

SABAH LAW SOCIETY

presents

Webinar

Criminal law Masterclass

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Date: 7th September 2021

Time: 10 a.m. – 1.00 p.m.

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- Basis of the presumption of innocence
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Introduction

- Scope and purpose
 - Not a lecture but knowledge sharing

- Not a complete book or thesis or paper in criminal law and procedure

- Not a course in the Penal Code or Criminal Procedure Code or the Evidence Act

- Only to rediscover and remind us of some useful principles in criminal law and procedure but hopefully in the process, we may be able to include:
 - Discussion on possible weaknesses of the prosecution
 - The helpful but seldom used legal principles for the defence

 - Discussion on the pitfalls for the defence in criminal trial
 - Legal principles to note by the defence
- **Prelude to Advance Masterclass**

Basis of the presumption of innocence

- 'A central tenet of the rule of law is the equal subjection of all persons to the ordinary law' –**Alma Nudo case [2019] 4 MLJ 1**
- Importance to preserve the presumption of innocence hence the 'need to do the balancing enquiry between safeguarding the constitutional rights of an individual from being 'convicted and subjected to ignominy and heavy sentence and 'the maintenance of public confidence in the enduring integrity and security of the legal system'.
- 'Presumption of innocence is by no means absolute'
- The common law principle
 - **Woolmington v DPP [1935] AC 462 :**
 - "Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception..... No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."
-Viscount Sankey LC
 - **R v Oakes [1986] 1 SCR 103 at para 29**
- **Mohd. Radhi v PP [1992] 2 SLR 145** pg. 151 – 'accused has no burden to prove his innocence'- Azmi FCJ

Basis of the presumption of innocence

- The Constitutional provisions
 - **Articles 5 and 8**
 - Cases:
 - **Public Prosecutor v Gan Boon Aun [2017] 3 MLJ 12**
 - **Alma Nudo Atenza v Public Prosecutor and another appeal [supra]**
 - ‘..a provision of law, although it may be in the form of a proviso, is not rendered constitutionally valid if it ‘would subvert the very purpose of the entrenchment of the presumption of innocence’
 - **Breach of constitutional rights and habeas corpus? Will be discussed in the Advance Masterclass**
- Presumptions in certain criminal legislations
 - ‘A true presumption takes effect when, upon the proof of one fact (the basic fact), the existence of another fact (presumed fact) is assumed in the absence of further evidence’
 - ‘Presumptions of law or presumptions of fact’
 - ‘The usual purpose of a presumption is to ease the task of a party who can adduce some evidence which is relevant to, but not necessarily decisive of, an issue’
 - ‘a provision which violates the presumption of innocence may still be upheld if it is a reasonable limit, prescribed by law and demonstrably justified in a free and democratic society.’ The tests:
 - objective must be of sufficient importance
 - the means chosen to achieve the objective must be reasonable and demonstrably justified
 - But no double presumptions – **Alma Nudo (supra)**

Investigation and Arrest

- CPC provides the form and manner in investigation and arrest
 - 108. (1) When the information aforesaid relates to the commission of a non-seizable offence that officer shall refer the informant to a Magistrate.
 - (2) No police officer shall in a non-seizable case exercise any of the special powers in relation to police investigations given by this Chapter without the order of the Public Prosecutor.
 - (3) Any police officer not below the rank of Sergeant or any officer in charge of a police station receiving such order may exercise the same powers in respect of the investigation, except the power to arrest without warrant, as that police officer may exercise without an order in a seizable case.
- ‘109. (1) Any police officer not below the rank of Sergeant or any officer in charge of a police station may without the order of the Public Prosecutor exercise all or any of the special powers in relation to police investigations given by this Chapter in any seizable case.’
- Meaning of seizable and non-seizable offences – 3rd column of First Schedule of CPC – arrest without warrant and no arrest unless with warrant

Investigation and Arrest

- 38. (1) Every warrant of arrest issued by a Court under this Code shall be in writing and signed as provided by the Courts of Judicature Act 1964, or the Subordinate Courts Act 1948, and shall bear the seal of the Court.
- (2) Every such warrant shall remain in force until it is cancelled by the Court which issued it or until it is executed.

- 105. A police officer knowing of a design to commit any seizable offence may arrest without orders from a Magistrate and without a warrant the person so designing if it appears to the officer that the commission of the offence cannot otherwise be prevented.

- 117. (1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 28 and there are grounds for believing that the accusation or information is well founded the police officer making the investigation shall immediately transmit to a Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time produce the accused before the Magistrate.
- (2) The Magistrate before whom an accused person is produced under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding fifteen days in the whole. If he has no jurisdiction to try the case and considers further detention unnecessary he may order the accused person to be produced before a Magistrate having such jurisdiction or, if the case is triable only by the High Court, before himself or another Magistrate having jurisdiction with a view to transmission for trial by the High Court.
- (3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

Investigation and Arrest

- 15. (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested unless there is a submission to the custody by word or action.
- (2) If such person forcibly resists the endeavour to arrest him or attempts to evade the arrest such officer or other person may use all means necessary to effect the arrest.
- (3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.
- On section 15 (1) - **Public Prosecutor v Shee Chin Wah [1998] 5 MLJ 429** making reference to:
 - (i) **Shaaban & Ors v Chong Fook Kam & Anor [1969] 2 MLJ 219** at p 220 reproducing what Lord Devlin said:
 - An arrest occurs when a police officer states in terms that he is arresting or when he uses force to restrain the individual concerned. It occurs also when by words or conduct he makes it clear that he will, if necessary, use force to prevent the individual from going where he may want to go. It does not occur when he stops an individual to make enquiries.
 - Police can arrest if a reasonable suspicion existed. Not necessary to show prima facie proof of such offence - "reasonable suspicion" is NOT the same as "prima facie" proof
 - (ii) 'If a statement is made by a person before any arrest is effected on him and no caution has been read out to him, so long as that statement was not caused by any inducement, threat or promise having reference to the charge against him, such statement may be relevant and admissible against him.'

