

<b>Table of Contents</b>	<b>TAB</b>
Indictment Paper	1
U.S. Federal Rules of Criminal Procedure Rule 7	2
United States Fifth Amendment to the Constitution	3
U.S. Federal Rules of Criminal Procedure Rule 6	4
41 American Jurisprudence, Second Edition Indictments §90	5
Frisbee vs. US 157 US 160	6
Archbold Criminal Pleading, Evidence and Practice 2004	7
Canadian Criminal Code of Procedure R.S. 1985, C-46	8
French Code of Criminal Procedure	9
German Code of Criminal Procedure	10

## I. Indictments in the Different Jurisdictions

In most common law countries, a criminal trial cannot start until an issuance of a bill of indictment.<sup>1</sup> Each country issues the bill of indictment differently.<sup>2</sup> The issuance of the bill of indictment starts the accusatory process of a trial.<sup>3</sup>

While in Civil Code countries an indictment maybe called different things. In France an information is like common law countries indictments.<sup>4</sup> While in Germany it is called a preferment.<sup>5</sup> An information states what the accused is charged with.<sup>6</sup> While a preferment states what the accused will be charged with if allowed to go to trial.<sup>7</sup>

A major difference between common law and civil code countries is what the indictment process triggers. In common law countries the indictment triggers the start of the accusatory process.<sup>8</sup> While, in civil code countries the indictment triggers the start of an investigatory process.<sup>9</sup>

---

<sup>1</sup> See United States Constitution Fifth Amendment, Archbold's 1. Indictment I. Definition §1-1; Canadian Criminal Procedure Code, R.S. 1985, c. C-46

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> FCCP Chapter II The Indictment Division

<sup>5</sup> German Code of Criminal Procedure §158

<sup>6</sup> FCCP Chapter II The Indictment Division

<sup>7</sup> German Code of Criminal Procedure

<sup>8</sup> See United States Constitution Fifth Amendment, Archbold's 1. Indictment I. Definition §1-1; Canadian Criminal Procedure Code, R.S. 1985, c. C-46

<sup>9</sup> FCCP Chapter II The Indictment Division, German Code of Criminal Procedure Part Two Proceedings at First Instance Chapter 1 Public Charges §151 Hereinafter Germ. Crim. Pro. Code Part 2 Ch. 1 §151

In both the civil code and the common law countries the public prosecutor starts the indictment process, although through different means.<sup>10</sup> In code countries the prosecutor gives an application to the court to start the investigation against the accused and to issue either a preferment or an information.<sup>11</sup> While in the United States the prosecutor generally calls a grand jury to issue an indictment and to start the investigation process, most other common law countries do not have grand juries.<sup>12</sup> In Canada after the indictment is issued to the court the magistrate starts the investigation process.<sup>13</sup>

In Civil Code countries the only other person who can start an indictment process is the victim of the crime and that is generally through the prosecutors office.<sup>14</sup> If a criminal act has occurred the prosecutors in France and Germany must investigate and take action in the cases if there is sufficient information.<sup>15</sup>

In the United States and the United Kingdom the investigation into the indictment is decided in private and the defendant receives the information from the investigation after the indictment is signed and issued by either the jury foreman or the magistrate.<sup>16</sup> While in Canada during the investigation phase the defendant or the defendant's counsel can question the prosecutions witnesses.<sup>17</sup>

---

<sup>10</sup> U.S. Federal Rules of Criminal Procedure, Archbold IV. The Form of An Indictment C. Three Parts 2. Statement and particulars of offence §1-115 See also Indictment Rules 1971, r.4; FCCP Chapter II The District Prosecutor Article 41-2, German Code of Criminal Procedure Code Part 2 Ch. 1 §15

<sup>11</sup> See in General French and German Criminal Codes

<sup>12</sup> Federal Rules of Crim. Pro. Rule 6

<sup>13</sup> See Canadian Code of Crim. Pro

<sup>14</sup> FCCP Chapter II The Indictment Division

<sup>15</sup> FCCP Chapter II The Indictment Division, German Code of Criminal Procedure 2 Ch. 1

<sup>16</sup> See Archbold §1-234, Canadian Criminal Procedure Code Article 540 (1) (a)

<sup>17</sup> Canadian Criminal Procedure Code Article 540 (1) (a)

While in Civil Code countries, the indictment process is an investigation process run by the judges of the country.<sup>18</sup> In France the judges are called the investigating judges.<sup>19</sup> These judges sit on an investigating chamber which rules on the case after the investigation is done.<sup>20</sup> In Germany the investigation process is carried out by a commission judge.<sup>21</sup> The prosecutor must decide which court to bring the indictment in.<sup>22</sup> In these two countries the witnesses can be called before the court during this time in order to identify whether the charges on the indictment are correct or not.<sup>23</sup>

All three common law countries allow indictments to be informal.<sup>24</sup> Although in Canada the indictment needs to be on a certain the form it still can contain “popular language” not needing the formalities.<sup>25</sup> While in the United States, it actually states that an indictment need only be informal so as not to confuse with technicalities.<sup>26</sup> United Kingdom, Canada and the United States all require that the indictment be sufficient for the accused to know what he is charged with.<sup>27</sup>

In common law countries the accused’s lawyer has a right to the file after the investigation is done and the indictment is entered, in Code countries the accused

---

<sup>18</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 191

<sup>19</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 191

<sup>20</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions in general

<sup>21</sup> German Code of Criminal Procedure 2 Ch. 1 §173 (3)

<sup>22</sup> German Code of Criminal Procedure 2 Ch. 1 §207 (1)

<sup>23</sup> FCCP Chapter II The Indictment Division, German Code of Criminal Procedure 2 Ch. 1

