

**BLACKMAIL AND EXTORTION:
A LEGAL ANALYSIS**

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بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

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**An academic exercise submitted in partial fulfilment
of the requirements for the degree of
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SUPERVISION

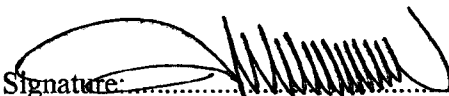
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DECLARATION

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I hereby declare that the work in this academic exercise is my own except for quotations and summaries which have been duly acknowledged.

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Blackmail and Extortion: A LEGAL ANALYSIS

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ABSTRACT

BLACKMAIL AND EXTORTION: A LEGAL ANALYSIS

This research aims to identify what Blackmail and extortion is all about according to the law. It will study its legal definition and will also carry out research as to how the punishment for extortion is implemented in Brunei Darussalam. The research will be carried out analytically to reach the objective of the research. The analytical approach will help the researcher understand and analyze the law in Brunei Darussalam and will be able to identify the points of reasonings behind the judgements that has been made in the courts of Brunei Darussalam. This research will also discuss the issues that arises from blackmail and extortion as well as how easily blackmail and extortion tend to be referred to as synonymous to one another, all though they are not. To make this research more in depth, the research will include a comparative study of the punishments for extortion between Brunei Darussalam, Malaysia and Singapore. The findings of this analysis will help better understand where the law stands towards blackmail and extortion and what actions are being taken by the law to avoid such offences to be made.

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CHAPTER I: BLACKMAIL AND EXTORTION ACCORDING TO THE LAW

1.1 INTRODUCTION

Blackmail according to its legal definition is seen as a crime involving a threat for purposes of compelling a person to do an act against his or her will, or for purposes of taking the person's money or property. The threat in blackmail may might imply physical injury to the threatened party or to someone loved by that person, or injury to a person's reputation. It can be defined as coercion involving threats of physical harm, threat of criminal prosecution, or threats for the purposes of taking the person's money or property. Blackmail cases are not reported as often in Brunei Darussalam as it is a very close knit society, but it does occur and should be addressed. Brunei Darussalam does not have the specific provisions for blackmail in it's law. The relevant provisions can be found in England's Theft Act 1968 Chapter 60¹, and can be found in section 21.

Section 21(1) of the Theft Act 1968 states a person guilty blackmail as:

(1) A person is guilty of blackmail if, with a view to gain for himself or another or with the intent to cause loss to another, he makes any unwarranted demand with menaces; and for this purpose a demand with menaces is unwarranted unless the person making it does so in the belief--

- (a) That he has reasonable grounds for making the demand; and
- (b) that the use of the menaces is a proper means of reinforcing the demand.

Blackmail is a crime involving unjustified threats to make a gain or cause loss to another unless a demand is met to what the demander pleases². It can also be defined as a form of coercion which involves threats of physical

¹ Theft Act 1968.

² *Merriam-Webster's dictionary of law*. Merriam-Webster. 1996. p. 634

harm, threat of criminal prosecution, or even threats for the purpose of taking the person's money or property.³ It is also important to point out that blackmail may also be considered as a form of extortion. The two are generally synonymous, however, in extortion, it is the taking of personal property by threat of future harm.⁴

1.2 BLACKMAIL

The word blackmail was used to describe the tribute paid to Scottish chieftains originally by landowners in the border counties in order to secure immunity from raids on their lands. During its early stages of development, the crime of blackmail seemed to have been coextensive with robbery and attempted robbery,⁵ and now the definition of blackmail has changed over the years and is now seen as a more subtle method of extortion.

Blackmail comprises of an *actus reus* of an unwarranted demand with menaces, and *mens rea* requirements of an intention to make the unwarranted demand with menaces, with a view to gain or intention to cause loss, in the absence of belief that there are reasonable grounds for making the demand and that the menacing is a proper means of enforcing the demand. The offence is then committed and completed when the demand is being made, irrespective to whether or not the property has been transferred.⁶

There must be a demand that is supported by menaces in order for blackmail to work.⁷ In the case of *R v Harry*⁸, the organisers of a student rag week wrote to shopkeepers and requested for donations to a charity. They stated that shopkeepers who gave donations would be given immunity from

3 *Ibid*

4 Frank Schmalleger, Daniel E. Hall, John J. Dolatowski (2009). *Criminal Law Today* (4th ed.). Prentice Hall. p.271–272

5 W Winder, 'The Development of Blackmail' (1941) 5 MLR 21; G Williams, 'Blackmail' [1954] Crim LR 7; J Lindgren, 'The Theory, History, and Practice of the Bribery-Extortion Distinction' (1993) 141(5) U Pa L Rev 1695; M Hepworth, 'The British Concept of Blackmail' (1975) Int J of Criminology and Penology 1.

