

# Penal Code

Number 111-1969

stipulated in the previous Sub-Paragraph, then the penalty will not be greater than one quarter of the maximum limit prescribed for that offence.

Paragraph 58 - Any person who gives assistance to a conspirator or facilitates the meetings of a group of conspirators or gives them shelter or helps them in any way knowing the aim of the conspiracy is punishable by the penalty prescribed in Paragraph 56.

Paragraph 59 - Any person is exempted from the penalties prescribed in Paragraphs 56, 57 and 58 if he promptly notifies the public authorities of the existence of a criminal conspiracy and of the participants before any offence is committed as a result of that conspiracy and before those authorities have begun to investigate the conspirators.

If the authorities are notified after they have begun their investigations, then he is not exempted from the penalty unless the information leads to the arrest of the conspirators.

#### CHAPTER FOUR The Criminal.

##### SECTION ONE Criminal liability and exemptions from it

###### 1. Loss of reason and volition .

Paragraph 60 - Any person who, at the time of the commission of the offence, is suffering from a loss of reason or volition due to insanity or infirmity of mind or because he is in a state of intoxication or under the influence of drugs *or alcohol* resulting from the consumption of intoxicating or narcotic substances given to him against his will or without his knowledge or due to any other *scientific* reason which leads one to believe that he has lost his reason or volition is not criminally liable. However, if he is not suffering from any infirmity of mind nor is under the influence of intoxicating, narcotic or other substances but only from a defect of reason or volition at the time of the commission of the offence, then it is considered a mitigating circumstance.

*Scientific*  
*§ 125 I*

Paragraph 61 (i<sup>2</sup>) If the offender is suffering from a loss of reason or volition induced by intoxicating or narcotic substances, acquired knowingly and of his own free will, he is punishable for the offence that is committed if there is a specific intent and <sup>as</sup> if that offence would have been committed without the <sup>influence</sup> use of intoxicating or narcotic substances. If the alcohol or drugs are acquired knowingly with a view to committing that offence, then it is considered an aggravating circumstance.

*Drugs  
or alcohol*

## 2. Compulsion

Paragraph 62 - Any person who is compelled to commit an offence by force or under threat so that he is unable to resist is not criminally liable.

## 3. Necessity

Paragraph 63 - Any person who commits an offence out of the necessity to protect himself or others or his property or the property of others from a significant or imminent danger and who had not himself deliberately caused that danger and has no power to prevent it by any other means is not criminally liable provided that the act contributing to the offence is proportionate to the danger from which he is protecting himself. Any person who is required by law to confront that danger is not considered to be acting out of necessity.

## 4. Age

Paragraph 64 Criminal proceedings can not be brought against any person who is under 7 years of age at the time of committing an offence.

Paragraph 65 The age of a person should be officially recorded but the chief investigator or the court may ignore that official record if it is not in keeping with the juvenile's appearance. They may also submit him to a medical examination in order to establish his age by radiative, laboratory or other scientific means.

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(i) Decision No 1477 of the RCC issued on 15 September 1980 and published in Al Waqai' Al'Iraqiya. No 2799 on 29 September 1980 (see page 254) states that, if the offender, who has obtained alcoholic liquor of his own free will, commits an offence, it is not considered a mitigating circumstance that calls for leniency.

5. The liability of juveniles (i<sup>3</sup>)

Paragraph 66 A juvenile is considered to be any person who commits an offence while between the ages of 7 and 18.

If the juvenile is under the age of 15 at the time of committing the offence, he is considered to be a child but, if he is between the ages of 15 and 18, he is considered to be a young person.

Paragraph 67 If a juvenile commits an infraction, he should be cautioned in court rather than punished in accordance with the law or he should be handed over to one of his parents, legal guardians or foster parents with a warning to the latter to insure the juvenile's good behaviour or he should be fined whatever the penalty prescribed by law for an infraction may be.

Paragraph 68 - If a child commits a misdemeanour, he should, instead of being punished in accordance with the law, be handed over to one of those people mentioned in Paragraph 67, if he undertakes in writing to insure the child's good behaviour. The period for this should not be less than 6 months and should not exceed 3 years from the date of the ruling. He may also be confined in a reform school for a period of not less than 6 months and not exceeding 3 years or he may be fined whatever the penalty prescribed by law may be.