Investigation and Arrest

- Section 113(1) of the CPC provides that no statement made by any person to a police officer in the course of a police investigation made under this Chapter shall be used in evidence.
- (iii) 'Generally, arrest may be actual arrest or constructive arrest. Whether a person is actually under arrest is a question of fact to be decided according to the circumstances of each case.'
- 'Submission to custody' – **Yong Moi Sin v Kerajaan Malaysia (1999) 8 CLJ 651**
- **R v Bryce (1992) 4 All ER 567**- An undercover officer conversation with Appellant who made incriminating statements. Upon arrest S said "no comment" to all tape-recorded interview but made further incriminating statements when tape record was off -Evidence of the conversation should have been excluded - an adverse effect on the fairness of the trial-the safeguards of the Code of Practice, para 10.5 to be readily by-passed

Investigation and Arrest

- **Christie v. Leachinsky [1947] A.C. 57** - The law requires every person who is arrested to be cautioned before being charged with an offence and to be told that he need not say anything unless he wishes to do so. Thus, a suspect is given an opportunity to be heard before being charged.
- 'It would follow therefore from this proposition, that a person arrested without being told the reason is entitled to resist the arrest and any force used to overcome the resistance would amount to assault.' - **Abdul Rahman v Tan Jo Koh [1968] 1 MLJ 205 at 207.**
- But in **Evan Rees and Others v Richard Alfred Crane [1994] 2 AC 173** - In considering whether this general practice should be followed the courts should not be bound by rigid rules. It is necessary to have regard to all the circumstances of the case. There are many situations in which natural justice does not require that a person must be told of the complaints made against him and given a chance to answer them at the particular stage in question. Essential features leading the courts to this conclusion have included the fact that the investigation is purely preliminary, that there will be a full chance adequately to deal with the complaints later, that the making of the inquiry without observing the audi alteram partem maxim is justified by urgency or administrative necessity, that no penalty or serious damage to reputation is inflicted by proceeding to the next stage without such preliminary notice, that the statutory scheme properly construed excludes such a right to know and to reply at the earlier stage.

Investigation and Arrest

- **Section 28A of Criminal Procedure Code** - A person arrested without a warrant, shall be informed as soon as may be of the grounds of his arrest by the police officer making the arrest - **Mohammad Shafiq Dollah & Anor v Sarjan Mejar Abdul Manaf Jusoh [2013] 2 CLJ 1096:**
 - section 28A and Article 5(3) of the Federal Constitution are joint rights - duty of the police to inform the arrested person of his fundamental rights provided by Article 5(3) of the Federal Constitution to consult or hire a lawyer of his own before any questions are posed to him after the arrest. Otherwise, the arrest may become an unlawful one.
- Other rights under section 28A – right to inform a relative or friend of the arrest and consult a legal practitioner.
- **Lewis & Anor v Chief Constables Of The South Wales Constabulary [1991] 1 AER 206**
 - The plaintiffs said that their arrests had been unlawful. The Court ruled that the arrests were lawful because, whilst their initial arrests were unlawful because the appellants were not told the reasons for them, they became lawful when they were given the reasons at the time of their presentation to the custody officer. There was no challenge to the grounds for the original arrest. The default of which complaint was made was not informing the person at the time of the arrest what those grounds were.
- But in **Richardson v The Chief Constable of West Midlands Police [2011] EWHC 773 (QB)**
 - arrest unlawful because no evidence as to whether and if so on what grounds the arresting officer considered arrest to be necessary – **prerequisites**: that an arresting officer believed that the arrest of the accused was necessary and that he had reasonable grounds for his belief. Whether the officer had that belief and reasonable grounds for it is a question of fact for the Court to determine.
- **Mahmood v Government of Malaysia & Anor [1974] 1 MLJ 103** – on arrest – discuss in the Advance Masterclass

Investigation and Arrest

- 23. (1) Any police officer or penghulu may without an order from a Magistrate and without a warrant arrest—
 - any person who has been concerned in any offence committed anywhere in Malaysia which is a seizable offence under any law in force in that part of Malaysia in which it was committed or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned;
 - possession without lawful excuse—implement for housebreaking;
 - proclaimed under section 44 - Proclamation for person absconding;
 - possession anything—may reasonably be suspected to be stolen or fraudulently obtained property and who may reasonably be suspected of having committed an offence with reference to that thing;
 - escape from lawful custody;
 - Deserter;
 - any person found taking precautions to conceal his presence under circumstances which afford reason to believe that he is taking such precautions with a view to committing a seizable offence;
 - any person who has no ostensible means of subsistence or who cannot give a satisfactory account of himself;
 - reputed a habitual robber, housebreaker or thief or a habitual receiver of stolen property knowing it to be stolen or who by repute habitually commits extortion or in order to commit extortion habitually puts or attempts to put persons in fear of injury;
 - breach of the peace;
 - supervision of the police who fails to comply with the requirements of section 296

Investigation and Arrest

- **PP v Tan Kim San [1980] 2 MLJ 98 –**
 - the police should refrain from the practice of ‘arrest first, investigate later’
- **See also: Public Prosecutor v Dato' Seri Anwar Bin Ibrahim (No 3) [1999] 2 MLJ 1**
- **Palaniappa Chettiar v Arunasalam Chettiar FM Civil Appeal No 34 of 1958; [1961] MLJ xxxiii –**
 - he is entitled to be represented by the counsel of his choice if that counsel is willing and able to represent him and not a litigant is entitled to be represented by the counsel of his choice.
 - **See also: Bakar bin Ahmad v Public Prosecutor (1968) 4 MC 294 –**
 - Article 5(3) Federal Constitution; It is the duty of an accused person to attend court when called upon and any obligation on counsel arises by reason of the contract between himself and his client. If counsel is absent on the date of the trial that is a matter between client and counsel.
- Article 5(3) of the Constitution does not in any way restrict the power of the court to fix any date for the hearing of a case nor does it prohibit the court from hearing the case in the absence of counsel who has been retained - **Mohamed Bin Abdullah v Public Prosecutor - [1980] 2 MLJ 201 p 203**
- **The implications of Public Prosecutor v Audrey Keong Mei Cheng [1997] 3 MLJ 477, Saul Hamid bin Pakir Mohamad v Inspektor Abdul Fatah bin Abdul Rahman & Anor [2007] 6 MLJ 47 & Inspector Yusof Hj Othman & Ors v Kwan Hung Cheong [2018] supp MLJ 224 - will be discussed during the Advance Masterclass**

