

CONSTITUTION OF BRUNEI DARUSSALAM

(Order made under Article 83(3))

SYARIAH PENAL CODE ORDER, 2013

ARRANGEMENT OF SECTIONS

Section

**PART I
PRELIMINARY**

1. Citation, commencement and long title.
2. Interpretation.
3. Application.
4. Criterion for deciding whether person is Muslim.
5. Saving of prerogative.

**PART II
GENERAL EXCEPTIONS**

6. Act done by person bound, or by mistake of fact believing himself bound, by law.
7. Act of Syar'ie Judge when acting judicially.
8. Act done pursuant to judgment or order of Court.
9. Act done by person justified or by mistake of fact believing himself justified by law.
10. Involuntarily doing lawful act.
11. Act likely to cause harm, but done without criminal intent, and to prevent other more serious harm.
12. Act of child who is not *mumaiyiz*.
13. Act of child who is *mumaiyiz* but not *baligh*.

14. Act of person of unsound mind.
15. Act of person intoxicated against his will or without his knowledge or caused by medication.
16. Act not intended, and not known to be likely, to cause death or hurt, done by consent.
17. Act not intended to cause death, done by consent in good faith for person's benefit.
18. Act done in good faith for benefit of person who is not *baligh* or of unsound mind, by or with consent of, guardian etc.
19. Consent known to be given under fear or misconception etc.
20. Acts which are offences independently of harm caused to person consenting, are not within the exceptions in sections 16, 17 and 18.
21. Act done in good faith for benefit of person without consent.
22. Communication in good faith.
23. Act to which person is compelled by threats.
24. Act causing slight harm.

Right of private defence

25. Nothing done in private defence etc. is an offence.
26. Right of private defence of body and property.
27. Right of private defence against act of person of unsound mind etc.
28. Acts against which there is no right of private defence.
29. When right of private defence of body extends to causing death.
30. When such right extends to causing any harm other than death.
31. Commencement and continuance of right of private defence of body.
32. When right of private defence of property extends to causing death.
33. When such right extends to causing any harm other than death.
34. Commencement and continuance of right of private defence of property.
35. Right of private defence against deadly assault when there is risk of harm to innocent person.
36. Exemption from this Part.

PART III
ABETMENT

37. Abetment of thing.
38. Abettor.
39. Common intention.
40. Abetment in Brunei Darussalam of offences outside Brunei Darussalam.
41. Punishment of abetment if act abetted is committed in consequence and where no express provision is made for its punishment.
42. Punishment of abetment if person abetted does act with different intention from that of abettor.
43. Liability of abettor when one act abetted and different act done.
44. Abettor when liable to cumulative punishment for act abetted and for act done.
45. Liability of abettor for effect caused by act abetted different from that intended by abettor.
46. Abettor present when offence is committed.
47. Abetment of offence punishable with death or life imprisonment.
48. Abetment of offence punishable with imprisonment if offence is not committed. If abettor or person abetted is public servant whose duty is to prevent offence.
49. Abetting commission of offence by public, or by more than ten persons.
50. Public servant concealing design to commit offence which it is his duty to prevent.
51. Concealing design to commit offence punishable with imprisonment.

PART IV
OFFENCES

Chapter I

**SARIQAH, HIRABAH, ZINA, ZINA BIL-JABAR, LIWAT, QAZAF, DRINKING
INTOXICATING DRINKS AND IRTIDAD**

52. *Hadd*.

Sariqah

53. *Sariqah* and *hirz*.
54. Value of *nisab* for *sariqah*.
55. Punishment for *sariqah*.
56. When *hadd* punishment for *sariqah* offences not imposed.
57. Property in different *hirz*.
58. Punishment for committing *qatl* or causing hurt to person during commission of *sariqah*.
59. Attempt to commit *sariqah*.
60. Abetting commission of *sariqah*.
61. Return of *sariqah* property.

Hirabah

62. *Hirabah*.
63. Punishment for *hirabah*.
64. When punishment of amputation of hand and foot in *hirabah* shall not be imposed.
65. Attempt to commit *hirabah*.
66. Abetting commission of *hirabah*.
67. Return of *hirabah* property.

Zina

68. *Zina*.
69. Punishment for *zina*.
70. Punishment for *zina* where the offender is not *mukallaf* or has not attained age of *baligh*.
71. Attempt to commit *zina*.
72. Attempt to commit *zina* where the offender is not *mukallaf* or has not attained age of *baligh*.

73. Abetting commission of *zina*.
74. Abetment to commit *zina* where the offender is not *mukallaf* or has not attained age of *baligh*.

Zina bil-jabar

75. *Zina bil-jabar*.
76. Punishment for *zina bil-jabar*.
77. Punishment for *zina bil-jabar* where the offender is not *mukallaf* or has not attained age of *baligh*.
78. Attempt to commit *zina bil-jabar*.
79. Attempt to commit *zina bil-jabar* where offender is not *mukallaf* or has not attained age of *baligh*.
80. Abetting commission of *zina bil-jabar*.
81. Abetment to commit *zina bil-jabar* where offender is not *mukallaf* or has not attained age of *baligh*.

Liwat

82. *Liwat*.
83. Proof of *liwat*.
84. Attempt to commit *liwat*.
85. Abetting commission of *liwat*.

Offences relating to *zina*, *zina bil-jabar* or *liwat*

86. Withdrawal of *ikrar* in cases of *zina*, *zina bil-jabar* or *liwat*.
87. Withdrawal of evidence in cases of *zina*, *zina bil-jabar* or *liwat*.
88. Accuser and witnesses not liable to *qazaf*.
89. Accuser and witnesses liable to *qazaf*.
90. *Ityan al-maiyyitah*.
91. *Ityan al-bahimah*.

92. *Musahaqah*.
93. Refusal to perform *li'an*.
94. Pregnant out of wedlock.

Qazaf

95. *Qazaf*.
96. Condition for person who commits *qazaf* and person liable to *qazaf*.
97. Manner of committing *qazaf*.
98. Punishment for *qazaf*.
99. Cases in which *hadd* punishment not imposed or enforced.
100. Issuing documents deemed to contain meaning of *qazaf*.
101. Sale of document deemed to contain the meanings of *qazaf*.
102. Attempt to commit *qazaf*.
103. Abetting commission of *qazaf*.

Intoxicating drinks

104. Drinking etc. liquor or intoxicating drinks.
105. Attempt to commit offence of drinking etc. liquor or intoxicating drinks.
106. Abetting commission of offence of drinking etc. liquor or intoxicating drinks.

Irtidad

107. *Irtidad*.
108. Declaring oneself as god.
109. Declaring oneself as *Rasul* or *Nabi*.
110. Contempt of *Nabi*.
111. Deriding etc. verses of the Al-Qur'an, *hadith* or obligatory matters with *ijma'*.
112. Declaring oneself as non-Muslim.
113. Attempt to commit *irtidad*.
114. Abetting commission of *irtidad*.

115. Forfeiture and disposal.
116. Order to repent.
117. Acquit after repentance.

Chapter II

QATL AND CAUSING HURT

118. *Qisas*.
119. *Diyat*.
120. Value of *diyat*.
121. *Arsy*.
122. *Badal-al-sulh*.
123. Application of *qisas*, *diyat* and *arsy*.

Qatl

124. *Qatl* and its kinds.
125. *Qatlul-'amd*.
126. Punishment for *qatlul-'amd*.
127. *Qatlul-'amd* due to *ikrah*.
128. *Qatl* caused by being hired.
129. *Qatlul-'amd* committed in self-defence.
130. *Qatlul-'amd* committed by public servant.
131. Right of *qisas* of *wali-ad-dam* in *qatlul-'amd*.
132. Cases in which punishment of *qatlul-'amd* not enforced.
133. Pardon in respect *qatlul-'amd*.
134. Compound of *qisas*.
135. Acquittal or punishment after pardon or compound of *qisas*.
136. Commission of *qatlul-'amd* by *wali-ad-dam* after pardon or compound of *qisas*.
137. Attempt to commit *qatlul-'amd*.
138. Abetment of *qatlul-'amd*.

Qatlu syibhil-'amd

139. *Qatlu syibhil-'amd*.
140. Punishment of *qatlu syibhil-'amd*.
141. Proof of *qatlu syibhil-'amd*.
142. Pardon of *diyat* in *qatlu syibhil-'amd*.
143. Acquittal or punishment after pardon of *diyat*.
144. Attempt to commit *qatlu syibhil-'amd*.
145. Abetment of *qatlu syibhil-'amd*.

Qatlul-khata'

146. *Qatlul-khata'*.
147. Punishment of *qatlul-khata'*.
148. Proof of *qatlul-khata'*.
149. Pardon of *diyat* in *qatlul-khata'*.
150. Acquittal or punishment after pardon of *diyat*.

Qatl by black magic

151. Black magic.
152. *Qatl* by black magic.
153. Attempt to commit *qatl* by black magic.
154. Abetment of *qatl* by black magic.

Qatl by poison

155. *Qatl* by using poison or poisonous substance.
156. Attempt of *qatl* by using poison or poisonous substance.
157. Abetment of *qatl* by using poison or poisonous substance.

***Qatl* by miscarriage of foetus**

158. *Qatl* by miscarriage of foetus.
159. Attempting *qatl* by miscarriage of foetus.
160. Abetment of *qatl* by miscarriage of foetus.
161. Miscarriage of pregnancy.
162. Attempt to cause miscarriage of pregnancy.
163. Abetment to cause miscarriage of pregnancy.
164. Exception for sections 158 and 161.

Suicide

165. Attempt to commit suicide.
166. Abetment to commit suicide.

Hurt

167. Causing hurt.
168. Kinds of hurt.
169. Punishment of causing hurt.
170. Proof of hurt liable to *qisas*.
171. Cases in which *qisas* punishment not enforced.
172. Power of Court to determine hurt liable to *qisas* or otherwise.
173. Pardon in respect of hurt.
174. Compound of *qisas*.
175. Acquittal or punishment after pardon or compound of *qisas*.
176. Punishment of *arsy ghairu muqaddar*.
177. Determination of value of *arsy ghairu muqaddar*.
178. Recovery of *arsy muqaddar* or *arsy ghairu muqaddar*.
179. Punishment for hurt by rash or negligent act.
180. Punishment for hurt by mistake.
181. *Arsy muqaddar* or *arsy ghairu muqaddar* shall to be paid to victim.

182. Attempt to cause hurt.
183. Abetting commission of causing hurt.

Chapter III

WITHDRAWAL OF SYAHADAH

184. Withdrawal of *syahadah* before pronouncement of punishment or sentencing, or making order or judgment.
185. Withdrawal of *syahadah* in *mal* case after order or judgment made.
186. Withdrawal of *syahadah* after conviction, in cases of *qisas* and *hadd* other than *zina*, *zina bil-jabar* or *liwat*.
187. Withdrawal of *syahadah* in case of *zina*, *zina bil-jabar* or *liwat*.
188. Withdrawal of *syahadah ihshan* by *syahid*.
189. Withdrawal of *syahadah* in cases liable to punishment other than *hadd*, *qisas*, *diyat* or *arsy*.
190. Withdrawal of *syahadah* by *syahid furu'* in *mal* case.
191. False information by *muzakki*.

Chapter IV

GENERAL OFFENCES

192. Punishment of committing *ghasab*.
193. Return of *ghasab* property.
194. Failure to perform Friday prayer.
195. Disrespecting month of *Ramadhan*.
196. *Khalwat*.
197. Indecent behaviour.
198. Man posing as woman or *vice versa*.
199. Instigating married man or married women to divorce or neglect duties.
200. Preventing Muslim married couple from cohabiting.

201. Enticing or causing Muslim married woman to leave matrimonial home.
202. Enticing female Muslim to leave custody of her parents or guardian.
203. Unmarried female Muslim who leaves custody of parents or guardian.
204. Give away or surrender of Muslim.
205. Acting as procurer.
206. False claim.
207. Doctrine or practices etc. contrary to *Hukum Syara'*.
208. Practising etc. black magic.
209. Propagation of religion other than religion of Islam.
210. Persuading etc. Muslims to change religion.
211. Persuading etc. person having no religion to become believer of etc. religion other than religion of Islam etc.
212. Exposing beliefs and practices of religion other than religion of Islam to Muslim child, or child whose parents have no religion, who is under 18 years.
213. Publication contrary to *Hukum Syara'*.
214. Delivering or giving publications relating to religion other than religion of Islam to Muslims or persons having no religion.
215. Giving in public places publications relating to religion other than religion of Islam to Muslims or persons having no religion.
216. Worship.
217. Offences in relation to use of certain words in respect of religion of Islam.
218. Misuse of titles for Muslims reserved for specific persons.
219. Accusing etc. Muslim as *kafir*.
220. Contempt or brings into contempt etc. religion of Islam.
221. Contempt of *Nabi* by non-Muslim.
222. Deriding etc. verses of Al-Qur'an or *hadith* by non-Muslim.
223. Attempt to commit offence under section 221 or 222.
224. Abetting commission of offence under section 221 or 222.
225. Forfeiture and disposal.
226. Order to repent.
227. Acquit after repentance.
228. *Fatwa*.

229. Religious teaching without written approval.
230. Contempt etc. of religious authority.
231. Obstructing Religious Enforcement Officer.
232. False report.
233. Giving false *syahadah*.
234. Giving false evidence or information.
235. Incitement to neglect religious duty.
236. Non-payment of *zakat* or *fitrah*.
237. Collection of *zakat* or *fitrah* without authority.
238. Payments of *zakat* or *fitrah* to unauthorised person.
239. Fraudulent collection of *zakat*.
240. Build etc. mosque without permission.
241. Breach of secrecy.
242. Intentional insult or interruption to public servant sitting in any stage of judicial proceeding.
243. Omission to assist public servant when bound by law to give assistance.
244. Public servant disobeying direction of law with intent to cause injury to any person.
245. Omission to produce document to public servant by person legally bound to produce it.
246. Refusal to make oath or declaration by public servant when duly required.
247. Refusal to answer public servant authorised to question.
248. Refusal to sign statement.
249. Voluntarily causing hurt to extort confession or to compel restoration of property.
250. Attempt.
251. Penalty not provided for.

PART V
GENERAL

252. Provisions under Chapter 22 do not apply.
253. *Hukum Syara'* to apply if no other provision.
254. Repeal.

| | | |
|------------------------|---|---|
| FIRST SCHEDULE | — | ARABIC SCRIPT |
| SECOND SCHEDULE | — | TYPES OF <i>ITLAF-AL-UDHW</i> OR <i>ITLAF-SALAHIIYAT-AL-UDHW</i>, AMOUNT OF <i>ARSY</i> AND TERM OF IMPRISONMENT |
| THIRD SCHEDULE | — | TYPES OF <i>SYAJJAH</i>, AMOUNT OF <i>ARSY</i> AND TERM OF IMPRISONMENT |
| FOURTH SCHEDULE | — | TYPES OF <i>JURH</i>, AMOUNT OF <i>ARSY</i> AND TERM OF IMPRISONMENT |
| FIFTH SCHEDULE | — | WORDS AND EXPRESSIONS |
| SIXTH SCHEDULE | — | PRACTICE OR CEREMONY RELATED TO RELIGION OF ISLAM |

CONSTITUTION OF BRUNEI DARUSSALAM

(Order made under Article 83(3))

SYARIAH PENAL CODE ORDER, 2013

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order –

**PART I
PRELIMINARY**

Citation, commencement and long title.

1. (1) This Order may be cited as the Syariah Penal Code Order, 2013 and shall commence on such date or dates to be appointed by the Minister of Religious Affairs, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*.

(2) Different dates may be appointed under subsection (1) for different provisions of this Order or for different purposes of the same provision.

(3) The long title of this Order is “An Order relating to laws in respect of syariah crimes and any matter connected therewith.”

Interpretation.

2. (1) In this Order, unless the context otherwise requires –

“*baligh*” has the same meaning assigned to it under section 3(1) of the Syariah Courts Evidence Order, 2001 (S 63/2001);

BLUV as at 7th August 2018

“committee of the Majlis” means the Committee established under sections 41(1) and 44(1) of the Religious Council and Kadis Court Act (Chapter 77) and other committee referred to in the Religious Council and Kadis Courts Act;

“child” includes grandchild and any descendant;

“Court” means the Syariah Courts established under section 6(1) of the Syariah Courts Act (Chapter 184);

“father” includes grandfather and any ascendant;

“*ghairu muhshan*” means a person who is not married, or married but never had sexual intercourse in the marriage;

“good faith” means honestly and without any enmity or hatred;

“guardian” in relation to a child, means any person who is appointed by deed or will or by the order of a Court to be the guardian of the child or any person who has adopted that child and includes any person who has the lawful custody of that child;

“*Hukum Syara*” means the laws of any sect which the Court considers valid;

“*ikrar*” has the same meaning assigned to it under section 20 of the Syariah Courts Evidence Order, 2001 (S 63/2001);

“injury” means any harm whatever illegally caused to any person in body, mind, reputation, or loss to property.

“*mahkum 'alaihi*” means a person against whom a judgment or order is made by the Court;

“Majlis” means the Majlis Ugama Islam constituted under section 5 of the Religious Council and Kadis Courts Act (Chapter 77);

“Mufti Kerajaan” means the Mufti Kerajaan for Brunei Darussalam appointed under section 40 of the Religious Council and Kadis Courts Act (Chapter 77);

“mother” includes grandmother and any ascendant;

“*muhshan*” means a legally married person and had sexual intercourse in the marriage;

“*mukallaf*” means a person who has attained the age of 15 years *qamariah* and of sound mind;

“*mumaiyiz*” has the same meaning assigned to it under section 3(1) of the Syariah Courts Evidence Order, 2001 (S 63/2001);

“*Nabi Allah*” means any *Nabi Allah* referred to in the Al-Qur’an and *Sunnah*;

“part of the body” includes internal organ;

“practice or ceremony related to the religion of Islam” includes *Maulud Nabi* celebration, the practice of visiting graves, performing *tahlil*, reciting Al-Qur’an before commencing duty or any practice or ceremony related to the religion of Islam as listed in the Sixth Schedule;

[S 35/2018]

“property” includes all estates, interests, easements and rights, whether equitable or legal, in, to or out of, property and things in action;

“publication” means any of the following –

- (a) book, magazine or periodical, whether in manuscript or final form;
- (b) sound recording;
- (c) picture or drawing, whether made by computer-graphics or otherwise howsoever;
- (d) photograph, photographic negative, photographic plate or photographic slide; or
- (e) paper, model, sculpture, tape, diskette, article or thing –
 - (i) that has printed or impressed upon it any word, statement, sign or representation; or
 - (ii) on which is recorded or stored for immediate or future retrieval any information that, by the use of any computer or other electronic device, is capable of being reproduced or shown as any picture, photograph, word, statement, sign or representation,

and includes a copy of any publication;

“publication relating to religions other than Islam” means a holy book, or a fundamental book or one of the important texts, of a religion other than Islam or if it is in essence a publication that –

- (a) contains any excerpts, quotations, citations, or copies whether partly or wholly from any holy book, fundamental book or important texts, of that religion;
- (b) states the history, principles, teachings, characteristics, policies, performances, ceremonies, customs, charitable deeds, dogmas, orders or organisations of that religion;
- (c) states an entity, spiritual power, person or thing that is worshipped by the believers or the members of that religion;
- (d) contains stories, tales, legends, fables or anecdotes originated from the fundamentals of that religion;

- (e) purports to persuade, influence or incite people to become believers or members of that religion or to seek knowledge of that religion;
- (f) purports to give knowledge or source of knowledge to people relating to any matter mentioned in paragraph (a), (b), (c) or (d); or
- (g) contains any combination of characteristics mentioned in paragraphs (a), (b), (c) and (d);

Explanation – Though a publication is a publication relating to religions other than Islam by reason it is included under paragraph (a), (b), (c) or (d), it is not a subject matter of an offence under this Order if that publication is for the best interest of, or benefits, the religion of Islam or Muslims.

“public servant” has denotes a person falling under any of the following description –

- (a) any person holding office by virtue of any Commission or Warrant granted by His Majesty the Sultan and Yang Di-Pertuan or by his authority;
- (b) any Syar’ie Judge;
- (c) any police officer;
- (d) any Registrar of a Court;
- (e) any officer of a Court whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court to perform any of such duties;
- (f) any *hakam* or other person who causes the content or matter which has been referred for decision or report by any Court, or by any other competent public authority;

- (g) any person who holds any office by virtue of which he is empowered to place or keep any person in confinement;
- (h) any Religious Enforcement Officer whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;
- (i) any officer whose duty it is as such officer, to take, receive, keep, or expend any property on behalf of Government or Majlis, or to make any survey, assessment, or contract on behalf of Government or Majlis, or to execute any revenue process, or to investigate or to report on any matter affecting the pecuniary interests of Government or Majlis, or to make, authenticate, or keep any document relating to the pecuniary interests of Government or Majlis, or to prevent the infraction of any law for the protection of the pecuniary interests of Government or Majlis, and every officer in the service or pay of Government or Majlis, or remunerated by fees or commission for the performance of any public duty;

“religion other than Islam” means –

- (a) any religion other than Islam or any variation, version, form or branch of any such religion;
- (b) any doctrine, belief, ideology, philosophy, or any group or system of practices or performances, where –
 - (i) one of its natures is the worship of an entity or spiritual power or magic whether it exists or thought to exist; or
 - (ii) it admits that its purpose or one of its purposes is the attainment of spiritual wisdom or spiritual existence,

which is not recognised by the religion of Islam;

“Religious Enforcement Officer” has the meaning assigned to it under the Syariah Courts Act (Chapter 184);

“repent” means to realise, to regret and to relinquish a wrongful act and intention to correct oneself with a determination not to repeat the same;

“*sulh*” means a settlement or an agreement;

“*syahadah*” has the same meaning assigned to it under section 3(1) of the Syariah Courts Evidence Order, 2001(S 63/2001);

“*syahid*” has the same meaning assigned to it under section 3(1) of the Syariah Courts Evidence Order, 2001(S 63/2001);

“Syar’ie Judge” has the same meaning assigned to it under section 2 of the Syariah Courts Act (Chapter 184);

“*tazkiyah al syuhud*” has the same meaning assigned to it under section 3(1) of the Syariah Courts Evidence Order, 2001(S 63/2001);

“*wali*” means *wali nasab* and includes female;

“*wali-ad-dam*” means heir or heirs of the victim of a crime who has the right to pardon the offender who has committed an offence against the victim.