6 *Criminal law*, David Ormerod. p. 895

7 *Criminal Law*, Catherine Elliott and Frances Quinn. p. 214

8 *R v Harry* [1974] Crim LR 32

the inconvenience of rag week activities. These activities had included the throwing of flour and water, and also tickling people with feathers. It was held by the court that while there was a demand, the activities threatened were not sufficient enough to be classified as menace as it was not anywhere close to grave.

There needs to be an element of *mens rea*. The defendant must have the intention to make his or her demand with menaces, and this demand must be made with a view of making a financial gain or causing a financial loss. It is clear in section 21 of the Theft Act 1968, as a statutory defence that a person will not be liable for blackmail if the demand was warranted. If the defendant believes that he or she has reasonable grounds for making the demand, and that the means used to reinforce the demand are deemed as proper, only then will the demand be warranted.⁹

The defence can be narrowed in the case of *R v Harvey*¹⁰, where the appellant had paid £20,000 to the victim who promised to supply him with cannabis. The victim had no intention to supply any cannabis, and simply pocketed the money. When the appellant realised this, he threatened to kill, maim and rape unless he was repaid. The appellant claimed that his demand for repayment was warranted, but the court held that the means used to make the demand were clearly not proper, since it could not be proper to threaten to do something that was known to be unlawful or morally wrong.¹¹

1.2.1 DEMAND

The demand may take any form and may be implicit or explicit. What would matter is the way the defendant communicates with the victim. The way that the defendant conveys the message to the victim and phrases the message that a menace would materialize unless the victim complies with the demand. The demand could be made orally, in writing, by gestures or by the defendant's

⁹ *Criminal Law*, Catherine Elliott and Frances Quinn. p. 215

¹⁰ *R v Harvey* (1981) Cr App R 139

¹¹ *Criminal Law*, Catherine Elliott and Frances Quinn. p. 215

demeanour provided that, objectively viewed, it is a demand. The defendant may be guilty of blackmail where he may apprehend the victim in the act of stealing and, without any formal demand, make it clear to the victim that if he pays the defendant the money he will hear no more of the matter¹².

A demand may be made through an intermediary. It may be complete though it has not been communicated to the victim because, the victim may be deaf. A demand by letter is made where and when it is posted¹³. This would also apply to communications through emails, with the demand being complete as soon as the email has been sent. The offence however is complete irrespective of the victim's compliance with the demand. It has been argued that the wide interpretation of demand means that there is little or no room for a crime of attempted blackmail¹⁴. The defendant needs to be in the view of gaining financially or having an intention to cause loss in money or other property, only then can the offence be committed.

The purpose of section 21(2), 'The nature of the act or omission demanded is immaterial, and it is also immaterial whether the menaces relate to action to be taken by the person making the demand', seems to have been to forestall a possible argument that the defendant cannot be guilty unless his demand is for some specific item of property. In a situation where the defendant demands with menace to the victim that he be given paid employment or demands that the victim append his signature to a promissory note provided by the defendant, he may be guilty of blackmail if he acts with a view to gain although he does not demand any property of the victim. However, demands for sexual intercourse or other acts of a sexual nature are not qualified within the scope of the offence and are dealt with under the Sexual Offences Act.¹⁵

The defendant must, expressly or implicitly, make a demand of the plaintiff to do or refrain from doing something. The nature of the act or

12 *R v Collister and Warhurst* (1955) 39 Cr App R 100, CCA

13 *Treacy v DPP* [1971] AC 537

14 *Criminal law*, David Ormerod. p. 897

15 *Ibid*

omission demanded is immaterial. In the case of *Collister and Warhurst*¹⁶, two police officers intimated to the plaintiff that he would be prosecuted for an offence and arranged to meet him the following day intimating that the report of the offence would be held up and was to be filed only if the plaintiff failed to keep the appointment. At that meeting Warhurst asked the plaintiff if he had brought anything with him, and the plaintiff handed him £5. Collister and Warhurst were convicted of demanding money with menaces contrary to section 30 of the Larceny Act 1916, the judge having directed the jury that they did not need to be satisfied that there had been express threats or demands it being sufficient that:

'The demeanour of the accused and the circumstances of the case were such that an ordinary reasonable man would understand that a demand for money was being made upon him and that that demand was accompanied by menaces... so that his ordinary balance of mind was upset...'

It is enough that the demand is made regardless of whether the plaintiff complies with it. A problem may arise, however, in deciding when or where a demand has been made. In the case of *Treacy*¹⁷, the defendant had posted a letter in England containing a demand to the plaintiff in Germany. The defendant argued that the demand made was made in Germany when the plaintiff read the letter and thus she was not triable in England. The House of Lords had held that by a majority, the demand was made when the letter was posted, not when the letter was made. This would be the same if it was through telex or fax. In verbal demands, the demand would be made the moment the defendant utters the words, even if the plaintiff is deaf, it still applies.