Search

- **Jeffery v Black [1978] Q.B. 490 –**

- ‘I do not accept that the common law has yet developed to the point, if it ever does, in which police officers who arrest a suspect for one offence at one point can as a result thereby authorise themselves, as it were, to go and inspect his house at another place when the contents of his house, on the face of them, bear no relation whatever to the offence with which he is charged or the evidence required in support of that offence.’
- Yet ‘the mere fact that evidence is obtained in an irregular fashion does not of itself prevent that evidence from being relevant and acceptable to a court’. But subject to a general discretion of the court to decline to allow any evidence to be called by the prosecution if they think that it would be unfair or oppressive to allow that to be done. It is a discretion which every judge has all the time in respect of all the evidence which is tendered by the prosecution. ‘The police officers not only entered without authority, but they have been guilty of trickery or they have misled someone, or they have been oppressive or they have been unfair, or in other respects they have behaved in a manner which is morally reprehensible, then it is open to the justices to apply their discretion and decline to allow the particular evidence to be let in as part of the trial.’

- **Gooi Loo Seng v Public Prosecutor [1993] 2 MLJ 137 –**

- the contents of search list prepared on the spot told materially different story to that deposed to by raiding police officer. Consistent with accused’s version - necessary for the trial judge to view the whole of the evidence objectively and from all angles.

- **Public Prosecutor v Abdul Karim @ Dollah Bin Pak Kub & Anor [1993] MLJU 0654 –** importance of good attention to search list by defence

Bail

- Bailable offence (Section 387 of Criminal Procedure Code)
 - Bail is a matter of right for bailable offences but at times there may be exceptions
 - The court cannot deny the bail.
 - **Mohd Jalil bin Abdullah & Anor v PP [1996] 5 MLJ 564 –**
 - the words “shall be released on bail” in this provision clearly means it is mandatory and hence a right.
 - Offences punishable with imprisonment with less than 3 years or with fine only.
 - Set out in Column 5 of the First Schedule of the Criminal Procedure Code.
- Non-bailable offence (Section 388 of Criminal Procedure Code)
 - Court has the discretion and power to decide whether to grant bail.
 - **PP v Mat Zain [1948] 1 MLJ 148–**
 - the granting of bail is a judicial act and it is the duty of the court to decide whether there are reasonable grounds for believing that the accused has been guilty of an offence punishable with death.
 - It does not mean that the accused can never be granted bail, but it only means the accused cannot claim bail as of right.
 - Offences punishable with death or imprisonment for 7 years or upwards or for 3 years or upwards but less than 7 years under other statutes.
 - Set out in Column 5 of the First Schedule of the Criminal Procedure Code.

Application of Bail for Non-Bailable Offences

- **Section 388(1) of Criminal Procedure Code**
 - “shall not be so released” meaning that there is no discretion if there are reasonable grounds to believe that the accused is guilty.
 - **But see: Public Prosecutor v Dato' Balwant Sing; cf. Leow Nyok Chin v Public Prosecutor [1999] 1 MLJ 437h (No 1) [2002] 4 MLJ 427 – for discussion in Advance Masterclass**
 - In order to grant bail, the court has underlined 9 factors that need to be considered before granting the bail in the case of **PP v Wee Swee Siang [1948] MLJ 114** and Mallal's Criminal Procedure Code also listed down an additional 3 factors.
 - **Dato' Mat Shah v Pendakwa Raya [1991] 2 MLJ 125** – The general rule is the court will lean in favour of granting bail unless there are strong grounds that bail should be refused.
- Proviso of **section 388(1) of Criminal Procedure Code**
 - The court may direct the accused to be released on bail even though there are grounds to believe that the accused is guilty if the accused is under 16 years old or any woman or any sick or infirm person.
 - **Jiramat Mohd Rashid v PP [2018] 8 CLJ 375** - the High Court granted the bail to the 16-year-old on the grounds that he has been surrounded by men with various criminal records during his imprisonment and it might expose the applicant to the risk of being a criminal in the future as reported in the filed Psychologist Report.
- **Section 388(2) of Criminal Procedure Code**
 - The accused may be released on bail if there are no reasonable grounds to believe that the accused is guilty of such offence even though there exist sufficient grounds for further inquiry.

Appeals against Bail Decisions

- **Section 388 of Criminal Procedure Code –**
 - successive applications made by the accused to the same court
 - sufficient and cogent reasons like material change in circumstances or new facts.
- **PP v Abdul Rahim bin Hj Ahmad & Ors [1988] 3 MLJ 272 –**
 - New fact in the form of medical report showed that the complainant may not have been raped. Bail was allowed with two conditions.
- **R v Nottingham Justice, Ex-Parte Davis [1980] 2 AER 775 –**
 - Bail - successive applications - new considerations but not to ignore the previous decisions - On a second or subsequent application for bail, magistrates need only ask first whether there had been a material change in circumstances since the original order. If there had been no change, there was no need to look at the facts underlying the previous refusals of bail. 'The court considering afresh the question of bail is both entitled and bound to take account not only of the change in circumstances which has occurred since the last occasion but also all circumstances which, although they then existed, were not brought to the attention of the court. To do so is not to impugn the previous decision of the court and is necessary in justice to the accused.'

Appeals against Bail Decisions

- **Section 389 of Criminal Procedure Code (2nd limb)** - by way of motion
 - A judge in any case whether there is an appeal on conviction or not, may direct that any person be admitted to bail, or the bail required by a police officer or by the court be reduced or increased.
 - **Sulaiman bin Kadir v PP [1976] 2 MLJ 37** – File a Notice of Motion supported by an affidavit.
- **Section 395 of Criminal Procedure Code** –
 - by filing an appeal to the High Court
 - Any person aggrieved by any order or refusal of any inferior court may appeal to the High Court which may confirm, vary, or reverse the order. This means that prosecution also can apply under this provision to cancel the bail.
 - File of a Notice of Appeal, and then wait for the grounds of decision of the lower court judge. Only after that a petition of appeal premised on the grounds furnished can be proceeded and then wait for a hearing date of appeal by the High Court.
 - **Revision exercisable? To discuss in Advance Masterclass**

