**UNIVERSITY OF THE WEST INDIES OPEN CAMPUS**

**CRIMINOLOGY**

**JURISDICTION**

Where a crime has been committed in a particular country or where the offender is based in one country but causes criminal activity to occur in another, there arise questions of who should prosecute the offender for the offence in question. This is known in Criminal Law as jurisdiction.

Jurisdiction therefore includes three aspects:

* Physical jurisdiction: the territorial limits of the courts
* Local jurisdiction: the particular court in the country which hears the case
* Statutory limitation: the denial of jurisdiction because of the passage of time

1. **PHYSICAL JURISDICTION**

A state can only try offences committed within the boundaries of that state. This includes islands and the territorial seas or waters that surround them. According to the case of **Cox v Army Council**, It is only conduct occurring within a particular state that is subject to prosecution by agencies of that state.

As such, once the constituents of the offence are committed by the offender in a particular state, the authorities may proceed to prosecute**: DPP v Stonehouse**. A member of the English Parliament faked his death and attempted to collect the insurance monies from policies taken out in England. He faked his death in the USA and challenged his conviction based on the alleged act of his death had occurred out of England. The court found that he had performed sufficient of the actus reus in England to be liable in that country, as he had taken out the policies in England.

Similarly in the conspiracy cases of **Liangsiriprasert v USA** and **DPP v Doot**. The decisions in these cases mean that an inchoate crime committed elsewhere is justifiable in any country, if the completed offence is to be completed in that country. There is no requirement for physical acts to be done within the country (given the incomplete nature of such acts).

**Territoriality**

The area or territoriality of a particular country may be extended to give jurisdiction to that country by prerogative of the executive head of the country or by parliament: **R v Kent JJ ex parte Lee.**

Trinidad and Tobago’s state boundaries have been extended by 12 nautical miles and this area of water is called the territorial sea: Territorial Sea Act, Chap. 1:51.

***3.*** *The territorial sea of Trinidad and Tobago comprises those areas of the sea having as their inner limits the base-lines defined in section 5 and as their outer limits, a line measured seaward from that baseline, every point of which is distant twelve nautical miles from the nearest point of the baseline so, however, that where the outer limits of the territorial sea of Trinidad and Tobago intersect foreign territorial waters the outer limits thereof shall be resolved through agreements or other means recognized by international law.*

**Ships**

A ship that is within the territorial sea of a country is within that country’s jurisdiction: **Pianka v R.**

International law has intervened to extend jurisdiction to specific situations, in respect of acts committed outside the boundaries out territorial waters in a particular state.

* **The High Seas**

The UN Convention on the High Seas, Art. 6: a ship is subject to the jurisdiction of the state whose flag it bears (also UNCLOS, Art 97). It should also be noted that a ship may be subject concurrent jurisdiction, if not on the High Seas: the flag State and the State in whose territorial waters it is: **Anderson.**

* **The Admiralty Jurisdiction**

This jurisdiction extends to ships whether they fly the flag or not: if a ship is owned by a State’s citizen and is on the High Seas or foreign rivers (below bridges), it is subject to that State’s law. See **Deokienanan v R**, a case out of then British Guiana, the court found that a ship owned by a British subject, even though unregistered, was sufficient for the purposes of invoking admiralty jurisdiction.

* **Airspace**

The sovereignty of a State extends to its airspace. The country in whose airspace the aircraft is flying has jurisdiction. In open airspace: offences committed on such aircraft may be prosecuted in the country in which the aircraft is registered. See Tokyo Convention, incorporated into domestic law in the Civil Aviation (Tokyo Convention) Act, Chap. 11:12.

If an aircraft is flying over one country’s airspace is registered in another country, both countries may claim jurisdiction. This concurrent jurisdiction may be resolved by agreement between the States.

By treaty, incorporated into local law, States undertake to return or send offenders to the country that has jurisdiction. This is known as Extradition.