Paragraph 69 - If a young person commits a misdemeanour, he should, instead of being punished in accordance with the law, be ordered to undergo one of those measures set out in Paragraph 68 or be confined in a school for young offenders for a period of not more than 3 years or fined, whatever the penalty prescribed by law for that misdemeanour may be.

Paragraph 70 - If a juvenile commits a felony or misdemeanour during the period when he is in the care of one of the persons mentioned in Paragraph 68, that person who has undertaken to insure the juvenile's good behaviour, should stand bail for a sum not exceeding 50 dinars if the offence is a misdemeanour.

Paragraph 71 - The provision ceases to apply when the juvenile reaches the age of 18.

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(i) Paragraph 70 of the Juveniles' Code No 64 (1,962) states that: "Provisions relating to juveniles referred to in the Penal Code and the Code of Penal Procedure which conflict with the provisions of this Code are not enforceable in such places where they apply."

- (b) slander, libel, insult or disclosure of secret information.
- (c) offences against the public decency or morality.
- (d) manslaughter and malicious wounding.
- (e) premeditated offences included in this Code.

(3) The judgment of a foreign court is not relevant in the application of the provisions of this Paragraph unless it is issued for offences of counterfeiting or forgery of Iraqi or foreign currency.

Paragraph 140 - The court may, in the event of a further offence as stipulated in the preceding Paragraph, impose a sentence greater than the maximum penalty prescribed by law provided that the increase in the penalty does not exceed half the maximum penalty. However, a term of imprisonment should not, under any circumstances, exceed 25 years and a period of detention should not exceed 10 years but:

(1) If the penalty prescribed for the offence is imprisonment for a term of years without qualification, the court may impose a sentence of life imprisonment.

(2) If the penalty prescribed for the offence is a fine, the court may impose a period of detention.

#### SECTION SEVEN

The multiplicity of offences and its effect on punishment

Paragraph 141 - If one act constitutes a number of offences, the offence carrying the greatest penalty must be taken into consideration and the prescribed penalty must be imposed. If the penalties are similar then one of them should be imposed.

Paragraph 142 - If a number of offences are committed as a result of a number of acts and they are inextricably linked and have a common purpose, the penalty prescribed for each one of those offences must be imposed and an order to serve the greatest penalty only must be issued. This does not prevent the convicted person from serving any incidental or supplemental penalties or precautionary measures prescribed by law or imposed in respect of the other offences.

If the convicted person ~~is sentenced~~ is sentenced for the offence carrying the least severe penalty, he may later be tried for the offence carrying the greatest penalty. In this case, the court will order him to serve the penalty prescribed for the second sentence with an order to subtract the portion of the previous sentence actually served.

Paragraph 143 - (1) If a person commits a number of unrelated offences without a common purpose, he will, instead of being sentenced for one of those offences, be sentenced to the prescribed penalty for each of them and they will be served consecutively but. the total period of imprisonment or detention imposed on him or the total combined period of imprisonment and detention should .not exceed 25 years.

(2) If a person is sentenced for an offence committed after he has been sentenced for some other offence, the two sentences will be served consecutively (i<sup>8</sup>).

(3) The period of imprisonment must be asmuch as the period of detention imposed for an offence committed before the imposition of the sentence to imprisonment.

(4) All fines should be paid and all incidental or supplemental penalties and precautionary measures should be discharged, however many there are but the total period of police supervision should not exceed 5 years.

#### SECTION EIGHT

##### Suspension of sentence

Paragraph 144 - The court may, when passing a sentence of detention for a felony or misdemeanour for a period not exceeding 1 year,, order in the sentence itself a suspension of that sentence if the convicted person has not previously committed a premeditated offence and if it sees from his character, his past, his age and the circumstances of his offence any reason to believe that he will not commit a further offence. The court may confine the suspension of sentence to the primary penalty or make it apply to incidental or ' supplemental penalties or precautionary measures. If the sentence is to both detention and a fine, the court may confine the suspension of sentence to the period of detention only. The court must indicate in its judgment its reasons for suspending the sentence.