<sup>24</sup> U.S. Federal Rules of Criminal Procedure 7(5); Archbold IV. The Form of An Indictment C. Three Parts 2. Statement and Particulars of offence §1-114b See also Indictment Act 1915, s.3; Canadian Criminal Procedure Code Article 581 (2) (a)

<sup>25</sup> Canadian Criminal Procedure Code Article 581 (2)(a)

<sup>26</sup> U.S. Federal Rules of Criminal Procedure 7(5)

<sup>27</sup> U.S. Federal Rules of Criminal Procedure 57, Archbold IV. The Form of An Indictment C. Three Parts 2. Statement and Particulars of offence §1-114b See also Indictment Act 1915, s.3; Canadian Criminal Procedure Code Article 581 (3)

also has this right but the lawyer must pay for the copies of the file.<sup>28</sup> They must further pay for the court to deliver the copies of the file to their offices.<sup>29</sup>

In all the countries once the indictment is signed by the grand jury, magistrate, or judge then accused will go trial.<sup>30</sup> If the indictment is not signed then the accused will not go to trial.<sup>31</sup>

## II. Common Law Countries in Depth

### a. United States

In the United States, each state has its own system for indictments, which are issued by a grand jury.<sup>32</sup> In the United States some states employ a charging instrument called an “information” which is issued directly by the prosecutor.<sup>33</sup> While in some states that use indictments grand juries are summoned.<sup>34</sup> Grand juries return indictments if a simple majority votes in favor of the indictment and the grand jury need only find that there is probably cause to believe a crime has occurred and the defendant has committed it.<sup>35</sup>

In addition to state indictments the federal government also has an indictment process for prosecution of federal crimes.<sup>36</sup> Rules governing the indictments are set forth in the Federal Rules of Criminal procedure and relevant case law. There are no formal requirements detailing how to write indictments.<sup>37</sup>

---

<sup>28</sup> Archbold 2004 Chapter 1 The Indictment VII. Preferring Bill of Indictment D. Copy of Indictment for Defendant and Judge §1-234; FCCP Chapter II The Indictment Division

<sup>29</sup> FCCP Chapter II The Indictment Division

<sup>30</sup> See in general all criminal codes of each country

<sup>31</sup> Id.

<sup>32</sup> Criminal Procedure

<sup>33</sup> Criminal Procedure

<sup>34</sup> Criminal Procedure

<sup>35</sup> Criminal Procedure

<sup>36</sup> Federal Rules of Crim. Pro.

<sup>37</sup> Federal Rules of Crim. Pro. Rule 7

Federal criminal cases, if they are felonies, must be brought by indictment as guaranteed by the Fifth Amendment.<sup>38</sup> Under this clause, the possible bases for conviction are limited to those contained in the indictment.<sup>39</sup> The indictment can be narrowed after the grand jury has charged the accused but it cannot be broadened. This aids in alerting the defendant to what charge he has been accused of and what he needs to defend against.<sup>40</sup>

Although there is not an actual code for how indictments in the United States should be written, there are rules on grand juries.<sup>41</sup> Under the United States Federal Rules of Criminal Procedure, Rule 6 states that, “when the public interest requires the court must order that one or more grand juries be summoned.”<sup>42</sup> The grand jury can only indict when at least 12 of the jurors concur.<sup>43</sup> The indictment is then returned to the judge or the magistrate in open court.<sup>44</sup> A lack of concurrence must also be reported to the judge when the indictment is pending.<sup>45</sup> The foreperson must sign the indictment before giving the indictment to the judge, although the lack of a signature is not a basis for invalidating the indictment.<sup>46</sup>

Before the return of the verdict, the grand jury’s proceedings are in private and kept secret from the public.<sup>47</sup> Rule, regarding grand jury secrecy permit attendance only by attorneys for the government, the witness being questioned, an

---

<sup>38</sup> Fifth Amendment

<sup>39</sup> Fifth Amendment “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury.

<sup>40</sup> Federal Rules of Crim. Pro. Rule 6

<sup>41</sup> Federal Rules of Crim. Pro. Rule 6 (a) (1)

<sup>42</sup> Federal Rules of Crim. Pro. Rule 6

<sup>43</sup> Federal Rules of Crim. Pro. Rule 6 (f)

<sup>44</sup> Fed. Rules of Crim. Pro Rule 6(f)

<sup>45</sup> Fed. Rules of Crim Pro. Rule 6 (f)

<sup>46</sup> Fed. Rules of Crim. Pro Rule 6(c) note to it also see *Frisbie v. U.S.* 157 U.S. 160

<sup>47</sup> Fed. Rules of Crim Pro. Rule 6(d)

interpreter when needed and a court reporter.<sup>48</sup> The defendant's attorney is not allowed in the grand jury proceedings at all.<sup>49</sup>

Modern federal indictment practice is designed to be non-technical.<sup>50</sup> Rule seven of the Federal Rules of Criminal Procedure was created to "eliminate technicalities in criminal proceedings."<sup>51</sup> Under early common law, the technical requirements for an indictment were strictly enforced and their absence invalidated the charge.<sup>52</sup> The rule now is designed for practical rather than technical considerations.<sup>53</sup> As in other common law countries, the indictment needs only to be sufficient as to the offenses being charged.<sup>54</sup> It should be written in "plain ordinary language."<sup>55</sup> This is so that "specific justice may not be defeated by subservience to technicalities."<sup>56</sup>

Although the indictment need take no particular form each count must charge every element or the essential element of an offense.<sup>57</sup> The indictment must charge all essential ingredients of the crime, in order to inform the defendant of the offenses with which he is charged, and to protect the defendant from double jeopardy.<sup>58</sup> Indictments can include occurrences that are not mentioned in the complaint.<sup>59</sup> All parts of the indictment count must be read together. This means that