Extradition is based upon:

* Reciprocity: relates to the need for reciprocal legislation between the two countries which also details the crimes which are extraditable; and
* The Rule of Specialty: prohibits the receiving State from trying the offender for any other offence than the one for which he was extradited.
* Procedure for extradition is based on statute (Extradition Act). Failure to comply with the statue will render the order committing the person for extradition void: **US v Bowe.**

1. **LOCAL JURISDICTION**

Note the hierarchy of the courts:

Privy Council

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Court of Appeal

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High Court or Assizes

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Magistrates Court

Local Jurisdiction determines in which court a matter will be heard. In Trinidad and Tobago and many other Commonwealth Caribbean countries, all criminal proceedings must at least start in the magistrates court, whether indictable or summary, since an indictable matter would begin with a preliminary inquiry at the magistrates court and if it is held that there is sufficient evidence to bring the matter before a judge and jury, the proceedings then continue in the High Court, unless there is some specific statutory provision which allows the matter to be heard in the magistrates court.

**N.B.** Indictable offences are now the only criminal offences tried by jury in the High Court.

**Magistrates’ Court**

If the offence is summary, the magistrate is entitled to try the matter without a jury.

Magistrates courts are purely creatures of statute. Their jurisdiction originates and is founded in statute : **Johnson**, by contrast, judges derive much of their power from the common law, including the power to supervise and control the magistrates courts and other ‘inferior’ tribunals.

**Districts**

Countries are divided into districts by statute for the purpose of administering justice in the lower courts. See Summary Courts Act, Chap. 4:20.

A magistrate only has jurisdiction over cases which occur in the district in which he is sitting, unless otherwise provided for by statute: **D’Oliviera.** In this case, D’Oliviera, the complaint asserted that the defendants sold intoxicating liquor in the East Demerara judicial district. The complaint was laid in the Georgetown district. The court ruled that where a complaint alleges an offence in one judicial district, the magistrate of another judicial district has no jurisdiction to hear the complaint.

In **R v Johnson**, the Court held that a magistrate’s jurisdiction is not limited to the district to which he/she is appointed. However, this really means that, a magistrate may be asked to sit in another district without having been assigned to that district.

Noteworthy, as it concerns local jurisdiction, it has been held that it is not necessary for a formal statement to be made in testimony that the locality of the offence is ‘within this or that magisterial district’: **Ram v Ramdass.** Once evidence emerges (this can be done inferentially) that the matter is within the magistrate’s jurisdiction, that is sufficient.

**Districts and Multiple Courts**

One magisterial district may have several courts: **Mark v Alexis**. In this case, a magistrate ruled that the evidence before him that the offence was alleged to have been committed in Point Fortin, whereas the charge was brought in the Siparia Magistrates’ court. The magistrate dismissed the complaint. The CA allowed the appeal of the police, saying that the Magistrate’s decision was misconceived, since both courts, though located in different places, belonged to one magisterial district, that of St. Patrick, as specified under the Summary Courts Act.

Another point was discussed in this case, concerning the meaning of Summary Courts Act, section 8(3): Every magistrate wherever assigned shall have jurisdiction throughout Trinidad and Tobago. The judge in this case considered that this meant that if a complaint arose in one district but was brought before a magistrate in another district, that magistrate would have jurisdiction being a magistrate for the whole of Trinidad and Tobago. However, what the section simply means is that a magistrate can be assigned to any court/district from day to day.