Paragraph 145 - The court may, when ruling for a suspension of sentence, require the convicted person to undertake to be on good behaviour during the period of the suspended sentence in accordance with the provisions of Paragraph 118 or require that he make restitution in whole or in part or that he fulfils both of these provisions..

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(i) The phrase "whatever the sum total of the two periods shall be" has been deleted in accordance with Paragraph 5 of Law No 207 1970) .

(3) Legally issued foreign banknotes are considered to be paper currency in the application of the provision of the preceding two Paragraphs.

SECTION THREE  
Falsification of written documents

SUB-SECTION ONE  
Definition of falsification and its types

Paragraph 286 - Falsification is the alteration as to substance or meaning as stipulated by the Code with intent to deceive of a deed, certificate or other document thereby causing harm to the public welfare or to others.

Paragraph 287 - (1) Falsification as to substance falls into the following categories:

- (a) the use of a falsified signature, thumb print or seal or the falsification of a genuine signature, thumb print or seal.
- (b) the procurement of the signature, thumb print or seal of any person who is unaware of the true content of the document by surprising or deceiving such person.
- (c) the completion of a blank document that has been signed, thumb printed or sealed without the consent of the person who signed, thumb printed or sealed such document. This includes the misuse of such signature, thumb print or seal.
- (d) the addition to, deletion, amendment or other alteration of the text of a written document or of a number, picture, sign or other thing contained therein.
- (e) the fabrication or forgery of a written document.

(2) Falsification as to meaning falls into the following categories:

- (a) the alteration of the basic premise, the documentation of which is the object of producing the written document.
- (b) knowingly making a simulated incident appear as a genuine one.
- (c) making an unauthorised incident, appear authorised.
- (d) the assumption or substitution or false description of a person's identity and, in general terms, the distortion of the truth in a written document or the omission from it at the time of writing of a statement considered to be for inclusion in it.

SUB-SECTION TWO  
Falsification of official documents

Paragraph 288 - An official document is one in which a public official or agent records that which occurs under his auspices or which is received from competent persons in accordance with legal provision and within the bounds of his authority and jurisdiction or which impinges upon its documentation in any way or by affording it official status.

Paragraph 289 - In circumstances other than those in which the law stipulates a special sentence, any person who falsifies an official document is punishable by a term of imprisonment not exceeding 15 years.

Paragraph 290 - Any person who compels a public official or agent while that official is making a report in the line of duty either by assuming the name of another or an identity that is not his own or by reporting fictitious information or by any other means to record or register fictitious information in respect of a matter which by its nature should be recorded is punishable by a term of imprisonment not exceeding 15 years.

SUB-SECTION THREE  
Special instances of falsification of official documents

Paragraph 291 - Fabrication is the creation of a document that has not previously existed and its attribution to another record without the need for there to be intent to falsify the do itself or the handwriting of person.

Paragraph 292 - Any person who manages by assuming a false name or identity to obtain any official permit, identity card, poll card, driving or transport licence or permit to move within the country is punishable by detention plus a fine not exceeding 300 dinars or by one of those penalties.

The same penalty applies to any person who forges or falsifies such document.

Paragraph 293 - Any public official or agent who issues a document referred to in the preceding Paragraph while being aware that the person to whom it is issued has assumed a false name or identity is punishable by detention.



Paragraph 294 - Any person who, before an authority presiding over an investigation into the circumstances of a death or bequest, makes false statements concerning the facts under investigation and a document is issued on the basis of such statements is punishable by detention plus a fine or by one of those penalties. The same penalty applies to any person who makes false statements or registers with or submits to any such person a document containing false information with intent to register the fact that either of the parties in the marriage contract has reached the legally required age in order to authenticate such marriage contract or to conclude a marriage contract to which there exists a legal impediment and a marriage certificate is issued on the basis of such statements or documents.

The same penalty applies to any public official or agent who issues a certificate pertaining to the death of a person or a bequest or attests a marriage contract while being aware of the false nature of those statements or documents on which that certificate or marriage contract is based:

#### SUB-SECTION FOUR

##### Falsification ordinary documents

Paragraph 295 - (1) Any person who falsifies an ordinary document which establishes a debt or disposes of property or discharges a person from a debt or settles a debt or any ordinary document which can be used to establish rights of ownership is punishable by a term of imprisonment not exceeding 7 years or by detention.