(2) All words and expressions used in this Order and not defined therein but defined in the Interpretation and General Clauses Act (Chapter 4), shall have the same meanings assigned thereto respectively to the extent that they do not conflict with *Hukum Syara’*.

(3) If any conflict or doubt arises when interpreting any word or expression relating to *Hukum Syara’* it shall be the discretion of the Court to decide the meaning of such word or expression.

(4) For the avoidance of doubt as to the identity or interpretation of any word and expression used in this Order that is listed in the First Schedule, reference may be made to the form in Arabic script with respect to the word and expression shown against it in the Schedule.

Application.

3. (1) Save as otherwise expressly provided therein, this Order shall apply to Muslims and non-Muslims.

(2) Every person shall be liable to punishment under this Order, and not otherwise, for every act or omission contrary to the provisions thereof of which he shall be guilty within Brunei Darussalam.

(3) Any person liable to be tried for an offence under this Order committed outside Brunei Darussalam shall be dealt with according to the provisions of this Order for any act committed outside Brunei Darussalam in the same manner as if such act had been committed within Brunei Darussalam.

(4) For the avoidance of any doubt, it is hereby declared that no court other than a Court established under Part II of the Syariah Courts Act (Chapter 184) shall have jurisdiction to hear or determine any claims or proceedings which relates to any matter arising in this Order.

Criterion for deciding whether person is Muslim.

4. If for the purposes of this Order any question arises as to whether a person is a Muslim, that question shall be decided according to the criterion of general reputation, without making any attempt to question the faith, belief, conduct, behaviour, character or act of disobedience of that person.

Saving of prerogative.

5. Nothing contained herein shall derogate from or affect the prerogative rights and powers of His Majesty the Sultan and Yang Di-Pertuan as the Head of the official religion of Brunei Darussalam.

**PART II
GENERAL EXCEPTIONS**

Act done by person bound, or by mistake of fact believing himself bound, by law.

6. Nothing is an offence which is done by a person who is, or who, by reason of a mistake of fact, and not by reason of a mistake of law, in good faith believes himself to be bound by law to do it.

Explanation – Nothing is said to be done or believed in good faith which is done or believed without due care and attention.

Illustration

A, an officer of a Court, being ordered by that Court to arrest B, and after due inquiry believing C to be B, arrests C. A has committed no offence.

Act of Syar'ie Judge when acting judicially.

7. Nothing is an offence which is done by a Syar'ie Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be given to him by law.

Act done pursuant to judgment or order of Court.

8. Nothing which is done in pursuance of, or which is warranted by, the judgment or order of a Court, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Act done by person justified or by mistake of fact believing himself justified by law.

9. Nothing is an offence which is done by a person who is justified by law, or who, by reason of a mistake of fact and not by reason of a mistake of law, in good faith believes himself to be justified by law, in doing it.

Illustration

A sees B commits what appears to A to be a *qatl*. A, to the best of his judgment, and in good faith, in the exercise of the power which the law gives to all persons for apprehending murderers in the act, seizes B in order to bring B before the authorities. A has committed no offence though it may turn out that B was acting in self-defence.

Involuntarily doing lawful act.

10. Nothing is an offence which is done involuntarily and without any criminal intention or knowledge, in the doing of a lawful act in a lawful manner by lawful means, and with proper care and caution.

Act likely to cause harm, but done without criminal intent, and to prevent other more serious harm.

11. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it is done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other more serious harm to person or property.

Explanation – It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature, and so imminent, as to justify or excuse the risk of doing the act with the knowledge it was likely to cause harm.

Illustration

A enticed or induced or persuaded B, an unmarried female person to leave the custody of her parents or guardian for the purpose of preventing her from being made a prostitute. He does this with the intention, in good faith, of saving her from more serious harm. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of an offence.

Act of child who is not *mumaiyiz*.

12. Nothing is an offence which is done by a child who is not *mumaiyiz*.

Act of child who is *mumaiyiz* but not *baligh*.

13. No *hadd* or *qisas* punishment may be imposed on any offence liable to *hadd* or *qisas* punishment, committed by a *mumaiyiz* child who is not *baligh* but may be punished with punishments other than *hadd* or *qisas*.

Act of person of unsound mind.

14. Nothing is an offence which is done by a person who, at the time of doing it by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that what he is doing is either wrong or contrary to law.

Act of person intoxicated against his will or without his knowledge or caused by medication.

15. (1) Nothing is an offence which is done by a person who, at the time of doing it, by reason of intoxication, does not know the nature of the act, or that what he is doing is either wrong or right, if the thing that caused him to be intoxicated was administered to him against his will or without his knowledge or he is intoxicated as the result of taking medicine for the purpose of treatment.

(2) For the purposes of this section, “intoxication” shall be deemed to include a state caused by narcotics or drugs.

Act not intended, and not known to be likely, to cause death or hurt, done by consent.

16. Nothing which is not intended to cause death or hurt, and which is not known by the doer to be likely to cause death or hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above 15 years *qamariah*, who has given consent whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration

A and *B* agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which in the course of such fencing may be caused without foul-play; and if *A*, while playing fairly, hurts *B*, *A* commits no offence.

Act not intended to cause death, done by consent in good faith for person's benefit.

17. Nothing which is not intended to cause death, is an offence by reason of any harm, which it may cause or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied to suffer that harm, or to take the risk of that harm.

Illustration

A, a surgeon, knowing that a particular operation is likely to cause the death of *B*, who suffers under a painful complaint, but not intending to cause *B*'s death and intending, in good faith, *B*'s benefit, performs that operation on *B* with *B*'s consent. *A* has committed no offence.

Act done in good faith for benefit of person who is not *baligh* or of unsound mind, by or with consent of, guardian etc.

18. Nothing which is done in good faith for the benefit of a person who is not *baligh*, or of unsound mind, by or with consent of, either express or implied, the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person:

Provided that this exception shall not extend to –

- (a) the intentional causing of death or the attempting to cause death;
- (b) the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or hurt or the curing of any disease or infirmity;
- (c) the voluntary causing of hurt or the attempting to cause hurt, unless it be for the purpose of preventing death or hurt, or the curing of any disease or infirmity;
- (d) the abetment of any offence, to the committing of which offence it would not extend.

Illustration

A, in good faith for his child's benefit without his child's consent has requested a surgeon to perform surgery on his child to remove stone, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception inasmuch as his object was the cure of the child.

Consent known to be given under fear or misconception etc.

19. A consent is not such a consent as is intended by any provision of this Order –

(a) if the consent is given by a person under fear of injury or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception;

(b) if the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

(c) if the consent is given by a person who is not *baligh*.

Acts which are offences independently of harm caused to person consenting, are not within the exceptions in sections 16, 17 and 18.

20. The exceptions in sections 16, 17, and 18 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration

Causing miscarriage, unless caused in good faith for the purpose of saving the life of the woman, is an offence independently of any harm which it may cause, or be intended to cause, to the woman. Therefore, it is not an offence by reason of such harm, and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Act done in good faith for benefit of person without consent.

21. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person

is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit:

Provided that this exception shall not extend to –

- (a) the intentional causing of death or the attempting to cause death;
- (b) the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or hurt or the curing of any disease or infirmity;
- (c) the voluntary causing of hurt or the attempting to cause hurt, for any purpose other than the preventing of death or hurt;
- (d) the abetment of any offence, to the committing of which offence it would not extend.

Illustrations

(a) *A* is thrown from his horse, and is insensible. *B*, a surgeon, finds that *A* requires to be trepanned. *B*, not intending *A*'s death, but in good faith, for *A*'s benefit, performs the trepan before *A* recovers his power of judging for himself. *B* has committed no offence.

(b) *C* is carried off by a crocodile. *D* fires at the crocodile knowing it to be likely that the shot may kill *C*, but not intending to kill *C*, and in good faith intending *C*'s benefit. *D*'s shot gives *C* a mortal wound. *D* has committed no offence.

(c) *E*, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is no time to apply to the child's guardian. *E* performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. *E* has committed no offence.

(d) *F* is in a house which is on fire, with a child. People below hold out a blanket. *F* drops the child from the house-top, knowing it to be likely that the fall may kill the child but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, *F* has committed no offence.

Explanation – Mere pecuniary benefit is not benefit within the meaning of sections 17, 18 and 21.

Communication in good faith.

22. No communication made in good faith is an offence by reason of any harm to the person to whom it is made if it is made for the benefit of that person.

Illustration

A, a surgeon, in good faith, communicates to a patient in his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

Act to which person is compelled by threats.

23. Except committing *qatl*, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence:

Provided that the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1 – A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of robbers, knowing their character, is not entitled to the benefit of this exception on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2 – A person seized by a gang of robbers, and forced, by threat of instant death, to do a thing which is an offence by law for example, a smith compelled to take his tools and to force the door of a house for the gang-robbers to enter and commit *hirabah*, is entitled to the benefit of this exception.

Act causing slight harm.

24. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Right of private defence

Nothing done in private defence etc. is an offence.

25. Nothing is an offence which is done in the exercise of the right of private defence and the right of a person.

Right of private defence of body and property.

26. Every person has a right, subject to the restrictions contained in section 28, to defend –

(a) his own body, and the body of his wife and descendant, against any offence affecting the human body;

(b) the property of himself, the property of his wife or descendant, whether movable or immovable, against any act which is an offence falling under the definition of *sariqah* or *hirabah*, or which is an attempt to commit *sariqah* or *hirabah*.

Right of private defence against act of person of unsound mind etc.

27. When an act, which would otherwise be a certain offence is not that offence, by reason of not being a *mumaiyiz*, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustration

A under the influence of madness, attempts to commit *qatl* against B. A is guilty of no offence, but B as the same right of private defence which he would have if A were sane.

Acts against which there is no right of private defence.

28. (1) There is no right of private defence against an act which does not reasonably cause the apprehension of death or of hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

(2) There is no right of private defence against an act which does not reasonably cause the apprehension of death or of hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

(3) There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

(4) The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1 – A person is not deprived of the right of private defence against an act done or attempted to be done by a public servant, as such, unless he knows or has reason to believe that the person doing the act is such public servant.

Explanation 2 – A person is not deprived of the right of private defence against an act done or attempted to be done by the direction of a public servant unless he knows or has reason to believe that the person doing the act is acting by such direction or unless such person states the authority under which he acts or, if he has authority in writing, unless he produces such authority, if demanded.

When right of private defence of body extends to causing death.

29. The right of private defence of the body extends, subject to the restrictions mentioned in section 28, to the voluntary causing of death, or of any other harm, to the assailant if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated –

(a) such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

(b) such an assault as may reasonably cause the apprehension that hurt will otherwise be the consequence of such assault;

(c) an assault with the intention of committing *zina bil-jabar*;

(d) an assault with the intention of committing *liwat*;

(e) an assault with the intention of abducting.

When such right extends to causing any harm other than death.

30. If the offence be not of any of the descriptions enumerated in section 29, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 28, to the voluntary causing to the assailant of any harm other than death.

Commencement and continuance of right of private defence of body.

31. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed and it continues as long as such apprehension of danger to the body continues.

When right of private defence of property extends to causing death.

32. The right of private defence of property extends, under the restrictions mentioned in section 28, to the voluntary causing of death, or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated –

(a) *hirabah*;

(b) *sariqah*, under such circumstances as may reasonably cause apprehension that death or hurt will be the consequence, if such right of private defence is not exercised.

When such right extends to causing any harm other than death.

33. If the offence, the committing of which or the attempting to commit which, occasions the exercise of the right of private defence, be *sariqah* that is not of any of the descriptions enumerated in section 32, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 28, to the voluntary causing to the wrongdoer of any harm other than death.

Commencement and continuance of right of private defence of property.

34. (1) The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

(2) The right of private defence of property against *sariqah* continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained or the property has been recovered.

(3) The right of private defence of property against *hirabah* continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death, of instant hurt, or of instant personal restraint continues.

Right of private defence against deadly assault when there is risk of harm to innocent person.

35. If, the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

Exemption from this Part.

36. This Part shall only apply if not inconsistent with any other provisions of this Order.

PART III
ABETMENT

Abetment of thing.

- 37.** A person abets the doing of a thing who –
- (a) instigates any person to do that thing;
 - (b) engages, with one or more other person or persons, in any conspiracy for the doing of that thing, if an act or illegal omission take place in pursuance of that conspiracy, and in order to the doing of that thing; or
 - (c) intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1 – A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorised by a warrant from a Court to apprehend B. C, knowing that fact, and also that D is not B, wilfully represents to A that D is B and thereby intentionally causes A to apprehend D. Here, C abets by instigation the apprehension of D.

Explanation 2 – Any person who, either prior to, or at the time of, the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Abettor.

- 38.** A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence, with the same intention or knowledge as that of the abettor.

Explanation 1 – The abetment of the illegal omission of an act may amount to an offence

although the abettor may not himself be bound to do that act.

Explanation 2 – To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to commit *qatl* against C. B refuses to do so. A is guilty of abetting B to commit *qatl*.

(b) D instigates E to commit *qatl* against F. E in pursuance of the instigation stabs F. F recovers from the wound. D is guilty of instigating E to commit *qatl*.

Explanation 3 – It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations

(a) A, with a guilty intention, abets a person who is not *baligh* or a person of unsound mind to commit an act which would be an offence if committed by a person capable by law of committing an offence, and having the same intention as A. Here, A, whether the act be committed or not, is guilty of abetting an offence.

(b) B, with the intention to commit *qatl* against C, instigates D, a person who is not *baligh*, to do an act which causes C's death. D, in consequence of the abetment, does the act and thereby causes C's death. Here, though D was not capable by law of committing an offence, B, is liable to be punished in the same manner as if D had been capable by law of committing an offence and had committed the offence of *qatl*, and B is therefore subject to the punishment of abetment of *qatl*.

(c) E, with the intention to offering an intoxicating drink to F, instigates G, a person who is of unsound mind, to offer an intoxicating drink to F. In consequence of the abetment, G does the act in the absence of E and thereby offers an intoxicating drink to F. Here, though G was not capable by law of committing an offence, E is liable to be punished in the same manner as if G had been capable by law of committing an offence and had committed the offence of offering an intoxicating drink and E is therefore subject to the punishment of offering intoxicating drink.

(d) A, intending to cause *sariqah* to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit *sariqah*. But A is guilty of abetting *sariqah*, and is liable to punishment of abetting *sariqah*.

Explanation 4 – The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration

A instigates B to instigate C to commit *qatl* against D. B accordingly instigates C to commit *qatl* against D and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for *qatl*; and, as A instigates B to commit the offence, A is also liable to the punishment of abetment of *qatl*.

Explanation 5 – It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

A concert with B a plan to commit *qatl* by using poison on Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison. Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has died. C has therefore committed the offence defined in this section, and is liable to the punishment for abetment of *qatl* by using poison.

Common intention.

39. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Abetment in Brunei Darussalam of offences outside Brunei Darussalam.

40. A person abets an offence within the meaning of this Order if –

(a) he, within Brunei Darussalam, abets the commission of any act outside Brunei Darussalam; or

(b) he, outside Brunei Darussalam, abets the commission of any act within Brunei Darussalam if the act would constitute an offence if committed in Brunei Darussalam.

Illustration

A, in Brunei Darussalam, instigates B, a foreigner in Singapore, to commit *qatl* in Singapore. A is guilty of abetting *qatl*.

Punishment of abetment if act abetted is committed in consequence and where no express provision is made for its punishment.

41. Save as otherwise expressly provided, any person who abets an offence, if the act abetted is committed in consequence of the abetment, is guilty of an offence and shall be liable on conviction to the punishment provided for the offence.

Explanation – An act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations

(a) A instigates B to give false evidence. B, in consequence of the instigation commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(b) C and D conspire to commit *qatl* by using poison on E. C, in pursuance of the conspiracy procures the poison and delivers it to D in order that he may administer it to E. D, in pursuance of the conspiracy administers the poison to E in C's absence, and thereby causes E's death. Here D is guilty of the offence of *qatl* by using poison. C is guilty of abetting that offence by conspiracy and is liable to the punishment for the offence of abetting to commit *qatl* by using poison.

Punishment of abetment if person abetted does act with different intention from that of abettor.

42. Any person who abets the commission of an offence, if the person abetted does the act with a different intention or knowledge from that of the abettor, is guilty of an offence and shall be liable on conviction to the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

Liability of abettor when one act abetted and different act done.

43. When an act is abetted and a different act is done, the abettor is liable for the act done in the same manner and to the same extent as if he had directly abetted it:

Provided that, the act done shall be a probable consequence of the abetment, and shall be committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Illustration

A instigates a child who is not *baligh* to put poison into the food of B and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of C, which is by the side of that of B. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of C.

Abettor when liable to cumulative punishment for act abetted and for act done.

44. If the act for which the abettor is liable under section 43 is committed in addition to the act abetted, and continues a distinct offence, the abettor is liable to punishment for each of the offences if the abettor knows the cumulative act is likely to be committed.

Illustration

A instigates B to entice an unmarried female to leave the custody of her parents or guardian. B entices the unmarried female to leave the custody of her parents or guardian and during such enticing serves her intoxicating drink. B is guilty of two offences and is liable on conviction to the punishments of both offences; and if A knew that B will likely serve that woman intoxicating drink, he is also liable for the punishment of each of the offences.

Liability of abettor for effect caused by act abetted different from that intended by abettor.

45. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment causes a different effect from that intended by the abettor, the abettor is liable for the effect caused in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Illustration

A instigates *B* to teach any matter relating to the religion of Islam without written approval from the Majlis. *B*, in consequence of the instigation takes the opportunity to bring into contempt the religion of Islam. Here, if *A* knows that teaching any matter relating to the religion of Islam without written approval from the Majlis which he abets will amount to bringing into contempt the teaching of the religion of Islam, *A* shall be liable for punishment of bringing into contempt the teaching of the religion of Islam.

Abettor present when offence is committed.

46. Whenever any person, who if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Abetment of offence punishable with death or life imprisonment.

47. Any person who abets the commission of an offence punishable with death or life-imprisonment, if that offence is not committed in consequence of the abetment, and no express provision is made by this Order for the punishment of such abetment, is guilty of an offence and shall be liable on conviction to a fine not exceeding \$28,000 and imprisonment for a term not exceeding 7 years.

Illustration

A instigates *B* to commit *qatl* against *C*. The offence is not committed. If *B* had committed *qatl* against *C*, *A* would have been subject to the punishment of abetment of *qatl*. Therefore *A* is guilty of an offence and liable on conviction to a fine not exceeding \$28,000 and imprisonment for a term not exceeding 7 years.

Abetment of offence punishable with imprisonment if offence is not committed. If abettor or person abetted is public servant whose duty is to prevent offence.

48. (1) Any person who abets an offence punishable with imprisonment, if that offence is not committed in consequence of the abetment and no express provision is made by this Order for the punishment of such abetment, is guilty of an offence and shall be liable on conviction to such fine as is provided for that offence, imprisonment for a term not exceeding to one-fourth of the longest term provided for that offence or both.

(2) If the abettor or the person abetted under subsection (1) is a public servant, whose duty it is to prevent the commission of such offence, the abettor is guilty of an offence and shall be liable on conviction to such fine as is provided for that offence, imprisonment for a term not exceeding to one-half of the longest term provided for that offence or both.

Illustrations

(a) *A* instigates *B* to give false evidence. Here, if *B* does not give false evidence, *A* has nevertheless committed the offence defined in this section, and is punishable accordingly.

(b) *C*, a public servant, whose duty is to prevent the sale of intoxicating liquor, abets the commission of the sale of intoxicating liquor. Here, though the sale is not committed, *C* is guilty of an offence and shall be liable on conviction to a fine as is provided for that offence, imprisonment for a term not exceeding one-half of the longest term of imprisonment provided for that offence or both.

(c) *D* abets the commission of sale of intoxicating liquor by *E*, a public servant, whose duty it is to prevent that offence. Here, though the sale is not committed, *D* is guilty of an offence and shall be liable on conviction to a fine as is provided for that offence, imprisonment for a term not exceeding one-half of the longest term of imprisonment provided for that offence or both.

Abetting commission of offence by public, or by more than ten persons.

49. Any person who abets the commission of any offence against Chapter IV (General Offences) of Part IV by the public generally, or by any number or group of persons exceeding ten, is guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,000, imprisonment for a term not exceeding 3 years or both.

Illustration

A instigates a group of five persons to give false information on any matter in any judicial proceeding. A has committed the offence defined in this section.

Public servant concealing design to commit offence which it is his duty to prevent.

