

Judicial Officers' Fraud and Corruption Workshop

Fiji

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Chapter 1: Similarities and differences of provisions across all jurisdictions

This chapter outlines the similarities and differences between fraud and corruption offences across PJIP partner court jurisdictions. The two most prevalent fraud and corruption offence categories defined by the region¹ are: fraud and bribery.

Fraud

In most jurisdictions, the Fraud regime is complex and there is significant overlap with various other provisions. The provisions annexed below are those with which a public officer could be charged, who embezzled public funds. Six jurisdictions (Fiji, Kiribati, Nauru, Republic of Marshall Islands, Solomon Islands, and Tonga) have provisions that specifically target fraud or embezzlement by public servants. In the other six jurisdictions, recourse must be had to general provisions (present in all jurisdictions) dealing with fraudulent misappropriation of property. These offences may be variously referred to as “theft”, “cheating”, “obtaining by false pretences”, “obtaining by deception”, or “fraudulent conversion”. Palau is the only jurisdiction to have a specific offence of theft of government property that can be committed by a private individual.

Kiribati and Solomon Islands have identical provisions dealing with the following:

- Frauds and breaches of trust by persons employed in the public service²
- Theft, including taking by trickery or despite knowledge of a mistake on the part of the person defrauded
- Larceny and embezzlement by public servants
- Obtaining by false pretences

Vanuatu has provisions dealing with theft and obtaining by false pretences which are substantially similar to those in the three aforementioned jurisdictions. However, it lacks any provisions dealing specifically with frauds by public servants. The other eight jurisdictions have substantially different regimes.

¹ As outlined in the PJIP Judicial Officer Needs Assessment Survey Report, June 2022

² Fiji has a similarly worded provision



There is a degree of practical commonality among the fraudulent misappropriation or theft offences in all jurisdictions. There are three main elements of which most jurisdictions include at least two. These are that the taking of a thing is done:

- Dishonestly, or by fraud or deceit;
- Without a good faith claim of right (some jurisdictions (Federated States of Micronesia, Fiji, and Nauru) merely include the weaker proposition that the property belongs to another); and
- With intent to permanently deprive the owner of the thing.

Kiribati, Nauru, Solomon Islands, Tonga and Vanuatu include all three elements; Palau, Republic of Marshall Islands, Samoa and Tokelau include the first and third; and Papua New Guinea and Federated States of Micronesia include the second and third.

Bribery

All jurisdictions except Nauru focus on bribery in official and political matters, with relevant bribery being bribery of public officials to act in a certain way in the course of their official duties. Nauru, by contrast, focuses on the dishonest provision/receipt of a bribe with the intention of gaining/providing a favour. All jurisdictions address both directions of bribery, that is, provision and receipt. Papua New Guinea and Fiji both have provisions that address bribery of judicial officials. The most detailed provision is that in the Marshall Islands. Fiji also has specific bribery legislation.³

Offence provision/s by jurisdictions

Unless otherwise specified, all references to statutory provisions are to the following Crimes Acts:

- **Federated States of Micronesia:** [Code of the Federated States of Micronesia](#) ;
- **Fiji:** [CRIMES ACT 2009 - Laws of Fiji](#); [Prevention of Bribery Act 2007](#) (For offences committed prior to 1/2/2010 see [Laws of Fiji Chapter 17 \(Penal Code\)](#));
- **Kiribati:** [Penal Code 1977](#);
- **Nauru:** [Crimes Act 2016](#);
- **Palau:** [Penal Code of the Republic of Palau](#);
- **Papua New Guinea:** [Criminal Code Act 1974](#);
- **Republic of Marshall Islands:** [Marshall Islands Revised Code 2014 Title 31 Chapter 1](#);
- **Samoa:** [Crimes Act 2013](#);
- **Solomon Islands:** [Penal Code 1963](#);
- **Tokelau:** [Crimes, Procedure and Evidence Rules 2003](#)
- **Tonga:** [Laws of Tonga Chapter 18 \(Criminal Offences\)](#)
- **Vanuatu:** [Penal Code 1977](#)

	Fraud	Bribery
Federated States of Micronesia	s 601(9) s 602	s 516

³ Prevention of Bribery Act 2007



Fiji	ss 4, 200, 290, 291, 292, 293, 317, 318, 319(1)(b), 323, 324, 325, 327, 328, 329, 330	s 4, 133, 134, 135, 136, 137, 138 Prevention of Bribery Act ss 2, 3, 4, 5, 6, 8
Kiribati	ss 121, 251, 266	s 85
Nauru	ss150, 153, 166-168, 179	s 173
Palau	ss 2600, 2614, 2615	s 4100
Papua New Guinea	s406, s365 s 383A, s403, s404, s405	ss 87, 97B, 119, 120
Republic of Marshall Islands	ss 223.0, 223.3, 240.7	s 240.0 s 240.1
Samoa	s 172	s 138
Solomon Islands	ss 129, 258, 273, 308	s 91
Tokelau	ss 27, 31, 73(1)	s 72 (1), 72 (2)
Tonga	ss 53, 143, 144, 145, 164	ss 50, 51
Vanuatu	ss 122, 123, 124, 125, 130B, 130C	s 73



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Chapter 2: Fiji - Legislative Provisions and Elements of the Offences

Under the two offence categories, the below offences pursuant to the [CRIMES ACT 2009 – Laws of Fiji](#); [Prevention of Bribery Act 2007](#) and [Laws of Fiji Chapter 17 \(Penal Code\)](#), have been identified as falling within the scope of “corruption”. Power is used corruptly if it has been “used to obtain some private advantage or for any purpose foreign to the Power”.⁴ For the purposes of this program, “corruption” refers to the abuse of entrusted power by public servants, with particular reference to the dishonest pursuit of gain.

