



Singapore
Institute of Legal Education

Private Client Practice Criminal Litigation Practice

Pleading Guilty

Areas of Focus

- (1) Statement of Facts
- (2) Validity of Plea
- (3) Newton Hearing
- (4) Charges Taken Into Consideration
- (5) Antecedents
- (6) Address on sentence/ Mitigation
- (7) Pronouncement of Sentence & Consequential Orders
- (8) Retraction of Guilty Plea

Key Pointers (for Context)

- The accused can elect to plead guilty at any time after being charged (including midway through the pre-trial discovery [CCDC process] or midway through trial).
- This training unit focuses on how a valid guilty plea is recorded and what happens when a guilty plea is “problematic”.
- In particular, be mindful of:
 - What happens when the accused challenges an element of the charge(s) against him/her? What happens when an accused person changes his/her mind midway through pleading guilty?
 - What happens when either the Prosecution or accused challenges a fact that is material to sentencing?

Procedure At Plead Guilty Hearings

Procedure At Plead Guilty Hearings

Section 227(1) of the CPC: If the accused pleads guilty to the charge after it has been read and explained to him, whether as originally framed or as amended, his plea must be recorded and he may be convicted on it.

Procedure At Plead Guilty Hearings

Section 227(2) of the CPC:

Before the court records a plea of guilty, it must-

- (a) If the accused is not represented by an advocate, be satisfied that the accused-
 - (i) Understands the **nature and consequences of his plea and the punishment** prescribed for the offence; and
 - (ii) Intends to admit to the offence without qualification; or
- (b) If the accused is represented by an advocate, record the advocate's confirmation that the accused-
 - (i) Understands the **nature and consequences of his plea**; and
 - (ii) Intends to admit to the offence without qualification.

Procedure for recording guilty plea

- Charges which the Prosecution intends to proceed with are read to the accused first. The remaining charges are stood down temporarily.
- The court will confirm that the accused wishes to plead guilty and understands the implications pursuant to sections 227(1) – (2) of the CPC.
- The Prosecution will read out the Statement of Facts (“**SOF**”).
- The accused is asked to confirm if he admits to the SOF without qualification.
- The court will convict the accused based on the facts in the SOF.
- The accused’s consent is obtained for any remaining charge(s) to be taken into consideration (“**TIC**”) for the purpose of sentencing (s 148 of the CPC).

1. Statement of Facts ("SOF")

SOF – Essential Ingredients

- The accused need not admit to every single fact in the SOF, as long as what he **does admit to contains all the essential ingredients of the offence** and what he disputes is **irrelevant or immaterial** to the ingredients of the offence.
- Occasionally, there are peripheral facts which the accused cannot recall or confirm. It is acceptable for the accused not to admit to such peripheral facts as long as he does not qualify the plea.
- In practice, parties would have made reasonable attempts to iron out the facts between them before the guilty plea hearing.

SOF – Legal Duty on the Court

Biplob Hossain Younus Akan & Ors v PP and another matter [2011] 3 SLR 217 at [6]:

- There is no *statutory* prescription for an SOF to be provided to the court – you will not find any references to an “SOF” in the CPC.
- However, it is now well established that there is a *legal duty* for parties to agree on an SOF and for the court to scrutinise the SOF to ensure that all the elements of the charge have been made out.

SOF – Legal Duty on the Court

Biplob Hossain Younus Akan & Ors v PP and another matter [2011]

3 SLR 217 at [8] expounds on how the Court should scrutinise the SOF:

1. To evaluate the SOF with fresh lenses and be satisfied that SOF sufficiently discloses the elements of the charge(s)
2. To take the contents of the SOF at face value; the Court should be very slow in drawing any inferences to supply deficiencies in the SOF
3. To be alert to the situation where there is reason to doubt what is stated in the SOF e.g. where there are internal inconsistencies in the SOF
4. If there is doubt as to the sufficiency of the SOF, the court should decline to record the plea of guilt
5. To satisfy itself that an accused person, especially one who is unrepresented, understands the ingredients of the offence

2. Validity of Plea

Validity of Plea

Recap: Section 227(2) of the CPC:

Before the court records a plea of guilty, it must-

- (a) If the accused is not represented by an advocate, be satisfied that the accused-
 - (i) Understands the **nature and consequences of his plea and the punishment** prescribed for the offence; and
 - (ii) Intends to **admit to the offence without qualification**; or
- (b) If the accused is represented by an advocate, record the advocate's confirmation that the accused-
 - (i) Understands the **nature and consequences of his plea**; and
 - (ii) Intends to **admit to the offence without qualification**.