50. Any person who, being a public servant, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence against Chapter IV (General Offences) of Part IV which it is his duty as such public servant to prevent, voluntarily conceals, by any act or illegal omission, the existence of a design to commit that offence, or who makes any representation which he knows to be false respecting such design –

(a) if that offence is committed, is guilty of an offence and shall be liable on conviction to such fine as is provided for that offence, imprisonment for a term not exceeding one-half of the longest term or both; or

(b) if that offence is not committed, is guilty of an offence and shall be liable on conviction to such fine as is provided for that offence, imprisonment for a term not exceeding one-fourth of the longest term provided for that offence or both.

Illustration

A, a public servant being legally bound to give information of all designs to commit the sale of intoxicating liquor which may come to his knowledge, and knowing that B designs to sell intoxicating liquor, omits to give such information, with intent to facilitate the commission of that offence. Here, A, by an illegal omission concealed the existence of B's design, and shall be liable to punishment according to the provisions of this section.

Concealing design to commit offence punishable with imprisonment.

51. Any person who, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence or who makes any representation which he knows to be false respecting such design –

(a) if that offence is committed, is guilty of an offence and shall be liable on conviction to such fine as is provided for the offence, imprisonment for a term not exceeding one-fourth of the longest term provided for that offence or both; or

(b) if that offence is not committed, is guilty of an offence and shall be liable on conviction to such fine as is provided for that offence, imprisonment for a term not exceeding one-eighth of the longest term of such imprisonment or both.

PART IV OFFENCES

Chapter I

SARIQAH, HIRABAH, ZINA, ZINA BIL-JABAR, LIWAT, QAZAF, DRINKING INTOXICATING DRINKS AND IRTIDAD

Hadd.

52. (1) For the purposes of this Order, “*hadd*” means punishment or penalty as ordained by the Al-Qur’an or *Sunnah Rasulallah Sallallahu ‘Alaihi Wa Sallam* for the offences of *sariqah, hirabah, zina, qazaf*, drinking intoxicating drinks and *irtidad*.

(2) *Zina bil-jabar* and *liwat* are included in the meaning of *zina* liable to *hadd* punishment.

Sariqah

Sariqah and hirz.

53. For the purposes of this Order –

“*hirz*” means custody of a property according to its suitability based on *Hukum Syara’*;

“*sariqah*” means is an act of removing by stealth a movable property from the *hirz* or possession of its owner without his consent and with the intention to deprive him thereof.

Value of *nisab* for *sariqah*.

54. The value of *nisab* for *sariqah* liable to *hadd* punishment is 1 dinar.

Explanation –The value for *nisab* of *sariqah* liable to *hadd* punishment is 1 dinar (4.25 grammes of gold) or its price in the local currency at the time the offence of *sariqah* was committed.

Illustration

Where the market price for 1 gramme of gold is \$80, the value of *nisab* for *sariqah* liable to *hadd* punishment in Brunei Darussalam currency is \$340.

Punishment for *sariqah*.

55. (1) Any person who commits *sariqah*, where the value of the property amounts to or exceeds *nisab* and the *sariqah* is proved either by *ikrar* of the accused or by *syahadah* of at least two *syahid* in accordance with *Hukum Syara*’ other than the victim’s evidence, after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud* is guilty of an offence and shall be liable on conviction to *hadd* punishment as follows –

- (a) for a first offence, amputation of his right hand from the joint of the wrist;
- (b) for a second offence, amputation of his left foot up to the ankle; and
- (c) for a third or subsequent offence, imprisonment for a term not exceeding 15 years.

(2) Any *mukallaf* who commits *sariqah* in a group and the aggregate value of the stolen property is such that, if the property is divided equally amongst such of them as have entered the *hirz*, each one of them gets a share which amounts to, or exceeds, the *nisab*, whether or not each one of them has moved the *sariqah* property or any part

thereof and the *sariqah* is proved as provided under subsection (1) is guilty of an offence and shall be liable on conviction to the same punishment as provided under subsection (1).

(3) Any person who commits *sariqah* –

(a) which is proved by evidence other than that provided under subsection (1); or

(b) in any circumstances stated in sections 56 and 57,

is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000, imprisonment for a term not exceeding 10 years or both, and for the second or subsequent offence, to a fine not exceeding \$56,000, imprisonment for a term not exceeding 14 years or both.

When *hadd* punishment for *sariqah* offences not imposed.

56. *Hadd* punishment for *sariqah* offence shall not be imposed in any of the following circumstances –

(a) when the stolen property is less than the value of *nisab*;

(b) when the offender is not *mukallaf*;

(c) when the owner of the stolen property has not taken sufficient precaution to guard such property against theft, having regard to the nature of the property and place where the property is kept or left not in the *hirz*;

(d) when the offender has not obtained full possession of the stolen property, although its owner has already been deprived of its custody or possession;

Illustration

A buys a watch, owned by B, from B. A pays part of the price of the watch before concluding the transfer of possession, A steals the watch. A is not liable to *hadd* punishment.

(e) when the stolen property is of trifling in nature and can be found in abundance anywhere or is of perishable nature;

Illustration

A steals fruits in a garden which belongs to B and eats the stolen fruit in that area or place. A is not liable to *hadd* punishment.

(f) when the stolen property is of no value according to *Hukum Syara'* such as intoxicating drink or instruments for amusement;

(g) when the offence is committed by a creditor in respect of the property of his debtor who refuses to pay the debt:

Provided that the value of the stolen property shall not exceed the amount of the debt, or the value of the stolen property exceeds the amount of the debt but does not exceed the *nisab*;

(h) when the offence is committed in circumstances of extreme difficulties such as war, famine, disease and natural disaster;

(i) when the offence is committed within a family such as a wife stealing from her husband and *vice versa*, or son stealing from his father and *vice versa*;

(j) when the offence is committed by a group of persons, the share of each offender after dividing the stolen property or the proceeds thereof is less than the *nisab*;

(k) when the offender returns the stolen property or the value of the stolen property before the execution of *hadd* punishment;

(l) when the owner of the stolen property denies that his property has been stolen, notwithstanding the offender made an *ikrar* that he stole it;

(m) when the offender makes an objection acceptable by *Hukum Syara'* against the *syahid*;

Illustration

A was charged with stealing B's property. Two *syahid* gave *syahadah* to prove the truth. A proves to Court that both are *fasiq*. A is not liable to *hadd* punishment.

(n) when the stolen property is, or the circumstances in which the offence is committed are, such that there is no *hadd* punishment liable according to *Hukum Syara'*;

(o) when the stolen property is a common property;

Explanation – Common property means the movable property which is provided for the benefits of the general public.

(p) when the offender's right or left hand is not functional, maimed or cut.

Property in different *hirz*.

57. If *sariqah* is committed from the same *hirz* in more than one transaction, or from more than one *hirz*, and the value of the *sariqah* property in each case is less than the *nisab*, it is not *sariqah* liable to *hadd* punishment even if the value of the property involved in all cases adds up to or exceeds the *nisab*.

Illustrations

(a) A enters a house occupied by a family and commits *sariqah* from various rooms and the value of all the property removed adds up to or exceeds *nisab*. Such *sariqah* is liable to *hadd* punishment even though the value of the property removed from any of the rooms does not amount to the *nisab*. If the house is occupied by more than one family and the value of all the property removed from the *hirz* of anyone family is less than the *nisab*, then such *sariqah* is not liable to *hadd* punishment, even though the value of all the properties removed adds up to or exceeds the *nisab*.

(b) A enters a house several times to commit *sariqah* in the house, on each occasion the value of the property removed does not amount to *nisab*. Such *sariqah* is not liable to *hadd* punishment even though the value of all the properties removed adds up to or exceeds the *nisab*.

Punishment for committing *qatl* or causing hurt to person during commission of *sariqah*.

58. Any person who commits *qatl* or causes hurt to a person during the commission of *sariqah* is guilty of an offence and shall be liable on conviction in addition to the punishment of such *sariqah* to punishment of *qisas*, *diyat* or *arsy* in accordance with *Hukum Syara'*.

Attempt to commit *sariqah*.

59. Any person who attempts to commit *sariqah* or attempts to cause the commission of *sariqah* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years or both.

Illustration

A makes an attempt to commit *sariqah* some jewellerys by breaking open a box and finds after so opening the box that there is no jewellery in it. A has done an act of attempting to commit *sariqah*, he has therefore committed an offence under this section.

Abetting commission of *sariqah*.

60. (1) Any person who abets the commission of *sariqah* under section 55(1) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000, imprisonment for a term not exceeding 10 years or both.

(2) Any person who abets the commission of *sariqah* under section 55(3) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$28,000, imprisonment for a term not exceeding 7 years or both.

Return of *sariqah* property.

61. (1) *Sariqah* property shall be returned to the victim if that property is in the original form and is identifiable.

(2) If the *sariqah* property is lost or used while it is in the custody of the offender, the offender shall be ordered to pay compensation and it shall become a debt which is payable to the owner.

Hirabah

Hirabah.

62. For the purposes of this Order, “*hirabah*” means an act of taking another person’s property by force or threat of the use of force done by a person or a group of persons armed with any weapon or instrument capable of being used as weapon.

Punishment for *hirabah*.

63. (1) Any person who commits *hirabah* and it is proved either by *ikrar* of an accused or by *syahadah* of at least two *syahid* in accordance with *Hukum Syara’* other than the victim’s evidence, after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud* is guilty of an offence and shall be liable on conviction to *hadd* punishment as follows –

(a) death, if during the commission of *hirabah*, *qatl* has been committed, with or without taking property, whether or not the value of the property amounts to

or less than *nisab*;

- (b) (i) amputation of the right hand from the wrist and of the left foot from the ankle, if during the commission of *hirabah*, the value of property taken amounts to or exceeds *nisab*;
- (ii) when the offence of *hirabah* has been committed jointly by more than one person, the punishment for the amputation of hand and foot shall be imposed only if the value of the share of each one of them amounts to or exceeds *nisab*;

(c) *qisas* or *arsy* in accordance with the nature of the hurt as specified in the Second, Third and Fourth Schedules or as determined by the Court.

(2) Any person who commits *hirabah* –

(a) which is proved by evidence other than that provided under subsection (1); or

(b) in any circumstances provided under section 64,

is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 30 years and to whipping not exceeding 40 strokes.

When punishment of amputation of hand and foot in *hirabah* shall not be imposed.

64. The punishment for the amputation of hand and foot shall not be imposed in cases which *hadd* punishment may not be imposed for *sariqah*, and the provisions of section 56, in accordance with the appropriate amendment, shall apply to such *hirabah* cases.

Attempt to commit *hirabah*.

65. Any person who attempts to commit *hirabah* or attempts to cause the commission of *hirabah* is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 15 years and whipping not exceeding 30 strokes.

Abetting commission of *hirabah*.

66. (1) Any person who abets the commission of *hirabah* under section 63(1) is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 30 years and whipping not exceeding 40 strokes.

(2) Any person who abets the commission of *hirabah* under section 63(2) is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 15 years and whipping not exceeding 20 strokes.

Return of *hirabah* property.

67. The provisions of section 61, in accordance with the appropriate amendment, shall apply to the returning of property taken during the commission of *hirabah*.

Zina

Zina.

68. (1) A man and a woman are said to commit *zina* if they willfully had sexual intercourse without being validly married to each other or such intercourse is not *syubhah* intercourse.

Explanation – Penetration by *hasyafah* or *qadar* thereof is sufficient to constitute the sexual intercourse necessary for the offence of *zina*.

(2) In this section –

“*syubhah* intercourse” means a sexual intercourse performed with a presumption that it is a valid marriage but in actual fact the marriage is not valid (*fasid*) or sexual intercourse occurred by mistake;

“sexual intercourse occurred by mistake” means sexual intercourse between a man and a woman on the assumption that the woman is his wife and the man is her husband, when in actual fact she is not his wife and he is not her husband.

Illustration

At night, in the dark, *A* and *B* have sexual intercourse. *A* thinks *B* is his wife and *B* thinks *A* is her husband, when in fact *B* is not *A*'s wife and *A* is not *B*'s husband. *A* and *B* did not commit the offence under this section.

Punishment for *zina*.

69. (1) Any Muslim who commits *zina* and it is proved either by *ikrar* of the accused, or by *syahadah* of at least four *syahid* according to *Hukum Syara'* after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*, is guilty of an offence and shall be liable on conviction to *hadd* punishment as follows –

- (a) if he is *muhshan*, stoning to death witnessed by a group of Muslims; or
- (b) if he is *ghairu muhshan*, whipping with 100 strokes witnessed by a group of Muslims and imprisonment for a term of one year.

(2) Any Muslim who commits *zina* and it is proved by evidence other than that provided under subsection (1) is guilty of an offence and shall be liable on conviction –

- (a) if he is *muhshan*, whipping with not exceeding 30 strokes and imprisonment for a term not exceeding 7 years; or
- (b) if he is *ghairu muhshan*, whipping with not exceeding 15 strokes and imprisonment for a term not exceeding 3 years.

(3) Any non-Muslim who commits *zina* with a Muslim and it is proved either by *ikrar* of the accused, or by *syahadah* of at least four *syahid* according to *Hukum Syara'* after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*, is guilty of an offence and shall be liable on conviction to the same punishment as provided under subsection (1).

(4) Any non-Muslim who commits *zina* with a Muslim and it is proved by evidence other than that provided under subsection (3) is guilty of an offence and shall be liable on conviction to the same punishment as provided in subsection (2).

Punishment for *zina* where the offender is not *mukallaf* or has not attained age of *baligh*.

70. Where any person who is not *mukallaf* or has not attained the age of *baligh* commits *zina* and –

(a) it is proved either by *ikrar* of the accused, or by *syahadah* of at least four *syahid* according to *Hukum Syara'* after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*, is guilty of an offence and shall be liable on conviction to whipping not exceeding 30 strokes and shall be detained in any rehabilitation centre as the Court thinks appropriate for a term not exceeding 3 years; or

(b) it is proved by evidence other than that provided under paragraph (a) is guilty of an offence and shall be liable on conviction to whipping not exceeding 15 strokes and shall be detained in any rehabilitation centre as the Court thinks appropriate for a term not exceeding 3 years.

Attempt to commit *zina*.

71. Any person who attempts to commit *zina* or attempts to cause the commission of *zina* is guilty of an offence and shall be liable on conviction –

(a) if he is *muhshan*, to a fine not exceeding \$14,000, imprisonment for a term not exceeding 3 years or both, and to whipping not exceeding 20 strokes; or

(b) if he is *ghairu muhshan*, to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both, and to whipping not exceeding 10 strokes.

Illustration

A, a *mukallaf* man, lies on a bed with B, a *mukallaf* woman who is not A's wife. A and B are committing the offence under this section.

Attempt to commit *zina* where offender is not *mukallaf* or has not attained age of *baligh*.

72. Any person, who is not *mukallaf* or has not attained the age of *baligh*, who attempts to commit *zina* or attempts to cause the commission of *zina* is guilty of an offence and shall be liable on conviction to whipping not exceeding 10 strokes and shall be detained in any rehabilitation centre as the Court thinks appropriate for a term not exceeding one year.

Abetting commission of *zina*.

73. (1) Any person who abets the commission of *zina* under section 69(1) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$28,000, imprisonment for a term not exceeding 7 years or both and, to whipping not exceeding 40 strokes.

(2) Any person who abets the commission of *zina* under section 69(2) or (4) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$16,000, imprisonment for a term not exceeding 4 years or both, and to whipping not exceeding 20 strokes.

Abetment to commit *zina* where the offender is not *mukallaf* or has not attained age of *baligh*.

74. Any person who is not *mukallaf* or has not attained the age of *baligh* who abets the commission of *zina* is guilty of an offence and shall be liable on conviction to whipping not exceeding 15 strokes and shall be detained in any rehabilitation centre as the Court thinks appropriate for a term not exceeding 3 years.

Zina bil-jabar

Zina bil-jabar.

75. A person is said to commit *zina bil-jabar* if he or she has sexual intercourse with a woman or a man, as the case may be, to whom he or she is not validly married, in any of the following circumstances –

- (a) against the will of the victim;
- (b) without the consent of the victim;
- (c) with the consent of the victim, when the consent has been obtained with threat by putting the victim in fear of death or hurt;
- (d) with the consent of the victim, when the offender knows that the offender is not validly married to the victim and that the consent is given because the victim believes that the offender is another person to whom the victim is validly married or the victim believes herself or himself to be validly married to the offender;

Illustrations

(a) A, as the *wali mujbir* to his daughter B, marries her off to C. B have never met C. D came to B and claims to be her husband. B believes that D is her husband and consents to having sexual intercourse with D. D has committed the offence under this section.

(b) E and F are identical twin sisters. G is married to E. F claims that she is G's wife and G believes that F is his wife. G consents to having sexual intercourse with F. F has committed the offence under this section.

(c) H has four wives. H married I who does not know that H already has four wives. I consents to having sexual intercourse with H because she believes that their marriage was valid. H has committed the offence under this section.

(d) J is still in her 'iddah period. K does not know that J is still in her 'iddah period and marries her. K consents to having sexual intercourse with J because he believes that their marriage was valid. J has committed the offence under this section.

(e) with the consent of the victim, if the consent is given by a person under a misconception of fact and the person doing the act knows, or has reason to believe, that the consent was given in consequence of such misconception;

Illustration

A, a patient, asks for help from B, a bomoh (traditional healer). B told A that for medical purposes, anything is allowed to be done by any means. A, because of a misconception of fact believes B, consents to having sexual intercourse with B. B has committed the offence under this section.

(f) with the consent of the victim, if the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or if the consent is given by a person who has not attained the age of *baligh*.

Illustrations

(a) A who is of unsound mind is persuaded by B to have sexual intercourse with him. A consents to having sexual intercourse with B. B has committed the offence under this section.

(b) C deliberately adds drugs to D's drinks to intoxicate D. C invites D to have sexual intercourse with him. D because of intoxication, consents to having sexual intercourse with C. C has committed the offence under this section.

(c) E who has not attained the age of *baligh* is persuaded by F, by promising her gifts, to have sexual intercourse with him. E consents to having sexual intercourse with F. F has committed the offence under this section.

Explanation – Penetration by *hasyafah* or *qadar* thereof is sufficient to constitute the sexual intercourse necessary for the offence of *zina bil-jabar*.

Punishment for *zina bil-jabar*.

76. (1) Any person who commits *zina bil-jabar* and it is proved either by *ikrar* of the accused, or by *syahadah* of at least four *syahid* according to *Hukum Syara'* other than the evidence of the victim after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*, is guilty of an offence and shall be liable on conviction to *hadd* punishment as follows –

- (a) if he is *muhshan*, stoning to death witnessed by a group of Muslims;
- (b) if he is *ghairu muhshan*, whipping with 100 strokes witnessed by a group of Muslims and to imprisonment for one year.

(2) Any person who commits *zina bil-jabar* and it is proved by evidence other than that provided under subsection (1) is guilty of an offence and shall be liable on conviction –

- (a) if he is *muhshan*, to imprisonment for a term not exceeding 30 years and whipping with not exceeding 40 strokes;
- (b) if he is *ghairu muhshan*, to imprisonment for a term not exceeding 15 years and whipping with not exceeding 20 strokes.

Punishment for *zina bil-jabar* where the offender is not *mukallaf* or has not attained age of *baligh*.

77. Where any person who is not *mukallaf* or has not attained the age of *baligh* commits *zina bil-jabar* and –

(a) it is proved either by *ikrar* of the accused, or by *syahadah* of at least four *syahid* according to *Hukum Syara*’ other than the evidence of the victim after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*, is guilty of an offence and shall be liable on conviction to whipping with 40 strokes and shall be detained in any rehabilitation centre as the Court thinks appropriate for a term not exceeding 5 years; or

(b) it is proved by evidence other than that provided under paragraph (a) is guilty of an offence and shall be liable on conviction to whipping with 20 strokes and shall be detained in any rehabilitation centre as the Court thinks appropriate for a term not exceeding 5 years.

Attempt to commit *zina bil-jabar*.

78. Any person who attempts to commit *zina bil-jabar* or attempts to cause the commission of *zina bil-jabar* is guilty of an offence and shall be liable on conviction –

(a) if he is *muhshan*, to imprisonment for a term not exceeding 15 years and whipping with 20 strokes;

(b) if he is *ghairu muhshan*, to imprisonment for a term not exceeding 7 years and whipping with 20 strokes.

Attempt to commit *zina bil-jabar* where offender is not *mukallaf* or has not attained age of *baligh*.

79. Any person, who is not *mukallaf* or has not attained the age of *baligh*, who attempts to commit *zina bil-jabar* or attempts to cause the commission of *zina bil-jabar* is guilty of an offence and shall be liable on conviction to whipping with 20 strokes and shall be detained in any rehabilitation centre as the Court thinks appropriate for a term not exceeding 4 years.

Abetting commission of *zina bil-jabar*.

80. (1) Any person who abets the commission of *zina bil-jabar* under section 76(1) is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 30 years and whipping with 40 strokes.

(2) Any person who abets the commission of *zina-bil-jabar* under section 76(2) is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 15 years and whipping with 20 strokes.

Abetment to commit *zina bil-jabar* where offender is not *mukallaf* or has not attained age of *baligh*.

81. Any person, who is not *mukallaf* or has not attained the age of *baligh*, who abets the commission of *zina bil-jabar* is guilty of an offence and shall be liable on conviction to whipping with 20 strokes and shall be detained in any rehabilitation centre as the Court thinks appropriate for a term not exceeding 5 years.

Liwat

***Liwat*.**

82. (1) Any person who commits *liwat* is guilty of an offence and shall be liable on conviction to the same punishment as provided for the offence of *zina*.