Fraud: s 4 Interpretation

person employed in the civil service means any person holding any of the following offices or performing the duties of that office, (whether as a deputy or otherwise), namely—

- (a) any civil office including the office of President
- (b) any office to which a person is appointed or nominated under the provisions of any Act or by election;
- (c) any civil office, the power of appointing to which or removing from which is vested in any person or persons holding an office of any kind included in either of paragraphs (a) or (b);
- (d) any office of arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of any court, or in pursuance of any Act;
- (e) a member of a commission of inquiry appointed under or in pursuance of any Act;
- (f) any person employed to execute any process of a court;
- (g) all persons belonging to a disciplined service of Fiji;
- (h) all persons in the employment of any Government department; and
- (i) a person in the employ of a local authority;

[def am Act 2 of 2016 s 20, effective 16 February 2016]

Fraud: s 200 Frauds and breaches of trust by persons employed in the civil service.

A person employed in the civil service who, in the discharge of the duties of his or her office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, commits a summary offence.

Penalty — Imprisonment for 5 years.

[s 200 am Act 2 of 2016 s 20, effective 16 February 2016]

⁴ *State v Gamato* [2021] PGNC 485, 136 (Berrigan J).

Fraud: s 290 Meaning of dishonest

For the purposes of this Part, dishonest means –

- (a) dishonest according to the standards of ordinary people; and
- (b) known by the defendant to be dishonest according to the standards of ordinary people.

Fraud: s 291 Theft

- (1) A person commits a summary offence if he or she dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property.

Penalty — Imprisonment for 10 years.

- (2) For the purposes of this Act an offence against subsection (1) is to be known as the offence of theft.

Fraud: s 292 Special rules about the meaning of dishonest

- (1) For the purposes of this Division, a person's appropriation of property belonging to another is taken not to be dishonest if the person appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.
- (2) Subsection (1) does not apply if the person appropriating the property held it as trustee or personal representative.
- (3) For the purposes of this Division, a person's appropriation of property belonging to another may be dishonest even if the person or another person is willing to pay for the property.

Fraud: s 293 Appropriation of property

- (1) For the purposes of this Division, any assumption of the rights of an owner to ownership, possession or control of property, without the consent of the person to whom it belongs, amounts to an appropriation of the property.
- (2) Subsection (1) applies to a case where a person obtains possession of property (innocently or not) without committing theft, and there is a later assumption of rights without consent by keeping or dealing with it as owner.
- (3) For the purposes of this Division, if property, or a right or interest in property, is, or purports to be, transferred or given to a person acting in good faith, a later assumption by the person of rights which the person had believed himself or herself to be acquiring does not, because of any defect in the transferor's title, amount to an appropriation of the property.

Fraud: s 317 Obtaining property by deception.

- (1) A person commits a summary offence if he or she, by a deception, dishonestly obtains property belonging to another with the intention of permanently depriving the other of the property.

Penalty — Imprisonment for 10 years.

- (2) For the purposes of this section (and for the purposes of the application of section 306 to this section), the person is taken to have obtained property if, and only if—
- (a) the person obtains ownership, possession or control of it for himself or herself or for another person; or
 - (b) the person enables ownership, possession or control of it to be retained by himself or herself; or
 - (c) the person induces a third person to pass ownership, possession or control of it to another person; or
 - (d) the person induces a third person to enable another person to retain ownership, possession or control of it; or
 - (e) subsection (7) or (8) applies.
- (3) For the purposes of this section, a person's obtaining of property belonging to another may be dishonest even if the person or another person is willing to pay for the property.
- (4) For the purposes of this section, if—
- (a) a person obtains property belonging to another without meaning the other permanently to lose the thing itself; and
 - (b) the person's intention is to treat the thing as the person's own to dispose of regardless of the other's rights,
- the person has the intention of permanently depriving the other of it.
- (5) For the purposes of subsection (4), a borrowing or lending of a thing amounts to treating the thing as the borrower's or lender's own to dispose of regardless of another's rights if, and only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.
- (6) For the purposes of subsection (4), if—
- (a) a person has possession or control (lawfully or not) of property belonging to another; and
 - (b) the person parts with the property under a condition as to its return that the person may not be able to perform; and
 - (c) the parting is done for purposes of the person's own and without the other's authority,
- the parting is taken to amount to treating the property as the person's own to dispose of regardless of the other's rights.
- (7) For the purposes of this section (and for the purposes of the application of section 306 to this section), if a person (the first person) causes an amount to be transferred from an account held by another person (the second person) to an account held by the first person—
- (a) the amount is taken to have been property that belonged to the second person; and
 - (b) the first person is taken to have obtained the property for himself or herself with the intention of permanently depriving the second person of the property.
- (8) For the purposes of this section (and for the purposes of the application of section 306 to this section), if a person (the first person) causes an amount to be transferred from an account held by another person (the second person) to an account held by a third person—
- (a) the amount is taken to have been property that belonged to the second person; and
 - (b) the first person is taken to have obtained the property for the third person with the intention of permanently depriving the second person of the property.
- (9) For the purposes of this section (and for the purposes of the application of section 306 to this section), if—

