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LAWS OF MALAYSIA

REPRINT

Act 574

PENAL CODE

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

87. Nothing, which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous 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 eighteen years of age, 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 *Z* 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 *Z*, *A* commits no offence.

Act not intended to cause death, done by consent in good faith for the benefit of a person

88. 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 *Z*, who suffers under a painful complaint, but not intending to cause *Z*'s death, and intending in good faith, *Z*'s benefit, performs that operation on *Z*, with *Z*'s consent. *A* has committed no offence.

Act done in good faith for the benefit of a child or person of unsound mind, by or by consent of guardian

89. Nothing, which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of 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 to 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 grievous hurt, or the curing of any grievous disease or infirmity;

(c) the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous 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 his child cut for the stone by a surgeon, 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, in as much as his object was the cure of the child.

Consent known to be given under fear or misconception and consent of a child or person of unsound mind

90. A consent is not such a consent as is intended by any section of this Code—

(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) unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Acts which are offences independently of harm caused to the person consenting, are not within the exceptions in sections 87, 88 and 89

91. The exceptions in sections 87, 88 and 89 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, except in cases excepted under section 312, 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 the benefit of a person without

Consent

92. 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 grievous hurt, or the curing of any grievous disease or infirmity;
- (c) the voluntary causing of hurt, or to 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) *Z* is thrown from his horse and is insensible. *A*, a surgeon, finds that *Z* requires to be trepanned. *A*, not intending *Z*'s death, but in good faith, for *Z*'s benefit, performs the trepan before *Z* recovers his power of judging for himself. *A* has committed no offence.

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

(c) *A*, 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. *A* performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. *A* has committed no offence.

(d) *A* is in a house which is on fire, with *Z*, a child. People below hold out a blanket. *A* drops the child from the housetop, 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, *A* has committed no offence.

Explanation—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

Communication made in good faith

93. 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 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 a person is compelled by threats

94. Except murder and offences included in Chapter VI punishable with death, 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 gang-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 gang-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 plunder it—is entitled to the benefit of this exception.

Infanticide

309A. When any woman by any wilful act or omission causes the death of her newly-born child, but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child, and by reason thereof the balance of her mind was then disturbed, she shall, notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, be guilty of the offence of infanticide.

Punishment for infanticide

309B. Whoever commits the offence of infanticide shall be punished at the discretion of the Court, with imprisonment for a term which may extend to twenty years, and shall also be liable to fine.

310–311. (*There are no ss. 310–311.*)

*Causing Miscarriage; Injuries to Unborn Children;
Exposure of Infants; and Concealment of Births*

Causing miscarriage

312. Whoever voluntarily causes a woman with child to miscarry shall be punished with imprisonment for a term which may extend to three years or with fine or with both; and if the woman is quick with child, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

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

Exception—This section does not extend to a medical practitioner registered under the Medical Act 1971 [Act 50] who terminates the pregnancy of a woman if such medical practitioner is of the opinion, formed in good faith, that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or injury to the mental or physical health of the pregnant woman, greater than if the pregnancy were terminated.

Causing miscarriage without woman's consent

313. Whoever commits the offence defined in section 312, without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine.

Death caused by act done with intent to cause miscarriage. If act done without woman's consent

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if the act is done without the consent of the woman, shall be punished with imprisonment for a term which may extend to twenty years.

Explanation—It is not essential to this offence that the offender should know that the act is likely to cause death.

Act done with intent to prevent a child being born alive or to cause it to die after birth

315. Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act is not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment for

a term which may extend to ten years or with fine or with both.

Causing death of a quick unborn child by an act amounting to culpable homicide

316. Whoever does any act under such circumstances that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine.

ILLUSTRATION

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. *A* is guilty of the offence defined in this section.

Exposure and abandonment of a child under twelve years by parent or person having care of it

317. Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, exposes or leaves such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

Explanation—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child dies in consequence of the exposure.

Concealment of birth by secret disposal of dead body

318. Whoever by secretly burying or otherwise disposing of the dead body of a child, whether such child dies before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child shall be punished with imprisonment for a term which may extend to two years or with fine or with both.