1.2.2 MENACES

With the demand, the menaces may be expressed or implied from the

¹⁶ *R v Collister and Warhurst* (1955) 39 Cr App R 100, CCA

¹⁷ *Treacy v DPP* [1971] AC 537

circumstances.¹⁸ Menaces are not defined in the Act but it has developed a wide meaning under law. In *Thorne v Motor Trade Association*¹⁹, Lord Wright stated:

'I think the word 'menace' is to be liberally construed and not a limited to threats of violence but as including threats of any action detrimental to or unpleasant to the person addressed. It may also include a warning that in certain events such action is intended. '

It is immaterial whether the menaces do or do not relate to action to be taken by the person making the demand. This makes it sufficient that the act may be carried out by someone else. The threats however must cross some threshold of seriousness to constitute 'menaces'. In *Clear*²⁰, Sellers LJ stated that the threat must be 'of such nature and extent that the mind of an ordinary person of normal stability and courage might be influenced or made apprehensive so as to accede unwillingly to the demand'. In the case of *Harry*, Judge Petre directed the jury to acquit as 'menaces' was a strong word and could not be established on the evidence in the case. The accused was the organiser of a Student Rag Appeal who had written to shopkeepers offering immunity from any 'inconvenience' arising from Rag activities.

In the case of *R v Lawrence and Pomroy*²¹, Cairns LJ stated:

'The word 'menaces' is an ordinary English word which any jury can be expected to understand. In exceptional cases where because of special knowledge in special circumstances what would be a menace to an ordinary person is not a menace to the person to whom it is addressed, or where the converse may be true, it is no doubt necessary to spell out the meaning of the word...'

In this case, Pomroy repaired the roof of the house of one Thorn. Thorn was dissatisfied with the work and withheld £70 from the agreed price for the

18 *R v Lawrence and Pomroy* (1971) 57 Cr App R 64

19 *Thorne v Motor Trade Association* [1937] AC 797

20 *R v Clear* [1968] 1 QB 670

21 *R v Lawrence and Pomroy* (1971) 57 Cr App R 64 (CA)

work. One evening Pomroy went to Thorn's house and said: 'Unless you pay me within seven days... you will have to look over your shoulder before you step out of doors'. A few days later Pomroy again went to Thorn's house. This time, Pomroy was accompanied by Lawrence, who was a big man. When Thorn again refused to pay the balance of £70, Lawrence said 'Step outside the house and we will sort this matter out.' When Thorn refused, Lawrence raise menacingly: 'Come on mate, come outside.' At that point, police officers who had been hiding in Thorn's house emerged and arrested the appellants.

In the case of *Garwood*²², The appellant was charged with blackmail. During the deliberations, the jury sent a note to the trial judge asking whether if, to the victim who was timid, the appellant seemed more menacing than in fact he was, it amounted to menaces although others might not have found it menacing. The judge repeated the standard direction on menaces and indicated that the effect on the particular victim should be taken into account. The jury convicted and the defendant appealed.

Held:

The conviction was upheld. Lord Lane CJ said that 'menaces' was an ordinary word of which the meaning would be clear to and jury and only rarely would a judge need to enter on a definition. There were two such possible occasions:

1. where the threats might affect the mind of an ordinary person of normal stability but did not affect the person actually addressed; such circumstances amounted to a sufficient menace: *R v Clear* [1968] 1 QB 670.
2. where the threats in fact affected the mind of the victim although they would not have affected the mind of a person of normal stability; in such circumstances the existence of menaces was proved provided that the accused was aware of the likely effect of his actions on the victim.

'As blackmail is committed when the demand with menaces is made, it does

²² *R v Garwood* [1987] 1 All ER 1032,1034

not matter that the plaintiff is not actually intimidated if the threats would have affected the mind of an ordinary person of normal stability'.²³

1.2.3 UNWARRANTED DEMAND

It is rare that menaces will be a proper mean of reinforcing the demand so that the demand becomes a warranted one under section 21(1) of the theft act. It would not be enough that one is demanding back property to which one is entitled, since the making of menaces is not a proper means of achieving that objective²⁴.

If the defendant demands from the victim that to which he is legally entitled, for example, say a payment of a debt or the return of bailed property, and threatens to institute legal proceedings to enforce the demand, this would not constitute an 'unwarranted' demand as the defendant is simply seeking to do that which he is legally entitled to do. However, if the defendant demands something that he is not entitled to, and is accompanied by menaces, or demands something to which he is entitled but threatens action which he is not legally entitled to use to enforce the demand, his demand may be found to be 'unwarranted'. Whether or not a demand is unwarranted depends on the defendant's belief. The prosecution must prove beyond doubt either (1) that he did not believe he has reasonable grounds for making the demand, or (2) that he did not believe that the use of menaces was a proper means of reinforcing the demand.

