



Plea BARGAINING

By Claudia Lau, Tan Swee Kiow, Thamil Durai a/l Chelliah

September 2021

Introduction

“A, a 26 years old jobless man with three children, was charged under Section 380 of the Penal Code for stealing six packs of cheese worth RM156.00 in a groceries shop in Taman X on 1 January 2018 at 5pm. This charge carries, upon conviction, a maximum of ten years imprisonment and a fine, and for a second or subsequent offence, shall be punished with imprisonment and shall also be liable to fine or to whipping. A was found guilty to the charge. A pleaded a lenient sentence as he is jobless and has a family to support. The Deputy Public Prosecutor asked for apt punishment. Since A was a first-time offender, the Magistrate meted out a six months imprisonment and a fine of RM1,500.00.”

“B is a 45 years old businessman. B misappropriated funds from a company. The Prosecutor found that B has channelled RM1.25 billion from the said company to his account. B was charged under section 4(1)(a) of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001. For committing a money laundering offence, upon conviction, B shall be liable to a maximum imprisonment of fifteen years and a fine of not less than five times the sum of an unlawful activity or RM5 million, whichever is the higher. B reached a settlement with the Prosecutor to drop charges against him; by returning 43% of the RM1.25 billion equivalent to RM465 million and an unspecified amount of fine to the company. B was discharged without formally being acquitted.”

When we read about cases similar to the above examples, many of us instantly feel a sense of injustice over such outcomes. We sympathize with poor A who was imprisoned for six months and fined RM1,500.00. We are upset that B walked away even without returning the balance of 57% from the RM1.25 billion. B’s case is the result of plea bargaining. To enlighten readers on the above situations, this article endeavours to share some general information on plea bargaining in Malaysia.

Benefits of a Plea Bargaining

Plea bargaining refers to the agreement which a prosecutor and a defendant entered into in a criminal case. It is a common procedure between a prosecutor and a defendant. In reality, there is a need for plea bargaining to take place due to situations such as the prosecutor having too many cases pending trial or lacking manpower and resources. As for the defendant, he can expect a lesser penalty from the plea bargaining. The benefits for both parties are that they can reach an agreement in a short time with certainty on the case outcome. Even with the trial on, there is no guarantee which party will eventually win the case.



Types of Plea Bargaining

There are three types of plea bargaining in Malaysia. In a charge bargaining, for example, a prosecutor charged a defendant with murder, but the defendant pleaded guilty to manslaughter which is a lesser serious crime than the murder charge. If accepted, the prosecutor shall dismiss the murder charge. In a sentence bargaining, both prosecutor and defendant agree to a lesser punishment on condition that the defendant pleads guilty to a new charge against him. Once the court accepts the prosecutor's recommendation for a lesser punishment, the defendant can avoid serving more years in prison. As for fact bargaining, this is the least common. This bargaining involves both prosecutor and defendant to agree on certain facts in the case; especially on certain elements which the prosecutor might have difficulty proving to convict the defendant. The defendant agrees with the prosecutor to omit such an element in return for a charge with lesser punishment.

Criminal Procedure Code (Amendment) Act 2012 of Malaysia

The amendment of the above Act in 2012 provided a pre-trial conference. Section 172C allows a prosecutor and a defendant, on a voluntary basis, to enter into a plea bargaining on a charge or a sentence. As per section 172D, once both parties agree to a new charge, the defendant has to plead guilty to the agreed new charge; the court will then pass a sentence based on the new charge.

Conclusion

The plea bargaining process is for a defendant to seek a lesser punishment on an agreed new charge. On scrutiny, the criminal procedure code does not provide for plea bargaining on an acquittal, a conditional discharge or an unconditional discharge. As such, a defendant cannot seek a discharge not amounting to acquittal. Hence, the discharge of a defendant is the power of the attorney-general who has the sole discretion to prosecute a defendant. For a defendant under a conditional discharge, his charge could be revived against him should he fail to meet the conditions of his discharge. From a moral standpoint, the unjust feeling that arose from the two examples provided is fully understandable.

Dr Claudia Lau is an Assistant Professor from the Department of Business at Faculty of Business and Finance, Universiti Tunku Abdul Rahman. To contact her, email: lausm@utar.edu.my.

Dr Tan Swee Kiow is an Assistant Professor from the Department of Commerce and Accountancy at Faculty of Business and Finance, Universiti Tunku Abdul Rahman. To contact her, email: sktan@utar.edu.my.

Mr Thamil Durai a/l Chelliah is a Lecturer from the Department of Business at Faculty of Business and Finance, Universiti Tunku Abdul Rahman. To contact him, email: thamildc@utar.edu.my.

Universiti Tunku Abdul Rahman
Centre for Corporate and
Community Development
Jalan Sungai Long
Bandar Sungai Long
Cheras
43000 Kajang
Selangor Darul Ehsan

Tel: +603 9019 8088
Mobile: +6016 223 3563

Universiti Tunku Abdul Rahman
Centre for Corporate and
Community Development
Heritage Hall Building, First Floor
Jalan Universiti
Bandar Barat
31900 Kampar
Perak Darul Ridzuan

Tel: +605 468 8888 ext: 2568
Mobile: +6016 261 8830

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 cccd@utar.edu.my
 cccd.utar.edu.my



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