Powers Of Prosecutor & Responsibilities & Obligations In Law

- **Institution of Proceedings**
 - **Article 145(3) of Federal Constitution**
 - To institute, conduct, or discontinue any proceeding for an offence, except proceedings before the Syariah Court, Native Court, or Court Martial.
 - **Sukma Darmawan Sasmitaat Madja v KP Penjara Malaysia & Anor [1998] 4 MLJ 742** – PP has the discretion to prefer where to charge and Article 145(3) prevails over Article 121 of the Federal Constitution.
 - **Section 376(1) of Criminal Procedure Code**
 - AG shall be the Public Prosecutor and have control and direction of all criminal proceedings under Criminal Procedure Code.
 - **PP v Chan Kam Leong [1989] 1 MLJ 326** – Public Prosecutor has the discretion to charge the accused under Dangerous Drugs Act 1952.
 - **The effects and implications on the powers of PP: Repco Holdings Bhd v Public Prosecutor [1997] 3 MLJ 681; Ahmad Zubair @ Ahmad Zubir bin Hj Murshid v Public Prosecutor [2014] 1 MLJ 624 & Suresh Kumar a/l Velayuthan v Public Prosecutor [2020] 10 MLJ 549 – to discuss in the Advance Masterclass**
- **Conduct of Proceedings**
 - **Section 378 of Criminal Procedure Code**
 - Only the Public Prosecutor, Senior Deputy Public Prosecutor, or Deputy Public Prosecutor can appear in any criminal appeal.
 - Section 379 of Criminal Procedure Code – Advocate employed on behalf of the government may, with the permission in writing of the Public Prosecutor.
 - **Section 377 of Criminal Procedure Code**
 - Authorized persons can conduct the prosecution where there is written authority of the Public Prosecutor.
 - **PP v KM Basheer Ahmad [1982] 2 MLJ 78** – Lack of authority of the PP was an illegality and the private prosecution was a nullity.

Powers Of Prosecutor & Responsibilities & Obligations In Law

- **Discontinuance of Proceedings**
 - **Article 145(3) of Federal Constitution**
 - To institute, conduct, or discontinue any proceeding for an offence, except proceedings before the Syariah Court, Native Court, or Court Martial.
 - **PP v Mohd Azril Nurrasyid b Mohamed Jomali [2009] 1 LNS 680** – Decision not to further prosecute the accused or withdraw the charge lies with the PP and should not be interfered.
 - **Section 254 of Criminal Procedure Code**
 - Public Prosecutor can discontinue proceedings at any stage of the trial before judgment.
 - **Poh Cho Ching v PP [1982] 1 MLJ 86** – It is not for the court to decide. Similar to *'nolle prosequi'* in common law which means to be unwilling to prosecute.
- **Miscellaneous Powers**
 - **Section 171A(1) of Criminal Procedure Code**
 - Where the accused has several charges and pleads guilty to one or is convicted on one charge, the Public Prosecutor may, with the consent of the court, withdraw the remaining charges.
 - **Section 108 of Criminal Procedure Code**
 - Police must first obtain an order to investigate from the Public Prosecutor in respect of non-seizable offences.
 - **Section 133(1A) of Criminal Procedure Code**
 - At any stage of the examination, Public Prosecutor may direct the police to investigate the offence complained of and to report thereon to the Public Prosecutor.
 - **Sections 7, 8, 9, and 11 of Kidnapping Act 1961**
 - Public Prosecutor has the power to freeze bank accounts, order inspection of documents, order individuals to furnish information, order interception of any relevant documents, postal articles, and communication transmitted by telecommunication.
- **Chew Wai Keong v Public Prosecutor [2010] 6 MLJ 847 & City Growth Sdn Bhd & Anor v The Government of Malaysia [2006] 1 MLJ 581 – exercise of power or administrative function? To discuss in the Advance Masterclass**

Alibi

- A formal notice is required.
- Reasonable notice and time shall be given to the Public Prosecutor to investigate the alibi before such evidence can be adduced
- The notice may be given during the case management, or even during the trial.
- It shall include particulars of the place where the accused claims to have been at the time of the commission of the offence and the names and addresses of any witnesses whom he intends to call for the purpose of establishing his alibi.
- **Dato' Seri Anwar bin Ibrahim v PP [2003] 5 AMR 481**
 - No merit in the defence of alibi raised because there was no notice of alibi served and no request for time to serve was made.
- **PP v Azilah Hadri & Anor [2015] 1 AMR 641**
 - A mere assertion of alibi is insufficient to exculpate an accused. Corroboration must be provided to cast a reasonable doubt over the prosecution's case.
- **Pathmanabhan a/l Nalliannen v Public Prosecutor and other appeals [2017] 3 MLJ 141** – the 'Sosilawati murder case' – the importance of the decision on alibi and other legal principles will be discussed in the Advance Masterclass

Delivery of Certain Documents under Section 51A of Criminal Procedure Code

- The prosecution is obliged to supply documents such as:
 - The first information report (FIR)
 - Copy of document which will be tendered as part of the evidence for the prosecution
 - A written statement of facts favorable to the defence of the accused signed under the hand of the PP.
- Contrary to the public interest
 - Proviso in section 51(2) Criminal Procedure Code
 - If the supply would be contrary to the public interest, the prosecution may not supply it.
 - **Husdi v PP [1980] 2 MLJ 80**
 - Where the statements made to the police during a police investigation is deemed as a privileged document and there is a real danger of tampering with witnesses, it is undesirable for the prosecution to supply the defence with the police statements.
- Effect of non-compliance
 - **Lee Lu Chuang v PP [2010] 3 AMR 379**
 - It must be complied with before the trial and ordered that trial would not commence until the said section is complied with.
 - Criminal Litigation Process (3rd Ed.) by Baljit Singh
 - When the defence is not supplied with certain documents, they would apply for adjournment to study the new documents.
 - **Sek Kek Chuan v PP [2013] 6 CLJ 98**
 - The prosecution is not barred from tendering those documents and the defence may be given time to study those documents. However, it may jeopardize the prosecution's case if the court refuses to condone the failure so material and section 422 of the Criminal Procedure Code may not be much assistance.

Ingredients of a Valid Charge

- **Offence**

- Section 152(1) of Criminal Procedure Code – Offence charged
- Section 152(2) of Criminal Procedure Code – in specific name; or
- Section 152(3) of Criminal Procedure Code – definition of the offence.