---

<sup>48</sup> Fed. Rules of Crim. Pro. Rule 6 (d)

<sup>49</sup> Fed. Rules of Crim. Pro Rule 6(d)

<sup>50</sup> Fed. Rules of Crim. Pro. Rule 7 (5)

<sup>51</sup> Fed. Rules of Crim. Pro. Rule 7 (5)

<sup>52</sup> AM JUR §90

<sup>53</sup> Fed. Rules of Crim. Pro. Rule 7 (1)

<sup>54</sup> AM JUR §90

<sup>55</sup> Am JUR §90

<sup>56</sup> Fed Rules of Crim Pro 7 (1)

<sup>57</sup> Fed Rules of Crim Pro 7 (3)

<sup>58</sup> Fed Rules of Crim Pro Rule 7 Notes of Decisions 57

<sup>59</sup> Fed Rules of Crim Pro Rule 7(4)

each charge needs to be read with every other charge in the indictment not separately.<sup>60</sup>

If the accused knows what crime is being alleged through the indictment, then the indictment is sufficient.<sup>61</sup> Furthermore, if there are minor defects that did not harm the accused the indictment is also considered sufficient.<sup>62</sup> Sufficiency of an indictment is assessed on its face, without consideration of extrinsic evidence.<sup>63</sup> An indictment is insufficient if it can be read as both stating and also not stating an offence.<sup>64</sup>

The court cannot supply language into the indictment where the omitted language was a necessary part of the charge.<sup>65</sup> In addition, a court must accept the various counts in the indictment as factual not looking to any other evidence outside the indictment.<sup>66</sup> Although a court cannot look to outside sources on the indictment if a fact is implied through the allegations made then the fact can be used in deciding whether to indict or not.<sup>67</sup>

When the indictment is tested can also affect sufficiency.<sup>68</sup> The time of the construction of the indictment also plays an important role in the indictment process.<sup>69</sup> If objection is made after verdict or judgment then the indictment is read liberally in favor of its sufficiency.<sup>70</sup> If the objection is after the conviction then

---

<sup>60</sup> Fed Rules of Crim Pro Rule 7 Notes of Decisions 57

<sup>61</sup> Fed Rules of Crim Pro Rule 7 Notes of Decisions 57

<sup>62</sup> Fed Rules of Crim Pro Rule 7 Notes of Decisions 57

<sup>63</sup> Fed Rules of Crim Pro Rule 7 Notes of Decisions 57

<sup>64</sup> Fed Rules of Crim Pro Rule 7 Notes of Decisions 62

<sup>65</sup> Fed Rules of Crim Pro Rule 7 Notes of Decisions 58

<sup>66</sup> Fed Rules of Crim Pro Rule 7 Notes of Decisions 59

<sup>67</sup> Fed Rules of Crim Pro Rule 7 Notes of Decisions 60

<sup>68</sup> Fed Rules of Crim Pro Rule 7 Notes of Decisions 63

<sup>69</sup> Fed Rules of Crim Pro Rule 7 Notes of Decisions 63

<sup>70</sup> Fed Rules of Crim Pro Rule 7 Notes of Decisions 63

everything will be done to support the soundness of the complaint.<sup>71</sup> If the objection is raised prior to trial, then the indictment should be read more strictly than if objected to after trial.<sup>72</sup>

Sufficiency requires that the accused can defend himself on the basis of the charge as stated in the indictment.<sup>73</sup> Further tested by whether the legitimacy of the indictment is “basic to any criminal conviction.”<sup>74</sup> The district court in reviewing the indictment for sufficiency would look to whether there are allegations that can be proven by evidence at a trial to support the conviction under the statute.<sup>75</sup> The sufficiency test is a question of law not fact.<sup>76</sup>

The indictment is valid even if there is not ample or expert evidence.<sup>77</sup> It is enough for the indictment to be valid to have some type of competent evidence even if other evidence is incompetent.<sup>78</sup> Need to at least have some type of proper evidence before the grand jury in order to have a valid indictment.<sup>79</sup>

The scope of the indictment may extend to anything within the court’s subject matter jurisdiction.<sup>80</sup> Probable cause is decided by the grand jury through the indictment.<sup>81</sup> If a grand jury has no power to indict then the court will not have jurisdiction over the defendant.<sup>82</sup>

#### b. United Kingdom

---

<sup>71</sup> Fed Rules of Crim Pro Rule 7 Notes of Decisions 63

<sup>72</sup> Fed Rules of Crim Pro Rule 7 Notes of Decisions 63

<sup>73</sup> Fed Rules of Crim Pro Rule 7 Notes of Decisions 71

<sup>74</sup> Fed Rule of Crim pRo Rule 7 Notes of Decisions 71

<sup>75</sup> Fed Rule of Crim Pro Rule 7 Notes of Decisions 71

<sup>76</sup> Fed Rule if Crim Pro Rule 7 Notes of Decisions 77

<sup>77</sup> Fed Rule of Crim Pro Rule 7 Notes of Decisions 74

<sup>78</sup> Fed Rule of Crim Pro Rule 7 Notes of Decisions 74

<sup>79</sup> Fed Rule of Crim Pro Rule 7 Notes of Decisions 74

<sup>80</sup> Fed Rule of Crim Pro Rule 7 Notes of Decisions 65

<sup>81</sup> Fed Rule of Crim Pro Rule 7 Notes of Decisions 65

<sup>82</sup> Fed Rule of Crim Pro Rule 7 Notes of Decisions 65

In the United Kingdom, a criminal trial cannot start in the crown court until the bill of indictment is issued.<sup>83</sup> “A bill of indictment is a written or printed accusation of crime made at the suit of the Crown against one or more persons.”<sup>84</sup> Two acts control the form and requisites of the indictments: The indictment Act of 1915 “1915 Act” and the Indictment Act of 1971 “1971 Act”.<sup>85</sup>