(2) The penalty will be detention if it is the falsification of any other ordinary document.

Paragraph 296 - Any person who is entrusted by law to seize ledgers or documents subject to supervision by the public authorities and makes a false entry in them or neglects to make a legitimate entry thereby deceiving such authorities and causing them to commit an error is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

Paragraph 297 - (1) Any doctor or midwife who issues a certificate in respect of a pregnancy, childbirth, illness, disability, death or anything concerned with his or her profession knowing it to be false in any way is punishable by a period of detention not exceeding 2 years or by a fine not

## SECTION TWO

## Violation of the sanctity of the home or property of others

Paragraph 428 - (1) The following persons are punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties:

- (a) Any person who enters a place of residence or place set aside for that purpose or part thereof without the consent of the owner and in circumstances other than those in which the law sanctions such entry.
- (b) Any person who is found in such place while hiding from another who has a right to eject him from it.
- (c) Any person who legitimately enters such place and remains there against the wishes of another who has a right to eject him from it.

(2) Any person who enters such place or hides or remains in it with intent to prevent another by force from taking possession of it or to commit an offence in it is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars by one of those penalties. The penalty will be detention if the offence is committed between dusk and dawn or if entry is gained by breaking or climbing in or by a person openly carrying a weapon, carrying a concealed weapon or by 3 or more persons or by a person who has assumed a public position or who claims to be a public official or who has assumed a false identity.

Paragraph 429 - (1) If an offence stipulated in Paragraph; 428 is committed in a place set aside for the safekeeping of money or in any other property not mentioned in such Paragraph, the penalty will be a period of detention not exceeding 1 year or a fine not exceeding 100 dinars.

(2) The penalty will be a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or one of those penalties if an offence stipulated in Sub-Paragraph 1 is committed by 2 or more persons, one of whom is openly carrying a weapon or carrying a concealed weapon or is committed by 5 or more persons.

## SECTION THREE

## Threats

Paragraph 430 - (1) Any person who threatens another with the commission of a felony against his person or property or against the person or property of others or with the imputation

to him of certain dishonourable matters or with the revelation of such matters and such threat is accompanied by a demand or charge to carry out or refrain from carrying out an act or is intended to be so accompanied is punishable by a term of imprisonment not exceeding 7 years or by detention.

(2) The same penalty applies if the threat is communicated anonymously or is attributable to an existing or alleged secret group.

Paragraph 431 - Any person who threatens another with the commission of a felony against his person or property or against the person and property of others or with the imputation to him of certain dishonourable or disrespectful matters or with the revelation of such matters in circumstances other than those mentioned in Paragraph 430 is punishable by detention.

Paragraph 432 - Any person who threatens another by word or action or in a written or spoken reference or through another person or in circumstances other than those mentioned in Paragraphs 430 and 431 is punishable by a period of detention not exceeding 1 year or by a fine not exceeding 100 dinars.

#### SECTION FOUR

##### Defamation, insult and the disclosure of confidential information

###### 1. Defamation and insult

Paragraph 433 - (1) Defamation is the imputation to another in public of a particular matter which if true, would expose such person to punishment or cause him to be scorned by society.

Any person who defames another is punishable by detention plus a fine or by one of those penalties. If such defamation is published in a newspaper or publication or other press medium it is considered an aggravating circumstance.

(2) Such person is not permitted to establish the proof of his imputation unless that imputation is directed at a public official or agent or public deputy or he is carrying out an act in the public interest or if such imputation is connected with the office or employment of the aggrieved person but if he establishes the proof of all imputations made, then there is no offence.

Paragraph 434 - Insult is the imputation to another of something dishonourable or disrespectful or the hurting of his

Paragraph 475 - The court may order the conviction for any offence stipulated in the preceding Paragraphs of this section to be published.

#### SECTION NINE

##### Violation of the rights of corporate ownership

Paragraph 476 - Without prejudice to any greater penalty prescribed by law, any person who violates another's right of corporate ownership which is protected by law or by international agreement to which Iraq is a party is punishable by a fine. Any goods arising from the violation of such right will be ordered to be confiscated.