Belief in reasonable grounds for making the demand

It is important to take into consideration as to whether the defendant had belied that there was reasonable grounds for making the demand. The

²³ *Ibid*

²⁴ *Sourcebook on Criminal Law*, Michael T. Molan. p.1036

defendant's belief need not be related to law. He may have believed that he was legally justified in demanding payment but the defendant's belief may be that he is morally justified in demanding something. For example, A dies without leaving a will and the defendant, a neighbour who is not entitled to inherit anything on the instancy demands from the plaintiff, A's daughter, some property from the estate believing that she is morally justified in doing so in recognition of all the help she rendered A. If the defendant honestly believes that the help she rendered provides reasonable grounds for her demand, the requirements of section 21(1)(a) are satisfied. The defendant however must also have the belief specified in section 21.(1)(b), 'that the use of the menaces is a proper means of reinforcing the demand'.

Belief that menaces are proper means of reinforcing the demand

The defendant may say that he believed that the plaintiff owed him money, or that he believed he was entitled to certain property, credulity is much more likely to be strained when he states he believed he was entitled to threaten the plaintiff with violence or defamatory disclosures to enforce the demand. If the jury considers that the defendant may possibly have believed that the menaces he used were a proper means of reinforcing the demand, they must acquit.

In the case of *Harvey*²⁵, there was an element of threat being used. If what the defendant threaten is not known to him to be a crime, he may still be convicted if he did not believe it to be socially and morally acceptable as a means of enforcing his demand.

With a view to gain or intent to cause loss

The words gain and loss are defined by section 34(2) of the Theft Act as being limited to gain or loss of money or other property, whether it's temporary or permanent. Demands will be found at charge of blackmail if there was an intent to a gain or cause a loss to another.²⁶ An example would be if the

²⁵ *R v Harvey* (1981) Cr App R 139

²⁶ *Criminal Law*, Micheal Allen. p.517

defendant threatens to expose the plaintiff's adultery to her husband unless she has sexual intercourse with him, this is not blackmail as it does not involve any gain in money or property to the defendant or similar loss to the plaintiff. However, if the defendant had demanded for the same act, but instead of exposing the plaintiff's adultery, the defendant instead asked for money or property on return, this would then fall into blackmail.

Section 34(2) defines gain and loss as provided:

(a) "gain" and "loss" are to be construed as extending only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent; and---

- (i) "gain includes a gain by keeping what one has, as well as a gain by getting what one has not; and
- (ii) 'loss' includes a loss by not getting what one might get, as well as a loss by parting with what one has;

1.3 EXTORTION

Extortion is commonly known as a form of blackmail. It involves a threat of future harm. Extortion is the taking or acquisition of property of another using a threat with an intent to steal the property.²⁷ A threat of future physical harm satisfies the threat element, as do threats can injure another's reputation, business, financial status, or family relationship.

The physical element of extortion is that the accused were to put the victim in fear of injury to the victim or to another person; and this fear induced victim to deliver property to any person. The fault element is the element of intention, where the defendant must intentionally put the victim in fear, and there must also be dishonesty. Extortion can take up in forms of physical and non-violent threats. An example of a physical violent threat would be if the defendant were to threaten the victim to pay a sum of \$2000 otherwise the defendant would cause bodily harm towards the victim or the victim's family.

²⁷ *Criminal Law and Procedure*, Daniel E. Hall. p. 147

A non-violent example of extortion would be seen as blackmail and would be where the defendant threatens to blackmail the victim unless the victim pays the sum of money that the defendant had ordered.²⁸

An honest claim of right will negate the intent to cause wrongful gain or wrongful loss. In an Indian case, the accused had purchased from the government some rights with respect to the gathering of firewood. He misconstrued the extent of the right and demanded for payment from the complainants for some wood that they had gathered. He was found not guilty of extortion on a number of grounds, which included the absence of dishonesty. Even if his belief was unfounded, he did not intend wrongful gain or loss.²⁹

²⁸ *Criminal Law in Malaysia and Singapore*, Stanley Yeo, Neil Morgan, Chan Wing Cheong.
p.414

²⁹ *R v Abdul Kader Valad Bala Abuji* (1866)

CHAPTER II: EXTORTION IN BRUNEI

2.1 INTRODUCTION

Extortion under the legal definition is obtaining a property from another through wrongful use of actual or threatened force, violence, or fear. In extortion, the victim is threatened to hand over goods, or else damage to their reputation or other harm or violence against them may occur. Brunei Darussalam does address extortion as a crime in its Penal Code, Chapter 22. The relevant provisions for extortion can be found in section 383 to 389 of the Penal Code of Brunei Darussalam.