Generally, crown court staff writes an indictment.<sup>86</sup> However, it is the responsibility of the crown counsel to ensure that the indictment is in proper form before arraignment.<sup>87</sup> The indictment must have separate number counts in separate paragraphs.<sup>88</sup> A “count” is the statement and particulars of each offence being issued by the indictment, although there need not be separate counts for the crime and the lesser crime included.<sup>89</sup> The counts also need not be consistent; thus an indictment may charge inconsistent theories with another count.<sup>90</sup>

According to the 1915 act, an indictment is to have three parts; a commencement, a statement of the offence, and the particulars of the offence.<sup>91</sup> The statement of the offence, as in the United States, is a requirement for sufficient information.<sup>92</sup> The statement of the offence needs to have the specific offence or

---

<sup>83</sup> Archbold Criminal Pleading, Evidence and Practice 2004 (Hereinafter Archbold) 1. Indictment I. Definition §1-1

<sup>84</sup> Archbold I. Definition §1-1

<sup>85</sup> Archbold IV. The Form of Indictment A. Rules as to Indictments §1-108

<sup>86</sup> Archbold IV. The Form of An Indictment B. Drawing the Indictment (1) General §1-110

<sup>87</sup> Archbold IV. The Form of An Indictment B. Drawing the Indictment (1) General §1-110

<sup>88</sup> Archbold IV. The Form of An Indictment C. Three Parts 2. Statement and particulars of offence §1-115  
See also Indictment Rules 1971, r.4

<sup>89</sup> Archbold IV. The Form of An Indictment C. Three Parts 2. Statement and particulars of offence §1-115  
See also Indictment Rules 1971, r.4

<sup>90</sup> Archbold IV. The Form of An indictment B. Drawing the Indictment (4) Inconsistent Counts §1-113a

<sup>91</sup> Archbold IV. The Form of An Indictment C. Three Parts 2. Statement and particulars of offence §1-114b  
See also Indictment Act 1915, s.3

<sup>92</sup> Archbold IV. The Form of An Indictment C. Three Parts 2. Statement and Particulars of offence §1-114b  
See also Indictment Act 1915, s.3

offences which the prosecutor is charging.<sup>93</sup> There also needs to be logical information with the charge.<sup>94</sup>

The particulars of the indictment need to be adequate otherwise the defendant does not know the case that it needs to meet.<sup>95</sup> Particulars are the facts of the case.<sup>96</sup> The defendant can submit an application to have the prosecution offer the particulars in order for the defendant to know his case.<sup>97</sup> Even if a defendant does not submit an application, the court may choose to order the prosecution to submit particulars.<sup>98</sup>

The indictment needs to be preferred from six months when the crime has been committed.<sup>99</sup>

c. Canada

Although Canada is a common law country its pretrial procedure is that of Civil Code countries and the Common law countries. A person is either indicted or stands before a pretrial inquiry.<sup>100</sup> This is before a justice who inquires the charge of the accused and any other indictable offence.<sup>101</sup>

In the preliminary inquiry the justice takes the evidence under oath.<sup>102</sup>

This is done in the presence of the accused and prosecution's witnesses.<sup>103</sup> The

---

<sup>93</sup> Archbold IV. The Form of An Indictment C. Three Parts 2. Statement and Particulars of offence §1-114b See also Indictment Act 1915, s.3

<sup>94</sup> Archbold IV. The Form of An Indictment C. Three Parts 2. Statement and Particulars of offence §1-114b See also Indictment Act 1915, s.3

<sup>95</sup> Archbold IV. The Form of an Indictment C. Three Parts 2. Statement and Particulars of offence §1-116 See also Indictment Rules 1971, r.5

<sup>96</sup> Archbold IV. The Form of an Indictment C. Three Parts 2. Statement and Particulars of offence §1-116

<sup>97</sup> Archbold IV. The Form of an Indictment C. Three Parts 2. statement and Particulars of Offence §1-117

<sup>98</sup> Archbold IV. The Form of an Indictment C. Three Parts 2. statement and Particulars of Offence §1-117

<sup>99</sup> Archbold V. Time for Commencement of Prosecution B. Statutory Limitations on the Prosecution of Offences 1.General Time §1-200

<sup>100</sup> Canadian Code of Criminal Procedure, R.S. 1985, c. C-46 Here in after Can. Crim. Pro.

<sup>101</sup> Can Crim Pro.

<sup>102</sup> Can Crim Pro 540 (1) (a)

accused or the accused's counsel can cross examine the witnesses.<sup>104</sup> Furthermore a record of the evidence given by each witness should be taken.<sup>105</sup> The justice also deposes the witnesses when this occurs the deposition is read to the witness making it, the witness then signs the deposition and the justice signs it.<sup>106</sup>

After the inquiry the justice decides whether there is enough evidence to put the accused on trial for the offence or any other offence that is indictable with regards to the same occurrence of the original charge.<sup>107</sup> When this is done the justice orders the accused to stand trial.<sup>108</sup> Otherwise the accused may be discharged due to lack of evidence to prove the charge or any other indictable charges.<sup>109</sup>

If the justice orders the accused to stand trial, then the justice signs the information giving the charges that the accused shall stand trial for the charges.<sup>110</sup> The justice will then under his power either fixes the date of the trial or the date that the accused needs to be in court to have the trial date fixed.<sup>111</sup> The order will still be valid even if a harmless error has been made on its face.<sup>112</sup> At any time the justice may order the accused to stand trial, but the justice needs the consent of the prosecutor and the accused in order to do this.<sup>113</sup>