- **Law and punishable section of law**

- Section 152(4) of Criminal Procedure Code – Section of law must be stated.
- Section 152 Illustration (c) of Criminal Procedure Code - Punishable section of law must be stated.

- **Time and date**

- Section 153(1) of Criminal Procedure Code – Particulars of the place, time, and date of the commission of the alleged offence must be stated.

- **Particulars of thing**

- Section 153 of Criminal Procedure Code – The particulars of the thing such as the serial number of a gun, or registration number of a vehicle must be stated.
- Section 154 of Criminal Procedure Code – Manner of the commission of the alleged offence must be stated.

- **See: Public Prosecutor v Tan Sri Kasitah Gaddam [2009] 6 MLJ 494** – ‘to prove all the elements of cheating on the second charge and therefore failed to make out a prima facie case against the accused’

Charge

- **PP v Raymond Chia Kim Chwee [1985] 2 MLJ 463 SC**
 - If before trial commences - the Court must regard Sec. 152, 153 and 154 of CPC - i.e. Prosecution to give particulars to the charge sufficiently to give adequate notice to the accused - "If there be any one principle of criminal law and justice clearer and more obvious than all others, it is that the offence imputed must be positively and precisely stated, so that the accused may certainly know with what he is charged, and be prepared to answer the charge as best he may";
 - Under Sec. 51 CPC- accused entitled to copies of documents mentioned in the charge but not all documents seized;
- **Low Seng Wah v PP [1962] MLJ 107 -**
 - Defective charge – where the essential ingredients of the offence are omitted from the charge and the accused is misled by that omission; if the charge is said to be bad for duplicity there must be miscarriage of justice; (See also: **Thenegaran a/l Murugan & Anor v Public Prosecutor [2013] 2 MLJ 855**);
- **Azahan bin Mohd Aminallah v Public Prosecutor [2005] 5 MLJ 334**
 - 'It certainly does not establish the proposition that a charge wanting of a specific date is bad and warrants an acquittal'.

Charge

- **Mohamed Ramly Bin Haji Rasip v Public Prosecutor [1941] 1 MLJ 31**
 - section 163 (i) (now 165 (i)) of the Criminal Procedure Code – requires the series of acts enquired into though separated by short intervals of time, may well be held to have formed one transaction in the sense that they were connected through being done with one specific criminal intent for the furtherance of a continuous plot;
- **Loh Kwang Seang v PP [1960] 26 MLJ 271-**
 - ‘a trial Court, without amending the charge, can properly convict for a "minor offence" arising out of the same original charge. The position, therefore, to my mind, is perfectly clear that it is only in cases where a complete minor offence is disclosed arising out of some of the elements necessary to constitute the major offence charged that a trial Court can convict for that minor offence without amending the charge and calling upon the accused to plead to that charge as amended’, that is, ‘it is always open to a subordinate Court, without amending the charge, to convict the accused of a different charge providing that that charge in itself constitutes a complete minor offence composed of constituent elements necessarily included in the offence originally charged’;
 - But it would be a ‘departure from the ordinary principles of justice if, upon a charge of corruption a Court could convict the accused upon the more serious charge of extortion without giving him an opportunity to be heard in answer to that charge and then impose a sentence of corporal punishment which it would have had no jurisdiction to impose on the original charge’.
- This case is deferred from **Lau Chuan Chuah v Regina [1955] MLJ 246 –**
 - ‘there could be no justification in a summary trial for calling upon an accused for his defence in respect of one charge and then convicting him upon a different charge’.

Charge

- **Public Prosecutor v Francis Dang Anak Nuya [1988] 1 MLJ 89**
 - The prosecution has no 'right to alter or add to a charge without the leave of the Court. It is plain that the power to alter or amend resides in the Court, not the prosecution, and that if the prosecution seeks to alter or amend or charge, it must make application to the Court for leave to do so'.
- **Ahmad Zubair @ Ahmad Zubir bin Hj Murshid v Public Prosecutor [2014] 1 MLJ 624**
 - 'with the leave of the court, the prosecution is entitled to amend the charges at any stage of the trial'. See also: Public Prosecutor v Yeoh Teck Chye [1981] 2 MLJ 176;
 - 'no error in stating either the offence or the particulars to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material, unless the appellant was in fact misled by that error or omission. More than that, s 422 of the CPC provides that any error or omission in the charges would not vitiate the proceedings, unless such error or omission has occasioned a failure of justice. In our view, whether the appellant was misled by any error or omission in the charges or whether such error or omission has occasioned a failure of justice can only be determined at the conclusion of the trial having regard to the entire evidence being placed before the trial judge'.
- **Datuk Haji Wasli bin Mohd Said v Public Prosecutor and another application [2006] 5 MLJ 172 – when to apply to strike out a criminal charge – to be discussed in the Advance Masterclass**

Section 422 of Criminal Procedure Code

- This provision cures all forms of irregularities, error, omission, or improper admission or rejection of evidence unless it has occasioned a failure of justice.
- **Harun bin Abdullah v PP [1998] 3 MLJ 1**– A breach of an explicit provision of the Criminal Procedure Code and a principle of general importance is not an error, omission or irregularity, hence it cannot be cured under section 422 of the Criminal Procedure Code.
- **Ng Yee v PP [1953] 1 MLJ 250**
 - The admission as evidence of a report by a government chemist which was not served on an accused 10 days before the trial as required by section 399 of the Criminal Procedure Code is an irregularity and not an illegality.
- **PP v Tan Eng Hock [1970] 2 MLJ 15**
 - An order of binding over under section 173A of the Criminal Procedure Code after recording a conviction is illegal and the defect cannot be cured under section 422 of the Criminal Procedure Code.