#### SECTION TEN

##### Damage to and destruction of property and trespass

#### SUB-SECTION ONE

##### Damage to and destruction of property.

Paragraph 477 - Without prejudice to any greater penalty prescribed by law:

(1) Any person who breaks, destroys or damages any moveable property which does not belong to him or renders it unsuitable for use or harms or impairs it in any way is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.

(2) The penalty will be detention if the offence results in the closure of a public utility or frustration of an activity carried out by an agency for the public good or if it endangers the lives, health or security of others. The same penalty applies to any person who wilfully destroys, damages or defaces a building set aside for use by the public or monument erected in a public place.

(3) The penalty will be imprisonment if the offence results in the death of others.

Paragraph 478 - Without prejudice to any greater penalty prescribed by law:

(1) Any member of a group consisting of at least five persons that breaks, damages or destroys moveable or immovable property belonging to another or renders it unsuitable for use or harms or impairs it in any way is punishable by detention.

(2) The penalty will be a term of imprisonment not exceeding 7 years or detention if the offence is committed with the use of violence against others.

(3) If the offenders make use of a time of civil commotion, riot or disaster in order to commit such offence, the penalty will be a term of imprisonment not exceeding 10 years.

Paragraph 479 - (1) The following persons are punishable by detention plus a fine or by one of those penalties:

- (a) Any person who destroys the unharvested crops or plants belonging to another.
- (b) Any person who destroys a sown field belonging to another or scatters harmful substances or seeds on it.
- (c) Any person who uproots, cuts down or destroys a tree belonging to another or this fruit or bark thereof so that it dies.

(2) The penalty will be a term of imprisonment not exceeding 7 years or detention if the offence is committed between dusk and dawn by at least three persons or by two persons, one of whom uses violence against another or is openly carrying a weapon or is carrying a concealed weapon.

Paragraph 480 - Any person who cuts down, uproots or destroys a tree or any greenery planted in a place of worship or in a street or public square or recreational area or public garden or other place set aside for the public benefit without permission. from a competent authority is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.

#### SUB-SECTION TWO Trespass

Paragraph 481 - Any person who fills in a ditch or destroys a wall or fence made out of living or dead trees or other material or moves or removes any other marker delimiting areas, defining boundaries or separating properties is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.

The penalty will be detention if the offence is committed with the use of violence against others or with intent to appropriate land belonging to another or if such markers have been erected by an official or semiofficial agency.

Paragraph 456 - (1) Any person who obtains or transfers for himself or another ownership of any moveable property that is in the possession of another in any of the following circumstances is punishable by detention in any of the following circumstances:

- (a) If the offence is committed by deception.
- (b) If the offence is committed by assuming a false name or identity or by misrepresenting a particular fact, thereby deceiving the victim or compelling him to surrender such ownership.

(2) The same penalty applies to any person who, in the ways stated above, compels another to surrender or transfer to him ownership of a promissory note or to dispose of property or a document granting a remission from debt or any other document that can be used to establish a right of ownership or other material right or who, in the ways stated above, compels another to sign, annul, destroy or amend such document.

Paragraph 457 - Any person who disposes of any moveable or immoveable property knowing that he is not the owner of such property or that he has no right of disposal over it or disposes of it knowing that he has already disposed of it or concludes a contract on the basis of it, thereby causing harm to others, is punishable by detention.

Paragraph 458 - (1) Any person who takes advantage of the needs of a juvenile or exploits his inexperience or an obsession of such juvenile and obtains, to the detriment of such juvenile's interests or the interests of others, any property, promissory note, receipt or the annulment or amendment of such document is punishable by detention.

In addition to juveniles, this Paragraph applies to the insane, disabled, those placed in care or any person whose care order is to continue after he has reached the age of 18.

(2) The penalty will be a term of imprisonment not exceeding 7 years or detention if the offender is a guardian, protector or custodian of the victim or is entrusted in any capacity with the care of the victim's interests whether by requirement of law, legal judgment or by private arrangement.

Paragraph 459 - (1) Any person who maliciously gives another a cheque knowing that he does not have sufficient disposable funds to cover such cheque or, having given that person the cheque, he withdraws all or part of such funds so that the balance does not cover the value of the cheque or orders the drawee to withhold payment or deliberately writes or