---

<sup>103</sup> Can Crim Pro 540 (1) (a)

<sup>104</sup> Can Crim Pro 540 (1) (a)

<sup>105</sup> Can Crim Pro 540 (1) (b)

<sup>106</sup> Can Crim Pro 540 2(a) (1) (2) (3)

<sup>107</sup> Can Crim Pro 548 (1(a))

<sup>108</sup> Can Crim Pro 548 (1(a))

<sup>109</sup> Can Crim Pro 548 (1)(b)

<sup>110</sup> Can Crim Pro 548 (2)

<sup>111</sup> Can Crim Pro 548 (2.1)

<sup>112</sup> Can Crim Pro 548 (3)

<sup>113</sup> Can Crim Pro 549 (1)

A person may be obliged by the justice to give evidence at the accused's trial.<sup>114</sup> The justice can do this under "recognizance" and can also prescribe under "recognizance" things that will secure the witness to attend the trial.<sup>115</sup> This may include having the witness produce one or more sureties or to deposit a sum of money that is adequate to the judge to ensure that this witness is going to appear at the trial of the defendant.<sup>116</sup> If the witness doesn't do this he may be required to stay in jail until he either pays, gives the surety or until the trial is concluded.<sup>117</sup> All evidence, information, dispositions and effects of this nature shall be sent to the clerk or other proper officer of the court that the accused is going to be tried at.<sup>118</sup>

An indictment shall be set forth when there is a trial of an accused for an indictable offence.<sup>119</sup> The indictment shall be written on Form 4 which is a general indictment form, it shows how to set out the particulars and the counts of the indictments.<sup>120</sup> If the accused decides to stand trial without a jury then an indictment on Form 4 may be preferred which means an indictment that in general looks like the one on form 4.<sup>121</sup> A grand jury does not convene; there is no grand jury whatsoever in the Canadian legal system.<sup>122</sup>

The prosecutor may prefer the indictment against any person who has been ordered to stand trial.<sup>123</sup> This means that the preliminary inquiry must have been

---

<sup>114</sup> Can Crim Pro 550 (1)

<sup>115</sup> Can Crim Pro 550 (1)

<sup>116</sup> Can Crim Pro 550 (3) (a) (b)

<sup>117</sup> Can Crim Pro 550 (4)

<sup>118</sup> Can Crim Pro 551

<sup>119</sup> Can Crim Pro 566 (1)

<sup>120</sup> Can Crim Pro 566 (1) See Form 4 attached

<sup>121</sup> Can Crim Pro 566 (1)

<sup>122</sup> Can Crim Pro 576 (2)

<sup>123</sup> Can Crim Pro 574 (1)

done already.<sup>124</sup> The indictment may be preferred on any charge for which the accused was ordered to stand trial or “any charge founded on the facts disclosed by evidence taken on the preliminary inquiry, in addition to or in substitution for any charge on which that person was ordered to stand trial” even if the charges were not included in one information.<sup>125</sup> If the accused consents, then the indictment can include an offence that is not included in either of the previous stated methods.<sup>126</sup> Unless the Attorney General is the prosecutor preferring the indictment, or has intervened in some way, then the indictment must be by written order of the judge sitting in the court that will try the accused.<sup>127</sup>

In the indictment, there will be counts for each transaction and the count must contain substance an account of the offence committed.<sup>128</sup> The account may be in “popular language,” omitting any formal declarations or assertions of items that are not part of what will be proved.<sup>129</sup> As long as it is in language sufficient to give the accused notice of what he is charged with, then the wording of the count is appropriate.<sup>130</sup>

The count should further contain adequate facts of the occurrence of the offence that the accused is charged with.<sup>131</sup> This is in order to give the accused enough information to be able to know what the charge is.<sup>132</sup> Only under certain

---

<sup>124</sup> Can Crim Pro 574

<sup>125</sup> Can Crim Pro 574 (1) (a) (b)

<sup>126</sup> Can Crim Pro 574 (2)

<sup>127</sup> Can Crim Pro 574 (3)

<sup>128</sup> Can Crim Pro 581 (1)

<sup>129</sup> Can Crim Pro 581 (2) (a)

<sup>130</sup> Can Crim Pro 581 (2) in general

<sup>131</sup> Can Crim Pro 581 (3)

<sup>132</sup> Can Crim Pro 581 (3)

sections shall the actual “overt act” be stated in the indictment.<sup>133</sup> For example, a person cannot be charged with high treason or first-degree murder if the indictment does not specifically charge that offence.<sup>134</sup> A statement of the charge exact charge needs to be included in the indictment.<sup>135</sup>

Several types of insufficiencies in wording will not render an indictment in valid.<sup>136</sup> For example, a person allegedly injured by the accused need not be named, the means by which the accused allegedly committed the offence need not be specified, there need be no precise description of any person, place or thing harmed or taken.<sup>137</sup> The facts only need to be adequate enough to show that there is enough evidence for the accused to stand trial.<sup>138</sup>

The indictment may, however require particulars from the prosecutor.<sup>139</sup> This may be done if the court believes it is necessary for a fair trial.<sup>140</sup> The particulars can be used to clarify an actual count that is ambiguous, such as “further describing the means by which an offence is alleged to have been committed.”<sup>141</sup> To determine whether a particular is required, the court can give thought to any evidence that has been taken.<sup>142</sup> If a particular is required, then the court shall delivered the copy to the accused, enter it into the record and the trial will proceed as if the indictment was amended in order with the particular.<sup>143</sup>

---

<sup>133</sup> Can Crim Pro 581 (4)

<sup>134</sup> Can Crim Pro 582

<sup>135</sup> Can Crim Pro 583

<sup>136</sup> Can Crim Pro 587 (1)