Section 34 of Penal Code

- Used by the prosecution in order to impose joint criminal liability on persons who participate in the commission of an offence.
- Must be attached to another offence-creating provision to infer joint responsibility for a criminal act.
- **Hng Hock Seng v Public Prosecutor [2017] 2 MLJ 456** – The appellant was charged with another two co-accused of having acted in furtherance of a common intention to traffic in dangerous drugs under section 39B(1)(a) of the Dangerous Drugs Act 1952 read together with section 34 of Penal Code.
- In order to invoke section 34, it must be established each and every one of the elements to hold secondary offenders vicariously liable. If the prosecution fails to establish any of these postulates beyond a reasonable doubt, then their invocation of section 34 against the secondary offenders will also fail.
- **Sabarudin bin Non v Public Prosecutor [2005] 4 MLJ 37:**
 - In our judgment, presence in every case is not necessary for s 34 to apply. In our judgment, *s 34 should be interpreted having regard to modern technological advances*. The early decisions on the section, admittedly by the Privy Council, that held presence to be essential for s 34 to bite were handed down at a time when modes of communication were not as advanced as today. It would, in our judgment, be a perversion of justice if we are required to cling on to an interpretation of the section made at a time when science was at a very early stage of development.
- ‘the crux of the section is participation, and presence may or may not provide evidence of participation; this is a question of fact to be decided in each case.’ - **Lee Chez Kee v Public Prosecutor [2008] 3 SLR(R) 447**
- **R v Gnango [2011] UKSC 59**- joint enterprise – ‘whether an offence is committed as a principal or as an accessory, the offence is the same offence’ i.e. ‘permits two or more defendants to be convicted of the same criminal offence in relation to the same incident, even where they had different types or levels of involvement in the incident’.
- But note: **R v Jogee [2016] UKSC 8:**
 - ‘The error was to equate foresight with intent to assist, as a matter of law; the correct approach is to treat it as evidence of intent. The long-standing pre Chan Wing-Siu practice of inferring intent to assist from a common criminal purpose which includes the further crime, if the occasion for it were to arise, was always a legitimate one; what was illegitimate was to treat foresight as an inevitable yardstick of common purpose.’

Prosecution stage

- **Public Prosecutor v Hettiarachigae Ls Perera [1977] 1 MLJ 12**

- a magistrate cannot acquit an accused person until the evidence for the prosecution has been heard - **Kuppusamy v Public Prosecutor [1948] MLJ 25;**
- a magistrate's 'powers of acquittal can only be exercised either under section 173(f) of the Criminal Procedure Code at the close of the case for the prosecution when there is no case to answer or under section 173(m)(1) of the Criminal Procedure Code at the close of the case for the defence when the court finds the accused not guilty. Apart from these two provisions, a magistrate may order a discharge amounting to an acquittal when the Public Prosecutor declines to prosecute further at any stage before delivery of judgment under section 254 of the Criminal Procedure Code. A magistrate, however, may discharge an accused person under either section 173(g) of the Criminal Procedure Code before the close of the case for the prosecution or section 173(n) of the Criminal Procedure Code before calling upon the accused to enter upon his defence but the discharge under these provisions does not amount to an acquittal'.
- 'According to Article 145 of the Federal Constitution only the Attorney-General has the power to institute, conduct or discontinue any proceedings for an offence. Until he makes up his mind the courts have to wait. Magistrates therefore have no business to usurp the functions of the Attorney-General. If the Police are slow complaints should be made to the Attorney-General who in the final analysis is answerable to Parliament.'
- 'If the police are not ready, the magistrate should adjourn to another date. Even if it takes ten years to dispose a case that is better than pretending to dispose of it early by means not provided by law. So let it be. One of the virtues of the judiciary is patience. If the waiting should become unbearable the remedy lies elsewhere.'

Prosecution stage

- **Public Prosecutor v David Noordin [1980] 2 MLJ 146**
 - Several postponements -13 times – ‘such circumstances a Magistrate should not make an order of discharge not amounting to an acquittal’ but the ‘prosecution should apply to the court to stay the proceedings under section 254(ii) Criminal Procedure Code and the learned Magistrate would be justified in making an order of discharge not amounting to acquittal. If such an order is made, it should not be followed by a prompt re-arrest and re-charge because it will be inconsistent with the grounds on which the application for stay was made. The accused should only be re-arrested if at all, when the prosecution is in a position to proceed with the trial.’
- **Tan Sri Eric Chia Eng Hock v Public Prosecutor (No 1) [2007] 2 MLJ 101-Revision? & Public Prosecution v Datuk Hj Wasli Mohd Said and other appeals [2013] MLJU 1599 – s.132 Evidence Act 1950 and prejudice to the defence — to discuss in the Advance Masterclass**

Prosecution's Case

- **At the close of the prosecution's case**
 - Section 173(f) of Criminal Procedure Code
 - The court shall consider whether the prosecution has made out a prima facie case against the accused.
 - If the court finds that the prosecution has not made out a prima facie case against the accused, the court shall record an order of acquittal.
- **Authority**
 - **PP v Mohamed Said [1984] 1 MLJ 50**
 - The prosecution was unable to produce 2 material witnesses.
 - Magistrate discharged the accused as the prosecution had failed to establish a prima facie case against the accused.
 - **PP v Hanif Basree bin Abdul Rahman [2007] 2B MLJ 320**
 - Court of Appeal approved the trial judge's decision in acquitting the respondent without calling for his defence where the presence of an unknown person clearly casts a doubt that the respondent was the one who caused the death of the deceased.

Standard of Proof

- There is no provision in the Evidence Act 1950 or the Criminal Procedure Code in regards with the accused's standard of proof.
- **Ikau anak Mail v PP [1973] 2 MLJ 153**
 - The accused has a burden to prove his defence of provocation in a balance of probabilities.
- **Saminathan v PP [1955] MLJ 121**
 - With regard to the defence in criminal cases, it is said the burden of proof is not as high as that of the prosecution and that if the defence raises a reasonable doubt or there is a preponderance of probabilities in favour of the accused, the accused is entitled to acquittal.

Principle Of Prima Facie And Maximum Evaluation At The Close Of Prosecution Case

- **Maximum Evaluation**

- **Public Prosecutor v Ong Cheng Heong [1998] 6 MLJ 156**

- ‘Maximum evaluation’ simply means evaluation, on a prima facie basis, of each and every essential ingredient of the charge as tested in cross-examination. In other words, maximum evaluation connotes quantitative rather than qualitative evaluation of the evidence; with focus more on the evidential burden in terms of evidence led.

- **Prima Facie**

- **Public Prosecutor v Ong Cheng Heong [1998] 6 MLJ 156**

- On the face of it or at first glance.
- Oxford Companion of Law – ‘A case which is sufficient to call for an answer. While prima facie evidence is evidence which is sufficient to establish a fact in the absence of any evidence to the contrary but is not conclusive.’