(2) For the purposes of this Order, "*liwat*" means sexual intercourse between a man and another man or between a man and a woman other than his wife, done against the order of nature that is through the anus.

Proof of *liwat*.

83. *Liwat* shall be proved in the same manner as provided for the offence of *zina*.

Attempt to commit *liwat*.

84. Any person who attempts to commit *liwat* or attempts to cause the commission of *liwat* is guilty of an offence and shall be liable on conviction to the same punishment as provided under the section 71 or 72, as the case may be.

Abetting commission of *liwat*.

85. Any person who abets the commission of *liwat* is guilty of an offence and shall be liable on conviction to the same punishment as provided under the section 73 or 74, as the case may be.

Offences relating to *zina*, *zina bil-jabar* or *liwat*

Withdrawal of *ikrar* in cases of *zina*, *zina bil-jabar* or *liwat*.

86. (1) Conviction of *zina*, *zina bil-jabar* or *liwat* through *ikrar* of an accused may be withdrawn by the accused at any time, even though at the time when he is undergoing punishment.

(2) If an *ikrar* is withdrawn before the execution of *hadd* punishment, the accused shall cease to be liable to such punishment and if he withdraws that *ikrar* at the time when he is undergoing the punishment, the punishment shall forthwith cease.

(3) If at any time before or at the time when the *hadd* punishment is executed the accused managed to get away from the authority, he shall be considered to have withdrawn that *ikrar*; the provision of subsection (2) shall thereby apply.

Withdrawal of evidence in cases of *zina*, *zina bil-jabar* or *liwat*.

87. (1) If a *syahid* withdraws his evidence before the execution of *hadd* punishment on the accused, the accused shall cease to be liable to such punishment and if it is withdrawn at the time when the accused is undergoing the punishment, the punishment shall forthwith cease.

- (2) In the case of *zina*, *zina bil-jabar* or *liwat*, where a *syahid* –
- (a) declines to give evidence;
 - (b) gives evidence contrary to the charge;
 - (c) gives evidence in support of the charge but subsequently withdraws such evidence; or
 - (d) is disabled according to *Hukum Syara'*,

and by reasons mentioned in paragraph (a), (b), (c) or (d) or other reasons, the number of *syahid* in support of the charge becomes less than four, the charge of *zina*, *zina bil-jabar* or *liwat* against the accused shall remain unproved and the accused shall cease to be liable to *hadd* punishment, but may be punishable with the punishment as provided under section 69(2), 69(4) or 76(2).

Accuser and witnesses not liable to *qazaf*.

88. An accuser and witnesses who give evidence in good faith, either in *syahadah* or *bayyinah* before the Court, to prove the offence of *zina*, *zina bil-jabar* or *liwat* which does not fulfill the requirements of *Hukum Syara'* for the *hadd* punishment shall not be charged with *qazaf*.

Accuser and witnesses liable to *qazaf*.

89. An accuser and witnesses who give evidence not in good faith, either in *syahadah* or *bayyinah* before the Court, to prove the offence of *zina*, *zina bil-jabar* or *liwat* which does not fulfill the requirements of *Hukum Syara'* for the *hadd* punishment shall be charged with *qazaf*.

***Ityan al-maiyyitah*.**

90. (1) Any person who commits *ityan al-maiyyitah* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000, imprisonment for a term not exceeding 10 years, whipping not exceeding 40 strokes or a combination of any two of the punishment.

(2) In this section, "*ityan al-maiyyitah*" means an offence of performing sexual intercourse with a dead person, whether such dead person is male or female.

Ityan al-bahimah.

91. (1) Any person who commits *ityan al-bahimah* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000 imprisonment for a term not exceeding 10 years, whipping not exceeding 40 strokes or a combination of any two of the punishment.

(2) In this section, “*ityan al-bahimah*” means an offence of performing sexual intercourse with an animal.

Musahaqah.

92. (1) Any Muslim woman who commits *musahaqah* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000, imprisonment for a term not exceeding 10 years, whipping not exceeding 40 strokes or combination of any two of the punishment.

(2) Any non-Muslim woman who commits *musahaqah* with a Muslim woman is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000, imprisonment for a term not exceeding 10 years, whipping not exceeding 40 strokes or a combination of any two of the punishment.

(3) In this section, “*musahaqah*” means any physical activities between a woman and another woman which would amount to sexual acts if it is done between a man and a woman, other than penetration.

Refusal to perform *li'an*.

93. (1) A husband who accuses his wife of committing *zina* and he or his wife refuses to perform *li'an* after being ordered by the Court to undergo *li'an*, the husband or the wife shall be imprisoned until –

(a) the husband has agreed to perform *li'an* or be punished with *hadd* punishment for committing *qazaf*; or

(b) the wife has agreed to perform *li'an* or accepted the husband's accusation of *zina* and if the wife accepted the husband's accusation, she is guilty of

the offence of *zina* and shall be liable on conviction to *hadd* punishment for committing *zina*.

(2) For the purposes of this section and section 95, “*li’an*” means an accusation of *zina* on oath in accordance with *Hukum Syara’* made by a husband against his wife whilst the wife on oath in accordance with *Hukum Syara’* rejects such accusation and the accusation and rejection are made before the Court.

Pregnant out of wedlock.

94. (1) Any Muslim woman who is pregnant or who gives birth to a child out of wedlock is guilty of an offence and shall be liable on conviction –

(a) if she is *muhsan*, to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both;

(b) if she is *ghairu muhsan*, to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

(2) Any Muslim woman who gives birth to a fully-developed child within a period of less than 6 months *qamariah* and 2 *lahzah* after her marriage shall be deemed to have given birth to the child out of wedlock.

(3) For the purpose of subsection (1), a woman is said to be pregnant out of wedlock or has given birth to a child out of wedlock if –

(a) she was not married;

(b) the marriage is not a *syubhah* marriage;

(c) she has not been raped;

(d) the child is born less than 6 months *qamariah* and 2 *lahzah* after her valid marriage; or

(e) the child is born more than 4 years *qamariah* after divorce or dissolution of marriage and she has not remarried.

(4) The burden of proof to rebut any of the paragraph (a), (b), (c), (d) or (e) in subsection (3) is upon the woman.

(5) Any man who impregnates a Muslim woman out of wedlock, whether or not such woman has given birth to a child, is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

Qazaf

Qazaf.

95. Except in cases that require *li'an*, “*qazaf*” means an accusation of *zina*, *zina bil-jabar* or *liwat* whether orally or documentarily not proved by four *syahid* against a Muslim who is *mukallaf* and known as a person who is clear of *zina*, *zina bil-jabar* or *liwat*.

Condition for person who commits *qazaf* and person liable to *qazaf*.

96. (1) A person who commits *qazaf* shall be a person who is a *mukallaf*.

(2) A person liable to *qazaf* shall be a *muhshan* and if the person liable to *qazaf* is dead person, that person shall be ascertained.

Illustration

A made a statement that B is a child born out of wedlock. Here, A has committed *qazaf* against B's mother. If B's mother has died, A shall determine the name of B's mother in his statement.

(3) In this section, “*muhshan*” means a Muslim who is of sound mind and has attained the age of *baligh*, clear of *zina*, *zina bil-jabar* or *liwat*, capable of having sexual intercourse and such conditions shall remain until he is liable to the *hadd* punishment.

Manner of committing *qazaf*.

97. (1) *Qazaf* may be committed by making a statement expressly such as to say that a person has committed *zina*, *zina bil-jabar* or *liwat* or making a statement impliedly such as to say that a person is not the father or not the offspring of a particular person.

(2) The statement under subsection (1) shall be deemed to be *qazaf* unless it is proved by *syahadah* in accordance with the requirements of conviction of *zina*, *zina bil-jabar* or *liwat* liable to *hadd* punishment and if such statement is unproved, the person who makes the accusation shall be guilty of an offence of *qazaf* but if such statement is proved, the person against whom the statement is made shall be guilty of an offence of *zina*, *zina bil-jabar* or *liwat*.

Illustration

A made a statement that B has committed *zina*. B made a complaint to Court that A has made a statement accusing him of committing *zina* and brought two *syahid* to support his complaint. If B's complaint is proved, then A has committed the offence of *qazaf* and may be punished for committing *qazaf*. However, if A is able to prove his statement by bringing four *syahid*, A will be released from the accusation of committing *qazaf*. As a result, B will be convicted of committing *zina* and may be punished for committing such offence.

(3) The statement under subsection (1) shall be deemed to be unproved if one or more of the four *syahid* called to give evidence by *syahadah* in support of the statement refuse to testify or do testify but their evidence are against such statement, and in such case each of the *syahid* who gives evidence in support of the statement, subject to section 88, shall be deemed to have committed an offence of *qazaf*.

Punishment for *qazaf*.

98. (1) Any person who commits *qazaf* and it is proved either by his *ikrar*, or by *syahadah* of at least two *syahid* according to *Hukum Syara'* other than the evidence of the victim after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*, is guilty of an offence and shall be liable on conviction to *hadd* punishment to whipping with 80 strokes.

(2) Any person who commits *qazaf* before the Court and fails to prove his *qazaf* is guilty of an offence and shall be liable on conviction to *hadd* punishment to whipping with 80 strokes.

Illustration

A has committed *qazaf* against B and brought only one *syahid* to support his allegation. A has committed the offence under this section.

(3) After a person has been convicted for the offence of *qazaf* liable to *hadd* punishment, his *syahadah* shall not be admissible in any Court until he repents.

(4) Any person who commits *qazaf* –

(a) which is proved by evidence other than that provided under subsection (1);

(b) where the person liable to *qazaf* does not fulfill the conditions provided under section 96; or

(c) in cases mentioned under section 99,

is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years, whipping not exceeding 40 strokes or a combination of any two of the punishments.

Cases in which *hadd* punishment not imposed or enforced.

99. (1) *Hadd* punishment shall not be imposed for *qazaf* in any of the following cases –

(a) a person has committed *qazaf* against any of his descendants;

(b) the person who commits *qazaf* has died;

(c) *qazaf* has been proved to be true.

(2) Where before the execution of *hadd* punishment –

(a) the complainant withdraws the allegation of *qazaf*;

(b) the complainant's *syahid* retract their evidence or the complainant states that any of his *syahid* has given false evidence until the number of the *syahid* is less than two in accordance with *Hukum Syara'*;

(c) the complainant states that the person who commits *qazaf* has made a false confession; or

(d) the complainant pardons the person who commits *qazaf*, *hadd* punishment shall not be enforced, but the Court may order retrial or impose the punishment under section 98(4) on the basis of the evidence before the Court.

(3) In this section, “descendant” means a person’s biological children, whether male or female.

Issuing documents deemed to contain meaning of *qazaf*.

100. Any person who issues any document deemed to contain the meaning of *qazaf* that may harm the reputation or hurt the feelings of any person is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years, whipping not exceeding 40 strokes or a combination of any two of the punishments.

Sale of document deemed to contain the meanings of *qazaf*.

101. Any person who sells, offers for sale, displays or gives any document deemed to contain the meanings of *qazaf* that may harm the reputation or hurt the feelings of any person is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years, whipping not exceeding 40 strokes or a combination of any two of the punishments.

Attempt to commit *qazaf*.

102. Any person who attempts to commit *qazaf* or attempts to cause the commission of *qazaf* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years, whipping with 10 strokes or a combination of any two of the punishments.

Abetting commission of *qazaf*.

103. (1) Any person who abets the commission of *qazaf* under section 98(1) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years, whipping with 20 strokes or a combination of any two of the punishments.

(2) Any person who abets the commission of *qazaf* under section 98(4) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,000, imprisonment for a term not exceeding 3 years, whipping with 10 strokes or a combination of any two of the punishments.

Intoxicating drinks

Drinking etc. liquor or intoxicating drinks.

104. (1) Any Muslim who drinks liquor or any intoxicating drinks is guilty of an offence and shall be liable on conviction to *hadd* punishment to whipping with 40 strokes, whipping with 80 strokes for a second offence and whipping with 80 strokes and imprisonment for a term not exceeding 2 years for a third or subsequent offence.

(2) Any Muslim who drinks liquor or any intoxicating drinks liable to *hadd* punishment is proved either by *ikrar* of the accused, or by *syahadah* of at least two *syahid* according to *Hukum Syara'* other than the evidence of the accused after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*.

(3) Any Muslim who –

(a) drinks liquor or any intoxicating drink and it is proved by evidence other than that provided under subsection (2); or

(b) consumes liquor or any intoxicating drink,

is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both, and for the second or subsequent offence, to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

Explanation – A person who drinks or eats, drinks or food, into which liquor or any intoxicating drink has been mixed or added is said to consume liquor or any intoxicating drink.

(4) Any Muslim who makes, sells, advertises, serves, offers, gives as present, exhibits, owns, keeps, buys or possesses any liquor or intoxicating drink is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

(5) Any non-Muslim who drinks liquor or any intoxicating drink in public place is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

(6) Any non-Muslim who sells, advertises, serves, offers, gives as present or exhibits any liquor or intoxicating drink to a Muslim is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

Attempt to commit offence of drinking etc. liquor or intoxicating drinks.

105. (1) Any Muslim who attempts to commit or attempts to cause the commission of the offence under the section 104(1), (3) or (4) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

(2) Any non-Muslim who attempts to commit or attempts to cause the commission of the offence under the section 104(5) or (6) is guilty of an offence and liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

Abetting commission of offence of drinking etc. liquor or intoxicating drinks.

106. (1) Any person who abets the commission of the offence under section 104(1) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

(2) Any person who abets the commission of the offence under section 104(3), (4), (5) or (6) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

Irtidad

Irtidad.

107. (1) For the purposes of this Order, “*irtidad*” means any act done or any word uttered, by any means, by a Muslim who is *mukallaf*, which according to *Hukum Syara’*, such act or word affects or is contrary to the ‘*aqidah*’ of the religion of Islam:

Provided that such act is done or such word is uttered intentionally, voluntarily, knowingly and without being compelled by anyone or circumstances.

(2) The acts or words which affect the ‘*aqidah*’ are those which concern or deal with the fundamental aspects which must be known and believed by every Muslim such as Pillars of Islam, Pillars of *Iman* and other matters generally known by Muslims.

Declaring oneself as god.

108. (1) Any Muslim who declares himself or any other person as god and it is proved either by *ikrar* of the accused, or by *syahadah* of at least two *syahid* according to *Hukum Syara’* after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*, is guilty of the offence of *irtidad* and shall be liable on conviction to death as *hadd*.

(2) Any Muslim who declares himself or any other person as god and it is proved by evidence other than those provided under subsection (1) is guilty of the offence of *irtidad* and shall be liable on conviction to imprisonment for a term not exceeding 30 years and whipping not exceeding 40 strokes.

Declaring oneself as *Rasul* or *Nabi*.

109. (1) Any Muslim who declares himself or any other person as *Rasul* or *Nabi* and it is proved either by *ikrar* of the accused, or by *syahadah* of at least two *syahid* according to

Hukum Syara' after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*, is guilty of the offence of *irtidad* and shall be liable on conviction to death as *hadd*.

(2) Any Muslim who declares himself or any other person as *Rasul* or *Nabi* and it is proved by evidence other than those provided under subsection (1) is guilty of the offence of *irtidad* and shall be liable on conviction to imprisonment for a term not exceeding 30 years and whipping not exceeding 40 strokes.

Contempt of *Nabi*.

110. (1) Any Muslim who contempts or brings into contempt *Nabi Muhammad Sallallahu 'Alaihi Wa Sallam* or any *Nabi Allah* and it is proved either by *ikrar* of the accused, or by *syahadah* of at least two *syahid* according to *Hukum Syara'* after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*, is guilty of the offence of *irtidad* and shall be liable on conviction to death as *hadd*.

(2) Any Muslim who contempts or brings into contempt *Nabi Muhammad Sallallahu 'Alaihi Wa Sallam* or any *Nabi Allah* and it is proved by evidence other than those provided under subsection (1) is guilty of the offence of *irtidad* and shall be liable on conviction to imprisonment for a term not exceeding 30 years and whipping not exceeding 40 strokes.

Deriding etc. verses of the Al-Qur'an, *hadith* or obligatory matters with *ijma'*.

111. (1) Any Muslim who –

- (a) derides, mocks, mimics, ridicules or insults any verse of the Al-Qur'an or *hadith* of *Nabi Muhammad Sallallahu 'Alaihi Wa Sallam*;
- (b) denies the *hadith* of *Nabi Muhammad Sallallahu 'Alaihi Wa Sallam* as a source or authority (*hujjiyyah*) of the teachings of the religion of Islam; or
- (c) denies obligatory matters with *ijma'*,

and it is proved either by *ikrar* of the accused, or by *syahadah* of at least two *syahid* according to *Hukum Syara'* after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*, is guilty of the offence of *irtidad* and shall be liable on conviction to death as *hadd*.

- (2) Any Muslim who –
- (a) derides, mocks, mimics, ridicules or insults any verse of the Al-Qur'an or *hadith* of *Nabi Muhammad Sallallahu 'Alaihi Wa Sallam*;
 - (b) denies the *hadith* of *Nabi Muhammad Sallallahu 'Alaihi Wa Sallam* as a source or authority (*hujjiyyah*) of the teachings of the religion of Islam; or
 - (c) denies obligatory matters with *ijma'*,

and it is proved by evidence other than those provided under subsection (1) is guilty of the offence of *irtidad* and shall be liable on conviction to imprisonment for a term not exceeding 30 years and whipping not exceeding 40 strokes.

Declaring oneself as non-Muslim.

112. (1) Any Muslim who declares himself as a non-Muslim and it is proved either by *ikrar* of the accused, or by *syahadah* of at least two *syahid* according to *Hukum Syara'* after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*, is guilty of the offence of *irtidad* and shall be liable on conviction to death as *hadd*.

(2) Any Muslim who declares himself as a non-Muslim and it is proved by evidence other than those provided under subsection (1) is guilty of the offence of *irtidad* and shall be liable on conviction to imprisonment for a term not exceeding 30 years and whipping not exceeding 40 strokes.

Attempt to commit *irtidad*.

113. Any Muslim who attempts to commit or attempts to cause the commission of *irtidad* is guilty of the offence of *irtidad* and shall be liable on conviction to the same punishment as provided for such offence.

Illustrations

(a) A, a Muslim, takes an Al-Qur'an to be given to B for B to throw into a garbage disposal. When A wants to give the Al-Qur'an to B, B is not there. A is guilty of an offence under this section and may be liable to punishment under section 111.

(b) C, a Muslim, says that he is determined to renounce from the religion of Islam. C is guilty of an offence under this section and shall be liable to punishment under section 112.

Abetting commission of *irtidad*.

114. Any person who abets the commission of any offence of *irtidad* is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 30 years and whipping not exceeding 40 strokes.

Forfeiture and disposal.

115. The Court may order any document, publication, thing, object and structure and anything similar used in the commission of or in relation to any offence of *irtidad* to be forfeited and disposed, notwithstanding that no person may have been convicted of such offence.

Order to repent.

116. The Court shall, after sentencing an offender for any offence of *irtidad* and before execution of the punishment, order him to repent.

Acquit after repentance.

117. The Court shall after being satisfied that the offender has repented, make an order of acquittal from sentence on the offender.

Chapter II

***QATL* AND CAUSING HURT**

***Qisas*.**

118. For the purposes of this Order, “*qisas*” means retaliation or similar penalty for offences of *qatlul-’amd* or causing hurt to anybody.

Diyat.

119. For the purposes of this Order, “*diyat*” means the specified amount payable to the heirs of victim of *qatl*.

Value of *diyat*.

120. The value of *diyat* shall be 1000 dinar (4250 grammes of gold) or its value in the local currency at the time the offence of *qatl* was committed.

Illustration

If the market price of 1 gramme of gold is \$80, the value of full *diyat* in Brunei currency is \$340,000.

Arsy.

121. For the purposes of this Order, “*arsy*” means specified amount determined by *Hukum Syara’ (muqaddar)* or specified amount not determined by *Hukum Syara’ (ghairu muqaddar)* for compensation payable to the victim of hurt.

Badal-al-sulh.

122. For the purposes of this Order, “*badal-al-sulh*” means the mutually agreed compensation according to *Hukum Syara’* to be paid or given by the offender to a *wali-ad-dam* in cash or in kind or in the form of movable or immovable property.

Application of *qisas, diyat and arsy.*

123. *Qisas, diyat and arsy* shall apply according to the conditions provided under this Chapter.

Qatl

Qatl and its kinds.

124. (1) For the purposes of this Order, “*qatl*” means an act of a person which causes the death of another person.

(2) For the purposes of this Order, *qatl* consists of three kinds –

- (a) *qatlul-'amd*;
- (b) *qatlu syibhil-'amd*; and
- (c) *qatlul-khata'*.

Qatlul-'amd.

125. For the purposes of this Order, “*qatlul-'amd*” means any of the following acts –

- (a) the act which causes death is committed with the intention of causing death;
- (b) the act is committed with the intention of causing bodily harm which he knows may cause death to the injured person; or
- (c) the act is committed with the intention of causing bodily harm to a person and the bodily harm meant to be inflicted in the ordinary course of nature is sufficient to cause death.

Illustrations

(a) A shoots B with the intention of killing him. B dies in consequence of the shooting. A commits the offence of *qatlul-'amd*.

(b) A knowing that B is suffering from a disease that a blow is likely to cause his death, A strikes him with the intention of causing bodily harm. B dies in consequence of the blow. A is guilty of *qatlul-'amd* although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that B is suffering from any disease, gives him such a blow as in the ordinary course of nature would not kill a person in a sound state of health, here A, although he may intend to cause bodily harm, is not guilty of *qatlul-'amd*, if he did not intend to cause death, or such bodily harm as in the ordinary course of nature would cause death.