Validity of Plea

- **Nature of the plea** - the accused must know exactly what offence(s) he is pleading guilty to
- **Consequences of the plea** -
 - The accused has to be aware of the punishments prescribed by the law so that he is similarly aware of the possible sentence he would receive upon conviction
 - Must be aware that if the accused pleads guilty, he **may appeal against the sentence handed down on him but may not appeal against his conviction**

Validity of Plea

Md Rafiqul Islam Abdul Aziz v PP [2017] 3 SLR 619 at [36] provides a non-exhaustive list of the circumstances where the court should not accept an accused's guilty plea:

- a. Where the court is not satisfied that the accused understands the nature and consequences of his plea;
- b. Where the court is not satisfied that the accused intends to admit to the offence without qualification;
- c. Where the court is satisfied that the accused has qualified his plea in mitigation;
- d. Where the accused pleaded guilty on a mistake or misunderstanding; or
- e. Where the accused did not plead guilty voluntarily.

Validity of Plea

Simple example of qualifying the plea:

- Assume the accused is charged with one count of theft in dwelling under section 380 of the Penal Code for stealing alcohol from a supermarket.
- Dishonesty is the *mens rea* or fault element of theft-related offences (see sections 24 and 378 of the Penal Code).
- If the accused tells the court that he simply forgot to pay for the item, he is denying that he possessed the *mens rea* or fault element for the charge – this qualifies his plea of guilt.
- In practice, the qualification of plea usually arises (1) where the written mitigation plea expressly undermines a material element of the charge or (2) where the accused orally challenges the SOF after it is read out.
- If accused maintains the qualification, the matter must go for trial.

3. Newton Hearing

When is a Newton Hearing Required

- **Candidates must be mindful that the matter will not proceed to this stage if the plea is qualified in any way. A Newton Hearing relates to sentencing and is predicated on a valid guilty plea.
- A Newton Hearing is conducted when a fact is contested and the contested fact is material to sentencing. Such a hearing is the (very rare) exception rather than the norm. (***Ng Chun Hian v PP [2014] 2 SLR 783*** at [24])
- Court has the discretion to decline to hear evidence on a disputed fact if the Court is satisfied that the case advanced by the accused is “*absurd or obviously untenable*” (***Ng Chun Hian v PP [2014] 2 SLR 783*** at [24])

Newton Hearing – Who has to prove?

See *PP v Chan Yoke Ling Catherine* [2004] SGDC 108

- General rule: the party who asserts a fact that is contested has the burden of proving that that fact
- The burden is on the Prosecution to prove a contested fact if:
 - (a) The fact is “*very fundamental*” to the Prosecution’s case; and
 - (b) The Prosecution would nevertheless have had to prove the fact in the event of a trial [47 – 48]
- The burden shifts to the Defence to prove a contested fact if:
 - (a) The disputed fact relate to extraneous matters which the Prosecution would not have proven as part of its case had there been a trial;
 - (b) The disputed fact is within the knowledge of the accused; or
 - (c) Where it is provided by law that the proof of certain facts lie on the accused [52]

Newton Hearing – Standard of Proof

- The general rule is that the Prosecution has to prove a contested fact beyond a reasonable doubt; the Defence has to prove a contested fact on a balance of probabilities (see ***PP v Chan Yoke Ling Catherine [2004] SGDC 108*** at [50] – [52])
- If held, the proceedings at the hearing are akin to that of a trial process and the court will record evidence from witnesses

When is a Newton Hearing Required

Simple example:

- Assume that the accused is charged with one count of theft in dwelling under section 380 of the Penal Code for stealing alcohol from a supermarket. The accused has a very long history of property offences and faces a significant imprisonment term for this offence.
- Instead of qualifying the plea, the accused asserts in mitigation that his sentence should be lower as he was suffering from depression that significantly lowered his self control when he committed the offence. He relies on a report from a private psychiatrist.
- The Prosecution tenders a report from IMH, stating that the accused was not suffering from any mental disorders at the time of the offence.
- In this scenario, the court will likely have to convene a Newton Hearing as the disputed fact is material to sentencing. Note that the accused is not contesting *mens rea* or *actus reus*.

4. Charges Taken Into Consideration (TIC)

Charges Taken Into Consideration

Section 148(1) of the CPC:

If the accused is found guilty of an offence in any criminal proceedings began by or on behalf of the Public Prosecutor, the court in determining and passing sentence may, ***with the consent of the prosecution and the accused***, take into consideration any other outstanding offences that the accused admits to have committed.

Procedure for charge(s) to be TIC-ed

1. The Court convicts the accused after the accused confirms that the accused accepts the SOF without qualification;
2. The Prosecution then applies for the remaining charge(s) to be TIC-ed; and
3. The accused must admit and consent to remaining charge(s) to be TIC-ed

Effect on charges TIC

PP v Mok Ping Wuen Maurice [1998] 2 SLR (R) 439 at [19]:

“...The effect of taking into consideration outstanding offences is to enhance the sentence that would otherwise be awarded. The accused merely admits to these offences and must not be convicted of them. However, in doing so, the accused also saves the court time and trouble in determining his complicity in these offences. Ultimately, it is the court’s discretion whether to consider the offence or not.” [Emphasis Added]

*Note that court is more likely to increase the sentence(s) for the proceeded charge(s) if TIC charge(s) is similar in nature.

5. Offender's Antecedents

Offender's Antecedents

Section 2(1) of the CPC

Definition of “*Criminal Record*” means the record of any –

- (a) Conviction in any court, or subordinate military court established under section 80 of the Singapore Armed Forces Act;
- (b) Order made under section 34(2) of the Misuse of Drugs Act;
- (c) Supervision order made under section 16 of the Intoxicating Substances Act;
- (d) Order made under section 30 of the Criminal Law (Temporary Provisions) Act; and
- (e) Order as may be prescribed by the minister charged with the responsibility for home affairs to be a criminal record for the purposes of this Code

Offender's Antecedents

Section 228(2) of the CPC

The address on sentence may include-

- (a) The criminal records of the accused;
- (b) Any victim impact statement; and
- (c) Any relevant factors which may affect the sentence.



(see [51] – [60])

- The accused pleaded guilty and was convicted of one charge dangerous driving under Section 64(1) of the Road Traffic Act (Chapter 276).
- The accused's driving record comprised offences that were compounded from 1999 to 2014. In particular, the compounded traffic offences that were relevant were the speeding offences and the offence of failing to confirm to a red light signal.
- The High Court held that compounded offences can be taken into account for sentencing purposes.

PP v Koh Thiam Huat

[2017] 4 SLR 1099

“59 Moreover, allowing a court to take into account a compounded offence under the RTA (or its subsidiary legislation) allows for a more holistic approach in sentencing. It cannot be gainsaid that a court should have regard to all relevant factors in sentencing. This is, in fact, hinted at by s 228(2)(c) of the CPC, which provides that the Prosecution’s address on sentence may include “any relevant factors which may affect the sentence” [emphasis added] (although this provision appears to apply only to plead guilty proceedings, s 230(1)(x) of the CPC makes it applicable to trial proceedings as well). It follows that the court must be allowed to take these same factors into account.

60 Furthermore, the offence of dangerous driving is one that calls for both specific and general deterrence (*D’Rozario Pancratius Joseph v PP* [2015] SGHC 46 at [27]). Allowing a court to take into account a compounded offence under the RTA (or its subsidiary legislation) gives better effect to this need. Indeed, whether a traffic offence is compounded may ultimately depend on the prevailing prosecutorial policy of the day. But the need to deter bad driving remains regardless and is better given effect to when a court is allowed to take into account compounded offences under the RTA (or its subsidiary legislation).”