The Brunei Penal Code states extortion under section 383³⁰:

(383). Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed, which may be converted into a valuable security, commits "extortion".

This chapter will discuss the types of extortion that occurs in Brunei Darussalam. It will discuss where the law in Brunei Darussalam stands on extortion by referring to past cases and judgements that had taken place in Brunei Darussalam and also by referring to Chapter 22 of the Penal Code on its definition and punishments for extortion. Extortion can be found in the sections 383 till 389 of Chapter 22 of the Penal Code.

2.2 EXTORTION IN BRUNEI DARUSSALAM

To obtain a better understanding of how the act of extortion is treated in Brunei Darussalam, I have conducted my research by looking for past cases within not only the UNISSA library, but also the library of the Attorney

³⁰ Laws of Brunei, Chapter 22 Penal Code 1951

General Chambers to find cases in which the charges involved extortion.

One of the most recent cases would be the case of *PP v Adimodaamin Bin Moktal*³¹, where the defendant was guilty under 5 charges. The first charge was extortion, while the other four consisted of impersonating an Enforcement officer, committing mischief, causing criminal intimidation and causing rape. The defendant has been found guilty on all five charges. In order for the defendant to commit extortion, he had threatened another man, name Solimin with a prosecution of a criminal case against him, which is seen as an offence punishable under section 385 of the Penal Code.

In this case, the defendant had asked for money that amounted to a total of \$1,000. At the end, the money was not paid to the defendant. As regard to the offence punishable under section 385 of the Penal Code, the law provides for an imprisonment of not less than three years and not more than five years and mandatory whipping. It was taken into consideration that the defendant did not receive the money that he had intended to extort, and was therefore sentenced to three years of imprisonment and two strokes of whipping. This sentence was given a minimum because the defendant did not manage to get a gain financially from his attempt to carry out extortion. However, since the defendant has been charged for five charges the judge sentenced the defendant to 16 years of imprisonment and 10 strokes of whipping. In this case, the prosecution had to prove three key elements, to prove to the court that the defendant was guilty of the first charge, which was extortion. The prosecution had to prove that the defendant had put the person in fear, that the fear was regarding some form of injury and that the defendant did the first two acts in order to commit extortion. The defendant has committed extortion by putting Muhamad Solimin bin Samsi, the plaintiff, in fear of injury to his reputation by threatening to proceed with a criminal case against the plaintiff. The defendant had knowledge that the plaintiff, Solimin, was having a sexual affair with a Miss X, even though the plaintiff was married to a Miss Wahyuni. The defendant posed as an immigration officer and had joined in conducting an ambush in the apartment that the plaintiff was

31 *PP v Adimodaamin Bin Moktal* [2011] JCBD

living in. In this apartment, there were immigrants living there, which would explain why there were immigration officers conducting an ambush. The defendant threatened to bring the plaintiff and his wife to his 'office' because the plaintiff admitted that he had committed adultery with Miss X. The plaintiff and his wife requested the defendant not to take such actions, and then the defendant agreed to not carry out further action provided that they paid him a 'fine' of \$1,000. The defendant wanted the money to be paid directly to him, by the plaintiff's wife, by which he would collect from the plaintiff's wife's work place the following day. The defendant was also found guilty of raping Miss X by causing criminal intimidation and by threatening to send her back to Indonesia. Miss X did not fight back because she was afraid that she would be harmed by the defendant. According to the law, penetration without consent is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Another case would be the case of Sukaji Arianto³², the appellant was convicted on his own pleas to the commission of an offense of extortion contrary to section 385 of the Penal Code. The appellant wrote a letter to his employer threatening to kidnap her grandchildren unless she paid a sum of \$40,000. After the employer had made a police report the appellant confessed to her that he had written the letter. He also told the police that he wrote the letter because he was upset with his employer for scolding him frequently. The appellant was sentenced to three years of imprisonment and two strokes of corporal punishment, or whipping.