(c) A intentionally wounded B with a sword or an object which in the ordinary course of nature is sufficient to cause the death of a person. B dies in consequence. Here A has committed the offence of *qatlul-'amd*, although he may not have intended to cause B's death.

Punishment for *qatlul-'amd*.

126. (1) Any person who commits *qatlul-'amd* and it is proved either by *ikrar* of the accused or *syhadah* of at least two *syahid* according to *Hukum Syara'* after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*, is guilty of an offence and shall be liable on conviction to death as *qisas*.

- (2) Any –
- (a) person who commits *qatlul-'amd* and it is proved by evidence other than that provided under subsection (1);
 - (b) person who is not *mukallaf* who commits *qatlul-'amd*; or
 - (c) mother or father who commits *qatlul-'amd* against her or his own child,

is guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000, imprisonment for a term not exceeding 25 years or both.

Qatlul-'amd due to ikrah.

127. (1) Any person who commits *qatlul-'amd* due to *ikrah tam* is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 10 years and the person causing *ikrah tam* shall be punished with death as *qisas*.

(2) Any person who commits *qatlul-'amd* due to *ikrah naqish* is guilty of an offence and shall be liable on conviction to death as *qisas* and the person causing *ikrah naqish* shall be punished with imprisonment for a term not exceeding 10 years.

- (3) In this section –

“*ikrah naqish*” means any form of force which does not amount to *ikrah tam*;

“*ikrah tam*” means placing any person in fear of death upon himself, his family members or loss of his property which causes him to commit a wrongful act without his consent in which he is incapable of avoiding himself from committing such act.

Qatl caused by being hired.

128. Any person who commits *qatl* by being hired to cause the death of a particular person, the person who commits *qatl* and the hirer are guilty of an offence and shall be liable on conviction to death punishment as *qisas*.

Qatlul-'amd committed in self-defence.

129. (1) Any person who commits *qatlul-'amd* in the exercise of his right of self-defence in good faith shall not be subject to any liability for such *qatl*.

(2) For the purposes of subsection (1), such person shall not exceed the limits provided for self-defence.

Qatlul-'amd committed by public servant.

130. (1) Any public servant who commits *qatlul-'amd* in obedience to the law or in the lawful exercise of his powers or duties as a public officer shall not be subject to any liability for such *qatl*.

(2) For the purposes of subsection (1), such public servant shall not exceed the powers given to him by law and commits *qatl* by doing an act which he in good faith believes to be lawful and necessary for the discharge of his duty as public servant.

Right of qisas of wali-ad-dam in qatlul-'amd.

131. In *qatlul-'amd*, the right of *qisas* are as follows –

- (a) where there is only one *wali-ad-dam*, he alone has the right of *qisas*;
- (b) where there is more than one *wali-ad-dam*, the right of *qisas* vests in each of them;
- (c) where the *wali-ad-dam* is not *mukallaf*, the right of *qisas* is taken over by his *wali*;
- (d) where the victim has no *wali-ad-dam*, the right of *qisas* is exercised by His Majesty the Sultan and Yang Di-Pertuan.

Cases in which punishment of qatlul-'amd not enforced.

132. The punishment of *qisas* in *qatlul-'amd* shall not be enforced in any of the following cases –

- (a) when the offender dies before the enforcement of *qisas*;
- (b) when any *wali-ad-dam* or all the *wali-ad-dam* pardon; or

(c) when *sulh* between the victim's *wali-ad-dam* and the offender has been made.

Pardon in respect *qatlul-'amd*.

133. (1) In the case of *qatlul-'amd*, a *wali-ad-dam* who is *mukallaf* may, before execution of the punishment, pardon *qisas* on the offender whether with or without *diyat*.

(2) If a *wali-ad-dam* is not *mukallaf*, his *wali* may pardon *qisas* on the offender with *diyat*.

(3) If His Majesty the Sultan and Yang Di-Pertuan becomes *wali*, His Majesty the Sultan and Yang Di-Pertuan may pardon *qisas* on the offender with *diyat*.

(4) If a victim has more than one *wali-ad-dam*, any one of them may pardon *qisas* on the offender with or without *diyat*.

(5) For the purposes of subsection (4), the *wali-ad-dam* who does not pardon *qisas* or does not compound his right of *diyat* against the offender, shall be entitled to his share of *diyat*.

Illustration

A and B are *wali-ad-dam* to C who was killed by D. D has been convicted of the offence of *qatlul-'amd* and is liable to *qisas*. A has pardoned D while B does not pardon him or has not compound his right of *diyat*. B has a right to one-half of the *diyat* liable to D.

(6) If there are more than one victim, the pardon of *qisas* by the *wali-ad-dam* or *wali* of any one of the victims shall not affect the right of *qisas* of the *wali-ad-dam* or *wali* of the other victim.

Illustration

A caused B and C's death and has been convicted of the offence of *qatlul-'amd* and is liable to *qisas* punishment. B's *wali-ad-dam* or *wali* has pardoned A but C's *wali-ad-dam* or *wali* does not pardon him. A shall remain liable to *qisas* punishment because C's *wali-ad-dam* or *wali* does not pardon him although B's *wali-ad-dam* or *wali* pardons him.

(7) If there are more than one offender, the pardon of *qisas* on any one offender shall not affect the right of *qisas* on the other offender.

Illustration

A and *B* caused *C*'s death and have been convicted of the offence of *qatlul-'amd* and is liable to *qisas* punishment. *C*'s *wali-ad-dam* has pardoned *qisas* on *A* and does not pardon *qisas* on *B*. *B* remains liable to *qisas* punishment.

(8) Any pardon in respect of *qatlul-'amd* shall be made before the Court and after the Court is satisfied with regards to it, the Court shall confirm it.

(9) If the *wali-ad-dam* or *wali* has pardoned *qisas* on the offender and has been confirmed by the Court, the pardon shall not be withdrawn.

(10) The *diyat* shall be paid immediately by the offender to the *wali-ad-dam* of the victim by cash, and in certain circumstances the Court may order the payment to be made in instalments for a period of not exceeding 3 years provided that there is a guarantee of payment acceptable by the *wali-ad-dam* of the victim.

Compound of *qisas*.

134. (1) In the case of *qatlul-'amd*, a *wali-ad-dam* who is *mukallaf* may compound *qisas* with *badal-al-sulh* and such compound shall be made after receiving *badal-al-sulh* with an amount which may be less or more than the value of full *diyat*.

(2) If a *wali-ad-dam* is not *mukallaf*, his *wali* may compound *qisas* with *badal-al-sulh* and such compound shall be made after receiving *badal-al-sulh* with an amount which shall be the same as the value of full *diyat*.

(3) If His Majesty the Sultan and Yang Di-Pertuan becomes *wali*, His Majesty the Sultan and Yang Di-Pertuan may compound *qisas* with *badal-al-sulh* and such compound shall be made after receiving *badal-al-sulh* with an amount which shall be the same as the value of full *diyat*.

(4) Any compound of *qisas* in *qatlul-'amd* shall be made before the Court and after the Court is satisfied with regards to it, the Court shall confirm it.

(5) *Badal-al-sulh* may be paid or given on demand by cash or on a fixed date as may be agreed upon between the offender and the *wali-ad-dam* of the victim.

Acquittal or punishment after pardon or compound of *qisas*.

135. The Court may, in the case of pardon or compound of *qisas* as provided in sections 133 and 134, as the case may be, in its discretion, having regard to the facts and circumstances of the case, acquits the offender against whom *qisas* has been pardoned or compound, or punishes him with imprisonment for a term not exceeding 15 years.

Illustration

A has caused B's death and has been convicted with the offence of *qatlul-'amd* and punished with *qisas*. B's *wali-ad-dam* or *wali* has pardoned A. Eventhough *qisas* punishment is not executed on A, the Court has a discretion to punish A with imprisonment for a term not exceeding 5 years having regards to the circumstances of the case where A has committed cruelty against B before killing him.

Commission of *qatlul-'amd* by *wali-ad-dam* after pardon or compound of *qisas*.

136. If a *wali-ad-dam* commits *qatlul-'amd* on the offender against whom *qisas* has been pardoned under section 133 or compound under section 134, such *wali-ad-dam* shall be punished with –

(a) *qisas* if he had himself pardoned or compound *qisas* on the offender or he had knowledge of such pardon or compound of *qisas* by other *wali-ad-dam*;

(b) *diyat* and imprisonment for a term not exceeding 5 years if he had not pardoned or compound *qisas* on the offender and had no knowledge of such pardon or compound of *qisas* by other *wali-ad-dam*.

Attempt to commit *qatlul-'amd*.

137. Any person who attempts to commit *qatlul-'amd* or attempts to cause the commission of *qatlul-'amd* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000, imprisonment for a term not exceeding 10 years or both.

Abetment of *qatlul-'amd*.

138. (1) Any person who abets the commission of *qatlul-'amd* under section 126(1) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000, imprisonment for a term not exceeding 25 years or both.

(2) Any person who abets the commission of *qatlul-'amd* under section 126(2) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$60,000, imprisonment for a term not exceeding 15 years or both.

Qatlu syibhil-'amd

Qatlu syibhil-'amd.

139. For the purposes of this Order, "*qatlu syibhil-'amd*" means an act which is done voluntarily and with intent to cause harm to the body or mind of a person, which causes death of that person or any other person, whether or not the act is done by means of a weapon and the act which in the ordinary course of nature is not likely to cause death.

Illustration

A in order to cause hurt, strikes B with a walking stick or stone which in the ordinary course of nature is not likely to cause death. B dies as a result of such hurt. A commits *qatlu syibhil-'amd*.

Punishment of *qatlu syibhil-'amd*.

140. (1) Any person who commits *qatlu syibhil-'amd* and it is proved in such manner as provided under section 141 is guilty of an offence and shall be liable on conviction to be punished with payment of *diyat* to the *wali-ad-dam* of the victims and with imprisonment for a term not exceeding 15 years.

(2) Any person who commits *qatlu syibhil-'amd* and it is proved by evidence other than that provided under section 141 is guilty of an offence and shall be liable on conviction to a fine not exceeding \$60,000, imprisonment for a term not exceeding 15 years or both.

Proof of *qatlu syibhil-'amd*.

141. (1) *Qatlu syibhil-'amd* which is liable to *diyat* shall be proved in the following manner –

- (a) *ikrar* of an accused who confesses with his consent before a Court of competent jurisdiction;
- (b) *syahadah* of two male *syahid*;
- (c) *syahadah* of one male *syahid* and two female *syahid*; or
- (d) *syahadah* of one male *syahid* and oath of the complainant.

(2) For the purposes of subsection (1)(b), (c) and (d), *syahadah* shall be made in accordance with *Hukum Syara'*, after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*.

Pardon of *diyat* in *qatlu syibhil-'amd*.

142. *Wali-ad-dam* of the victim in the case of *qatlu syibhil-'amd* may pardon *diyat* or any part thereof.

Acquittal or punishment after pardon of *diyat*.

143. The Court may, in the case of pardon of *diyat* as provided in section 142, in its discretion, having regard to the facts and circumstances of the case, acquits the offender against whom *diyat* has been pardoned, or punishes him with imprisonment for a term not exceeding 5 years.

Attempt to commit *qatlu syibhil-'amd*.

144. Any person who attempts to commit *qatlu syibhil-'amd* or attempts to cause the commission of *qatlu syibhil-'amd* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000, imprisonment for a term not exceeding 10 years or both.

Abetment of *qatlu syibhil-'amd*.

145. (1) Any person who abets the commission of *qatlu syibhil-'amd* under section 140(1) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$60,000, imprisonment for a term not exceeding 15 years or both.

(2) Any person who abets the commission of *qatlu syibhil-'amd* under section 140(2) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$28,000, imprisonment for a term not exceeding 7 years or both.

Qatlul-khata'

Qatlul-khata'

146. For the purposes of this Order, "*qatlul-khata'*" means an act done without an intention of causing death or injury which causes the death of a person, either by doing an act which is not anticipated may cause the death of such person or any other person, or by doing a wrongful act which later becomes the cause for the death of such person.

Illustrations

(a) A aims at a deer but misses the target, however shot B, thus causing B's death. A commits *qatlul-khata'*.

(b) A shoots at an object that he thought to be a deer but it turns out to be a human being. A commits *qatlul-khata'*.

Punishment of *qatlul-khata'*

147. (1) Any person who commits *qatlul-khata'* without any apparent rash, negligent or wrongful act or default on his part and proved in such manner as provided under section 148 is guilty of an offence and shall be liable on conviction to be punished with payment of *diyat* to the *wali-ad-dam* of the victim and to a fine not exceeding \$5,000.

(2) Any person who commits *qatlul-khata'* by any rash or negligent act and it is proved in such manner as provided under section 148 is guilty of an offence and shall be liable on conviction to be punished with payment of *diyat* to the *wali-ad-dam* of the victim and with imprisonment for a term not exceeding 10 years.

(3) Any person who commits *qatlul-khata'* without any apparent negligent or wrongful act or default on his part and it is proved by evidence other than that provided under section 148 is guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

(4) Any person who commits *qatlul-khata'* by any rash or negligent act and it is proved by evidence other than that provided under section 148 is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years.

Proof of *qatlul-khata'*.

148. (1) *Qatlul-khata'* which is liable to *diyat* shall be proved in the following manner –

- (a) *ikrar* of an accused who confesses with his consent before a Court of competent jurisdiction;
- (b) *syahadah* of two male *syahid*;
- (c) *syahadah* of one male *syahid* and two female *syahid*; or
- (d) *syahadah* of one male *syahid* and oath of the complainant.

(2) For the purposes of subsection (1)(b), (c) and (d), *syahadah* shall be made in accordance with *Hukum Syara'* after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*.

Pardon of *diyat* in *qatlul-khata'*.

149. *Wali-ad-dam* of the victim in the case of *qatlul-khata'* may pardon *diyat* or any part thereof.

Acquittal or punishment after pardon of *diyat*.

150. The Court may, in the case of pardon of *diyat* as provided under section 149, in its discretion, having regard to the facts and circumstances of the case, acquit the offender against whom *diyat* has been pardoned, or punishes him with imprisonment for a term not exceeding 5 years.

***Qatl* by black magic**

Black magic.

151. (1) For the purposes of sections 152, 153 and 154, “black magic” means knot, spell, chants, words, or specific expression or special names spoken or written or doing any act with evil purposes which has the implication and the effect, in the ordinary course of nature, to cause harm to the body, heart or mind of the person; usually the person who practices black magic befriends, or asks for or seeks help from, *Iblis*, satan, jinn, evil spirits, spirits, ghosts and the like.

(2) In this section, “knot” means an art or method to tie any matter used to practice black magic such as by using rope, thread, cloth etc.

***Qatl* by black magic.**

152. (1) Any person who commits *qatl* by black magic which in the ordinary course of nature may cause death and it is proved by *ikrar* of the accused is guilty of committing the offence of *qatlul-’amd* and shall be liable on conviction to death punishment as *qisas*.

Illustration

If the offender states in his *ikrar* that he has used black magic on *B* and his black magic, in the ordinary course of nature, causes death, he has committed the offence of *qatlul-’amd*.

(2) Any person who commits *qatlul-’amd* by black magic –

(a) which is proved by evidence other than that provided under subsection (1);

(b) where the person is not *mukallaf*; or

(c) against his own child,

is guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000, imprisonment for a term not exceeding 25 years or both.

(3) Any person who commits *qatl* by black magic which –

(a) sometimes or rarely causes death;

(b) intended to cause the death of a particular person but caused the death of another person, whose death he does not intend to cause, and it is proved by *ikrar* of the accused is guilty of committing *qatlu syibhil-'amd* and shall be liable on conviction to be punished with payment of *diyat* to the *wali-ad-dam* of the victims and with imprisonment for a term not exceeding 15 years.

Illustration

(a) If the offender states in his *ikrar* that he has used black magic on someone and his black magic sometimes causes death and sometimes not, or his black magic rarely causes death, he has committed the offence of *qatlu syibhil-'amd*.

(b) If the offender states in his *ikrar* that he uses black magic on a particular person, but affected some other person and that person died, he has committed the offence of *qatlul syibhil-'amd*.

(4) Any person who commits *qatlu syibhil-'amd* by black magic and it is proved by evidence other than that provided under subsection (3) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$60,000, imprisonment for a term not exceeding 15 years or both.

Attempt to commit *qatl* by black magic.

153. Any person who attempts to commit or attempts to cause the commission of the offence of *qatlul-'amd* or *qatlu syibhil-'amd* by black magic is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000, imprisonment for a term not exceeding 10 years or both.

Abetment of *qatl* by black magic.

154. (1) Any person who abets the commission of the offence under section 152(1) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000, imprisonment for a term not exceeding 25 years or both.

(2) Any person who abets the commission of the offence under section 152(2) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$60,000, imprisonment for a term not exceeding 15 years or both.

(3) Any person who abets the commission of the offence under section 152(3) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$60,000, imprisonment for a term not exceeding 15 years or both.

(4) Any person who abets the commission of the offence under section 152(4) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$28,000, imprisonment for a term not exceeding 7 years or both.

Qatl by poison

Qatl by using poison or poisonous substance.

155. (1) Any person who commits *qatl* –

(a) by coercing a person into taking poison or poisonous substance which in the ordinary course of nature may kill; or

(b) by administering food or drinks which he knows to contain poison which in the ordinary course of nature may kill, to a person who has no knowledge that the food or drinks contain poison,

and causes the death of the person is guilty of the offence of *qatlul-'amd* and shall be liable on conviction to punishments as provided under section 126(1) or (2), as the case maybe.

(2) Any person who commits *qatl* –

(a) by coercing a person into taking poison or poisonous substance which in the ordinary course of nature may not kill; or

(b) by administering food or drinks which he knows to contain poison which in the ordinary course of nature may not kill, to a person who has no knowledge that the food or drinks contain poison,

and causes the death of the person is guilty of the offence of *qatlu syibhil-'amd* and shall be liable on conviction to punishments as provided under section 140(1) or (2), as the case maybe.

(3) Any person who commits *qatl* by using poison or poisonous substance intended to cause the death of a particular person but caused the death of another person, whose death he does not intend to cause is guilty of the offence of *qatlu syibhil-'amd* and shall be liable on conviction to punishments as prescribed under section 140(1) or (2), as the case maybe.

Illustration

A intended to kill *B* by administering poison to the food that he served to *B*, the food was eaten by *C*. Consequently *C* dies from eating the food. *A* has committed the offence of *qatlu syibhil-'amd*.

(4) In this section, “taking” means eating, drinking or any other means to cause death by using poison or poisonous substance.

Attempt of *qatl* by using poison or poisonous substance.

156. (1) Any person who attempts to commit or attempts to cause the commission of the offence under section 155(1) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000, imprisonment for a term not exceeding 10 years or both.

(2) Any person who attempts to commit or attempts to cause the commission of the offence under section 155(2) or (3) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000, imprisonment for a term not exceeding 10 years or both.

Abetment of *qatl* by using poison or poisonous substance.

157. (1) Any person who abets the commission of the offence under section 155(1) is guilty of an offence and shall be liable on conviction to the punishments as provided under section 138(1) or (2), as the case may be.

(2) Any person who abets the commission of the offence under section 155(2) or (3) is guilty of an offence and shall be liable on conviction to the punishments as provided under section 145(1) or (2), as the case may be.

Qatl by miscarriage of foetus

Qatl by miscarriage of foetus.

158. (1) Any person who commits *qatl* on a foetus by intentionally causing its miscarriage is guilty of an offence and shall be liable on conviction for each foetus to be punished with the following –

(a) when as a result of the miscarriage, the foetus dies, the person who causes the woman to have a miscarriage shall be punished with one-twentieth of a *diyat* as provided in this Order;

(b) when as a result of the miscarriage, the foetus lives and later dies, the person who causes the woman to have a miscarriage shall be punished with *diyat* as provided in this Order;

(c) when the pregnant woman herself causes the miscarriage and the foetus is in a condition as mentioned in paragraph (a) or (b), she shall be punished as provided in paragraph (a) or (b), as the case may be,

and the Court shall impose a sentence of imprisonment for a term not exceeding 15 years.

(2) The heirs of the foetus shall be entitled to *diyat* under subsection (1), unless the offender is the heir of the foetus.

(3) For the purposes of this section and sections 159, 161 and 164, “foetus” means a child in the womb of its mother, part of whose organ have been formed and is alive.

Attempting qatl by miscarriage of foetus.

159. Any person who attempts to commit or attempts to cause the commission of the offence of *qatl* by miscarriage of foetus is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years or both.

Abetment of *qatl* by miscarriage of foetus.

160. (1) Any person who abets the commission of the offence under section 158(1)(a) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years or both.

(2) Any person who abets the commission of the offence under section 158(1)(b) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000, imprisonment for a term not exceeding 10 years or both.

Miscarriage of pregnancy.

161. (1) Any person who voluntarily causes the miscarriage of the pregnancy of a woman is guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,000, imprisonment for a term not exceeding 3 years or both.

(2) For the purposes of this section and sections 162, 163 and 164, “pregnancy” means something in the womb of a pregnant woman that has not developed into a foetus.

Explanation – A woman who causes herself to miscarry is within the meaning of this section.

Attempt to cause miscarriage of pregnancy.

162. Any person who attempts to commit or attempts to cause the commission of the offence of miscarriage of pregnancy is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

Abetment to cause miscarriage of pregnancy.