- (a) a credit is made to an account (the credited account); and
- (b) a debit is made to another account (the debited account); and
- (c) either—
 - (i) the credit results from the debit; or
 - (ii) the debit results from the credit,
 the amount of the credit is taken to be transferred from the debited account to the credited account.
- (10) For the purposes of this section (and for the purposes of the application of section 306 to this section), a person is taken to cause an amount to be transferred from an account if the person induces another person to transfer the amount from the account (whether or not the other person is the holder of the account).
- (11) A person may be convicted of an offence against this section involving all or any part of a general deficiency in money even though the deficiency is made up of any number of particular sums of money that were obtained over a period of time.
- (12) A person may be convicted of an offence against this section involving all or any part of a general deficiency in property other than money even though the deficiency is made up of any number of particular items of property that were obtained over a period of time.
- (13) If, in a prosecution for an offence of theft, the court is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against this section, the court may find the defendant not guilty of the offence of theft but guilty of the offence against this section.
- (14) If, in a prosecution for an offence against this section, the court is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence of theft, the court may find the defendant not guilty of the offence against this section but guilty of the offence of theft.

Fraud: s 318 Obtaining a financial advantage by deception.

A person commits a summary offence if he or she, by a deception, dishonestly obtains a financial advantage from another person.

Penalty — Imprisonment for 10 years.

Fraud: s 319 Conversion.

- (1) A person commits a summary offence if he or she—
 - (a) being entrusted either solely or jointly with any other person with any power of attorney for the sale or transfer of any property, fraudulently sells, transfers, or otherwise converts the property or any part of it to his or her own use or benefit, or the use or benefit of any person other than the person by whom he or she was entrusted; or
 - (b) being a director, member or officer of any company or other body incorporated by or under the provisions of any Act, fraudulently takes or applies for his or her own use or benefit, or for any use or purposes other than the use or purposes of such company or other body, any of the property of the company or other body; or

- (c)
 - (i) being entrusted either solely or jointly with any other person with any property in order that he or she may retain in safe custody or apply, pay, or deliver, for any purpose or to any person, the property or any part of it or any proceeds from it; or
 - (ii) having either solely or jointly with any other person received any property for or on account of any other person— fraudulently converts to his or her own use or benefit, or the use or benefit of any other person, the property or any part of it, or any proceeds from it.

Penalty — Imprisonment for 7 years.

- (2) Nothing in subsection (1)(c) applies to or affects any trustee under any express trust created by a deed or will, or any mortgage of any property, real or personal, in respect of any act done by the trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage.

Fraud: s 323 General dishonesty – Obtaining a gain.

A person commits a summary offence if he or she does anything with the intention of dishonestly obtaining a gain from another person.

Penalty – Imprisonment for 5 years.

Fraud: s 324 General dishonesty – Influencing a public official.

- (1) A person commits a summary offence if he or she does anything with the intention of dishonestly causing a loss to another person.

Penalty — Imprisonment for 5 years.

- (2) A person commits a summary offence if he or she—

- (a) dishonestly causes a loss, or dishonestly causes a risk of loss, to another person; and
- (b) person knows or believes that the loss will occur or that there is a substantial risk of the loss occurring.

Penalty — Imprisonment for 5 years.

Fraud: s 325 General dishonesty – Causing a loss.

- (1) A person commits a summary offence if he or she does anything with the intention of dishonestly influencing a public official in the exercise of the official's duties as a public official.

Penalty — Imprisonment for 5 years.

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew—

- (a) that the official was a public official; or
- (b) that the duties were duties as a public official.

Fraud: s 327 Conspiracy to defraud – Obtaining a gain.

A person commits a summary offence if he or she conspires with another person with the intention of dishonestly obtaining a gain from a third person.

Penalty — Imprisonment for 10 years.

Fraud: s 328 Conspiracy to defraud – Causing a loss.

(1) A person commits a summary offence if he or she conspires with another person with the intention of dishonestly causing a loss to a third person.
Penalty — Imprisonment for 10 years.

(2) A person commits a summary offence if he or she—

(a) conspires with another person to dishonestly cause a loss, or to dishonestly cause a risk of loss, to a third person; and

(b) knows or believes that the loss will occur or that there is a substantial risk of the loss occurring.

Penalty — Imprisonment for 10 years.

Fraud: s 329 Conspiracy to defraud – Influencing a public official.

(1) A person commits a summary offence if he or she conspires with another person with the intention of dishonestly influencing a public official in the exercise of the official's duties as a public official.

Penalty — Imprisonment for 10 years.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew—

(a) that the official was a public official; or

(b) that the duties were duties as a public official.

Fraud: s 330 General Provisions relating to conspiracy to defraud.

(1) For a person to be guilty of an offence of conspiracy to defraud—

(a) the person must have entered into an agreement with one or more other persons; and

(b) the person and at least one other party to the agreement must have intended to do the thing pursuant to the agreement; and

(c) the person or at least one other party to the agreement must have committed an overt act pursuant to the agreement.

(2) A person may be found guilty of an offence of conspiracy to defraud even if—

(a) obtaining the gain, causing the loss, causing the risk of loss, or influencing the public official, as the case may be, is impossible; or

(b) the only other party to the agreement is a body corporate; or

(c) each other party to the agreement is a person who is not criminally responsible; or

(d) subject to subsection (3), all other parties to the agreement have been acquitted of the offence.

