



Singapore
Institute of Legal Education

Private Client Practice Criminal Litigation Practice

Ancillary Proceedings / Matters

Overview:

- A. The Power to Seize Certain Property
- B. Procedure Governing Seizure of Property
- C. Power of Court to Order Disposal of Property
- D. Disposal Orders
- E. Forfeiture
- F. Confiscation Orders

A – Power to Seize

A – Power to Seize Certain Property

Section 35(1) CPC provides that the police may seize any property:

- (a) in respect of which an offence is suspected to have been committed;
- (b) which is suspected to have been used or intended to be used to commit an offence; or
- (c) which is suspected to constitute evidence of an offence.

A – Power to Search & Seize Property From Person or Place

Section 78(1) CPC provides that:

- (1) When an arrest is made, the police may search the person arrested and place in safe custody all articles other than necessary wearing apparel found upon him.
- (2) Police investigating an arrestable offence and who enter certain places pursuant to section 78(2)(a) CPC may search the place for any evidence of the offence.

B – Procedure Governing Seizure of Property

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Section 370 provides that in respect of property seized under section 35 or section 78 CPC, a report of seizure must be made to a Magistrate's Court ("MC") at the *earlier* of the following times:

- (a) when property considered no longer relevant; or
- (b) one year from date of seizure of property.

The MC must then deal with the seized property accordingly (sections 370 (2) & (3) CPC). Key points to note:

- (a) No disposal if there is any pending court proceeding under any written law in relation to the property.
- (b) No disposal if court is satisfied that the property is relevant for any investigation, inquiry, trial or proceeding under any written law.

B – Procedure Governing Seizure of Property

The requirement to report a seizure is made mandatory, and not merely directory, for sound policy reasons:

- (a) Mandatory and prompt reporting ensures safe custody of property once MC takes cognisance of seizure; and
- (b) Prevents such property from being wrongfully detained, used, appropriated or disposed of.

B – Procedure Governing Seizure of Property

Failure to report seizure altogether will deprive police of power to retain legal control and/or custody of the seized property, except with the consent of a MC.

C – Power of Court to Order Disposal of Property

C – Power of Court to Make Certain Orders In Respect of The Property Seized (Disposal Orders)

Section 371 provides the procedure where person entitled to property referred to in s 370 is known.

Section 372 provides the procedure where person entitled to property referred to in s 370 is unknown or cannot be found.

C – Power of Court to Make Certain Orders In Respect of The Property Seized (Disposal Orders)

Pursuant to section 364(1), during or at the conclusion of an inquiry or trial under the CPC, the court may make an order as it thinks fit for the disposal of any property produced before it.

*The court possesses a relatively wide discretion.

C – Power of Court to Make Certain Orders In Respect of The Property Seized (Disposal Orders)

Pursuant to section 364(2), during or at the conclusion of any criminal proceeding under the CPC, a court may make an order as it thinks fit for the disposal of any property –

- (a) in respect of which an offence is or was alleged to have been committed or which has been used or is intended to have been used for the commission of any offence or which constitutes evidence of an offence; and
- (b) which is produced before the court or is in the court's custody or the custody of a police officer or any other person who has seized the property pursuant to any law.

*Subject to section 364(3) – disposal order must not be carried out until timeline for appeal has lapsed or appeal is dealt with.

D – Disposal Orders

D – Disposal Orders

- In general, the court can make the following disposal orders:
 - 1) Forfeiture (usually applies to vehicles or weapons used in commission of offences).
 - 2) Confiscation (commonly applies to monies in frozen bank accounts).
 - 3) Destruction (can overlap with forfeiture – example: DNA swabs).
 - 4) Delivery to any person (encompasses return of property to rightful owner(s)).
- Disposal inquiry will be conducted if there are any competing claims.
- Generally no right of appeal against disposal order – appropriate means of challenge is via criminal revision in the High Court.
- However, an appellate court is not precluded from intervening on its own motion if it takes the view that a disposal order is predicated on a fundamental error giving rise to a clear failure of justice (see *Magnum Finance Bhd v PP* [1996] 2 SLR(R) 159).

D – Disposal Orders

- The court has wide discretion and the appropriate disposal order is heavily predicated on common sense.
- E.g. Items belonging to innocent party (victim, complainant, witness) – order for delivery / return.
- E.g. Items used in commission of offence – order for forfeiture for the purpose of destruction.
- *Confiscation is very technical (see slide 24 – specifically legislated in statutes such as the CDSA) – **for reference only – not required for exam purposes.**

E – Forfeiture

E – Forfeiture: General

When is forfeiture of property **mandatory** and when is it **discretionary**?

Depends on a statutory interpretation of the relevant legislative provisions.

E – Forfeiture: Mandatory Forfeiture

- E.g. Section 123(2) Customs Act:
 - “An order for the forfeiture of goods **shall** be made if it is proved to the satisfaction of the court that an offence under this Act has been committed and that the goods were the subject matter of, or were used in the commission of, the offence, notwithstanding that no person may have been convicted of the offence.”

E – Forfeiture: Mandatory Forfeiture

In the Customs Act example, forfeiture is mandatory upon proof that:

- Goods were subject matter of an offence under the Act; OR
- Goods were used in commission of an offence under the Act

*In the absence of a similar governing statute, forfeiture is discretionary but governed by common sense principles (e.g. if used in commission of offence, starting point is to forfeit in the absence of good reasons otherwise).

E – Forfeiture: Discretionary Forfeiture

- Section 364(2) creates a general discretionary power of, *inter alia*, forfeiture with respect to property produced before the court regarding which an offence is or was alleged to have been committed or which has been used or is intended to be used for the commission of any offence or which constitutes evidence of an offence.

E – Forfeiture: Discretionary Forfeiture

- Principles governing exercise of discretion to forfeit:
 - Whether property owned by offender and if not, the degree of owner's complicity, i.e. whether he connived, participated, or had Nelsonian knowledge of commission of offence;
 - Whether owner benefitted from commission of offence;
 - Value of property and whether forfeiture is proportionate to gravity of offence and maximum penalty prescribed

E – Forfeiture: Discretionary Forfeiture

- Principles governing exercise of discretion to forfeit:
 - Need for general deterrence;
 - Extent of use of property in commission of offence; and
 - Whether claimant could reasonably have taken any preventive measures.

F- Confiscation Orders

- Example of confiscation orders in practice (**not examinable**).
- See sections 6 & 7 of the Corruption, Drug Trafficking & other Serious Crimes (Confiscation of Benefits) Act 1992 (CDSA).
- Relates to possible confiscation of proceeds from drug dealing and certain “serious offences” listed in the first and second schedules to CDSA.

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