In the case of Goh Wei Seng³³, the respondent and another man were charged with extortion under section 386 of the Penal Code. The proceedings against the other man were discontinued, and an amended charge under section 386 was preferred against the respondent. On the second day of the trial an alternative charge under section 385 was added, and to that the respondent pleaded guilty. He was sentenced to three years imprisonment and two strokes of whipping with the rattan. Three years is the minimum term

³² *Sukaji Arianto v Public Prosecutor* [2001] JCB D

³³ *Public Prosecutor v Goh Wei Seng* [2000] II JCB D

allowed by the law in Brunei Darussalam. The respondent used the name "Wong" and telephoned from Kuching to Mr Lee Boon Leng, a legal practitioner, and said that he (the respondent) had been hired to cut off Mr Boon's limbs and to injure two of his colleagues, but that he would not do this if he were paid money. After negotiating, Mr Boon agreed to pay \$5,000 immediately and another \$3,000 after Chinese New Year. The money was to be remitted by telex to an address in Kuching. During the next three days the respondent repeatedly telephoned to Mr Boon to remind him of the seriousness of the matter and insisting that the police should not be informed. Mr Boon however, told him that there were problems with regard to a bank transfer, and the respondent then said he would come to Brunei Darussalam to collect the money the next day. The respondent then did come to Brunei and contacted Mr Boon to obtain his home address. The respondent then went to the house and identified himself as "Wong" to Mr Boon and was handed an envelope containing a total of \$5,000 in cash. He said that he would contact him later that day about the balance of \$3,000. At this point, the police who had been observing from a distance came and arrested the respondent.

The discretion of the Judge as to whether to discount a sentence where the defendant is a first offender. In this case, the charge had been reduced but the respondent subsequently admitted facts which clearly showed that the greater offence had been committed. It would not have been surprising if the Judge had declined to make a further discount, but he took a lenient course. It was seen that the sentence was more lenient than one might have imposed, but was nevertheless within the bracket which a Judge might reasonable think appropriate.

In one more case, where there are five defendants³⁴, D1, D2 and D4 pleaded guilty to kidnapping, contrary to section 365 read with section 34 of the Penal Code. D3 pleaded guilty to abetting the kidnapping under the same section. D1, D2, D3 and D4 pleaded guilty to extortion contrary to section 385, also read with section 34 of the Penal Code. The situation of the case was

³⁴ *Public Prosecutor v Wong Kok Sein @ Ramos @ Remus @ Ah Sin, Lee Hung Cher @ Lee Han Tee, Loke Weng Yew @ Robin, Lim Sey Khim, Lim Kheng Huat* [1987] JCB

that, on the evening April 8th, 1987, the victim, a 12 years old boy was kidnapped near his tutor's flat and bundled into a waiting car. The man who seized the boy was D1. The car was driven by D5, with D4 seated by the side of the boy at the back. On arrival at their destination, the boy was blindfolded and chained to a padlock in the wall in a room. Over the next two days D1 carried out a series of negotiations with the victim's family by telephone. He warned the boy's aunt that unless a ransom was paid to them, the boy would be tied up and abandoned in the jungle. The agreement was that if the family did not come up with the money, the kidnappers would tie up the victim and abandon him in the jungle and they could look for him. D1 did mention that they would not kill the victim, but the aunt did reply that if they failed to find him that would tantamount to killing the boy.

The ransom was originally demanded to be about \$2 million Brunei Dollars, and was eventually reduced to a sum of \$600,000 Brunei Dollars after negotiating. The first half of the sum was to be paid on the night of the 10th of April, and the second half was to be paid the following day. The family then reported the matter to the police.

The Chief Justice, when it came to passing the sentence, noted that the maximum sentence for the offence of kidnapping was 10 years plus a fine, and that for the offence of extortion was 7 years or with a fine or both. He noted that the maximum seem to him to be far too low. Taking all the circumstances into consideration, and in particular the role which each of the defendant played, the Chief Justice imposed the following sentences.

D1 was sentenced to five years for kidnapping and three additional years for extortion, where by D2 was sentenced for six years for kidnapping and three years for extortion. D3 was sentenced to eighteen months for kidnapping and twelve months for extortion, and finally D4 was sentenced to three years for kidnapping and two years for extortion, where each set of sentences are to run concurrently.

On imposing concurrent sentences, the Chief Justice had to say that,

“whilst it is possible to abduct under section 365 without any extortion under section 385, the two normally go together, except in the case of abduction for political purposes. In this case, the kidnapping was executed purely for the purpose of extortion and, not without reluctance, I have decided to impose concurrent sentences on the first four defendants”.

In Brunei Darussalam, the number of extortion cases are still on the rise. Most of them involves situations where the offenders impersonates government officials and has the tendency to take place and not be reported as the people who are being extorted are afraid of what would happen to them if they were to turn to the authorities and ask for help. This issue is very common and I believe that the community needs to be aware of their rights in order for them to know their rights and what they can do to prevent being extorted.

2.3 THE POSITION IN BRUNEI DARUSSALAM

This part of the chapter will discuss the punishments that the law in Brunei Darussalam will carry out to those who commits extortion and what the law decides fit. I shall be referring to Brunei's Penal Code, which would be Chapter 22, of the Laws of Brunei. The punishments for extortion can be found from section 384 till 389 of the Penal Code. It is important to understand the definition of extortion that falls under this jurisdiction, to fully understand it and ensure that there is no room for confusion as to whether the act carried out if an offence or not.