(3) A person cannot be found guilty of an offence of conspiracy to defraud if—

(a) all other parties to the agreement have been acquitted of such an offence; and

(b) a finding of guilt would be inconsistent with their acquittal

(4) A person cannot be found guilty of an offence of conspiracy to defraud if, before the commission of an overt act pursuant to the agreement, the person—

- (a) withdrew from the agreement; and
 - (b) took all reasonable steps to prevent the doing of the thing.
- (5) A court may dismiss a charge of an offence against this section if the court thinks that the interests of justice require the court to do so.
- (6) Proceedings for an offence of conspiracy to defraud require the consent of the Director of Public Prosecutions, but before the necessary consent has been given, a person may be—
- (a) arrested for an offence against this section; or
 - (b) charged with an offence against this section; or
 - (c) remanded in custody or released on bail in connection with an offence against this section.

Bribery: s 4 Interpretation

Benefit includes any advantage, and is not limited to property

Public official means –

- (a) The President;
- (b) any person who is appointed or nominated under the provisions of any Act or by election, including all –
 - (i) Ministers
 - (ii) Members of the Parliament of Fiji; and
 - (iii) Local Government Councillors;
- (c) any person employed in the civil service;
- (d) any person holding an office under the Constitution of the Republic of Fiji;
- (e) any Judge or Magistrate, or any person holding any other judicial or quasi-judicial office;
- (f) any person who holds or performs the duties of an office established by or under any law;
- (g) any person who is an officer or employee of a Government authority or agency, whether or not the authority or agency is established by an Act;
- (h) any person who is a contract service provider for a Government contract; and
- (i) any person who is an officer or employee of a contracted service provider to or under a Government contract.

Bribery: s 133. Definitions.

- (1) In this Division -
benefit includes any advantage including political gain and is not limited to property.
- (2) For the purposes of this Division, a person is taken to have obtained a benefit for another person if the first mentioned person induces a third person to do something that results in the other person obtaining the benefit.
- (3) The definition of “obtaining” in section 288 does not apply to this Division.

Bribery: s 134. Bribery of public officials.

- (1) A person commits an indictable offence (which is triable summarily) if –

- (a) the person without lawful authority or reasonable excuse –
 - (i) provides a benefit to another person; or
 - (ii) causes a benefit to be provided to another person; or
 - (iii) Offers to provide, or promises to provide, a benefit to another person; or
 - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
- (b) the person does so with the intention of influencing a public official (who may be the other person) in the exercise of the officer's duties as a public official.

Penalty – Imprisonment for 10 years.

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew -
 - (a) that the official was a public official; or
 - (b) that the duties were duties of a public official.

Bribery: s 135. Receiving a bribe.

- (1) A public official commits an indictable offence (which is triable summarily) if—
 - (a) the public official without lawful authority or reasonable excuse—
 - (i) asks for a benefit for himself, herself or another person; or
 - (ii) receives or obtains a benefit for himself, herself or another person; or
 - (iii) agrees to receive or obtain a benefit for himself, herself or another person; and
 - (b) the public official does so with the intention—
 - (i) that the exercise of the official's duties as a public official will be influenced; or
 - (ii) of inducing, fostering or sustaining a belief that the exercise of the official's duties as a public official will be influenced. Penalty —
- Imprisonment for 10 years.

Bribery: s 136. Corrupting benefits given to, or received by, a public official.

- (1) A person commits a summary offence if—
 - (a) the person without lawful authority or reasonable excuse—
 - (i) provides a benefit to another person; or
 - (ii) causes a benefit to be provided to another person; or
 - (iii) offers to provide, or promises to provide, a benefit to another person; or
 - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
 - (b) the receipt, or expectation of the receipt, of the benefit would tend to influence a public official (who may be the other person) in the exercise of the official's duties as a public official.

Penalty — Imprisonment for 10 years.

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew—
- (a) that the official was a public official; or
 - (b) that the duties were duties as a public official.

Bribery: s 137 Receiving a corrupting benefit.

- (1) A public official commits a summary offence if—
- (a) the official without lawful authority or reasonable excuse—
 - (i) asks for a benefit for himself, herself or another person; or
 - (ii) receives or obtains a benefit for himself, herself or another person; or
 - (iii) agrees to receive or obtain a benefit for himself, herself or another person; and
 - (b) the receipt, or expectation of the receipt, of the benefit would tend to influence a public official (who may be the first mentioned official) in the exercise of the official's duties as a public official.

Penalty — Imprisonment for 5 years.

Bribery: s 138 Benefit in the nature of a reward.

For the purposes of sections 136 and 137, it is immaterial whether the benefit is in the nature of a reward.

Prevention of Bribery Act: s 2 Interpretation

In this Act, unless the context otherwise requires – advantage means

- a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
- b) any office, employment or contract;
- c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- d) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
- e) the exercise or forbearance from the exercise of any right or any power or duty; and

- f) any offer, undertaking promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d), and (e)

Prevention of Bribery Act: s 3 Soliciting or accepting an advantage

Any prescribed officer who, without prior written permission of his or her appointing authority, solicits or accepts any advantage commits an offence.

Prevention of Bribery Act: s 4 Bribery

(1) Any person who, whether in Fiji or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's-

(2) Any public servant who, whether in Fiji or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of his or her -

- a) performing or abstaining from performing, or having performed or abstained from performing, any act in his or her capacity as a public servant;
- b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or her or that other public servant's capacity as a public servant; or
- c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

(3) if a public servant other than a prescribed officer solicits or accepts an advantage with the permission of the public body of which he or she is an employee being permission which complies with subsection (4), neither he or she nor the person who offered the advantage shall be guilty of an offence under this section.

(4) For the purposes of subsection (3), permission shall be in writing and –

- a) be given before the advantage is offered, solicited, or accepted; or
- b) In any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance, and for such permission to be effective for the purposes of subsection (3), the public body shall, before giving such permission have regard to the circumstances in which it is sought.