- **Public Prosecutor v Saare Hama & Anor [2001] 4 MLJ 480**

- The prosecution could be ruled to have made out a prima facie case against the accused when the probative value of the evidence on all the essential elements in the charge taken as a whole is such that, if unrebutted, it is sufficient to induce the Court to believe in the existence of the facts pertaining to such essential elements or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts existed or did happen.

Rights of the Accused upon Entering in His Defence

- **Section 173(ha) of Criminal Procedure Code**
 - **The accused remains silent**
 - **Kartigeyan a/l Krishnan v PP [2012] 4 AMR 792**
 - The appellant was found guilty of charges for rape and murder. But opted to remain silent.
 - Court of Appeal decided that when the appellant elects to remain silent, the court is put in a situation where it has no other choice, but to convict the appellant on the charges as the appellant failed to rebut the evidence adduced by the prosecution.
 - **The accused makes an unsworn statement from the dock**
 - The accused cannot be cross-examined.
 - **Mohammad Reza Lajevardi Taghi v PP [2015] 4 CLJ 186**
 - Court of Appeal emphasized that the appellant's unsworn statement should be taken into account along with other evidence in a case.
 - **Azahan Mohd Aminallah v PP [2004] 6 AMR 810**
 - For the purpose of a trial, an unsworn statement from the dock is evidence.
 - **The accused gives evidence on oath from the witness box**
 - The accused is subject to examination-in-chief, cross-examination, and re-examination.
 - Allows the credibility or the truthfulness of the accused to be tested in the court.

Appeals

- **Section 316(b) of Criminal Procedure Code**

- Judge may reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried; or
- Judge may alter the finding, maintain the sentence, or with or without altering the finding, reduce or enhance the sentence or alter the nature of the sentence.

- **Authority**

- **Low Cheok Hin v R [1956] MLJ 131**

- Two-stage test where the accused may be convicted of another offence not charged.
- Where the facts are such that the unframed charge was available from the start of the trial under section 166 Criminal Procedure Code and the court is satisfied that had the unframed charge been framed, the prosecution and the defence would have raised the same issues of facts and adduced the same evidence.

- **Sivalingam v PP [1982] 2 MLJ 172**

- High Court substituted the conviction of cheating under section 420 of Penal Code to criminal breach of trust under section 409 of Penal Code. On appeal to the Federal Court, it was held that the substitution was wrong.
- The ingredients under section 409 Penal Code must be proved as they are different from the former but was not done in this case.

- **Public Prosecutor v Datuk Hj Wasli bin Mohd Said [2015] 3 MLJ 35** – interlocutory ruling and appeal discussed

Retrial

- **Azahan bin Mohd Aminallah v Public Prosecutor [2005] 5 MLJ 334**
 - 're-trials are generally not ordered in cases where the case has been pending against an accused for about four years'.
- **R v Saunders (1974) 58 Cr App R 248** - Long delay of prosecution is undesirable

Section 27 of Evidence Act 1950

- Allows evidence of information given by the accused which is distinctly related to the fact discovered to be admissible.
- **Hasamuddin bin Talena v PP [2002] 2 MLJ 408** – Where the prosecution sought to rely on information under section 27, approximations are not permitted. The exact words spoken by the accused had to be proved.
- Conditions under section 27 of Evidence Act 1950
 - Accused must have been in police custody at that time of information
 - A fact must have been discovered in consequence of the information given by the accused
 - Information must distinctly relate to the fact discovered
 - The fact must be a relevant fact which relates to the commission of the crime
- Adducing evidence
 - **Tan Hung Song v R [1951] 1 MLJ 181**
 - No hard and fast rule governing the procedure in adducing evidence under section 27
 - Give evidence of the discovery of the fact before giving evidence of the information the accused supplied.
 - The facts discovered will be admissible in its own right following the general relevancy provision
 - **Pulukuri Kottaya v Emperor [1947] AIR 1947 PC 67**
 - The accused confessed that he stabbed the victim and hide the spear in a yard in his village.
 - The first part of the statement was not admissible as it spoke about his guilt. The second part of the confession leading to the discovery of the spear was admissible.
 - **PP v Lim Kim Seng [2013] [2013] 7 MLJ 844**
 - The accused confessed to having unintentionally committed murder and that he could show the police the place where it happened. The body was found in the said location.
 - Only the information that led to the discovery of the body was admissible. The evidence did not lead to the inference that the accused had committed the murder, only to the fact that there was dead body.
- **Goi Ching Ang V Public Prosecutor [1999] 1 MLJ 507** – ‘vested discretion in a trial judge to exclude evidence which is prejudicial to an accused even though the said evidence may be technically admissible. Evidence obtained in an oppressive manner by force or against the wishes of an accused person or by trick or by conduct of which the police ought not to take advantage, would operate unfairly against the accused and should in the discretion of the court be rejected for admission. The court should ensure that the standards of propriety in obtaining s 27 information are scrupulously followed’

Admission and Confession

- **Admission**

- Section 17(1) of Evidence Act 1950
- An inference can be made from statements made by parties either orally or by documentary evidence under certain circumstances, and this inference could include an inference of guilt on the part of a party or another party.

- **Confession**

- Section 17(2) of Evidence Act 1950
- For a confession of a person to be admissible, it must first be established that it comes from a person who has been accused of an offence. Second, the confession refers to an admission of guilt about a crime committed by the accused person.

Admission and Confession

- **Admissibility of Admission**

- Oral admissions about contents of documents
 - **Section 22 of Evidence Act 1950**
 - Inadmissible unless the original document is produced, or the party gives secondary evidence in accordance with section 65 Evidence Act 1950 as to the content of the document.