6A. Prosecution's Address on Sentence

Prosecution's Address on Sentence

Section 228 of the CPC

- (1) On the conviction of the accused, the prosecution may where it thinks fit address the court on sentence.
- (2) The address on sentence may include-
 - (a) The criminal records of the accused;
 - (b) Any victim impact statement; and
 - (c) Any relevant factors which may affect the sentence.

PP v Tan Fook Sum

[1991] 1 SLR(R) 1022 at [34]

- A sentence is awarded entirely within the discretion of the court and a trial judge cannot justify a sentence that is manifestly inadequate by pointing to the omission of the Prosecution to press for a harsher sentence.

6B. Mitigation Plea

Mitigation Plea

Section 228(3) of the CPC:

The court **must** then hear any plea in mitigation of sentence by the accused and the prosecution has a right of reply.

Mitigation Plea

Section 228(4) of the CPC:

The plea in mitigation must not qualify the plea. If the plea in mitigation qualifies the plea, the court **must** reject the plea of guilty.

Mitigation Plea

Rule 14(7), Legal Profession (Professional Conduct) Rules 2015:

If an accused person has pleaded guilty or has been convicted after trial, the legal practitioner representing the accused person, when presenting a plea in mitigation, **must not make any allegation which is scandalous or is intended or calculated to vilify, insult or annoy any person.**

E.g. Unacceptable to engage in victim blaming in matters involving sexual offences (see *GCM v PP* [2021] 4 SLR 1086, for reference only – not in course outline)

7. Pronouncement of Sentence & Consequential Orders

Deferment of sentence

Section 318 of the CPC:

Subject to this Code and any other written law, a sentence of imprisonment shall take effect from the date it was passed, unless the court passing the sentence or, when there has been an appeal, the appellate court, otherwise directs.



Loh Kok Siew v PP [2002] 2 SLR(R) 186 at [7]-[12]

If accused asks to defer sentence, the Court's paramount consideration would be the accused's reasons for the postponement of sentence. The Court will consider factors including:

- The adjournment(s) that have previously been granted to the accused;
- Gravity of the offence;
- The accused's criminal record and the possibility of reoffending while at liberty;
- Whether bail imposed will ensure the attendance of the accused in court.

Loh Kok Siew v PP [2002] 2 SLR(R) 186 at [10]

- Burden lies on the accused to satisfy the Court that the circumstances necessitate the Court's exercise of its discretion to grant a deferment of the sentence.
- Court will have to weigh the reasonableness of the request against the justice of the case i.e. "*the discretion to postpone should be exercised judiciously and only where good reasons exist*".

Fines – amount to be imposed

Section 319(1)(a) of the CPC:

- If maximum amount not stated in the law, the fine to which the offender is liable shall be unlimited but must not be excessive.

BUT Section 303 of the CPC:

- High Court – no upper limit
- District Court – fine not exceeding S\$30,000
- Magistrate Court – fine not exceeding S\$10,000

Payment of Fines

Section 319(1)(b) of the CPC:

- The Court may allow an extension of time for the payment of the fine;
- The Court may allow the fine to be paid by instalments;
- The Court may direct that the offender must serve a term of imprisonment if the offender defaults on the payment of the fine. This term of imprisonment must run consecutively with any other imprisonment term that the offender may have been sentenced to.

Withdrawal of remaining charges on conviction on one of several charges

Section 147 of the CPC:

- (1) When 2 or more charges are made against the same person and he has been convicted on one or more of them, the prosecution may, with the consent of the court, withdraw the remaining charge or any of the remaining charges.
- (2) Such withdrawal shall have the effect of an acquittal on the remaining charge or charges withdrawn unless the conviction is set aside.
- (3) Where a conviction is set aside under subsection (2), and subject to any order of the court setting aside the conviction, the court may proceed with the trial of the charge or charges previously withdrawn.