Prevention of Bribery Act: s 5 Bribery for giving assistance etc in regard to contracts

- (1) Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as a inducement to or reward for or otherwise on account of such public servant's giving assistance or using influence in, or having given assistance or used influence in –
- a) The promotion, execution or procuring of –
 - i. Any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, or
 - ii. Any subcontract to perform any work, provide any service, do anything or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body; or
 - b) The payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as aforesaid,
- shall be guilty of an offence.
- (2) Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his or her giving assistance or using influence in, or having given assistance or used influence in –
- a) The promotion, execution or procuring of, or
 - b) The payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as in referred to in subsection (1) shall be guilt of an offence.

Prevention of Bribery Act: s 6 Bribery for procuring withdrawal of tenders

(1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of the withdrawal of a tender or the refraining from the making of a tender, for such a contract as is referred to in subsection (1), shall be guilty of an offence.

Prevention of Bribery Act: s 8 Bribery of public servants by persons having dealings with public bodies

(1) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the Government through any department, office or establishment of the Government, offers any advantage to any prescribed officer employed in that department, office or establishment of the Government, shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any other public body, offers any advantage to any public servant employed by that public body, shall be guilty of an offence.

Partner Court / Topic	Fraud	Bribery
FIJI	<p>Crimes Act 2009 Prevention of Bribery Act 2007 ** for any offence committed before 1/2/10 the Penal Code applies.⁵</p>	
Legislative Provisions	<p>s 4 Interpretation s 200 Frauds and breaches of trust by persons employed in the civil service s 290 Meaning of Dishonest s 291 Theft s 292 Special rules about meaning of dishonest s 293 Appropriation of property s 317, 318 Obtaining Property or a financial advantage by deception s 319 (1) (b) Conversion s 323 General Dishonesty – Obtaining a gain s 324 General Dishonesty – Causing a loss s 325 General Dishonesty – Influencing a public official ss 327,328,329, 330 Conspiracy to defraud provisions</p>	<p>s 4 Interpretation s 133 Definitions s 134 Bribery of public officials s 135 Receiving a bribe s 136 Corrupting benefits given to, or received by, a public official s 137 Receiving a corrupting benefit s 138 Benefit in the nature of a reward</p> <p><u>Prevention of Bribery Act offences</u> <i>s 2 Interpretation, s 3 Soliciting or accepting an advantage, s 4 Bribery, s 5 Bribery for giving assistance etc in regards to contracts, s 6 Bribery for procuring withdrawal of tenders, s 8 Bribery of public servants by persons having dealings with public bodies</i></p>
Elements of the Offence	<p>s 200 Frauds and breaches of trust by persons employed in the civil service 1. A is employed in the civil service 2. A commits any fraud or breach of trust affecting the public (whether or not it would have been criminal if committed against a private person) 3. A did so in the discharge of the duties of his office</p> <p>s 291 Theft A. Date B. Place</p>	<p>s 134 Bribery of public officials A. Date B. Place C. Accused Person D. Without lawful authority or reasonable excuse E. To influence a public official F. In the exercise of the officer’s duties as a public official G. Did (1) Provide (2) Causes to be provided (3) Offers to provide</p>

⁵ The legislative provisions, elements of offence and common defence provisions from the Penal Code can be provided upon request.



	<p>C. Accused Person D. Dishonestly E. Appropriates F. Property G. Belonging to another H. With intent to permanently deprive</p> <p>s 317 Obtaining property by deception A. Date B. Place C. Accused Person D. By deception E. Dishonestly obtains F. Property G. Belonging to another person H. Intention to permanently deprive</p> <p>s 318 Obtaining a financial advantage by deception A. Date B. Place C. Accused Person D. By deception E. Dishonestly obtains F. Financial advantage G. From another person</p> <p>s 319 (1) (b) Conversion A. Date B. Place C. Accused Person D. Is a Director, member or officer of company or other body incorporated under any Act E. Fraudulently takes or applies F. For (1) own use or benefit; or</p>	<p>(4) Promises to provide (5) Causes an offer of the provision (6) Promises the provision H. A Benefit I. To Another person (may be the public official)</p> <p>s 135 Receiving a bribe A. Date B. Place C. Public official D. Without lawful authority or reasonable excuse E. Did (1) Ask for; OR (2) receive; OR (3) obtain; OR (4) agree to receive; OR (5) agree to obtain; F. A Benefit G. For (1) Himself/herself; OR (2) another person H. With the intention (1) to influence; OR (2) to induce, foster or sustain a belief that there will be influence in I. The exercise of official's duties as a public official.</p> <p>s 136 Corrupting benefits given to, or received by, a public official A. Date B. Place C. Accused Person D. Without lawful authority or reasonable excuse E. Did (1) Provide (2) Causes to be provided</p>
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	<p>(2) any use or purpose other than use or purpose of company or other body G. Property of company or other body H. Fraudulently converts I. To (1) own use or benefit; or (2) use or benefit of another person J. The property, any part of it or proceeds from it</p> <p>s 324 General Dishonesty – Obtaining a gain A. Date B. Place C. Accused Person D. Does anything E. Intention of dishonestly obtaining F. Gain G. From another person</p> <p>s 324 (1) General Dishonesty – Causing a loss A. Date B. Place C. Accused Person D. Does anything E. Intention of dishonestly causing F. Loss G. To another person</p> <p>s 324 (2) General Dishonesty – Causing a loss A. Date B. Place C. Accused Person D. Dishonestly (1) Causes; OR (2) Causes risk of E. Loss F. To another person</p>	<p>(3) Offers to provide (4) Promises to provide (5) Causes an offer of the provision (6) Promises the provision F. A Benefit G. To Another person (may be the public official); AND H. Receipt or expectation of receipt would tend to influence I. The exercise of official’s duties as a public official.</p> <p>s 137 Receiving a corrupting benefit A. Date B. Place C. Public official D. Without lawful authority or reasonable excuse E. Did (1) Ask for; OR (2) receive; OR (3) obtain; OR (4) agree to receive; OR (5) agree to obtain; F. A Benefit G. For (1) Himself/herself; OR (2) another person H. The receipt or expectation of receipt I. Tend to influence J. The exercise of official’s duties as a public official.</p>
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	<p>G. Accused knows or believes that the loss (1) will occur; OR (2) there is a substantial risk of it occurring</p> <p>s 325 General Dishonesty – Influencing a public official</p> <p>A. Date B. Place C. Accused Person D. Does anything E. Intention of dishonestly influencing F. Public Official G. The exercise of official’s duties as a public official.</p>	
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Chapter 3: Fiji - Summary of Elements of the Defences

