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Claiming Trial – Implications – Procedure

Criminal Law Practice Series

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“Genuine Remorse”

What Is the implication of choosing either to plead guilty or to claim trial?

As a start, after being formally charged in Court, an accused has two (2) options; (a) to plead guilty and (b) to claim trial.

Where one chooses to plead guilty to the charges, an accused is effectively saying that he / she admits to committing the offence(s) in question.

On the other hand, by choosing to claim trial, an accused is contesting such charges leveled against him / her and stating that he / she is in reality innocent and should be acquitted.

Remorse-Based Approach

Where an accused chooses to plead guilty timeously, there is basis for that accused to request for a discount to his / her sentence.

That said, the Court in **Angliss Singapore Pte Ltd v PP** [2006] 4 SLR 653 clarified that a plea of guilt will only have mitigating effect when it is motivated by *genuine*

Claiming Trial v. Pleading Guilty

remorse, contriteness or regret and/or a desire to facilitate the administration of justice.

Claiming Trial – Lack of Remorse?

Where an accused has claimed trial and prevails at the end of the trial, that accused will be acquitted.

However, where the Court rules against the accused, that accused will still be convicted and sentenced for the offence(s). Typically, in such instances, it will be harder for the accused to thereafter claim to be remorseful and request for a discount to his / her sentence.

Be that as it may, the Court in **Thong Sing Hock v Public Prosecutor** [2009] SGHC 47 clarified that; “An accused is entitled to claim trial. Although an accused who pleads guilty may usually expect a discount, it does not follow that the court can impose a heavier sentence merely because he had elected to contest the charges instead. The mere fact of claiming trial is not an aggravating circumstance. ...”.

Trial Procedure

Once an accused indicates that he / she intends to claim trial, the particular matter will be fixed for Pre-Trial Conferences ("PTCs").

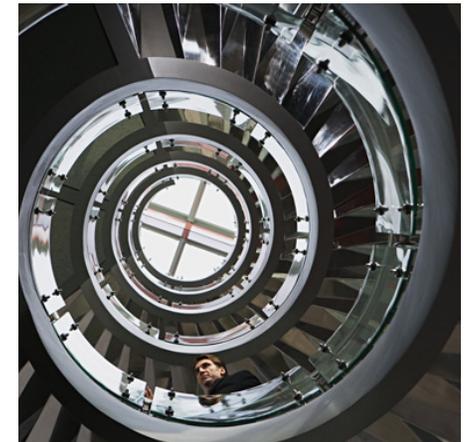
PTCs are administrative hearings where a judge will ensure that all logistical, administrative matters, etc., have been complied with before fixing trial dates for the matter (e.g. deciding how many days the trial will take). In general, a criminal trial proceeds in the following stages:-

- a) **The Prosecution's Case;** The Prosecution will start the trial by calling various witnesses and adducing evidence to satisfy the Court that the accused did in fact commit the offence(s) in question. The Prosecution must prove its case **beyond all reasonable doubt**.
- b) **Calling of Prosecution's Witnesses;** The Prosecution has an unfettered discretion as to whether to call or use any witness and as to the order in which to call its witness(es).
- c) **Order of Examination (Prosecution);** The Prosecution will first pose questions to its witness(es) to establish their case (Examination-in-Chief), thereafter, the Defence Counsel will pose questions to "test" the Prosecution's evidence (Cross-Examination), finally the Prosecution

will round up by asking its witness(es) a final round of questions (Re-Examination).

- d) **Close of the Prosecution's Case;** Once the Examination-in-Chief, Cross-Examination and Re-Examination of all the Prosecution's witnesses are done, the Prosecution will have to close its case.
- e) **The Defence's Case;** Once the Prosecution closes its case, the Defence will call its witness(es) and adduce such relevant evidence to establish its Defence and try to convince the Court that the accused should be acquitted.
- f) **Order of Examination (Defence);** The order in which each of the Defence's witnesses are questioned mirrors that of the Prosecution's witnesses. The only difference of course is that the Prosecution will cross-examine the Defence's witnesses.
- g) **Close of Trial;** After the last Defence witness has given evidence and any rebuttal witnesses have been examined the Defence and the Prosecution may be called upon to provide written submissions (citing the law and evidence adduced at trial) of their respective positions.
- h) **Judgment;** Upon reviewing the evidence and law, the Court will decide whether to convict or acquit the accused.

**"Examination-in-Chief,
Cross Examination,
Re-Examination"**



Appeals

Generally, after electing to plead guilty, one cannot thereafter appeal against his/her conviction and may only appeal against his/her sentencing (exceptions apply). That said, the Prosecution may also file for an appeal if it takes the view that the sentence of an accused is too light.

In a claim trial scenario, where an accused is eventually convicted by the trial judge, that accused may appeal against such conviction to an appellate Court. Likewise, where an accused has been acquitted, the Prosecution may appeal against such acquittal.

There are typically two (2) steps to file for an appeal; (1) to file a Notice of Appeal and, thereafter, (2) to file a Petition of Appeal. There are strict timelines for one to adhere to in order to file an appeal, an accused is strongly advised to seek timely legal advice to ensure that he / she will not miss such deadlines and, thereby, compromise their rights to appeal.

Generally, an appeal will be considered based on the evidence on record (i.e. evidence adduced in the trial Court or Court below). Strict guidelines will have to be satisfied before the Court will allow fresh evidence to be admitted.



For more information on the article, or if you wish to learn more about the topics discussed, please contact:-

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