* If a complaint arose in one district (District A) but is laid in another (District B), section 56 of the Summary Courts Act allows the transfer of the complaint to the first district (District A). The only other discretion a magistrate can have in this circumstance is to dismiss it (D’Oliviera). If a magistrate purports to try a case outside his magisterial district, he acts without jurisdiction, unless otherwise permitted by statute, and the proceedings will constitute a nullity.
* Where an offence is committed in two districts (a continuing offence), both districts will have jurisdiction. In such cases, the case will be heard in the more convenient district, having regard to the witnesses and the evidence.
* One court cannot continue a matter begun in another court. If a magistrate is transferred to another district, he must return to the previous district to complete any “part heards”. Similarly, if a magistrate retires or resigns from the bench, he may not continue a matter begun before he left, even if he is subsequently reappointed: **Frederick v Chief of Police**. A magistrate become functus officio(*this means that an officer or agency whose mandate has expired either because of the arrival of an expiry date or because an agency has accomplished the purpose for which it was created. This is a branch of the doctrine of* [***res judicata***](http://en.wikipedia.org/wiki/Res_judicata) *which prevents the re-opening of a matter before the same court, tribunal or other statutory actor which rendered the final decision in the absence of statutory authority*). when his acting appointment is terminated and this is not cured by his subsequent reappointment.

N.B. the restrictions with respect to the jurisdiction of the Magistrates’ Court applies to summary proceedings only and not to preliminary enquiries. By way of the **Indictable Offences (Preliminary Enquiry) Act** an enquiring magistrate may hear matters wherever committed in Trinidad and Tobago.

**High Court**

There are two High Court locations in Trinidad: Port of Spain (5 courts) and San Fernando (3 courts) and Matters are listed in the appropriate High Court locality. If there is a request/application by either side for a transfer from one locality to another (possibly to avoid bias in jurors, etc.), the judge may transfer the matter. This power stems from the inherent jurisdiction of a judge to ensure a fair trial and this can also now be found in statute.

1. **STATUTORY LIMITATION**

**Indictable Offences**

Indictable offences: no statutory limitation period. This is because they are so serious that it would be against the public interest to allow a serious crime to go unpunished.

A person who is subject to a very late prosecution on an indictable charge may nevertheless assert abuse of process of the court trying him, but he must prove prejudice. If there is an unusual delay in laying or prosecuting a charge, the judge ought to bring this to the attention of the jury and point out any possible resulting prejudice or unfairness to the defendant in the preparation of his defence**: DPP v Tokai.**

**Summary Offences**

Statute provides that there is a specific time period within which a charge must be instituted. If the charges is laid outside that time period, then the court has no jurisdiction to hear it: **R v The Network Sites Ltd ex parte London Borough of Havering**.

The statutory period in Trinidad and Tobago is 6 months for the commission of the offence. Section 33(2) of the Summary Courts Act:

*In every case where no time is specially limited for making a complaint for a summary offence in the Act relating to such offence, the complaint shall be made within* ***six months from the time when the matter of the complaint arose****, and not after.*

The exception to this is larceny and other related offences: the limitation period is 12 months as stated in the Summary Offences Act, Chap 11:02, section 42:

*All cases punishable under this Act of—*

*(a) larceny or stealing;*

*(b) attempting to commit larceny, or attempting to steal;*

*(c) aiding or abetting or counselling or procuring the commission of larceny or of stealing;*

*(d) receiving any chattel or money or valuable security knowing it to have been stolen or otherwise unlawfully come by or obtained;*

*(e) fraudulent conversion;*

*(f) embezzling or obtaining or attempting to obtain under false pretences any chattel or money or valuable security with intent to defraud,*

*may be prosecuted at any* ***time within twelve months after the commission of the offence****.*

NOTE: the first day, the date of the alleged commission of the offence in not counted (Interpretation Act, **Radcliff v Bartholomew**). However, an amendment to a defective complaint can be made outside the limitation period: **Cross v John**. The amendment does not create a new complaint.

If the offence is a continuing one, the statutory limitation does not generally apply, as it is considered that as long as the offence continues, it is repeated from day to day: **Rowley v TA Everton and Sons Ltd.**

If a summary charge is laid within the limitation time, but the service of the summons is delayed, it is possible for the defence to argue prejudice, arising from an abuse of process. The court may then stay the matter, but it cannot dismiss it.