Under the two offence categories, the below common defences have been identified across each jurisdiction. The **offence** is highlighted by **orange font**; the **common defence** is identified by **pink font** and the **elements of the defence** in **blue font**.

Fraud	Bribery
FIJI	
<p>Common defences</p> <p>s 38 (claim of right): Not criminally responsible for offence that has physical element that relates to property if -</p> <ul style="list-style-type: none"> - at time of offence - person is under a mistaken belief about proprietary or possessory right; AND - existence of right would negate the fault element <p>s 16 (Voluntariness) - conduct can only be a physical element if it is voluntary - conduct is voluntary if it is product of will of the person whose conduct it is - omission to perform an act is only voluntary if act omitted is one the person is capable of performing</p> <p>s 34 (Mistake or ignorance of fact (fault elements other than negligence)) Not criminally responsible for offence that has a physical element for which there is a fault element (other than negligence) if –</p>	

- at the time of the conduct person is under mistaken belief about or ignorant of facts; AND

-existence of mistaken belief or ignorance negates any fault element

Court may consider whether the mistaken belief or ignorance was reasonable in the circumstances.

s 34 (Mistake or ignorance of fact (strict liability))

Not criminally responsible for offence that has a physical element for which there is NO fault element if –

- at or before conduct, person considered whether or not facts existed but is under a mistaken reasonable belief about those facts; AND

- had those facts existed conduct would not be an offence

A person is considered whether or not facts existed if –

- had considered previously whether facts existed in the circumstances surrounding that occasion; AND

- honestly and reasonably believed that the circumstances surrounding present occasion were the same or substantially the same as the previous occasion

s 28 (mental impairment)

Not criminally responsible for offence if at time of carrying out conduct constituting offence -

- the person was suffering from a mental impairment

- that impairment had the effect that person:

- did not know the nature and quality of conduct; OR

- did not know the conduct was wrong; OR

- unable to control the conduct

Whether person is suffering from a mental impairment is a question of fact.

Presumption is that a person is NOT suffering from mental impairment. Presumption is displaced if proved on balance of probabilities

s 33 (Involuntary intoxication)

- Person not criminally responsible if conduct constituting offence was a result of intoxication that was not self-induced. (s29 definition – self induced intoxication)

s 26-27 (immature age)

- s26 person < 10 years = not criminally responsible

-s27 person >10 years but < 12 years = not responsible unless proved that the child knows the conduct is wrong.

Whether child knows conduct is wrong is question of fact with burden on prosecution.

s 42 (Self defence)

- Not criminally responsible for offence if conduct is in self defence

- Conduct is in self defence if;

- To defend themselves or another; OR

- To protect property from unlawful appropriation, destruction, damage or interference; AND

Is reasonable in the circumstances as they perceive them.

<p>s 40 (Duress)</p> <ul style="list-style-type: none"> - Not criminally responsible for offence if conduct is under duress - Conduct is under duress if they reasonably believe that: <ul style="list-style-type: none"> - A threat to cause death or serious harm has been made and will be carried out; AND - No reasonable way that threat can be rendered ineffective; AND - Conduct is a reasonable response to threat <p>Does not apply if threat is may by or behalf of person with whom person under duress voluntarily associates with for the purpose of carrying out that type of conduct.</p>	
<p>s 200 (Frauds and breaches of trust by persons employed in the civil service), s 291 Theft, s 319(1) (b) Conversion, ss 323 - 325 General Dishonesty</p> <ul style="list-style-type: none"> - No express defences <p>However, common defences</p> <ul style="list-style-type: none"> - consent of the owner - claim of right 	<p>s 134 Bribery of public officials, s 135 Receiving a bribe, s 136 Corrupting benefits give to, or received by, a public official, s 137 Receiving a corrupting benefit</p> <ul style="list-style-type: none"> - No express defences

Chapter 4: Evidentiary issues

From the PJIP needs assessment and ongoing discussions with Partner Courts, the following evidentiary issues were identified. A summary of the similarities and differences between the jurisdictions are discussed below.