163. Any person who abets the offence of causing miscarriage of pregnancy is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

Exception for sections 158 and 161.

164. Sections 158 and 161 does not extend to a medical practitioner registered under any written law who causes miscarriage of foetus or pregnancy of a woman if such medical practitioner is of the opinion, in good faith, that the continuance of the pregnancy would involve risk to the life of the woman, greater than if the pregnancy were terminated.

Suicide

Attempt to commit suicide.

165. Any person who attempts to commit or attempts to cause the commission of suicide is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

Abetment to commit suicide.

166. (1) If any person commits suicide, any person who abets such commission of suicide is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000 and imprisonment for a term not exceeding 10 years.

(2) If any person commits suicide, any person who abets such commission of suicide, and the person abetted is not *mukallaf*, is guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and imprisonment for a term not exceeding 25 years.

Hurt

Causing hurt.

167. Any person who causes hurt to a person as provided under section 168, without causing his death, is said to have caused hurt.

Kinds of hurt.

168. For the purposes of prescribing the punishments, hurt shall be classified as follows –

- (a) *itlaf-al-udhw* that is the dismemberment or hurt of any part of the body;
- (b) *itlaf-salahiyyat-al-udhw* that is the destruction or permanent impairment of the function or use of any part of the body, or permanently disfiguring such part;
- (c) *syajjah* that is hurt on the head or face which does not amount to *itlaf-al-udhw* or *itlaf-salahiyyat-al-udhw*;
- (d) *jurh* that is wound on any part of the body other than the head and face which leaves a mark or scar whether temporary or permanent; or
- (e) other hurts.

Punishment of causing hurt.

169. (1) Any person who causes hurt to a person and it is proved in such manner as provided under section 170 is guilty of an offence and shall be liable on conviction to *qisas* punishment.

(2) Any person who –

- (a) causes hurt and it is proved by evidence other than that provided under section 170;
- (b) is not *mukallaf* who causes hurt;
- (c) is a mother or father who causes hurt to his own child; or
- (d) causes hurt where the part of the body for which *qisas* is to be imposed is not functional or otherwise incapacitated,

is guilty of an offence and shall be liable on conviction to –

- (i) payment of *arsy muqaddar*, and imprisonment for a term, as prescribed in the Second Schedule for committing *itlaf-al-udhw* or *itlaf-salahiyyat-al-udhw*;
- (ii) payment of *arsy*, and imprisonment for a term, as prescribed in the Third Schedule for committing *syajjah*;

- (iii) payment of *arsy muqaddar*, and imprisonment for a term, as prescribed in the Fourth Schedule for committing *jurh jaefah*;
- (iv) payment of *arsy ghairu muqaddar*, and imprisonment for a term, as specified by the Court as prescribed in the Fourth Schedule for committing *jurh ghairu jaefah*; or
- (v) payment of *arsy ghairu muqaddar*, and imprisonment for a term, as specified by the Court for committing hurt other than those provided under section 168(a), (b), (c) and (d).

(3) The Court may, in addition to the punishments mentioned in subsection (2)(a), (b) and (c), having regard to the facts and circumstances of the case, order the offender to pay compensation in the amount as the Court thinks fit having regard to the following –

- (a) the expenses incurred for the treatment of the victim;
- (b) loss or disability affecting the function or power of any part of the body;
- (c) the anguish suffered by the victim; and
- (d) any other matter as it thinks fit.

Proof of hurt liable to *qisas*.

170. Hurt liable to *qisas* punishment shall be proved in the following manner –

- (a) *ikrar* of an accused who confesses with his consent before a Court of competent jurisdiction; or
- (b) *syahadah* of at least two *syahid* according to *Hukum Syara'* other than the evidence of the victim, after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*.

Cases in which *qisas* punishment not enforced.

171. The punishment of *qisas* shall not be enforced in the following cases –

- (a) when the offender who has committed the offence of *qisas* is dead;
- (b) when the part of the body for which *qisas* punishment is to be imposed is not functional or otherwise incapacitated;
- (c) when pardon is given by the victim or his *wali*; or

(d) when *sulh* between the victim and the offender has been made.

Power of Court to determine hurt liable to *qisas* or otherwise.

172. The Court shall, in consultation with a Government medical practitioner, determine whether a hurt caused is liable to *qisas* or otherwise.

Pardon in respect of hurt.

173. (1) In the case of hurt, a victim who is *mukallaf* may, before execution of the punishment, pardon *qisas* on the offender whether with or without *arsy*.

(2) If the victim is not *mukallaf*, his *wali* may pardon *qisas* of the offender with *arsy*.

(3) If His Majesty the Sultan and Yang Di-Pertuan becomes *wali*, His Majesty the Sultan and Yang Di-Pertuan may pardon *qisas* of the offender with *arsy*.

(4) If there are more than one victim, the pardon of *qisas* by one of the victims or his *wali* shall not affect the right of *qisas* of the other victims or his *wali*.

Illustration

A caused hurt to B and C and A has been convicted of the offence and liable to *qisas* punishment. B or his *wali* has pardoned A but C or his *wali* does not. A shall remain liable to *qisas* punishment because C or his *wali* does not pardon him although B or his *wali* does.

(5) If there are more than one offender, the pardon of *qisas* on any one offender shall not affect the right of *qisas* on the other offender.

Illustration

A and B caused hurt to C and A and B have been convicted of the offence and liable to *qisas* punishment. C or his *wali* has pardoned A but does not pardon B. A shall not be liable to *qisas* punishment but B shall remain liable to *qisas* punishment because C or his *wali* has not pardoned him.

(6) Any pardon in respect of hurt shall be made before the Court and after the Court is satisfied with regards to it, the Court shall confirm it.

(7) If the victim or his *wali* has pardoned *qisas* on the offender and has been confirmed by the Court, the pardon shall not be withdrawn.

(8) *Arsy muqaddar* or *arsy ghairu muqaddar* shall be paid immediately by the offender to the victim or his *wali* by cash, and in certain circumstances the Court may order the payment to be made in instalments for a period of not exceeding 3 years provided that there is a guarantee of payment acceptable by the victim or his *wali*.

Compound of *qisas*.

174. (1) In the case of hurt, a victim who is *mukallaf* may compound *qisas* with *badal-al-sulh* and such compound shall be made after receiving *badal-al-sulh* with an amount which may be less or more than the value of *arsy*.

(2) If the victim is not *mukallaf*, his *wali* may compound *qisas* with *badal-al-sulh* and such compound shall be made after receiving *badal-al-sulh* with an amount which shall be the same as the value of *arsy*.

(3) If His Majesty the Sultan and Yang Di-Pertuan becomes *wali*, His Majesty the Sultan and Yang Di-Pertuan may compound *qisas* with *badal-al-sulh* and such compound shall be made after receiving *badal-al-sulh* with an amount which shall be the same as the value of *arsy*.

(4) Any compound of *qisas* in causing hurt shall be made before the Court and after the Court is satisfied with regards to it, the Court shall confirm it.

(5) *Badal-al-sulh* may be paid or given on demand by cash or on a fixed date as may be agreed upon between the offender and the victim or his *wali*.

Acquittal or punishment after pardon or compound of *qisas*.

175. The Court may, in the case of pardon or compound of *qisas* as provided under sections 173 and 174, as the case may be, in its discretion, having regard to the facts and

circumstances of the case, acquits the offender against whom *qisas* has been pardoned or compound, or punishes him with imprisonment for a term not exceeding 5 years.

Punishment of *arsy ghairu muqaddar*.

176. Any person who causes hurt to a person against whom *qisas* or *arsy muqaddar* punishment cannot be executed shall be liable to *arsy ghairu muqaddar* punishment.

Explanation – The determination of the value of *arsy ghairu muqaddar* is based on the assessment made by the Court.

Determination of value of *arsy ghairu muqaddar*.

177. The value of *arsy ghairu muqaddar* may be determined by the Court having regard to the following –

- (a) the expenses incurred on the treatment of the victim;
- (b) loss or disability affecting the function or power of any part of the body;
- (c) the anguish suffered by the victim; and
- (d) any other matter as it thinks fit.

Recovery of *arsy muqaddar* or *arsy ghairu muqaddar*.

178. (1) If an offender fails to pay *arsy muqaddar* or *arsy ghairu muqaddar* or any part thereof within the period specified, it shall be recovered from him and he shall be detained until such *arsy muqaddar* or *arsy ghairu muqaddar* is paid in full to the victim or his wali.

(2) If the offender dies before his payment of *arsy muqaddar* or *arsy ghairu muqaddar* or any part thereof, it shall be recovered from his estate.

Punishment for hurt by rash or negligent act.

179. Any person who commits hurt to another person by rash or negligent act is guilty of an offence and shall be liable on conviction to payment of *arsy muqaddar* or *arsy ghairu muqaddar*, as the case may be, and to imprisonment for a term not exceeding 5 years.

Punishment for hurt by mistake.

180. Any person who commits hurt to another person by mistake is guilty of an offence and shall be liable on conviction to payment of *arsy muqaddar* or *arsy ghairu muqaddar*, as the case may be.

***Arsy muqaddar* or *arsy ghairu muqaddar* shall be paid to victim.**

181. The amount of *arsy muqaddar* or *arsy ghairu muqaddar* shall be paid to the victim or his heirs according to their respective shares based on the ratio of division of the inheritance.

Attempt to cause hurt.

182. Any person who attempts to cause hurt or attempts to cause the commission of the offence of causing hurt is guilty of an offence and shall be liable on conviction to one-half of the punishment provided under section 169(2).

Abetting commission of causing hurt.

183. (1) Any person who abets the commission of the offence of causing hurt under section 169(1) is guilty of an offence and shall be liable on conviction to the same punishment provided under section 169(2).

(2) Any person who abets the commission of the offence of causing hurt under section 169(2) is guilty of an offence and shall be liable on conviction to one-half of the punishment as provided for such offence.

Chapter III

WITHDRAWAL OF SYAHADAH

Withdrawal of *syahadah* before pronouncement of punishment or sentencing, or making order or judgment.

184. When a *syahid* withdraws his *syahadah* before the courts pronounce the punishment, or

makes an order or judgment, the withdrawal of such *syahadah* is acceptable and the Court shall not make such *syahadah* as proof for granting the claim or conviction, and such *syahid*, except in the case of *zina*, *zina bil-jabar* or *liwat*, is guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both.

Withdrawal of *syahadah* in *mal* case after order or judgment made.

185. When *syahid* in a *mal* case withdraws his *syahadah* after order or judgment is made by the Court, whether or not the order or judgment has been executed, the withdrawal is invalid and such *syahid* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months, and pay damages for the loss incurred by *mahkum 'alaihi*, if any, according to their respective shares.

Explanation 1 – If both *syahid* withdraw their *syahadah*, the payment of damages to *mahkum 'alaihi* is divided into two between themselves and if only one *syahid* withdraws his *syahadah*, he shall pay damages of one-half of the loss incurred by *mahkum 'alaihi*.

Explanation 2 – If there are four *syahid*, two of them withdraw their *syahadah*, they are not liable. If three of the four *syahid* withdraw their *syahadah*, they shall pay damages of one-half of the loss incurred by *mahkum 'alaihi*.

Explanation 3 – If the *syahid* consist of a male and two females, one of the female *syahid* withdraws her *syahadah*, she shall pay damages of one-fourth of the loss incurred by *mahkum 'alaihi*, and if both female *syahid* withdraw their *syahadah*, they shall pay damages of one-half of the loss incurred by *mahkum 'alaihi*, and if the male *syahid* withdraws his *syahadah*, he shall pay damages of one-half of the loss incurred by *mahkum 'alaihi*.

Explanation 4 – If the *syahid* consist of a male and more than two females, all the female *syahid* withdraw their *syahadah*, they shall pay damages of one-half of the loss incurred by *mahkum 'alaihi*.

Withdrawal of *syahadah* after conviction, in cases of *qisas* and *hadd* other than *zina*, *zina bil-jabar* or *liwat*.

186. (1) In cases of *qisas* and *hadd*, except in cases of *zina*, *zina bil-jabar* or *liwat*, when a *syahid* withdraws his *syahadah* after the Court has passed its sentence and before execution of the punishment, the punishment of *hadd* or *qisas* shall not be executed and the *syahid* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

(2) In cases of *hirabah* and *qatlul-'amd*, when a *syahid* withdraws his *syahadah* after the Court has passed its sentence and the punishment has been executed, causing death to *mahkum 'alaihi*, the *syahid* is guilty of an offence and shall be liable on conviction to –

(a) payment of *diyat* according to the respective shares as specified by the Court, if the *syahid* confesses that he gives his *syahadah* in good faith and he does not lie;

(b) death as *qisas*, if the *syahid* confesses that he gives his *syahadah* with the intention to lie.

(3) In cases of *qatlu syibhil-'amd* or *qatlul-khata'*, or cases punishable with *qisas* or *hadd* except in the case of *zina*, *zina bil-jabar* or *liwat*, when a *syahid* withdraws his *syahadah* after the Court has passed its sentence and the punishment has been executed, but did not cause the death of *mahkum 'alaihi*, the *syahid* is guilty of an offence and shall be liable on conviction to –

(a) a fine not exceeding \$28,000, imprisonment for a term not exceeding 7 years or both, if the *syahid* confesses that he gives his *syahadah* in good faith and he does not lie;

(b) the same punishment sentenced for *mahkum 'alaihi* as *qisas* or the payment of *diyat* or *arsy* according to the respective shares as specified by the Court, if the *syahid* confesses that he gives his *syahadah* with the intention to lie.

Withdrawal of *syahadah* in case of *zina*, *zina bil-jabar* or *liwat*.

187. (1) When some or all the *syahid* in the case of *zina*, *zina bil-jabar* or *liwat* withdraw their *syahadah* before the Court makes the conviction, the withdrawal of such *syahadah* shall be accepted and the Court shall not make such *syahadah* as proof to convict the offence and such *syahid* is guilty of an offence and shall be liable on conviction to whipping with 80 strokes for committing *qazaf*.

(2) When some or all the *syahid* withdraw their *syahadah* –

(a) after the Court has made the conviction and the punishment has not been executed, the withdrawal of such *syahadah* shall cause the punishment not to be executed and such *syahid* is guilty of an offence and shall be liable on conviction to whipping with 80 strokes for committing *qazaf*;

(b) after the Court has made the conviction and the punishment of whipping has been executed, such *syahid* is guilty of an offence and shall be liable on conviction to whipping with 80 strokes for committing *qazaf*, a fine not exceeding \$4,000 and payment of *arsy* for hurt to *mahkum 'alaihi*, if any, according to the respective shares as specified by the Court.

(3) When some or all the *syahid* withdraw their *syahadah* after the Court has made the conviction and the punishment of stoning has been executed, causing death to *mahkum 'alaihi*, such *syahid* is guilty of an offence and shall be liable on conviction to –

(a) payment of *diyat* according to the respective shares as specified by the Court, if the *syahid* confesses that he gives his *syahadah* in good faith and he does not lie;

(b) death as *qisas*, if the *syahid* confesses that he gives his *syahadah* with the intention to lie.

Withdrawal of *syahadah ihshan* by *syahid*.

188. (1) When any *syahid* who has given his *syahadah* for conviction of *zina*, *zina bil-jabar* or *liwat* and at the same time he has also given *syahadah ihshan*, withdraws his *syahadah ihshan* at the time the punishment of stoning is being executed, the Court shall cease

forthwith the execution of the punishment and refer such case to a superior Court for revision.

If *mahkum 'alaihi* is still alive –

(a) if *mahkum 'alaihi* is found to be a *ghairu muhshan*, he shall be liable to whipping with 100 strokes and the *syahid* who withdraw his *syahadah ihshan* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both, and shall be liable to the payment of *arsy* for hurt to *mahkum 'alaihi*, if any, according to the respective shares as specified by the Court;

(b) if *mahkum 'alaihi* is found to be a *muhshan*, the punishment of stoning shall continue and the *syahid* who withdraw his *syahadah ihshan* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

Illustration

A and B have been convicted of *zina* with the *syahadah* of C, D, E and F. At the same time, C and D are *syahid ihshan* against A and B. A and B are found to be *muhshan* and punished with stoning. During the execution of the punishment, C withdraws his *syahadah ihshan*. The Court shall cease forthwith the execution of the punishment and refer such case to a superior Court for revision. C has committed an offence under this section.

(2) When *syahadah zina*, *zina bil-jabar* or *liwat* and *syahadah ihshan* is given by different *syahid*, and *syahid ihshan* or *syahid zina*, *zina bil-jabar* or *liwat* and *syahid ihshan* withdraw their *syahadah* at the time the punishment is being executed, the Court shall cease forthwith the execution of the punishment –

(a) if those who withdraw the *syahadah ihshan* are *syahid ihshan*, the Court shall refer such case to a superior Court for revision –

(i) if *mahkum 'alaihi* is found to be a *ghairu muhshan*, he shall be liable to whipping with 100 strokes and the *syahid ihshan* who withdraw his *syahadah ihshan* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both, and may also be liable to the payment of *arsy* for hurt to *mahkum 'alaihi*, if any, according to the respective shares as specified

by the Court;

- (ii) if *mahkum 'alaihi* is found to be a *muhshan*, the punishment of stoning shall continue and the *syahid ihshan* who withdraw his *syahadah* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both;

Illustration

A and *B* have been convicted of *zina* with the *syahadah C, D, E* and *F*. *G* and *H* are *syahid ihshan* against *A* and *B*. *A* and *B* are found to be *muhshan* and punished with stoning. During the execution of the punishment, *G* withdraws his *syahadah ihshan*. The Court shall cease forthwith the execution of the punishment and refer such case to a superior Court for revision. *G* has committed an offence under this section.

(b) if *syahid zina, zina bil-jabar* or *liwat* and *syahid ihshan* withdraw their *syahadah*, the *syahid zina, zina bil-jabar* or *liwat* who withdraw his *syahadah* is guilty of an offence and shall be liable on conviction to whipping with 80 strokes for committing *qazaf*, and such *syahid zina, zina bil-jabar* or *liwat* and *syahid ihshan* shall be liable to a fine not exceeding \$8,000, and may also be liable to the payment of *arsy* for hurt to *mahkum 'alaihi*, if any, according to the respective shares as specified by the Court.

Illustration

A and *B* have been convicted of *zina* with the *syahadah C, D, E* and *F*. *G* and *H* are *syahid ihshan* against *A* and *B*. *A* and *B* are found to be *muhshan* and punished with stoning. During the execution of the punishment, *C* withdraws his *syahadah zina* and *G* withdraws his *syahadah ihshan*. The Court shall cease forthwith the execution of the punishment. *C* and *G* have committed an offence under this section.

(3) When the withdrawal of *syahadah zina, zina bil-jabar* or *liwat* and *syahadah ihshan* is made at the time the punishment of stoning is being executed and *mahkum 'alaihi* has died, those *syahid* who withdraw their *syahadah* is guilty of an offence and shall be liable on conviction to –

(a) payment of *diyat* according to the respective shares as specified by the Court, if the *syahid* confesses that he gives his *syahadah* in good faith and he does not lie;

(b) death as *qisas*, if the *syahid* confesses that he gives his *syahadah* with the intention to lie.

Illustration

A and B has been convicted of *zina* with the *syahadah* of C, D, E and F. G and H are *syahid ihshan* against A and B. A and B are found to be *muhshan* and punished with stoning. C withdraws his *syahadah zina* and G withdraws his *syahadah ihshan* during the execution of the punishment, and A and B died. C and G have committed an offence under this section.

(4) In this section, “*syahadah ihshan*” means a true statement before the Court using the *lafaz* “*asyhadu*” to conclude that the accused is *muhshan* in case of *zina*, *zina bil-jabar* or *liwat*.

Withdrawal of *syahadah* in cases liable to punishment other than *hadd*, *qisas*, *diyat* or *arsy*.

189. When a *syahid* in cases liable to punishment other than *hadd*, *qisas*, *diyat* or *arsy* withdraws his *syahadah* –

(a) after the Court has made the conviction and passed sentence but the punishment has not been executed, the withdrawal of such *syahadah* is acceptable and the punishment shall not be executed and the *syahid* who withdraws his *syahadah* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both;

(b) after the Court has made the conviction and passed sentence and the punishment is being executed, the withdrawal of such *syahadah* is acceptable and the Court shall forthwith cease or suspend the execution of the punishment and shall refer the case to a superior Court for revision, and if –

(i) it is found that no conviction is made, *mahkum 'alaihi* shall be released and the *syahid* who withdraws his *syahadah* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000 or imprisonment for a term not exceeding 2 years, and shall be liable to pay of damages for the loss incurred by the *mahkum 'alaihi*, if any, according to the respective shares as the Court thinks reasonable;

- (ii) it is found that the conviction is made, the punishment shall be upheld and the *syahid* who withdraws his *syahadah* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000 or imprisonment for a term not exceeding 2 years.

Withdrawal of *syahadah* by *syahid furu'* in *mal* case.

190. (1) When a case is proved by way of *syahadah ala al syahadah*, the withdrawal of *syahadah* after the Court has made its order or judgment, whether before or after execution, is invalid, and the *syahid furu'* who withdraws his *syahadah* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or imprisonment for a term not exceeding 6 months and shall be liable to pay damages for the loss incurred by *mahkum 'alaihi*, if any, according to their respective shares as the Court thinks reasonable.

- (2) In this section –

“*syahadah ala al syahadah*” has the same meaning assigned to it under the Syariah Courts Evidence Order, 2001 (S 63/2001);

“*syahid furu'*” has the same meaning assigned to it under the Syariah Courts Evidence Order, 2001 (S 63/2001).