<sup>137</sup> Can Crim Pro 587

<sup>138</sup> Can Crim Pro 587 (1)

<sup>139</sup> Can Crim Pro 587 (2)

<sup>140</sup> Can Crim Pro 587

<sup>141</sup> Can Crim Pro 590 (1) (a)

<sup>142</sup> Can Crim Pro 590 (1) (b)

<sup>143</sup> Can Crim Pro 590 (2)

A count can legally be objectionable for two reasons. First if “it charges in the alternative several different matters, acts or omissions that are stated in the alternative in an enactment that describes as an indictable offence the matters, acts or omissions charged in the count.”<sup>144</sup> Which means if the indictment states differently the matters, acts or omissions that were already stated then the count is objectionable.<sup>145</sup> Second, if it is either double or multifarious.<sup>146</sup> The accused can apply to have this type of count either amended or divided due to “it embarrasses him in his defense.”<sup>147</sup> If justice requires this, then the court can order the count to be amended or divided into two or more counts.<sup>148</sup> If there is more than one count in an indictment, then each count will be treated as separate indictment.<sup>149</sup>

An accused can more to quash either the indictment or the count, although this must be done before the accused entered a plea.<sup>150</sup> The court can decide to amend the indictment, or the count, to fix the problem.<sup>151</sup> It can do this either prior to or during the trial of the indictment.<sup>152</sup> The court must amend the indictment when the indictment is preferred under the wrong act of parliament or when there is a failure to state an offence, or when an exception is not negative that should be negated and the indictment is defective in any way.<sup>153</sup> When deciding to amend, the court takes in to all the evidence and the circumstances of the case.<sup>154</sup> Furthermore, the court needs

---

<sup>144</sup> Can Crim Pro 590 (3)

<sup>145</sup> Can Crim Pro 591 (2)

<sup>146</sup> Can Crim Pro 601 (1)

<sup>147</sup> Can Crim Pro 601 (1)

<sup>148</sup> Can Crim Pro 601 (1)

<sup>149</sup> Can Crim Pro 601 (1) (2)

<sup>150</sup> Can Crim Pro 601 (3) (a) (b)

<sup>151</sup> Can Crim Pro 601 (4)

<sup>152</sup> Can Crim Pro 601 (3) (a) (b)

<sup>153</sup> Can Crim Pro 601 (4)

<sup>154</sup> Can Crim Pro 601 (4) (d) (e)

to consider whether injustice will be done or if the accused has been misled or prejudiced against.<sup>155</sup> To amend is a question of law under the Canadian system.<sup>156</sup>

### III. Civil Code Countries in Depth

#### a. France

In France, an indictment is not called an indictment it is instead called an information.<sup>157</sup> The system is set up to allow judges to do the investigations to decide whether a person is to go to trial, when there is not enough information to show that the accused has committed a crime or is the person who committed the crime.<sup>158</sup> The same judge that does the investigation does not partake in the actual criminal trial.<sup>159</sup>

In the French system, the public prosecutor initiates the proceedings.<sup>160</sup> It is solely, up to the prosecutor to decide whether to initiate proceedings.<sup>161</sup> A plaintiff may take civil action before the criminal court also, even if the public prosecutor decides not to initiate the proceedings.<sup>162</sup>

At this point the prosecutor can do one of two things.<sup>163</sup> They can either serve a summons or commit the case to an investigating judge.<sup>164</sup> The only way the prosecutor can serve the summons is if the defendant is known and there is no need of

---

<sup>155</sup> Can Crim Pro 601 (c)

<sup>156</sup> Can Crim Pro 601 (c)

<sup>157</sup> French Code of Criminal Procedure (hereinafter (FCCP)

<sup>158</sup> FCCP Chapter III Article

<sup>159</sup> FCCP Chapter III Article 49

<sup>160</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 194

<sup>161</sup> FCCP First Part Legislative Public Prosecution and Civil Action Article 1

<sup>162</sup> FCCP First Part Legislative Public Prosecution and Civil Action Article 1

<sup>163</sup> FCCP Chapter II The District Prosecutor

<sup>164</sup> FCCP Chapter II The District Prosecutor Article 41-2

further investigation.<sup>165</sup> A case will go to an investigating judge when the accused is unknown, the case is intricate or when the law mandates that the case goes before the investigating judge.<sup>166</sup>

An investigating judge is part of the indictment division.<sup>167</sup> The indictment division is made of three judges known as the investigating chamber.<sup>168</sup> One of the judges is known as the presiding judge who is only part of the indictment division, and two other judges who may serve with the other division of the criminal courts if needed.<sup>169</sup>

If there is a pretrial detention matter, then the case will be prepared by the prosecutor general within forty-eight hours.<sup>170</sup> In this case, the investigating chamber must decide as soon as possible, but in no event beyond ten days from being presented the case.<sup>171</sup> In other cases, the prosecutor general prepares the matter within ten days, and the investigating chamber decides the cases within two months.<sup>172</sup>

If a decision is made to go forward with the case, then there is an arrest warrant issued or the accused is placed in detention.<sup>173</sup> After the decision, the parties and their advocates are informed of the time and location of the hearing.<sup>174</sup> This hearing must be held within forty-eight hours while all others can be held for up to

---

<sup>165</sup> FCCP Chapter III Article 51

<sup>166</sup> FCCP Chapter II

<sup>167</sup> FCCP Chapter III The Investigating Judge Article 50

<sup>168</sup> FCCP Chapter III The Investigating Judge Article 50

<sup>169</sup> FCCP Chapter III The Investigating Judge Article 50

<sup>170</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 194

<sup>171</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 194

<sup>172</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 194

<sup>173</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 215

<sup>174</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 197

five days relating to the time the letter is sent and the time the hearing is set.<sup>175</sup>

