

CHAPTER II

COURTS OF JUSTICE AND APPEALS

A knowledge of the structure of the courts and their jurisdiction is essential in understanding how the system of appeals operates. The courts relevant to this study are those of West Malaysia only. Though this study is confined to appeals from the lower courts to the High Court, all courts will be considered in this chapter so that a complete picture of appeals in relation to the entire hierarchy of courts can be seen. The appellate system at glance is provided by Chart 2.7 at the end of this chapter.

Types of Courts and their criminal jurisdiction

There are basically two levels of courts, namely the Superior and the Subordinate or Lower Courts. The jurisdiction of these courts are governed by the Courts of Judicature Act, 1964¹ (hereinafter referred to as C.J. Act, 1964) as amended by the Courts of Judicature (Amendment) Act, 1976² (hereinafter C. of J.(A) Act, 1976) and the Subordinate Courts Act, 1948³ (hereinafter S.C. Act, 1948).

Subordinate Courts

Penghulu's Courts: The criminal jurisdiction of a Penghulu's Court is restricted to the trial of offences of a minor nature which are specifically enumerated in his kuasa

¹Courts of Judicature Act, 1964 (Revised - 1972) Act 91.

²Courts of Judicature (Amendment) Act, 1976 Act 328.

³Subordinate Courts Act, 1948 (Revised - 1972) Act 92.

punishable with a fine not exceeding twenty-five dollars. Persons charged with offences before this court may elect to be tried by a Magistrate's Court and has a right to be notified of this right of election at the commencement of the trial. This court may pass any sentence authorised by law not exceeding a fine of twenty-five dollars.⁴ An appeal from this court lies to a First Class Magistrate.⁵

Magistrates' Courts: There are two classes of Magistrates.

A First Class Magistrate has jurisdiction to try all offences for which the maximum sentence does not exceed five years or which are punishable by fine only, and offences under sections 325, 380, 381, 407, 408, 429, 431, 432, 435, 451, 452, 454 and 457 of the Penal Code. He may pass any sentence allowed by law not exceeding two years, a fine of five thousand dollars, whipping up to six strokes or a combination of these.⁶

Section 86 of the S.C. Act, 1948 empowers a First Class Magistrate to hear and determine criminal appeals by persons convicted by a Ponghulu's Court situate within the local limits of his jurisdiction. He may allow or dismiss an appeal against conviction depending on the sufficiency of grounds for interfering. However in an appeal against sentence,

⁴Ibid., s.95 and 96.

⁵Ibid., s.86.

⁶Ibid., s.85 and 87 (1).

he may vary, reduce but not enhance the sentence.

Second Class Magistrates may try offences which are punishable with a maximum term of imprisonment of twelve months or by fine only. The punishment which may be inflicted by him is a term of three months' imprisonment or a fine of two hundred and fifty dollars or a combination of these.⁷

Appeals from all Magistrates' Courts lie to the High Court, the decision of which is final.⁸

Sessions Courts: A Sessions Court may try all offences punishable by a maximum term of imprisonment of ten years or by fine only and offences under sections 409, 454 and 457 of the Penal Code. This court may pass a sentence of less than five years' imprisonment, a fine of ten thousand dollars, whipping up to twelve strokes or a combination of these.⁹

Any President of a Sessions Court on whom the Yang Di-Pertuan Agong has conferred special jurisdiction by notification in the Gazette on the advice of the Chief Justice, may try offences punishable by not more than fourteen years' imprisonment and offences under sections 326, 329, 370 and 377 of the Penal Code and Section 30 of the Arms Act, 1960. The said President may impose an imprisonment not exceeding seven

⁷Ibid., s.88 and 89.

⁸C. of J. Act, 1964 s.26.