Disposal of property by court

Section 364 of the CPC

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

Disposal of property by court

Pursuant to s 364(2), during or at the conclusion of any criminal proceeding, 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.

Disposal of property by court

- Court can make the following disposal orders:
 - 1) Forfeiture;
 - 2) Confiscation;
 - 2) Destruction; or
 - 3) Delivery to any person.
- Disposal inquiry will be conducted if there are any competing claims.

8. Retraction of Guilty Plea

Retraction of Guilty Plea

***Md Rafiqul Islam Abdul Aziz v PP [2017] 3 SLR 619* at [23]-[36]**

- Court's powers of revision are to be exercised sparingly and would only be invoked to remedy a serious injustice.
- Before a court accepts a guilty plea, the court:
 - Should be satisfied that it is the accused himself who wishes to plead guilty;
 - Must ensure that the accused understands the true nature and consequences of his plea; and
 - Must establish that the accused intends to admit without qualification to the offence alleged against him.

Md Rafiqul Islam Abdul Aziz v PP
[2017] 3 SLR 619 at [26]

- An accused person would be permitted to retract his guilty plea if he is able to show “*valid and sufficient grounds which satisfy [the court] that it is proper and in the interests of justice that he should be allowed to do so.*”
- “*valid and sufficient grounds*” depend on all facts of the case, for example:
 - Situation where there was a mistake or misunderstanding; or
 - Where the accused did not make a “*voluntary and deliberate choice*” to plead guilty

Md Rafiqul Islam Abdul Aziz v PP

[2017] 3 SLR 619 at [34]

“...The combined purport of ss 227(2) and 228(4) of the CPC is that at all stages of the plead guilty procedure – both when the plea is being taken and during mitigation – the court must be cautious to ensure that the accused intends to unequivocally admit to the offence alleged against him without qualification before convicting and sentencing the accused on the charge”.

*See also PP v Dinesh s/o Rajantheran [2019] 1 SLR 1289, especially at [28]-[30], [67]

Sentencing Philosophy & Principles

WHY PUNISH?

Each time a judge decides to punish an offender, he must remember to ask himself the additional question: Why punish? This will remind him that the punishment imposed should achieve a societal purpose and cannot be an end in itself.

Former Chief Justice Chan Sek Keong (2006)

Sentencing Overview

- Sentencing only takes place if there is a conviction (including a successful appeal against acquittal by the Prosecution)
- Not much controversy when it comes to conventional sentences of fines and imprisonment for individual charges – courts will usually have regard to (1) the prescribed punishment for the offence and (2) any sentencing guideline judgments / sentencing norms
 - Court of Appeal and High Court have been very active in promulgating sentencing guideline judgments in recent times
 - Optional: For a good overview (and example) of such guideline judgments – see Ng Kean Meng Terence v PP [2017] 2 SLR 449

Sentencing Overview

- ***Three main areas of interest which are highly topical:
 - Consecutive and concurrent sentencing when the court imposes imprisonment terms for multiple charges
 - Sentencing of youthful offenders
 - Community based sentences (see sections 335 to 354 of the CPC)

Sentencing Philosophy

- Key sentencing principles and sentencing pillars:
 - **Retribution:** punishment must reflect gravity of offence
 - **Deterrence:** deter likeminded offenders (general deterrence) and/or deter a particular offender from reoffending (specific deterrence)
 - **Prevention:** take offender out of circulation to protect public (e.g. preventive detention)
 - **Rehabilitation:** targeted at reform - underpins the sentencing of youthful offenders and adult offenders who may qualify for community sentences

*Sentencing often entails identifying the most relevant principle and proceeding from there. There can certainly be competing considerations (e.g. deterrence v rehabilitation when it comes to youthful offenders).