The act of extortion is defined in section 383 of the Penal Code, where it states that, 'whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed, which may be converted into a valuable security, commits "extortion".' There are four illustrations available in the penal code to help better understand what is meant by extortion. One of these four illustrations

would be where, 'A' threatens to publish a defamatory libel concerning 'Z' unless 'Z' gives him money. He thus induces 'Z' to give him money: 'A' is now seen to have committed extortion.

The punishments for extortion can be found from section 384 to 389. Section 384 stated that the punishment for extortion would be imprisonment of the offender and would also be liable to whipping. It was stated that whoever commits extortion shall be punished with imprisonment for a term of not less than 2 years and not more than 7 years and with whipping. The judge has the power to sentence the offender to what the judge deems fit as long as the period of imprisonment is not less than 2 years and that if the punishment of whipping were to be involved, the imprisonment sentence should not exceed the amount of 7 years.

Section 44 of the Penal code, defines injury as 'any harm whatever illegally caused to any person, in body, mind, reputation, or property'. In extortion, the prosecution needs to show to the court that the defendant intended to cause fear to the victim through illegal means. 'Illegal' is defined in section 43 of the act where it is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action: and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

Putting person in fear of injury in order to commit extortion is another offence under the penal code. Its punishment is found in section 385, where whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear of injury, shall be punished with imprisonment for a term of not less than 3 years and not more than 5 years and with whipping. Putting a person in fear is an offence, and the fear of being put in injury in order to commit extortion makes it an offence under extortion.

Extortion by putting a person in fear of death or grievous hurt is an **even more serious offence**. The punishment would be more stern towards this **offence** as to when one puts a person in fear of injury in order to commit

extortion. Section 386 states that whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment for a term of not less than 5 years and not more than 15 years and with whipping. Here it means that the punishment must not be less than 5 years of imprisonment and if whipping is involved in the sentence, then the imprisonment period must not exceed 15 years in total.

The punishment for putting a person in fear of death or of grievous hurt, in order to commit extortion can be found in section 387, where whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment for a term of not less than 3 years and not more than 15 years and with whipping.

Extortion by threat of accusation of an offence punishable with death or imprisonment is also deemed as an offence under the penal code. It states that whoever commits extortion by putting any person in fear of an accusation against that person or any other of having committed, or attempted to commit, any offence punishable with death, or with imprisonment for a term which may be extended to 10 years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment for a term which may extend to 10 years and with whipping; and if the offence be one punishable under section 377 of this Code, the imprisonment may extend to 15 years.

Lastly, the final punishment found in the penal code is putting a person in fear of accusation of offence, in order to commit extortion is punishable under section 389, where whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation against that person or any other person of having committed, or attempted to commit, an offence punishable with death, or with imprisonment for a term which may extend to 10 years, shall be punished with imprisonment for a term which may extend to 10 years and with whipping; and if the offence be punishable under section 377 of this Code, the imprisonment may extend to 15 years.

CHAPTER III: DOES THE LAW PROVIDE JUSTICE TO BLACKMAIL AND EXTORTION VICTIMS?

3.1 THE LAW'S VIEW ON BLACKMAIL AND EXTORTION

Blackmail is obtaining property from another due to future threats of physical injury, property damage, or exposure to ridicule or criminal charges. Blackmail has in fact become synonymous with extortion, that most jurisdictions have replaced the older term of “blackmail” with “extortion”. Although “blackmail” may be synonymous to “extortion”, there are still differences between the two. “Blackmail” and “extortion” have different origins. In modern usage blackmail differs from extortion in that the money or other valuable object or act is not extorted by threat of direct bodily harm, but by the threat of revealing something presumed to be injurious to the victim.

Blackmail is derived from the European terms for money or payment. The term had originated in reference to the “protection money” demanded by clan chieftains from Scottish farmers in exchange for leaving them alone. The “mail” part of blackmail derives from Middle English *male*, “rent, tribute.” Old English “*mal*” meant “lawsuit, terms, bargaining, agreement.”³⁵ The “black” of blackmail refers to association of the color black with evil. The “black” is believed to reflect the illegal nature of the payments and also may refer to the metal in which the payment was made. An example of “blackmail” would be where a woman ended up having an affair with a man named 'D', and ended the affair. 'D' then claims that he would sell sexually explicit photos of the woman and her new boyfriend if she did not give money to 'D'. Here there is a threat to damage the woman's reputation.