⁹S.C. Act, 1948 s.63 and 64.

years or a fine of twenty thousand dollars.¹⁰

Superior Courts

High Court: Section 22 of the C. of J. Act, 1964 confers on the High Court unlimited original jurisdiction in criminal cases but cases tried by this court are normally those outside the jurisdiction of the lower courts. The High Court hears appeals from the Magistrates' and Sessions Courts.¹¹ No appeal shall lie in the case of any offence punishable with fine only not exceeding twenty-five dollars. There can be no appeal when an accused person has pleaded guilty and been convicted except as to the extent or legality of the sentence. Where an accused has been acquitted, there is no appeal except by or with the sanction in writing of the Public Prosecutor.¹²

The Federal Court: Section 50 of the C. of J. Act, 1964 as amended by the C. of J.(A) Act, 1976 confers upon the Federal Court jurisdiction to hear and determine any appeal against any decision of the High Court in the exercise of its original jurisdiction.¹³ By inserting a new subsection(2A) after subsection (2) of section 50 of the C. of J. Act, 1964 the Public

¹⁰Ibid., s.63(3) and s.64(1)(a) and (b).

¹¹C. of J. Act, 1964 s.26.

¹²Criminal Procedure Code (F.M.S. Cap 6) s.304-306.

¹³C. of J.(A) Act, 1976 s.5(a) (1)(a).

Prosecutor may now appeal against acquittal or sentence after giving notice of such appeal.¹⁴ This is in line with purpose (b) set out in the Explanatory Statement of the Bill which subsequently became the C. of J.(A) Act, 1976. This purpose is to empower the Public Prosecutor to appeal to the Federal Court against any decision made by the High Court in the exercise of its criminal jurisdiction at the first instance. This has removed the general restriction on the Public Prosecutor to appeal in the case of an acquittal by the High Court. Formerly in such a case, it is only if the Public Prosecutor certifies that the determination of the trial involves a question of law which is desirable to be determined by the Federal Court that the latter would review the case and deliver a declaratory judgement. This judgement does not operate to reverse the order of acquittal but will be binding on all courts in Malaysia in the same way as an ordinary judgement of the Federal Court.¹⁵

There is usually no right of appeal when the High Court exercises appellate jurisdiction in criminal cases. However another purpose of the C. of J.(A) Act, 1976 is to enable an appeal to be made to the Federal Court from any decision of

¹⁴Ibid., s.5(b).

¹⁵C. of J. Act, 1964 s 65

the High Court rejecting an appeal from a decision of a President of a Sessions Court who is conferred with special jurisdiction under section 63(3) of the S.C. Act, 1948. To this end, the same Act empowers the Federal Court to hear and determine appeals against any decision of the High Court in the exercise of its appellate jurisdiction in respect of appeals from the said President.¹⁶ In all other cases, the position remains the same as that provided by C. of J. Act, 1964. The Judge may on the application of any party and shall on the application of the Public Prosecutor reserve for the decision of the Federal Court any question of law of public interest which has arisen in the course of the appeal and the determination of which by the Judge has affected the event of the appeal. The Federal Court shall hear and determine the question reserved and may make such order as the High Court might have made as it may consider just for the disposal of the appeal.¹⁷

Appeals to the Yang di-Pertuan Agong

Though the C. of J.(A) Act, 1976 has come into force on 22nd January this year, the section abolishing appeals to the Privy Council (i.e. section 13) is not as yet enforced. This is because the Minister has not appointed the date of enforcement of section 13 by notification in the Gazette.¹⁸ Thus an appeal still lies from the Federal Court to

¹⁶C. of J.(A) Act, 1976. s.5(a)(1)(b).

¹⁷C. of J. Act, 1964. s.66.

¹⁸C. of J. (A) Act, 1976. s.1(3).

the Yang di-Pertuan Agong who refers them to the Privy Council with special leave of the Yang di-Pertuan Agong who acts on the advice of the Judicial Committee.¹⁹ However once section 13 comes into operation, criminal appeals to the Privy Council will be abolished. This is done by deleting paragraph (c) to subsection (2) of section 74 of the C. of J. Act which authorises appeals to lie to the Yang di-Pertuan Agong in any criminal matter.²⁰ Appeals or applications for appeals which are pending at the date of the coming into force of section 13 will not be affected.²¹

Procedure of Appeal

In view of the limited scope of this project, only the procedure of appeal from the Sessions and Magistrates' Courts to the High Court will be examined. This procedure is laid out in sections 307 to 322 of the Criminal Procedure Code.