Therefore if the person has a trial set for October 10 of 2004 and the letter states the date sent is on September 1 of 2004 the person can only be held for five days between September 1 and October 10.<sup>176</sup> A person not in pretrial detention can be held longer than this time allotment.<sup>177</sup>

At this time, the case file is put in the investigating chamber's court office and is "held at disposal of" the accused's advocates.<sup>178</sup> If the accused's advocates apply to have the case file then, it is delivered to them without hindrance and they must pay for the copies and the delivery.<sup>179</sup> The public cannot see these copies.<sup>180</sup>

Until the day of the hearing, the accused, his advocate are allowed to file reports.<sup>181</sup> They need to communicate this to the public prosecutor and to any other party involved in the matter.<sup>182</sup> Then the hearing is held and the judgment is made in chambers unless requested to be made public.<sup>183</sup> If publicity could hinder the investigation or harm a third party, then this request will be denied.<sup>184</sup> If the chamber concluded that further investigation is needed or the prosecutor or a third party to the

---

<sup>175</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 197

<sup>176</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 197

<sup>177</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 197

<sup>178</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 197

<sup>179</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 197

<sup>180</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 197

<sup>181</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 198

<sup>182</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 198

<sup>183</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 199

<sup>184</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 199

criminal matter asks for additional investigation, the court may permit for this on its own.<sup>185</sup>

The investigating judge relies solely on the case file, and there is no actual indictment given to him as there would be in the common law system.<sup>186</sup> The judge may decide on the case file that there are counts either by a witness or the defendant that need further investigation even if these are not dealt with in this order.<sup>187</sup> This means that if there are counts on the information that need to be clarified either by further investigation or re-questioning of a witness then this is allowed.<sup>188</sup>

Offences between persons are related when several persons were acting together or when committed as a result of conspiracy.<sup>189</sup> This is important because the judge can at any time place a person under judicial examination even if the person has not been referred to it.<sup>190</sup> The only time that this cannot take place is if the person has been given a final discharge order.<sup>191</sup>

After the investigating judge believes that he has seized enough evidence, the investigating chamber examines the lawfulness of the proceedings upon this evidence.<sup>192</sup> A ground of nullity is found if the investigation is incomplete.<sup>193</sup> If a

---

<sup>185</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 201

<sup>186</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 210

<sup>187</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 202

<sup>188</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 202

<sup>189</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 203

<sup>190</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 204

<sup>191</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 204

<sup>192</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 206

“grounds of nullity” is found, then the chamber has three options.<sup>194</sup> First the case can be transferred to the investigating chamber.<sup>195</sup> Second, the case file maybe returned to the original investigating judge.<sup>196</sup> Third, it maybe transferred to another investigating judge.<sup>197</sup> In all of these cases, the investigation will continue.<sup>198</sup>

The presiding judge of the investigating chamber decides within a week whether or not to refer the case to the investigating chamber.<sup>199</sup> If there are grounds for the case to be referred to the investigating chamber, then the judge gives the case file to the prosecutor general.<sup>200</sup> This ruling by the presiding judge is not open to appeal.<sup>201</sup> Once the investigating chamber has the case then the chamber either sends the case to the trial court or indicts the defendant before the assize court.<sup>202</sup> Again, if the decision is not to seize the case then the investigation is sent back to the investigating judge.<sup>203</sup>

---

<sup>193</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 206

<sup>194</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 206

<sup>195</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 206

<sup>196</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 206

<sup>197</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 206

<sup>198</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 206

<sup>199</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 207-1

<sup>200</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 207-1

<sup>201</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 207-1

<sup>202</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 207-1

<sup>203</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 207-1

The investigating chamber makes judgments based on all the facts where there is a “connecting link”.<sup>204</sup> It ensures that the accused has adequate charges lodged against him under judicial examination.<sup>205</sup> “If the investigating chamber considers that the facts of the case do not constitute a felony, a misdemeanor or a petty offence or if the perpetrator remains unidentified, or where there is no case to prosecute.”<sup>206</sup>

If a person, is discharged, then the investigating chamber may order the full or partial order for the discharged to be published in newspapers, periodicals or on TV.<sup>207</sup> The chamber decides which services are chosen for the publication.<sup>208</sup> It further determines what information is allowed to be publicized and what information is not.<sup>209</sup> This can be at the request of the prosecutor or the defendant.<sup>210</sup> The chamber can deny the request only with “reasoned judgment.”<sup>211</sup>

When the order is discharged; then the detained defendant is immediately set free and there is no further judicial supervision.<sup>212</sup> Furthermore, if the case is

---

<sup>204</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 210

<sup>205</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 211

<sup>206</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 212

<sup>207</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 212-1

<sup>208</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 212-1

<sup>209</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 212-1

<sup>210</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 212-1

<sup>211</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 212-1

<sup>212</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 213

referred to the police court, the detained defendant is set free and supervision in this case also ends.<sup>213</sup>

b. Germany

Germany's indictment is called a preferment.<sup>214</sup> As in France, Germany's public prosecutor starts the process.<sup>215</sup> The prosecutor has the authority to prefer public charges.<sup>216</sup> He or she is obliged to act in all criminal offence cases that can be prosecuted if there are enough factual indications.<sup>217</sup>

In order for the investigation by the public prosecution office to start, an application needs to be made to the office.<sup>218</sup> The prosecution office decides whether charges will be preferred by examining both incriminating and exonerating circumstances.<sup>219</sup> The prosecution office has broad discretion concerning how to proceed in the investigation.<sup>220</sup> It can call witnesses to the office, require public officials to give information and use the police to investigate.<sup>221</sup>