False information by *muzakki*.

191. (1) If a *muzakki*, after order or judgment has been made or sentencing by the Court and after execution, confesses that he has given false information regarding the *tazkiyah al syuhud*, that *muzakki* is guilty of an offence and shall be liable on conviction to the same punishment as judgment made or sentencing to a *syahid* who has given false *syahadah* as provided under section 233(3).

(2) In this section, “*muzakki*” has the same meaning assigned to it under the Syariah Courts Evidence Order, 2001 (S 63/2001).

Chapter IV

GENERAL OFFENCES

Punishment of committing *ghasab*.

192. (1) Any person who commits *ghasab* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years or both.

(2) For the purposes of sections 192 and 193, “*ghasab*” means ruling over someone’s rights cruelly without consent of the rightful person.

Illustrations

(a) A threatens to kill or injure B if B does not give A an amount of money. B because of fear gives A the amount required. A has committed *ghasab*.

(b) A by force took money from B’s pocket without B’s permission. A has committed *ghasab*.

Return of *ghasab* property.

193. (1) *Ghasab* property shall be returned to the victim if that property is in the original form and is identifiable.

(2) If the *ghasab* property is lost or used while it is in the custody of the offender, the offender shall be ordered to pay compensation and it shall become a debt which is payable to the owner.

Failure to perform Friday prayer.

194. Any male who is *mukallaf* who fails to perform the Friday prayer in a mosque without *uzur syar’ie* or without any reasonable excuse is guilty of an offence and shall be liable on conviction to a fine not exceeding \$200 for a first offence, a fine not exceeding \$300 for a second offence, and a fine not exceeding \$1,000 for a third or subsequent offence.

Disrespecting month of *Ramadhan*.

195. (1) Any person who consumes in public any food, drink or tobacco during the fasting hours in the month of *Ramadhan* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

(2) Any person who sells or serves any food, drink or tobacco for immediate consumption at that spot, in a public place, during the fasting hours in the month of *Ramadhan* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

(3) Subsection (2) shall not apply to any medical practitioner or any other person who serves any food, drink or medicine to any patient during the fasting hours in the month of *Ramadhan* without which such patient will be affected.

(4) If any person fails to comply with the provisions of subsection (2) in his status as an employee for another person, his employer shall be deemed to have abetted such offence and to have caused the commission of such offence by reason of abetment unless he can prove that such offence was committed without his consent, power, knowledge or approval and that he took all reasonable steps to avoid such act from being committed.

***Khalwat*.**

196. (1) Any Muslim who commits *khalwat* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

(2) Any non-Muslim who commits *khalwat* with a Muslim is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

(3) In this section, "*khalwat*" means –

(a) living together, cohabiting, in confinement; or

(b) isolating oneself in close proximity that can lead to suspicion that they are committing an immoral act,
between one man and one woman or more who is not his wife or *mahram*, or between one woman and one man or more who is not her husband or *mahram*.

Indecent behaviour.

197. (1) Any person who commits an act of indecent behaviour in any a public place is guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both.

(2) Any person who organises, persuades or encourages any other person to commit any act of indecent behaviour is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

Explanation – An act shall be deemed to be indecent if it tends to tarnish the image of Islam, deprave a person, bring bad influence or cause anger to the person who is likely to have seen the act.

Man posing as woman or vice versa.

198. (1) Any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place without reasonable excuse is guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000, imprisonment for a term not exceeding 3 months or both.

(2) Any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place for immoral purposes is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

Instigating married man or married woman to divorce or neglect duties.

199. Any person who instigates, forces or persuades any Muslim man or Muslim woman to divorce or to neglect his or her duties towards his wife or her husband or children is guilty of

an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

Preventing Muslim married couple from cohabiting.

200. Any person who prevents a legally married Muslim couple from cohabiting is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both, and the Court shall order the couple to cohabit as a legally married couple.

Enticing or causing Muslim married woman to leave matrimonial home.

201. Any person who entices or causes the wife of a Muslim to leave the matrimonial home determined by her husband is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both, and the Court shall order her to return to her husband.

Enticing female Muslim to leave custody of her parents or guardian.

202. Any person who entices, induces or persuades a female Muslim to leave the custody of her parents or guardian or from any person having the legal custody of her according to *Hukum Syara'* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both, and the Court may order her to be returned to her parents or guardian or the person having the legal custody of her according to *Hukum Syara'*.

Unmarried female Muslim who leaves custody of parents or guardian.

203. Any unmarried Muslim female who leaves the custody of her parents or guardian or from any person having the legal custody of her according to *Hukum Syara'* without reasonable excuse according to *Hukum Syara'* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or imprisonment for a term not exceeding 3 months or both, and the Court shall order her to return to her parents or guardian or the person having the legal custody of her according to *Hukum Syara'*.

Give away or surrender of Muslim.

204. (1) Any Muslim parent or guardian who gives away or surrenders his child or a minor under his custody who has not attained the age of 18 years to a person who is not a Muslim is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years or both.

(2) Any Muslim who gives away or surrenders any other Muslim person under his custody to a non-Muslim is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years or both.

(3) Any giving away or surrender under subsection (1) or (2) is invalid and that child or person shall be surrendered to the relevant authority according to the opinion of the Court.

Acting as procurer.

205. Any person who acts as a procurer between a woman and a man, or between a woman and another woman, or between a man and another man, for any purpose which is contrary to *Hukum Syara'* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,000, imprisonment for a term not exceeding 3 years or both.

False claim.

206. Any Muslim who –

(a) declares himself or any other person as *Imam Mahdi*; or

(b) states or claims that he or any other person knows an event or a matter that is beyond human understanding or knowledge,

whilst such declaration, statement or claim is false and contrary to *Hukum Syara'* is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 10 years, whipping with 40 strokes and the Court shall order him to repent.

Doctrine or practices etc. contrary to *Hukum Syara'*.

207. (1) Any Muslim who –

(a) teaches or expounds any doctrine relating to the religion of Islam in manner contrary to *Hukum Syara'*; or

(b) teaches, expounds any doctrine or carries out, performs or practices, a ceremony or act contrary to *Hukum Syara'*,
is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years or both.

(2) Any non-Muslim who –

(a) teaches or expounds to any Muslim a ceremony or act contrary to *Hukum Syara'*; or

(b) carries out or performs on any Muslim a ceremony or act contrary to *Hukum Syara'*,

is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years or both.

(3) It is not an offence if any person expounds any matter in subsection (1)(a) and (b) for the interest or benefit of religion of Islam or Muslims.

(4) The Court may order for any document, thing, device or structure used in the commission of or related to the offence referred to in subsection (1) or (2) to be forfeited and destroyed notwithstanding that no person may have been convicted of such offence.

Practising etc. black magic.

208. (1) Any person who practises or advertises black magic is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years or both.

(2) Any person who seeks help from a person who practices black magic for the fulfillment of any wish is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

(3) The Court may make an order for any person convicted for an offence under subsection (1) or (2) to attend counselling given by any appropriate person, institution or organisation as the Court thinks fit.

(4) For the purposes of this section –

“black magic” means knot, spell, chants, words, or specific expression or special names spoken or written or doing any act with evil purposes which has the implication and the effect, in the ordinary course of nature, to cause harm to the body, heart or mind of the person affected by black magic; usually the person who practices black magic befriends, or asks for or seeks help from, *Iblis*, satan, jinn, evil spirits, spirits, ghosts and the like;

“knot” means an art or method to tie any matter used to practice black magic such as by using rope, thread, cloth etc.

Propagation of religion other than religion of Islam.

209. (1) Any person who propagates religion other than religion of Islam, to a Muslim or a person having no religion is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years or both.

(2) The Court may order for any document or thing, among others, used in the commission of or related to the offence referred to in subsection (1) to be forfeited and destroyed notwithstanding that no person may have been convicted of such offence.

Persuading etc. Muslims to change religion.

210. (1) Any person who persuades, tells, causes, offers payment to, influences, incites, encourages or lets a Muslim –

(a) to become a believer or a member of a religion other than the religion of Islam or to become inclined to that religion; or

(b) to leave or dislike the religion of Islam,

is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and imprisonment for a term not exceeding 5 years.

(2) It shall not be a defence to a charge under subsection (1) that the other person was not influenced by any matter which was discussed or done by the accused person to him.

Persuading etc. person having no religion to become believer of etc. religion other than religion of Islam etc.

211. Any person who persuades, offers payment, influences or incites a person having no religion –

(a) to become a believer or a member of a religion other than the religion of Islam or to become inclined to that religion; or

(b) to dislike the religion of Islam,

is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and imprisonment for a term not exceeding 5 years.

Exposing beliefs and practices of religion other than religion of Islam to Muslim child, or child whose parents have no religion, who is under 18 years.

212. (1) Any person who persuades, tells, causes, offers payment to, influences, incites, encourages or lets a Muslim child, or a child whose parents have no religion, who is under the age of 18 –

(a) to accept the teachings of religions other than the religion of Islam;

(b) to attend any ceremony, act of worship or religious activities of any religion other than the religion of Islam; or

(c) to participate in any activities held for the benefit of any religion other than the religion of Islam or organised by or carried out by any body, institution or organisation relating to the religion other than the religion of Islam,

is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and imprisonment for a term not exceeding 5 years.

(2) The Court may order for any document or thing, among others, used in the commission of or related to the offence referred to in subsection (1) to be forfeited and destroyed notwithstanding that no person may have been convicted for the offence.

Publication contrary to *Hukum Syara*'.

213. (1) Any person who –

(a) prints, publishes, imports, broadcasts or distributes for purposes of sale or otherwise or in any other manner; or

(b) has in his possession,

any publication which gives or purports to give instruction on any matter relating to the teachings of Islam containing any matter which is contrary to *Hukum Syara*' is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

(2) The Court may order for any documents or thing, among others, used in the commission of or related to the offence referred to in subsection (1) to be forfeited and destroyed notwithstanding that no person may have been convicted for the offence.

Delivering or giving publications relating to religion other than religion of Islam to Muslims or persons having no religion.

214. (1) Any person who sends or delivers or causes to be sent or delivered to a Muslim or person having no religion, any publication relating to religion other than the religion of Islam, or any advertising material for such publication, that the other person did not request for, is guilty of an offence and shall be liable on conviction to a fine of not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both.

(2) For the purpose of subsection (1), any publication sent or delivered to the address of any person shall be deemed to be sent or delivered to that person.

(3) It shall not be a defence against a charge under subsection (1) that the person to whom the publication was sent or delivered has requested for it if that request has been persuaded by the accused person or any person acting on his behalf.

(4) Subsection (1) does not apply to the delivery of any publication by the Post Office and any similar services.

Giving in public places publications relating to religion other than religion of Islam to Muslims or persons having no religion.

215. Any person who gives any publication relating to religion other than the religion of Islam to a Muslim or person having no religion in public places is guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000, imprisonment for a term not exceeding 3 months or both.

Worship.

216. (1) Any Muslim who worships any person, place, nature or any object, thing or animal in any manner which is contrary to *Hukum Syara'* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

Explanation – An act or statement that shows faith to any person, object, thing or animal that such person, object, thing or animal possesses power for example the ability to bring good luck, increases wealth, grants wishes, heals diseases and others, amount to the act of worship.

(2) The Court may order for any thing, object or structure used in the commission of or related to offence referred to in subsection (1) to be forfeited and destroyed notwithstanding that no person may have been convicted for the offence.

(3) The Court may order any person who has been convicted for an offence under subsection (1) to attend counselling given by any appropriate person, institution or organisation as the Court thinks fit.

Offences in relation to use of certain words in respect of religion of Islam.

217. (1) Any person who, in any –
(a) publication;
(b) speech or public statement;
(c) speech or statement addressed to any assembly; or

(d) published or broadcasted speech or statement and at the time of the speech or statement was made he knows, or reasonably should have known, that it will be published or broadcasted, uses any word listed in Part I of the Fifth Schedule, or any derivatives or its variation, to state or express any fact, belief, idea, concept, act, activity, matter or instances of or relating to a religion other than the religion of Islam is guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,000, imprisonment for a term not exceeding 3 years or both.

(2) Any non-Muslim who, in instances mentioned in subsection (1), uses any expression listed in Part II of the Fifth Schedule, except as a citation or reference is guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,000, imprisonment for a term not exceeding 3 years or both.

(3) The Court may order for any publication or thing, among others, used in the commission of or related to the offence referred to in subsections (1) and (2) to be forfeited and destroyed notwithstanding that no person may have been convicted for the offence.

Misuse of titles for Muslims reserved for specific persons.

218. (1) Any person who by words, either spoken or written, or in any other manner, refers to or addresses –

(a) any person, other than the *Nabi Muhammad Sallallahu 'Alaihi Wa Sallam*, by the title “*Sallallahu 'Alaihi Wa Sallam*”; or

(b) any person, other than a *Rasul* or *Nabi*, by the title “*'Alaihis Salam*” or “*'Alaihis Shalatu Wassalam*”,

is guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,000, imprisonment for a term not exceeding 3 years or both.

(2) Any person who by words, either spoken or written, or in any other manner, refers to or addresses –

(a) any person, other than a *sahabat* of *Nabi Muhammad Sallallahu 'Alaihi Wa Sallam*, as or by the title “*Sahabi*”;

(b) any person, other than a wife of *Nabi Muhammad Sallallahu 'Alaihi Wa Sallam*, as or by the title "*Ummul Mu'minin*"; or

(c) any person, other than a family member of *Nabi Muhammad Sallallahu 'Alaihi Wa Sallam*, as or by the title "*Ahli Bait*",

is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

(3) In this section –

(a) "any person" includes himself;

(b) "*Ahli Bait*" means the family member of *Nabi Muhammad Sallallahu 'Alaihi Wa Sallam* who are –

(i) his wives;

(ii) his daughter, Fatimah;

(iii) his son-in-law, Ali; and

(iv) his grandsons, Hasan and Husain.

Accusing etc. Muslim as *kafir*.

219. Any person who accuses, alleges or imputes orally, in writing, by sign, or by any act, activity or conduct, or by organising, promoting or arranging any activity or otherwise in any manner, that any Muslim –

(a) is *kafir*; or

(b) is no longer professing the religion of Islam,

is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

Contempt or brings into contempt etc. religion of Islam.

220. Any person who, orally, in writing, by visible representation or in any other manner contempts or brings into contempt, disputes, questions, insults, makes fun of, mocks, mimics or ridicules –

[S 35/2018]

(a) the teaching of the religion of Islam;

(b) the practice or ceremony related to the religion of Islam;

- (c) words that are regarded as holy by Muslims;
- (d) any law in force related to the religion of Islam;
- (e) any *sahabat*;
- (f) the tenets of any recognised sect; or
- (g) any *fatwa* published in the *Gazette*,

is guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,000, imprisonment for a term not exceeding 3 years or both.

Contempt of *Nabi* by non-Muslim.

221. (1) Any non-Muslim who, orally, in writing, by visible representation or in any other manner contempts or brings into contempt *Nabi Muhammad Sallallahu 'Alaihi Wa Sallam* or any *Nabi Allah* and it is proved either by *ikrar* of the accused, or by *syahadah* of at least two *syahid* according to *Hukum Syara'* after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*, is guilty of an offence and shall be liable on conviction to death penalty.

(2) Any non-Muslim who, orally, in writing, by visible representation or in any other manner contempts or brings into contempt *Nabi Muhammad Sallallahu 'Alaihi Wa Sallam* or any *Nabi Allah* and it is proved by evidence other than those provided under subsection (1) is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 30 years and whipping not exceeding 40 strokes.

Deriding etc. verses of Al-Qur'an or *hadith* by non-Muslim.

222. (1) Any non-Muslim who derides, mocks, mimics, ridicules or contempts, by word or deed, any verse of the Al-Qur'an or *hadith* of *Nabi Muhammad Sallallahu 'Alaihi Wa Sallam* and it is proved either by *ikrar* of the accused, or by *syahadah* of at least two *syahid* according to *Hukum Syara'* after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*, is guilty of an offence and shall be liable on conviction to death penalty.

(2) Any non-Muslim who derides, mocks, mimics, ridicules, or insults, by words or deed, any verse of the Al-Qur'an or *hadith* of *Nabi Muhammad Sallallahu 'Alaihi*

Wa Sallam and it is proved by evidence other than those provided under subsection (1) is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 30 years and whipping not exceeding 40 strokes.

Attempt to commit offence under section 221 or 222.

223. Any non-Muslim who attempts to commit or attempts to cause the commission of offences under section 221 or 222 is guilty of an offence and shall be liable on conviction to the same punishment as provided for such offences.

Abetting commission of offence under section 221 or 222.

224. Any person who abets the commission of offences under section 221 or 222 is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 30 years and whipping not exceeding 40 strokes.

Forfeiture and disposal.

225. The Court may order any document, publication, thing, object or structure or anything similar used in the commission of or in relation to the offences under section 221, 222, 223, or 224 to be forfeited and disposed, notwithstanding that no person may have been convicted of such offence.

Order to repent.

226. The Court shall, after sentencing an offender for any offence under section 221, 222, 223 or 224 and before execution of the punishment, order the offender to repent.

Acquit after repentance.

227. The Court shall, after being satisfied that the offender sentenced with any offence under section 221, 222, 223 or 224 has repented, make an order of acquittal from sentence on the offender.

Fatwa.

228. (1) Any Muslim, other than the Mufti Kerajaan or a person acting under powers conferred by the Religious Council And Kadis Courts Act (Chapter 77), who issues or

purports to issue any *fatwa* to be followed by the public on any question of Islamic doctrine or *Hukum Syara'* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

(2) If the *fatwa* is in the form of document, the Court may order any document used in the commission of or related to the offence referred to in subsection (1) to be forfeited and destroyed notwithstanding that no person may have been convicted of the offence.

Religious teaching without written approval.

229. (1) Any person who teaches any matter relating to the religion of Islam without written approval from the Majlis is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

(2) Subsection (1) does not apply to –

(a) any Member of the Majlis or committee of the Majlis or Secretary to the Majlis or any officer of the Court or any religious officer, religious teacher, *Imam*, *Bilal*, Religious Enforcement Officer or any person legally appointed under any written law or rules for the purpose of religious teaching or any office as may be determined by the Majlis; and

(b) any person who teaches or professes to teach any matter relating to the religion of Islam to his family members in his own residence only.

Contempt etc. of religious authority.

230. (1) Any person who in any manner contempts, neglects, contravenes, opposes or insults any *titah* of His Majesty the Sultan and Yang Di-Pertuan with respect to religion in his capacity as the Head of the official religion of Brunei Darussalam is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years.

(2) Any person who in any manner contempts –

(a) the Majlis or Members of the Majlis;

(b) any committee of the Majlis or its members;

(c) Court; or

(d) the administration of the Syariah justice,
is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

Obstructing Religious Enforcement Officer.

231. Any person who intentionally obstructs a Religious Enforcement Officer from carrying out his duties is guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both.

False report.

232. (1) Any complainant in a case who, before the judgment of the Court, or after the judgment of the Court but before the execution of the punishment, confesses or it is proved that he has lodged a false report or has lodged a report which he knows or believes to be false is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

(2) Any complainant in a case who, after the execution of the punishment, confesses or it is proved that he has lodged a false report or has lodged a report which he knows or believe to be false is guilty of an offence and shall be liable on conviction to the same punishment as that of the *mahkum 'alaihi*.

Giving false syahadah.

233. (1) Any *syahid* who, before the judgment or conviction is made by the Court, confesses that he has given false *syahadah* or it is proved that his *syahadah* is false is guilty of an offence and shall be liable on conviction to a fine not exceeding \$28,000, imprisonment for a term not exceeding 7 years or both.

(2) Any *syahid* who, after the Court has made the judgment or conviction, and the punishment has not been executed, confesses that he has given false *syahadah* or it is proved that his *syahadah* is false is guilty of an offence and shall be liable on conviction to a fine not exceeding \$28,000 or imprisonment for a term not exceeding 7 years, and pay damages for

the loss incurred by *mahkum 'alaihi*, if any, according to the respective shares as the Court thinks reasonable.

(3) Any *syahid* who, after the Court has made the judgment or conviction, and the punishment has been executed, confesses that he has given false *syahadah* or it is proved that his *syahadah* is false is guilty of an offence and shall be liable on conviction to the same punishment that has been made to the *mahkum 'alaihi*.

Giving false evidence or information.

234. (1) Any person who intentionally gives false evidence or fabricates evidence for the purpose of being used in any stage of a judicial proceeding is guilty of an offence and shall be liable on conviction to a fine not exceeding \$28,000, imprisonment for a term not exceeding 7 years or both.

- (2) For the purposes of subsection (1), “stage of a judicial proceeding” includes –
- (a) an investigation directed by law preliminary to a proceeding before a Court, though that investigation may not take place before a Court;
 - (b) an investigation directed by a Court under the law and conducted under the authority of the Court, though that investigation may not take place before a Court.

(3) Any person who knows or has reason to believe that an offence has been committed under this Order or under any other written law to which Syariah Courts have jurisdiction, gives any information relating to such offence which he knows or believes to be false is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

(4) Any person who furnishes, as true, information or statement or declaration on the matter which he knows or has reason to believe to be false on any matter required by any public servant in the exercise of his lawful duty is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

Incitement to neglect religious duty.

235. Any person who incites or persuades any Muslim, not to or prevents any Muslim from –

- (a) attending any mosque to perform Friday prayer;
- (b) attending Islamic religious teaching;
- (ba) attending or participating in any practice or ceremony related to the religion of Islam which is commonly practised in Brunei Darussalam;

[S 35/2018]

- (c) paying any *zakat* or *fitrah*; or
- (d) doing or paying whatever he is liable to do or pay under this Order,

is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

Non-payment of *zakat* or *fitrah*.