Extortion was originally limited to unlawful taking of property by abuse of a public office or an official position.³⁶ This applies to the U.S federal extortion law, that is called the *Hobbs Act* (1946)³⁷. It is seen as a crime that

³⁵ www.dailywritingtips.com/extortion-and-blackmail. November 03, 2012

³⁶ *Organized Crime in Our Times*, Jay S. Albanese, p. 71

³⁷ Hobbs Act (1946)

takes place “under colour of official right.” It has to be shown that a government official improperly induced a payment from another in return for the official's explicit act or promise. Under most statutes, extortion has been extended beyond acts by public officers.

Some jurisdictions require that the property actually be obtained in order to complete the crime of extortion, where as other jurisdictions require only the threat and proof that the defendant intended to carry out the threat, placing the victim in fear. It is required for the act of blackmail or extortion to involve a threat of future harm. The nature of the harm can be in any form, it can be in the form, but varies between jurisdiction. The threat can come in the form of causing bodily harm, damage to property, damage to reputation, criminal accusations or even an abuse of public office. The threat, must be serious enough to place a reasonable person in fear, and if the threats happen in the form of a joke or insincere, they will be judged according to a reasonable standard.

Extortion can be distinguished from Robbery, There are similarities between the offences of extortion and robbery. The crime of extortion is often related to robbery as both crimes share the element of an acquisition by means of force or fear. Robbery requires a “felonious taking” which would mean a specific intention to permanently deprive the victim of the property. It is taking of property that does not belong to the offender by force. Extortion however does not require the proof of this element.³⁸ Extortion however needs a written or verbal threat whereas robbery can occur without any verbal or written threat.

Claims of right in extortion and robbery

The principles relating to dishonesty applies in the same way to extortion as to other property offences.³⁹ For a charge of robbery, the prosecution must prove that the accused was guilty of either theft or extortion. A *bona fide* claim of

³⁸ *Criminal Law*, John M. Scheb, II Ph.D.. p.206

³⁹ *Criminal Law in Malaysia and Singapore*, Stanley Yeo, Neil Morgan, Chan Wing Cheong. p.415

BIBLIOGRAPHY

English Reference:

British Theft Act 1968.

Laws of Brunei, Chapter 22 Penal Code 1951

Hobbs Act (1946)

Malaysian Penal Code, Act 574

Singaporean Penal Code, Chapter 224 .

Merriam-Webster. *Merriam-Webster's dictionary of law*. 1996.

Frank Schmalleger, Daniel E. Hall, John J. Dolatowski (2009). *Criminal Law Today* (4th ed.). Prentice Hall. p.271–272

W Winder, 'The Development of Blackmail' (1941) 5 MLR 21; G Williams, 'Blackmail' [1954] Crim LR 7; J Lindgren, 'The Theory, History, and Practice, of the Bribery-Extortion Distinction' (1993) 141(5) U Pa L Rev 1695; M Hepworth, 'The British Concept of Blackmail' (1975) Int J of Criminology and Penology 1.

David Ormerod. *Criminal law*.

Catherine Elliott and Frances Quinn. *Criminal Law*.

Michael T. Molan. *Sourcebook on Criminal Law*.

Micheal Allen. *Criminal Law*.

Daniel E. Hall. *Criminal Law and Procedure*.

Stanley Yeo, Neil Morgan, Chan Wing Cheong, *Criminal Law in Malaysia and Singapore*.

Jay S. Albanese. *Organized Crime in Our Time*.

John M. Scheb . *Criminal Law*, II Ph.D.

“The second Paradox of Blackmail”

Fletcher (1985. p 1269)

Diego Garnetta. *The Sicilian Mafia: The Business of Private Protection*. Melbourne Crime, 2008.

Ryan Richard Thoreson. Responding to blackmail and extortion as Human Rights violations.

R v Harry [1974] Crim LR 32

R v Harvey (1981) Cr App R 139

R v Collister and Warhurst (1955) 39 Cr App R 100, CCA

Treacy v DPP [1971] AC 537

Lawrence and Pomroy (1971) 57 Cr App R 64

Thorne v Motor Trade Association [1937] AC 797

R v Clear [1968] 1 QB 670

R v Garwood [1987] 1 All ER 1032,1034

R v Abdul Kader Valad Bala Abuji (1866)

PP v Adimodaamin Bin Moktal [2011] JCBD

Sukaji Arianto v Public Prosecutor [2001] JCBD

Public Prosecutor v Goh Wei Seng [2000] II JCBD

Public Prosecutor v Wong Kok Sein @ Ramos @ Remus @ Ah Sin, Lee Hung

Cher @ Lee Han Tee, Loke Weng Yew @ Robin, Lim Sey Khim, Lim Kheng

Huat [1987] JCBD

Langham v R (1984) 36 SASR 48

Lee Choh Pet v PP [1972] 1 MLJ 187

Sarjit Singh Rapati v PP [2005] 1 SLR 638