On the completion of a trial in a Magistrate's Court,²² any person who is dissatisfied with the decision may prefer an appeal to the High Court by lodging within ten days from time of such judgement a notice of appeal in triplicate addressed to the High Court with the

¹⁹C. of J. Act, 1964. s.74.

²⁰C. of J.(A) Act, 1976. s.13(2)(c).

²¹Ibid., s.13(4).

²²s.303A of the Criminal Procedure Code (F.M.S. Cap 6) as amended by Act A324/76. Any reference in this Chapter to a Magistrate and a Magistrate's Court shall be deemed to include a reference to a President of Sessions Court, or a Sessions Court, as the case may be, and the expressions "Magistrate" and "Magistrate's Court" shall be construed accordingly.

clerk of the Magistrate's Court. An address at which notices connected with the appeal may be served shall be included in the notice of appeal.

On receipt of the notice of appeal, the court appealed from shall make a signed copy of the grounds of judgement of the case and serve it on the appellant at the above-mentioned address. The appellant shall lodge with the same clerk a petition of appeal within ten days after a copy of the grounds of judgement has been served on him. If the appellant has applied for a copy of the notes of evidence recorded by the Magistrate at his trial, he has to lodge the petition of appeal either within ten days after being served with the grounds of judgement or within ten days after a notice has been served on him to the effect that a copy of the notes of evidence can be had free of charge, whichever period is longer. A brief account of the substance of the judgement appealed against and definite particulars of the points of law or fact in regard to which the Magistrate's Court is alleged to have erred must be stated in the petition of appeal.

For an appellant in prison, it would suffice if he gives to the officer-in-charge either orally or in writing notice of appeal and the particulars required to be included in a petition of appeal within the requisite times.

An appeal is deemed withdrawn if the petition of appeal is not lodged within the required time subject to section 310. Section 310 confers upon a Judge discretion, on the application of any person desirous of appealing but has been debarred by non-compliance with some formality or requirement of the Code, to permit an appeal upon

such terms and with such directions to the Magistrate and the parties concerned to the end that substantial justice may be done in the matter.

After due compliance with the above requirements, the Magistrate's Court will transmit to the High Court, the Public Prosecutor and the appellant's advocate a signed copy of the record of the proceedings and grounds of decision together with a copy of the notice and petition of appeal. The Judge after perusing these documents will send them to the Registrar, who will fix a date of hearing, and notify the parties of such date. This is true only if the Judge does not reject the appeal summarily.

At the hearing, the appellant will support his appeal and answer the respondent's counter-submissions, orally to them. If the appellant is absent, the Court may consider his appeal and make such order as it thinks fit. However if the appellant is out of jurisdiction or fails to appear personally before the Court in pursuance of a condition upon which he was admitted to bail, the Court may refuse to consider the appeal. If the respondent is absent and the Court is not satisfied that the notice of appeal was not duly served upon him, the Court will adjourn the hearing to a future date and issue the requisite notice to him for service through the Registrar. However, the Court will proceed to hear the appeal if notice cannot be served on the respondent.

If the appeal necessitates additional evidence to be taken, the Judge can either take such evidence himself or direct a Magistrate to take it. If the latter course is adopted, the Magistrate must certify it to the High Court who will then proceed to dispose of the appeal.