236. (1) Any Muslim who having been lawfully assessed as liable to pay *zakat* or *fitrah* under the Religious Council and Kadis Courts Act (Chapter 77) and having failed to procure by appeal or otherwise, the cancellation or modification of such assessment, wilfully fails to pay the *zakat* or *fitrah* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

(2) A conviction under this section shall not extinguish the obligation to pay the *zakat* or *fitrah* imposed on him.

(3) Any *zakat* or *fitrah* due may be recovered as if the *zakat* or *fitrah* in question had been ordered to be delivered to the Majlis by a lawful order of a Court or as if the value thereof were recoverable as a fine imposed under this Order.

Collection of *zakat* or *fitrah* without authority.

237. Any Muslim who collects *zakat* or *fitrah* or who causes *zakat* or *fitrah* to be collected without having been appointed as *'Amil* or authorised by the Majlis is guilty of an offence

and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both, and the Court shall order such collection to be paid to the Majlis.

Payments of *zakat* or *fitrah* to unauthorised person.

238. Any Muslim who pays or causes *zakat* or *fitrah* to be paid to any person not appointed as '*Amil*' or authorised by the Majlis to collect *zakat* or *fitrah* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

Fraudulent collection of *zakat*.

239. (1) Any '*Amil*' who collects *zakat* or *fitrah* and issues receipt thereof but does not surrender the amount collected to the Majlis within such period as determined by the Majlis is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

(2) Any '*Amil*' who collects *zakat* or *fitrah* and does not issue receipt thereof or issues false receipt is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

(3) The Court shall, whether or not the '*Amil*' has been convicted under subsection (1) or (2), order the collection of *zakat* or *fitrah* to be forfeited and paid to the Majlis.

Build etc. mosque without permission.

240. Any Muslim who builds, dedicates or erects a mosque or uses any existing building as or for the purposes of a mosque without the permission of the Majlis under the Religious Council and Kadis Court Act (Chapter 77) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and the Court may, for satisfactory purposes subject to any rights of a third party, order the person convicted to close or demolish the building.

Breach of secrecy.

241. (1) Any Member of the Majlis or its servant other than those expressly authorised to do so, divulges any secret relating to the proceedings of the Majlis, which it is his duty to keep its secrecy, to any person other than His Majesty the Sultan and Yang Di-Pertuan and any Member of the Majlis is guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000, imprisonment not exceeding 6 months or both.

(2) Subsection (1) shall not apply to the matters which have been submitted to and have received the approval of His Majesty the Sultan and Yang Di-Pertuan.

(3) In this section, “proceedings of the Majlis” means any matter which has arisen at any meeting of the Majlis.

Intentional insult or interruption to public servant sitting in any stage of judicial proceeding.

242. (1) Any person who intentionally insults or interrupts any public servant while the public servant is sitting in any stage of a judicial proceeding is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.

- (2) For the purposes of subsection (1), “stage of a judicial proceeding” includes –
- (a) an investigation directed by law preliminary to a proceeding before a Court, though that investigation may not take place before a Court;
 - (b) an investigation directed by a Court under the law and conducted under the authority of Court, though that investigation may not take place before a Court.

Omission to assist public servant when bound by law to give assistance.

243. (1) Any person who, being bound by law to render assistance to any public servant in the execution of his duty, intentionally omits to give such assistance is guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000, imprisonment for a term not exceeding 3 months or both.

(2) If any person mentioned in subsection (1) intentionally omits to give such assistance demanded of him by a public servant legally competent to make such demand for the purpose of executing any summons lawfully issued by the Court, preventing the commission of any offence, suppressing a riot or affray at a public place, or of apprehending any accused person or a person who commits an offence or of having escaped from lawful custody, he is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

Public servant disobeying direction of law with intent to cause injury to any person.

244. Any public servant knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience cause injury to any person is guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,000 and to imprisonment for a term not exceeding 3 years.

Illustration

A, being an officer directed by law to take property in the execution to satisfy a decree pronounced in B's favour by a Court, knowingly disobeys that direction of law with the knowledge that he is likely thereby to cause injury to B. A has committed an offence under in this section.

Omission to produce document to public servant by person legally bound to produce it.

245. Any person who, being legally bound to produce or deliver up any document to any public servant, intentionally omits to produce or deliver up that document is guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both or, if the document is to be produced or delivered up to a Court, to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

Refusal to make oath or declaration by public servant when duly required.

246. Any person who refuses to bind himself by an oath or declaration to state the truth, when so required by a public servant legally competent to require him to do so is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

Refusal to answer public servant authorised to question.

247. Any person who, being legally bound to state the truth on any matter to any public servant, refuses to answer any question touching that matter demanded of him by such public servant in the exercise of his legal powers is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

Refusal to sign statement.

248. Any person who refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require him to do so is guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both.

Voluntarily causing hurt to extort confession or to compel restoration of property.

249. Any person who voluntarily causes hurt for the purpose of extorting from the victim or from any person interested in the victim, any confession or information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the victim or any person interested in the victim to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, is guilty of an offence and liable on conviction to a fine not exceeding \$28,000, imprisonment for a term not exceeding 7 years or both.

Illustrations

(a) A, a religious enforcement officer, tortures B in order to induce B to confess that he committed a crime. A is guilty of an offence under this section.

(b) C, a religious enforcement officer, tortures D to induce him to point out where certain stolen property is deposited. C is guilty of an offence under this section.

(c) E, causes hurt to F in order to compel him to pay certain arrears of revenue due from F. E is guilty of an offence under this section.

Attempt.

250. Unless otherwise expressly provided, if any person attempts to commit any offence under this Order or by any other written law to which Syariah Courts have jurisdiction punishable with fine, imprisonment or whipping or with a combination of such punishments, or attempts to cause such an offence to be committed and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Order or by such other written law to which Syariah Courts have jurisdiction, as the case may be, on conviction, be punished with such punishment as is provided for that offence:

Provided that any term of imprisonment imposed shall not exceed one-half of the longest term provided for the offences.

Penalty not provided for.

251. (1) Any person who contravenes or fails to comply with any provision of this Order or any direction given or requirement imposed thereunder for which no special penalty is provided is guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both.

(2) A sentence of imprisonment may be pronounced if the fine imposed under this Order is not paid but the sentence of imprisonment shall not exceed half of the sentence of imprisonment provided for the offence or 7 days if the offence is punishable with a fine only.

**PART V
GENERAL**

Provisions under Chapter 22 do not apply.

252. When a person has been tried in any proceedings in respect of the commission of an offence against this Order, he shall not be tried and no other proceedings shall be brought against him under the Penal Code (Chapter 22) for the same or a similar offence under that Code.

***Hukum Syara'* to apply if no other provision.**

253. On any matter which is not expressly provided for in this Order, the Court shall follow *Hukum Syara'*.

Repeal.

254. Sections 171, 172, 173, 174, 177, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195 and 196 of the Religious Council and Kadis Courts Act (Chapter 77) are hereby repealed.

FIRST SCHEDULE

(section 2(4))

ARABIC SCRIPT

| | | |
|-------------------------------------|-------|------------------------------|
| Ahli Bait | ----- | أهل البيت |
| 'Alaihis Shalatu Wassalam | ----- | عليه الصلاة والسلام |
| Allah | ----- | الله |
| Alhamdulillah | ----- | الحمد لله |
| Allahu akbar | ----- | الله أكبر |
| Al-Qur'an | ----- | القرآن |
| 'Amil | ----- | عامل |
| Arsy | ----- | أرش |
| Assalamu 'alaikum | ----- | السلام عليكم |
| Astaghfirullah al 'azim | ----- | أستغفر الله العظيم |
| Asyhadu | ----- | أشهد |
| A'udzubillahi minasy syaitanirrajim | ----- | أعوذ بالله من الشيطان الرجيم |
| Azan | ----- | أذان |
| Badal-al-sulh | ----- | بدل الصلح |

FIRST SCHEDULE - Continued

| | | |
|--------------------------|------|------------------------|
| Badhi'ah | ---- | باضعة |
| Baitullah | ---- | بيت الله |
| Baligh | ---- | بالغ |
| Bayyinah | ---- | بينة |
| Bilal | ---- | بلال |
| Bismillahirrahmanirrahim | ---- | بسم الله الرحمن الرحيم |
| Damiyah | ---- | دامية |
| Diyat | ---- | دية |
| Fasid | ---- | فاسد |
| Fatwa | ---- | فتوى |
| Fitrah | ---- | فطرة |
| Ghairu jaefah | ---- | غير جائفة |
| Ghairu muhshan | ---- | غير محصن |
| Ghairu muqaddar | ---- | غير مقدر |
| Ghasab | ---- | غصب |
| Hadd | ---- | حد |
| Hadith | ---- | حديث |

FIRST SCHEDULE - Continued

| | | |
|--------------|------|-------------|
| Hakam | ---- | حكم |
| Haji | ---- | حج |
| Hasyafah | ---- | حشفة |
| Hasyimah | ---- | هائمة |
| Hirabah | ---- | حرابة |
| Hirz | ---- | حرز |
| Hujjiyyah | ---- | حجبة |
| Hukum Syara' | ---- | حكم شرع |
| Iblis | ---- | إبليس |
| 'Iddah | ---- | عدة |
| Ihshan | ---- | إحسان |
| Ikrah tam | ---- | إكراه تام |
| Ikrah naqish | ---- | إكراه ناقص |
| Ikrar | ---- | إقرار |
| Ilahi | ---- | إلهي |
| Imam | ---- | إمام |
| Insya Allah | ---- | إن شاء الله |

FIRST SCHEDULE - Continued

| | | |
|---|-------|---------------------------------------|
| Irtidad | ----- | إرتداد |
| Itlaf-al-udhw | ----- | إتلاف العضو |
| Itlaf-salahiyyat-al-udhw | ----- | إتلاف صلاحية العضو |
| Ityan al-bahimah | ----- | إتيان البهيمة |
| Ityan al-mayyitah | ----- | إتيان الميتة |
| Jaefah | ----- | جانفة |
| Jurh | ----- | جرح |
| Ka'bah | ----- | كعبة |
| Kafir | ----- | كافر |
| Kalimah al-syahadah | ----- | كلمة الشهادة |
| Khalwat | ----- | خلوة |
| La ilaha illallah | ----- | لا إله إلا الله |
| La haula wala quwwata illa billahil 'aliyil 'azim | ----- | لا حول ولا قوة إلا بالله العلي العظيم |
| Lafaz | ----- | لفظ |
| Lahzah | ----- | لحظة |
| Li'an | ----- | لعان |

FIRST SCHEDULE - Continued

| | | |
|----------------|-------|-------------|
| Liwat | ----- | لواط |
| Mahkum 'alaihi | ----- | محكوم عليه |
| Mal | ----- | مال |
| Mahram | ----- | محرم |
| Masjid | ----- | مسجد |
| Masya Allah | ----- | ما شاء الله |
| Mazhab | ----- | مذهب |
| Mudhihah | ----- | موضحة |
| Mufti | ----- | مفتي |
| Muhshan | ----- | محصن |
| Mukallaf | ----- | مكلف |
| Mu'min | ----- | مؤمن |
| Mumaiyiz | ----- | مميز |
| Munaqqilah | ----- | منقلة |
| Muqaddar | ----- | مقدر |
| Musahaqah | ----- | مساحقة |
| Mutalahimah | ----- | متلاحمة |

FIRST SCHEDULE - Continued

| | | |
|--------------------|------|---------------|
| Muzakki | ---- | مزكي |
| Nabi | ---- | نبي |
| Nisab | ---- | نصاب |
| Kiblat | ---- | قبلة |
| Qadar | ---- | قدر |
| Qamariah | ---- | قمرية |
| Qatl | ---- | قتل |
| Qatlul-'amd | ---- | قتل العمد |
| Qatlul-khata' | ---- | قتل الخطأ |
| Qatlu syibhil-'amd | ---- | قتل شبه العمد |
| Qazaf | ---- | قذف |
| Qisas | ---- | قصاص |
| Rabbul 'alamin | ---- | رب العالمين |
| Ramadhan | ---- | رمضان |
| Rasul | ---- | رسول |
| Rasulullah | ---- | رسول الله |
| Rejam | ---- | رجم |

FIRST SCHEDULE - Continued

| | | |
|------------------------------|------|--------------------|
| Sahabat | ---- | صحابا |
| Sahabi | ---- | صحابى |
| Sallallahu 'Alaihi Wa Sallam | ---- | صلى الله عليه وسلم |
| Sariqah | ---- | سرقا |
| Sulh | ---- | صلح |
| Subhanallah | ---- | سبحان الله |
| Sunnah | ---- | سنة |
| Syahid | ---- | شاهد |
| Syahadah | ---- | شهادة |
| Syahadah ala al syahadah | ---- | شهادة على الشهادة |
| Syahid furu' | ---- | شاهد فروع |
| Syariah | ---- | شريعة |
| Syajjah | ---- | شجاة |
| Syajjah damighah | ---- | شجاة دامغة |
| Syajjah hasyimah | ---- | شجاة هاشمة |
| Syajjah khafifah | ---- | شجاة خفيفة |
| Syajjah ma'mumah | ---- | شجاة مأمومة |

FIRST SCHEDULE - Continued

| | | |
|--------------------|------|---------------|
| Syajjah mudhihah | ---- | شجرة مضيحة |
| Syajjah munaqqilah | ---- | شجرة منقطة |
| Syubhah | ---- | شبهة |
| Tabarakallah | ---- | تبارك الله |
| Tazkiyah al syuhud | ---- | تزكية الشهود |
| Ummul Mu'minin | ---- | أم المؤمنين |
| 'Uzur syar'ie | ---- | عذر شرعي |
| Wa'alaikumussalam | ---- | وعليكم السلام |
| Walillahilhamd | ---- | والله الحمد |
| Wallahu 'a 'alam | ---- | والله أعلم |
| Wali | ---- | ولي |
| Wali-ad-dam | ---- | ولي الدم |
| Zakat | ---- | زكاة |
| Zina | ---- | زنا |
| Zina bil-jabar | ---- | زنا بالجبر |

SECOND SCHEDULE

(sections 63(1)(c) and 169(2)(i))

TYPES OF *ITLAF-AL-UDHW* OR *ITLAF-SALAHIIYYAT-AL-UDHW*, AMOUNT OF *ARSY* AND TERM OF IMPRISONMENT

| Type of hurt | Amount of <i>arsy</i> | Term of imprisonment |
|---|--|------------------------|
| 1. Loss of single organ such as nose or tongue | Full <i>diyat</i> | Not exceeding 10 years |
| 2. Loss of one pair of organ such as arms, legs, eyes, lips, breasts and ears | Full <i>diyat</i> if both are hurt, but only half of <i>diyat</i> if only one of them is hurt | Not exceeding 10 years |
| 3. Loss of organs in fours such as eyelash or eyelids | 1/4 of <i>diyat</i> if only one of them is hurt. 1/2 of <i>diyat</i> if two are hurt. 3/4 of <i>diyat</i> if three are hurt. Full <i>diyat</i> if all of four are hurt | Not exceeding 10 years |
| 4. A finger or a toe | 1/10 of <i>diyat</i> | Not exceeding 10 years |
| 5. A finger joint | 1/30 of <i>diyat</i> | Not exceeding 10 years |
| 6. A thumb joint | 1/20 of <i>diyat</i> | Not exceeding 10 years |
| 7. A tooth other than milk teeth | 1/20 of <i>diyat</i> | Not exceeding 10 years |
| 8. Twenty teeth | Full <i>diyat</i> | Not exceeding 10 years |

THIRD SCHEDULE

(section 169(2)(ii))

TYPES OF SYAJJAH, AMOUNT OF ARSY AND TERM OF IMPRISONMENT

| Type of hurt | Amount of <i>arsy</i> | Term of imprisonment |
|--|--|------------------------|
| 1. <i>Syajjah khafifah</i> (hurt which does not reveal bone) | As much as may be specified by the Court | Not exceeding 2 years |
| 2. <i>Syajjah mudhihah</i> (hurt which reveals bone but does not break it) | 1/20 of <i>diyat</i> | Not exceeding 5 years |
| 3. <i>Syajjah hasyimah</i> (hurt which involves fractured or broken bone but does not dislocate it) | 1/10 of <i>diyat</i> | Not exceeding 5 years |
| 4. <i>Syajjah munaqqilah</i> (hurt which involves fractured or broken bone and dislocates it) | 3/20 of <i>diyat</i> | Not exceeding 10 years |
| 5. <i>Syajjah ma'mumah</i> (hurt which involves fracture of skull but wound only reaches the membrane of brain without tearing it) | 1/3 of <i>diyat</i> | Not exceeding 10 years |
| 6. <i>Syajjah damighah</i> (hurt which involves fracture of skull and wound tears membrane of brain) | 1/2 of <i>diyat</i> | Not exceeding 14 years |

FOURTH SCHEDULE

(section 169(2)(iii) and (iv))

TYPES OF *JURH*, AMOUNT OF *ARSY* AND TERM OF IMPRISONMENT

| Type of hurt | Amount of <i>arsy</i> | Term of imprisonment |
|---|------------------------------|------------------------|
| 1. <i>Jaefah</i> (wound which penetrates part of the body) | 1/3 of <i>diyat</i> | Not exceeding 10 years |
| 2. <i>Ghairu jaefah</i> (wound other than <i>jaefah</i>) which are – | | |
| (a) <i>Damiyah</i> (tear of the skin and bleeding) | As may be specified by Court | Not exceeding 3 years |
| (b) <i>Badhi'ah</i> (wound which does not reveal bone) | As may be specified by Court | Not exceeding 3 years |
| (c) <i>Mutalahimah</i> (wound which reaches flesh) | As may be specified by Court | Not exceeding 3 years |
| (d) <i>Mudhihah</i> (wound which reveals bone) | As may be specified by Court | Not exceeding 5 years |
| (e) <i>Hasyimah</i> (broken bone which does not dislocate joint) | As may be specified by Court | Not exceeding 5 years |
| (f) <i>Munaqqilah</i> (broken bone which dislocates joint) | As may be specified by Court | Not exceeding 7 years |

FIFTH SCHEDULE

(section 217)

WORDS AND EXPRESSIONS

PART I

WORDS WHICH SHALL NOT BE USED IN RESPECT OF RELIGION OTHER THAN RELIGION OF ISLAM

Allah

Al-Qur'an

Azan

Baitullah

Fatwa

Firman Allah

Hadith

Haji

Hukum Syara'

Ilahi

Imam

Ka'bah

Kalimah al-syahadah

Kiblat

Masjid

Mufti

Mu'min

Solat

Wali

PART II

EXPRESSIONS WHICH SHALL NOT BE USED BY NON-MUSLIMS IN RESPECT OF RELIGION OTHER THAN RELIGION OF ISLAM

Alhamdu lillah

Allahu akbar

Assalamu 'alaikum

Astaghfirullah al 'azim

A'udzubillahi minasy syaitanirrajim

Bismillahirrahmanirrahim

Insya Allah

La ilaha illallah

La haula wala quwwata illa billahil 'aliyil 'azim

Masya Allah

Rabbul 'alamin

Subhanallah

Tabarakallah

Wa 'alaikumussalam

Walillahilhamd

Wallaahu 'a 'alam

SIXTH SCHEDULE

(section 2)

[S 35/2018]

PRACTICE OR CEREMONY RELATED TO RELIGION OF ISLAM

- (a) Gifting the *pahala* of recitation of *Al-Fatihah* or Al-Qur'an to the deceased
- (b) Performing *doa* and reciting Al-Qur'an at graves
- (c) Reciting *doa* for the beginning and end of Hijriah year
- (d) Reciting *surah Yaasin* three times on the night of *Nisfu Sya'ban*
- (e) Reciting *surah Yaasin* on Thursday night
- (f) Celebration to commemorate the New Hijriah Year
- (g) *Israk* and *Mikraj* celebration
- (h) *Nuzul* Al-Qur'an celebration
- (i) Mass performance of *doa* after congregational prayer
- (j) Mass recitation of *wirid* and *zikir* loudly or in *jahr* manner after prayer
- (k) Reciting *basmalah* in the recitation of *Al-Fatihah* loudly or in *jahr* manner in *fardhu* prayers
- (l) To utter the *lafaz niyat* of prayer in Arabic before *takbiratul ihram*
- (m) Reciting *qunut* in *fardhu Subuh* prayer
- (n) *Sunat* prayer before *fardhu Maghrib* prayer
- (o) *Sunat qabliyyah* prayer before Friday prayer
- (p) Congregational *sunat hajat* prayer
- (q) Twenty *rakaat* for *sunat Tarawih* prayer
- (r) Reciting *salawat* loudly or in *jahr* manner between the intervals of *sunat Tarawih* prayer
- (s) *Qadha* prayer for those who did not pray *fardhu* prayers intentionally or not
- (t) Wiping the face after giving *salam* at the end of prayer
- (u) Shaking hands after congregational prayer
- (v) Reciting *talqin* during funeral ceremony
- (w) Practice of *tawassul* and *tabarruk*
- (x) Lifting the fore finger without moving it during *tahiyyah*
- (y) Placing the hands below the chest during *qiyam* when praying

Made this 14th. day of Ramadhan, 1434 Hijriah corresponding
to the 23rd. day of July, 2013 at Our Istana Nurul Iman, Bandar
Seri Begawan, Brunei Darussalam.

**HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN,
BRUNEI DARUSSALAM.**