- **Admissibility of Confession**

- **Section 24 of Evidence Act 1950**
- Confession has to be made voluntarily
 - **Mohammed Yusof v PP [1983] 2 MLJ 167** – The test used by the court is “if the court is satisfied from the facts and surrounding circumstances that its effect on the mind of the accused is that he has to make the statement whether he likes or not...”
- Inducement, threat or promise comes from person in authority
 - Statement will not be regarded as voluntary
 - **Aziz bin Muhammad Din V PP [1996] 5 MLJ 473** – A person in authority is someone engaged in the arrest, detention, examination or prosecution of the accused. In this case, the accused’s father persuaded the accused in the presence of person of authority. The confession was excluded.
- The inducement, threat or promise has reference to the charge
 - **Poh Kay Keong v PP [1995] 3 SLR 887** – “refer to charge” is not limited to matters directly relating to the charge, as long as it refers to any matters which could have an effect on the accused in respect of the charge.
- The inducement, threat or promise must, in the opinion of the court, give the accused person grounds which would appear to him reasonable, for supposing that by making it, he would gain any advantage or avoid any evil of a temporal nature in the proceeding against him
 - The accused honestly believes that he will gain an advantage or avoid a malevolent or dreadful outcome of he confesses voluntarily.
 - **R v Richards (1832) 5 C & P 318** – “If you don’t tell all about it, I will send for a constable”.

The Rule in Browne v Dunn (1893)

- When a witness is giving evidence and you intend to call evidence that contradicts them, you must put the substance of that contradictory evidence to the witness during cross-examination and give them the opportunity to comment on it.
- The rule is based on the principle that it is unfair to deny a witness the opportunity of explaining a point that will later be used to invite criticism or disbelief in their evidence. It is also in the interests of justice to put contrary evidence to a witness in order for any possible explanation of the contradiction to be put before the court.
- Indian case: **Carapiet v Derderian AIR 1961 Cal 359**
“Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that this is merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial.”
- Application in Malaysia
 - The principles of law enunciated in *Browne v Dunn (1893)* has been accepted in the Malaysian courts through cases such as **Sivalingam a/l Periasamy v Periasamy & Anor [1995] 3 MLJ 395** and **Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors** and another appeal [1995] 3 CLJ 639
- Gopal Sri Ram JCA (later FCJ) in **Aik Ming (M) Sdn Bhd v Chang Ching Chuen & Ors** expressed that principle in **Browne v Dunn** as follows:
“It is essential that a party's case be expressly put to his opponent's material witnesses when they are under cross-examination. A failure in this respect may be treated as an abandonment of the pleaded case and if a party, in the absence of valid reasons, refrains from doing so, then he may be barred from raising it in argument. It is quite wrong to think that this rule is confined to the trial of criminal causes. It applies with equal force in the trial of civil causes as well. This rule as to cross-examination to which I have just adverted derives its name from the case in which it was expressed.”
- ‘It is plain that their Lordships, whilst recognising and affirming **a rule of practice** in the terms in which they expressed themselves, also recognised the need for flexibility in its application. That need arises from the very nature of the subject matter which it concerns. The central purpose of the rule is to secure fairness in the conduct of adversary proceedings. That consideration provides the best guide, both to the practical requirements of the rule in a given case, and to the consequences which may properly flow from its non-observance, including the remedies that are available to deal with a problem so created.’- **R v Birks (1990) 19 NSWLR 677**

Similar Facts Evidence

- Similar facts evidence is a kind of evidence which renders the existence or non-existence of fact in issue probable because of its general resemblances and not by reason of it being connected therewith.
- In common law, the general rule is similar facts evidence is inadmissible. However, there are exceptions.
 - In **Common Law**, the test for admitting similar facts evidence has been refined in the case of **DPP v Boardman [1975]** where the element of probative force outweighing its prejudicial effect being included. The question is whether the evidence of previous offence sought to be admitted is strikingly similar with the offence which the accused is being tried and whether the probative value of this evidence outweighs its prejudicial effect.
 - Under the law of evidence in **Malaysia**, it is not competent for the prosecution to adduce evidence which tends to show that the accused had been guilty of a criminal act to show that he is a person likely to commit the offence. According to section 54 of Evidence Act 1950, the prosecution cannot lead evidence relying on the bad character of the accused to establish its case. However, the prosecution can only adduce evidence to show his good character.

Similar Facts Evidence

- **Invoking the admissibility of similar facts evidence**
 - **Actus Reus**
 - **Section 11(b) of Evidence Act 1950**
 - The word “highly” used requires the element of probative force to be higher than what would normally be required
 - **Mens Rea**
 - **Section 14 of Evidence Act 1950**
 - Facts showing existence of state of mind or of body or bodily feeling
 - **Section 15 of Evidence Act 1950**
 - When an act is accidental or intentional in relation to relevancy and similar facts evidence

Chain of Evidence

- Chain of evidence is a series of events which, when viewed in sequence, account for the actions of a person during a particular period of time or the location of a piece of evidence during a specified time period.
- In the case of **Bakshish Singh v The State of Punjab 1957 AIR 904**, the court stated that:

“In a case resting on circumstantial evidence, the circumstances put forward must be satisfactory proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again, those circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”
- In this case, it is clearly that the circumstantial evidence that had been brought as evidence should be a strong evidence and consistent in order for it is been accepted by the court. The circumstantial evidence is like a strand of rope. If one of it being cut off, the strength of the rope can be still strong if the weight of the ropes that had been cut off is a minor one. This is how the circumstantial evidence is being illustrated.
- **Eng Sin v Public Prosecutor [1974] 2 MLJ 168** – where the evidence is entirely circumstantial, the links in the chain of evidence must be strictly established. (See also: **Fazal Din v Public Prosecutor [1949] MLJ 123**.)

Other Legal principles for discussion in Advance Masterclass

- **Director of Public Prosecutions v Humphrys [1976] 2 All ER 497 –**
 - can issue estoppel be applied in criminal case?
- Can Mareva injunction be applied in criminal matters?
- Recognition, Identification and alibi – any distinction?
 - **Duis Akim & Ors v Public Prosecutor [2014] 1 MLJ 49; R v Turnbull and others [1976] 3 All ER 549; Muharam Bin Anson v Public Prosecutor [1981] 1 MLJ 222;**
- **Defences –**
 - **Wong Lai Fatt v Public Prosecutor [1973] 2 MLJ 31 & Doyle v Olby Ltd [1969] 2 QB 159 166:**
 - "We never allow a client to suffer for the mistake of his counsel if we can possibly help it. We will always seek to rectify it as far as we can. We will correct it whenever we are able to do so without injustice to the other side".

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Conclusion

Q & A