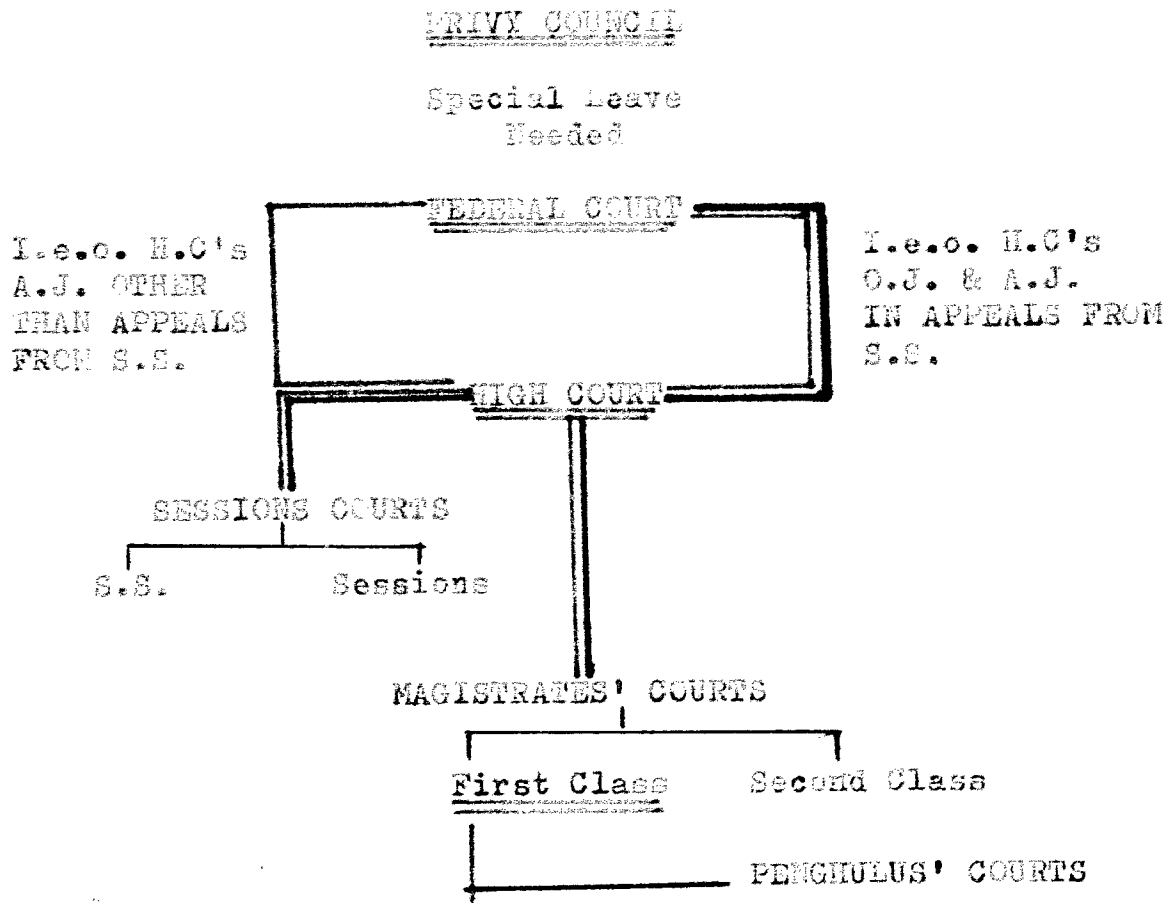
The Judge will dismiss the appeal if he considers that there is no sufficient ground for interfering with the decision of the Magistrate's Court. Conversely, in an appeal against an order of acquittal, he may reverse the order and direct that further inquiry be made, or that the accused be retried or committed for trial or find him guilty and pass the appropriate sentence. In an appeal against conviction or sentence, the Judge may reverse the finding and sentence and acquit and discharge the accused, or order him to be retried or committed for trial, or alter the finding, maintaining the sentence, or with or without altering the finding reduce or enhance the sentence or alter the nature of the sentence.

To aid the reader visualize this long and tedious procedure, this chapter will close with a simple chart showing the main stages involved in the procedure of appeal outlined above.