Consecutive and concurrent sentencing

- Key reference point is section 307(1) of the CPC – if accused is convicted and sentenced to imprisonment for at least 3 distinct offences, at least 2 imprisonment terms must run consecutively.
- For avoidance of doubt, fines cannot run “concurrently” when they are imposed – they aggregate and stack up.
- Two other key considerations:
 - There is a general rule that custodial sentences for unrelated offences (distinct offences committed on separate occasions) must run consecutively (IMPT: see *PP v Raveen Balakrishnan* [2018] 5 SLR 799)
 - The one-transaction rule serves as a “filter” for the court to ensure that sentences run concurrently when consecutive sentences are not appropriate (IMPT: see *Mohamed Shouffee bin Adam v PP* [2014] 2 SLR 998)

Consecutive and concurrent sentencing

- The general rule in *Raveen Balakrishnan* ensures that the deterrent effect of sentencing is not lost and avoids the appearance that one can get a bulk discount for multiple offending acts.
- One-transaction rule provides that offences which are part of the same transaction should be the subject of concurrent sentences:
 - Factors such as proximity of time, proximity of purpose and proximity of location serve as a “first level” filter – offences are quite plainly unrelated if these are not satisfied.
 - Be mindful that the “real basis” of the one-transaction rule is whether the offending acts offend the same legal interest (IMPT: see *Shouffee* at [31]).
 - In the final equation, common sense is still an important determinant in whether sentences should run concurrently or consecutively.

*Sentences are ultimately subject to the need for punishment to be proportionate and not crushing (Illustration: accused person who is convicted of eight counts of snatch theft under section 356 of the Penal Code (minimum sentence of one year's imprisonment per charge) - 8 consecutive sentences???

- Totality principle comes in as a moderating mechanism to ensure that punishment is not crushing.

Totality Principle

- The total sentence imposed should not be a ‘crushing sentence not in keeping with the offender’s records and prospects’
- Subject to Section 307(1), CPC

Totality Principle

“The “totality principle” is an expansion of the “one-transaction principle”. Under this principle, the sentencing court would take into account all sorts of overlapping factors that might, in some cases, render the overall punishment harsher than the offender deserves. These principles are applied as part of the court’s sentencing discretion, and are important considerations although they are not mandatory rules.”

PP vs McCrea Michael
[2006] 3 SLR(R) 677

Totality Principle

- Must not be used to minimize punishment when the facts merit sufficiently severe punishments being meted out: "...the totality principle cannot be unthinkingly invoked to minimise punishment for those who maliciously pursue a deliberate course of criminal behaviour"

- *ADF v PP & Anor*

[2010] 1 SLR 874, per VK Rajah JA (as he then was)

Maximum Sentence

- May be imposed even in PG cases
- Court has to identify a range of conduct characteristic of the most serious instances of the offence in question
- Consider the nature of the offence:
 - Aggravating features
 - Personal circumstances of the offender, e.g. previous similar convictions?

Maximum Sentence

“If a particular criminal provision prescribes a maximum sentence that seems unduly light or lenient in relation to the potential seriousness of offences that fall under it, meting out a near-maximum sentence is not warranted unless it is demonstrated by the prosecution that that particular offence figures among the worst type of cases *falling within that prohibition....* there must be a sense that the sentence is proportionate not only to the culpability of the offender but also in the context of the legislative scheme.”

Angliss Singapore Pte Ltd vs PP
[2006] 4 SLR(R) 653

- May be imposed even in PG cases
- Court has to identify a range of conduct characteristic of the most serious instances of the offence in question
- Consider the nature of the offence:
 - Aggravating features
 - Personal circumstances of the offender, e.g. previous similar convictions?

SENTENCING OPTIONS

Types of Sentences

General Sentencing Options

- Imprisonment
- Caning
- Fines
- Probation

Specific Sentencing Options

- Community Sentences
- Reformative Training
- Corrective Training
- Preventive Detention
- Disqualification from Driving

Date of commencement of sentence, deferment of sentence

- Court's power to backdate sentence of imprisonment is a discretionary one (see section 318 CPC for context).
- By backdating an imprisonment sentence, the court will be able to achieve a discount in the sentence.
- By refusing to backdate it, the court can in effect achieve an enhanced sentence.
- Where the court does decide to backdate an imprisonment sentence, the prevailing practice is to equate this with date of arrest if the accused was remanded (i.e. was not bailed out) since then.

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