Exceptions to Hearsay – Bankers’ books & business records

In all jurisdictions, there are statutory or common law exceptions to the rule against hearsay evidence. Most jurisdictions (Federated States of Micronesia, Kiribati, Palau, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Fiji and Papua New Guinea) have statutory provisions pertaining to the admissibility of business records or bankers’ books. In six jurisdictions (Federated States of Micronesia, Palau, Republic of Marshall Islands, Samoa, Solomon Islands and Tonga) these provisions are framed as exceptions to the rule against hearsay evidence. In Fiji and Papua New Guinea, the relevant legislation contains provisions regarding the admissibility of trade or business records more generally. However, it is likely that hearsay evidence would be admitted pursuant to these provisions.

The Federated States of Micronesia, Palau and the Republic of Marshall Islands have provisions which are almost identical. For the exception to apply to business records, two conditions must be established by the testimony of the custodian of the records, another qualified witnesses or, in the Republic of Marshall Islands only, a permitted certificate submitted to the court. First, the records were kept in the course of a regularly conducted business activity. Second, it was the regular practice of that business to make those records. Similar conditions are required in Fiji, Papua New Guinea, Samoa, Solomon Islands and Tonga.

In addition to these requirements, three jurisdictions (Fiji, Tonga, and Samoa) specify that witnesses must not be available before the business records can be admitted. In Fiji, the person who supplied the statement in the record must be either dead, unfit to give evidence as a witness, missing or cannot be reasonably expected to have any recollection of the matters dealt contained in the record. Samoa’s legislation contains similar provisions and two additional alternatives. Specifically, that the Judge may consider first, that the witness would not be useful to the proceedings as the person cannot be reasonably expected to recollect the matters dealt with in the record or secondly, it would cause undue expense or delay if the person were required to be a witness.

Papua New Guinea’s provisions specify that the court is not required to admit business records if, having regarding to all of the relevant circumstances, it would not be in the interests of justice to do so. Papua New Guinea also has provisions in relation to bankers’ books; however, the legislation does not specify any rules in relation to admissibility of hearsay evidence.

We have been unable to identify any relevant statutory provisions in Tokelau and Vanuatu. Consequently, in these jurisdictions hearsay contained in business records is not admissible because there is no such exception at common law.

Expert Evidence

In all jurisdictions, expert opinion evidence is admissible as an exception to the rule against the admissibility of opinion evidence. Generally, expert opinion testimony is admissible at common law if the witness is qualified as an expert by knowledge, skill, experience, training or education and the



expert's opinion will assist the court to understand a fact or issue relevant to the matter. Some jurisdictions (Federated States of Micronesia, Palau, Republic of Marshall Islands, Samoa, Solomon Islands, Tokelau and Tonga) have provisions in their statutes or court rules pertaining to the qualification of experts or competency of witnesses more generally. In these jurisdictions, except Tokelau, the common law exception is codified in the relevant statute (Samoa, Solomon Islands, Tonga) or court rules (Federated States of Micronesia, Palau, Republic of Marshall Islands).

In the Federated States of Micronesia, Palau and Republic of Marshall Islands the specific rules are almost identical. In those jurisdictions, a court may require an expert to disclose underlying facts or data prior to testifying or during cross-examination. Facts or data which an expert relies upon to form an opinion do not need to be admitted as evidence if that evidence is of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject. Testimony which is admissible is not objectionable if it relies upon a contested fact which is to be determined by the ultimate decision maker. In the Republic of Marshall Islands and Palau, facts or data which are relied on by an expert that are inadmissible do not need to be disclosed to the jury unless the court determines that the probative value of evidence, in assisting the jury to evaluate the expert's opinion, substantially outweighs their prejudicial effect.

We have been unable to identify any relevant statutory provisions in Fiji, Kiribati, Nauru, Papua New Guinea and Tokelau. However, it is our understanding that the common law exception exists in all of these jurisdictions.

Evidence Admissible Against Co-accused Defendants

Two jurisdictions (Papua New Guinea and Vanuatu) contain statutory provisions regarding accessorial liability. We have been unable to identify provisions in nine jurisdictions (Fiji, Kiribati, Nauru, Palau, Republic of Marshall Islands, Samoa, Solomon Islands, Tokelau and Tonga).

Regarding the admissibility of evidence against a co-accused, the common law position applies in most jurisdictions. At common law, the co-conspirator's rule permits acts or statements of a co-accused in furtherance of a conspiracy to be admissible against a co-accused.

We have been able to identify provisions in five jurisdictions (Papua New Guinea, Samoa, Solomon Islands and Tonga).

The Solomon Islands and Samoa have provisions which specify that the common law position in relation to the admissibility of statements by co-conspirators prevails. In the Solomon Islands, this is only in relation to confessions. The statute also provides that a co-accused is considered a competent and compellable witness. They may also offer propensity evidence only if that evidence is relevant to the defence raised or proposed to be raised by the accused.

Comparatively, in Papua New Guinea, a person charged with an offence shall not be called as a witness in any legal proceedings in connection with the offence. Notwithstanding this, where a person charged with an offence is a witness they may be asked any questions in cross-examination.



Electronic Evidence

We have been unable to identify any provisions regarding the evidentiary rules applicable to electronic evidence generally in all jurisdictions except for Papua New Guinea and Tonga. In Papua New Guinea, the *Electronic Transactions Acts 2021* specifies that the evidential requirements of admissibility and weight provided by the *Evidence Act* apply to electronic records or data messages. In Tonga, the *Evidence Act* contains provisions regarding the admissibility, standards and authentication of electronic evidence generally.

Some jurisdictions specify that forms of evidence include electronic records or documents stored electronically. The Federated States of Micronesia, Palau and Republic of Marshall Islands specify that writings and records includes electronic recordings. In Samoa, the meaning of ‘documents’ includes ‘information electronically recorded or stored, and information derived from that information’. In Kiribati, the *Evidence Act 2003* contains a provision regarding the ‘[a]dmissibility of statements produced by computers’.