The prosecutor may dispense with prosecution in less serious offenses.<sup>222</sup> The court needs to approve this decision, based on the nature of the offender's culpability and the public interest in the proceedings.<sup>223</sup> The accused is called at the latest possible time during the investigation process.<sup>224</sup> It is sufficient for him to

---

<sup>213</sup> FCCP Chapter II The Indictment Division: The Second-Tier Investigating Authority Section 1 General Provisions Article 213

<sup>214</sup> German Criminal Procedure Code Part Two Proceedings at First Instance Chapter 1 Public Charges §151 Hereinafter Germ. Crim. Pro. Code Part 2 Ch. 1 §151

<sup>215</sup> Germ. Crim. Pro. Code Part 2 Ch. 1 §151

<sup>216</sup> Germ Crim Pro Code 2 Ch. 1

<sup>217</sup> Germ Crim Pro Code 2 Ch. 1

<sup>218</sup> Germ Crim Pro Code 2 Ch. 1 §158

<sup>219</sup> Germ Crim Pro Code 2 Ch. 1 §160 (1)(2)

<sup>220</sup> Germ Crim Pro Code 2 Ch. 1 §§161-163

<sup>221</sup> Germ Crim Pro Code 2 Ch. 1

<sup>222</sup> Germ Crim Pro Code 2 Ch. 1

<sup>223</sup> Germ Crim Pro Code 2 Ch. 1

<sup>224</sup> Germ Crim Pro Code 2 Ch. 1 §163A(1)

respond in writing, but if he applies and proves that his evidence is important he may come to the prosecution office to give the testimony.<sup>225</sup>

After the investigation has concluded, the prosecution can decide whether or not he wants to prefer the charges.<sup>226</sup> So, he makes a note in the investigation file and submits a bill of indictment to the correct court.<sup>227</sup> When the court requests information, the prosecutor has gathered the prosecution is to present them to the court.<sup>228</sup> The court then tells the accused of the application and sets a time in which he may respond.<sup>229</sup> While this is happening, a commission judge starts the investigation process by the court.<sup>230</sup>

The case may also be dismissed after the charges have been preferred if the court gets consent from the public prosecution office and the indicted accused.<sup>231</sup> An indicted accused in the German system is an “accused person against whom public charges have been preferred.”<sup>232</sup> They do not become a defendant until there is a decision to open the main proceedings against them.<sup>233</sup>

If the court orders the preferment of charges, then the case will proceed to the main proceedings where the indictment shall be issued.<sup>234</sup> Here the competent court decides whether the main proceedings will be opened or will be “provisionally terminated.”<sup>235</sup> The bill of indictment includes the application for the main

---

<sup>225</sup> Germ Crim Pro Code 2 Ch. 1 §163A(2)(3)

<sup>226</sup> Germ Crim Pro Code 2 Ch. 1 §169(a)

<sup>227</sup> Germ Crim Pro Code 2 Ch. 1 §§ 169 (a)-170

<sup>228</sup> Germ Crim Pro Code 2 Ch. 1 §173(1)

<sup>229</sup> Germ Crim Pro Code 2 Ch. 1 §173(2)

<sup>230</sup> Germ Crim Pro Code 2 Ch. 1 §173 (3)

<sup>231</sup> Germ Crim Pro Code 2 Ch. 1

<sup>232</sup> Germ Crim Pro Code 2 Ch. 1

<sup>233</sup> Germ Crim Pro Code 2 Ch. 1

<sup>234</sup> Germ Crim Pro Code 2 Ch. 4

<sup>235</sup> Germ Crim Pro Code 2 Ch. 1 §199 (1)

proceedings to be opened.<sup>236</sup> At this time, the court also receives the investigation file.<sup>237</sup>

The bill of indictment is to indicate the accused, the crime that he is charged with and the penal provisions that are to be applied.<sup>238</sup> The applicable outcome of the investigation shall also be given to the court.<sup>239</sup>

An incontestable order can also be given by the court in order for further investigation to make clear any ambiguous matters.<sup>240</sup> The court may also refuse to open the main proceedings but must state if it was a legal or factual ground for its refusal and tell the defendant of the decision.<sup>241</sup>

In the final phase of the indictment process, the competent court decides the court before which the charges will be brought.<sup>242</sup> The court also admits the charges and states what if any changes will be made to the indictment in order for it to admit the charges to the ,main hearing, four changes can be made for four reasons.<sup>243</sup> First, if not all of the charges are allowed, the opening of the main proceedings may be refused.<sup>244</sup> Second, if the prosecution is limited to only certain offences that are severable from the indictment only certain charges may be in the indictment.<sup>245</sup> Third, “the act is legally evaluated from the bill indictment” and finally

---

<sup>236</sup> Germ Crim Pro Code 2 Ch. 1 §199 (2)

<sup>237</sup> Germ Crim Pro Code 2 Ch. 1 §199 (2)

<sup>238</sup> Germ Crim Pro Code 2 Ch. 1 §200 (1)

<sup>239</sup> Germ Crim Pro Code 2 Ch. 1 §200 (2)

<sup>240</sup> Germ Crim Pro Code 2 Ch. 1 §202

<sup>241</sup> Germ Crim Pro Code 2 Ch. 1 §204

<sup>242</sup> Germ Crim Pro Code 2 Ch. 1 §207 (1)

<sup>243</sup> Germ Crim Pro Code 2 Ch. 1 §207 (2)

<sup>244</sup> Germ Crim Pro Code 2 Ch. 1 §207 (2)1

<sup>245</sup> Germ Crim Pro Code 2 Ch. 1 §207(2)2

if the prosecution is limited to some several laws of the same violations that are in the indictments.<sup>246</sup>

This would end the indictment process of the German courts and start the beginning of the trial process for the defendant.

---

<sup>246</sup> Germ Crim Pro Code 2 Ch. 1 §207(2)3 4