CHART 2.1

CRIMINAL APPEALS AND COURTS

SUPERIOR
SUBORDINATE



KEY

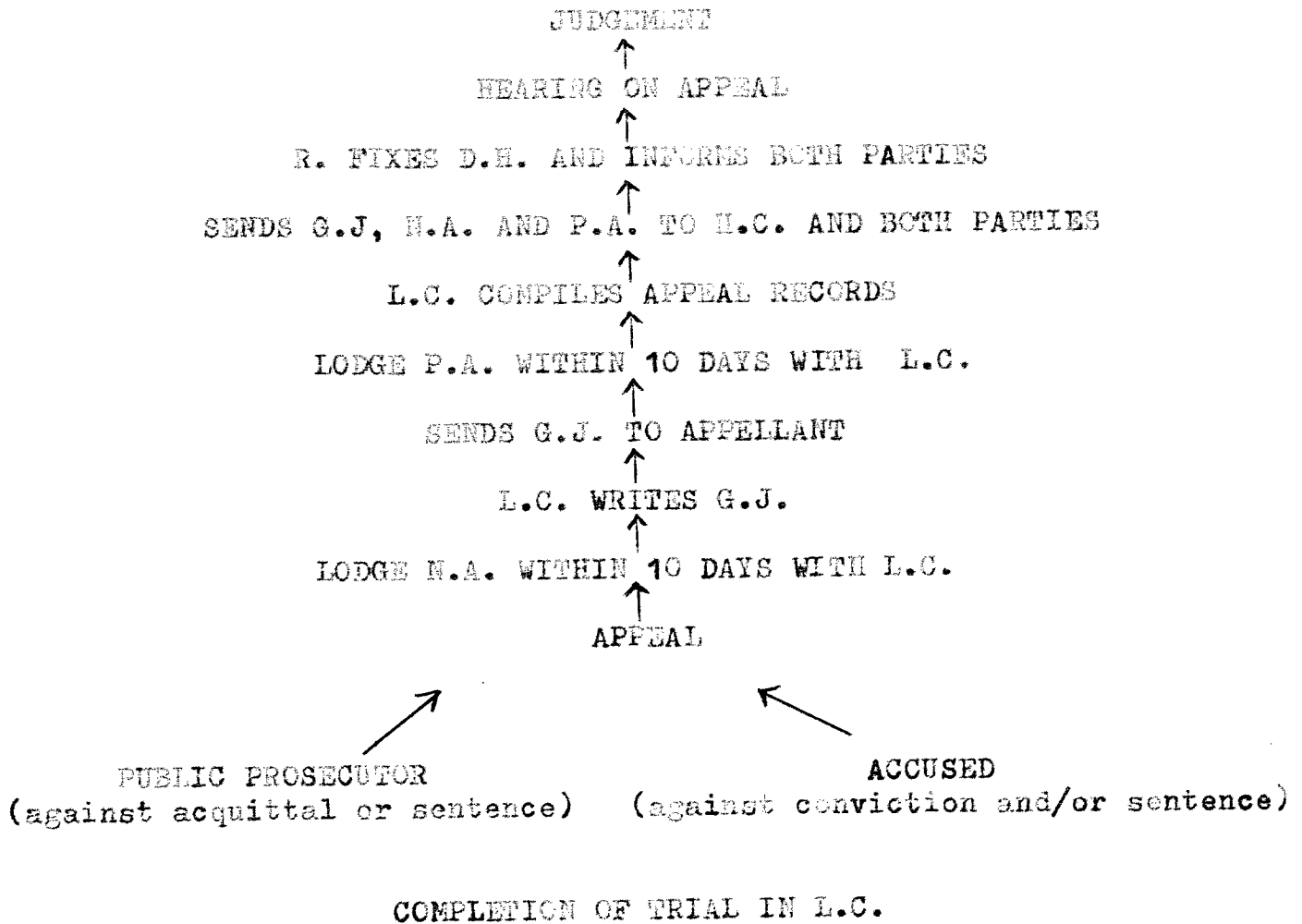
H.C.	High Court	S.S.	Special Sessions
O.J.	Original Jurisdiction	A.P.	Appellate Jurisdiction
I.e.o.	In exercise of		

- ===== Courts with appellate jurisdiction
- Appeals by accused against conviction and/or sentence
- Appeals by Public Prosecutor against acquittal or sentence
- No right of appeal but judge may reserve question of law for the Federal Court

SOURCE: Drawn from provisions of the Subordinate Courts Act 1948, The Courts of Judicature Act, 1964 and The Courts of Judicature (Amendment) Act, 1976.

CHART 2.2

PROCEDURE OF APPEAL

KEY

N.A. Notice of Appeal
 P.A. Petition of Appeal
 D.H. Date of Hearing
 G.J. Grounds of Judgement
 R. REGISTRAR
 H.C. High Court
 L.C. Lower Court

SOURCE: Drawn from the provisions of The Criminal Procedure Code (Sections 307-322).