Some jurisdictions have specific evidentiary rules or exceptions in relation to electronic evidence. For example, in the Solomon Islands section 122(1) of the *Evidence Act 2009* provides that the hearsay rule does not apply to a representation contained in a document recording a message that has been transmitted by electronic mail, fax, telegram, letter gram or telex.

Relevance of Evidence

Five jurisdictions (Federated States of Micronesia, Palau, Republic of Marshall Islands, Solomon Islands, Tonga) have provisions in either their statutes or court rules regarding the relevancy of evidence. In all of these jurisdictions relevant evidence is generally admissible.

In the Federated States of Micronesia, Palau and Republic of Marshall Islands, relevant evidence is defined as ‘evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence’. Comparatively, in Tonga, any evidence which is admissible under the relevant provisions is deemed relevant.

Some jurisdictions (Papua New Guinea and Samoa) specify in their statutes that the relevancy of evidence can be questioned during later stages of criminal proceedings, such as during cross-examination or following the end of submissions.



Unless otherwise specified, all references to statutory provisions and rules are to the following:

- **Federated States of Micronesia:**
 - [Code of the Federated State of Micronesia Title 6, Chapter 13 - Evidence](#)
 - [Rules of Evidence for the Trial Division of the Supreme Court of the Federated States of Micronesia](#)
- **Fiji:**
 - [Evidence Act 1944](#)
- **Kiribati:**
 - [Evidence Act 2003](#)
- **Nauru:**
 - [Criminal Procedure \(Amendment\) Act 2020](#)
- **Palau:**
 - [Rules of Evidence for the Courts of the Republic of Palau](#)
- **Papua New Guinea:**
 - [Evidence Act 1975](#)
 - [Electronic Transactions Act 2021](#)
 - [Criminal Practice Rules – Fraud & Corruption Related Offences 2013](#)
- **Republic of Marshall Islands:**
 - [Title 28 – Evidence Act of 1989](#)
- **Samoa:**
 - [Evidence Act of 2015](#)
- **Solomon Islands:**
 - [Evidence Act 2009](#)
- **Tokelau:**
 - [Crimes, Procedure and Evidence Rules 2003](#)
- **Tonga:**
 - [Evidence Act 2020](#)
- **Vanuatu:**
 - [Chapter 136 - Criminal Procedure Code](#)

	Exceptions to Hearsay	Expert Evidence	Evidence Against Co-accused	Electronic Evidence	Relevance of Evidence
Federated States of Micronesia	Rules 801, 802, 803	Rules 601, 602, 702, 703, 704, 705, 706	N/A	Rule 1001	Rules 401, 402, 403
Fiji	s 4	N/A	N/A	N/A	N/A
Kiribati	ss 32, 33, 34	N/A	N/A	s 28	N/A
Nauru	ss147A, 176	N/A	N/A	N/A	N/A
Palau	Rules 801, 802, 803	Rules 702, 703, 704, 705	N/A	Rule 1001	Rules 401, 402, 403

Papua New Guinea	s61, 91, 92, 93, 94 (Evidence Act)	N/A	s 9, 14 (Evidence Act)	s 12 (Electronic Transactions Act) ss 64, 65, 66, 67 (Evidence Act)	s 26 (Evidence Act)
Republic of Marshall Islands	s3 Rules 803, 902	s3 Rules 702, 703, 704, 705	N/A	s3 Rule 1001.	s3 Rules 104, 401, 402, 403
Samoa	ss 9, 10, 11	ss 2, 16	s 6	s 2	s 70, 83
Solomon Islands	ss 102, 103, 117, 118, 120	ss 24, 30, 129, 130	s 39, 40, 172	s 122	ss 20, 21, 22
Tokelau	ss 163, 175	ss 164, 175	s 175	N/A	N/A
Tonga	ss 88, 89	s24, 25	s 4	ss 2, 54A, 54C, 54D, 54E, 54F	s 14
Vanuatu	N/A	s86	N/A	N/A	N/A

Exceptions to Hearsay – Bankers’ books & business record

s 4. Admissibility of certain trade of business records in criminal proceedings.

In any criminal proceedings where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, on production of the document, be admissible as evidence of that fact if—

- (a) the document is, or forms part of, a record relating to any trade or business and compiled, in the course of that trade or business, from information supplied (whether directly or indirectly) by persons who have, or may reasonably be supposed to have, personal knowledge of the matters dealt with in the information they supply; and
- (b) the person who supplied the information recorded in the statement in question is dead, or beyond the seas, or unfit by reason of his bodily or mental condition to attend as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected (having regard to the time which has elapsed since he or she supplied the information and to all the circumstances) to have any recollection of the matters dealt with in the information he or she supplied.

Expert Evidence

At the time research was undertaken, we have been unable to identify relevant provisions regarding *Expert Evidence* within the *Evidence Act 1944*.

Evidence Admissible Against Co-accused Defendants

At the time research was undertaken, we have been unable to identify relevant provisions regarding *Evidence Admissible Against Co-accused Defendants* within the *Evidence Act 1944*.



Electronic Evidence

At the time research was undertaken, we have been unable to identify relevant provisions regarding *Electronic Evidence* within the *Evidence Act 1944*.

Relevancy of Evidence

At the time research was undertaken, we have been unable to identify relevant provisions regarding the *Relevancy of Evidence* within the *Evidence Act 1944*.

