

Judicial Orientation

Session Planning Toolkit

Additional Documentation

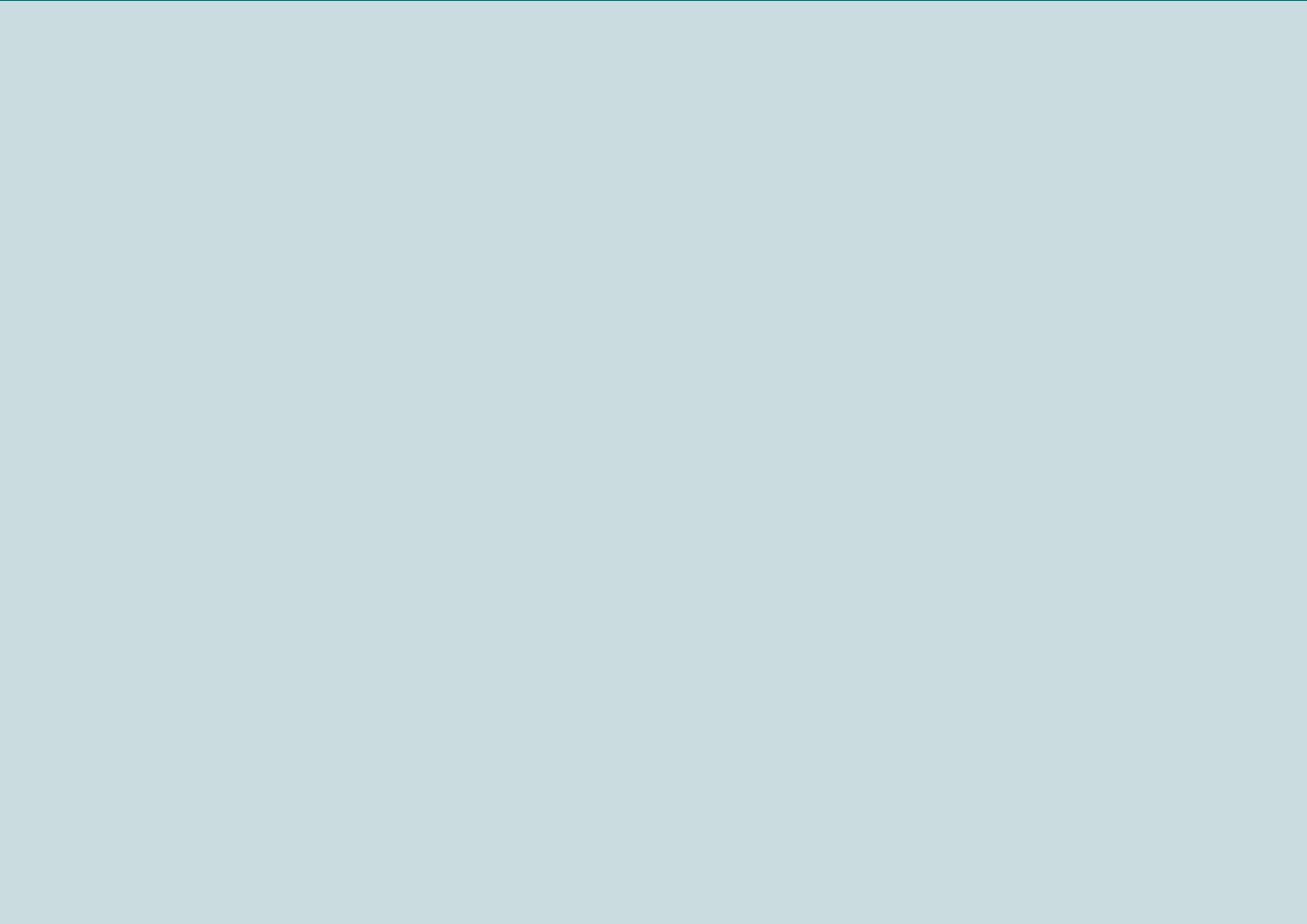



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Annex A: Extract from Training of Trainers Toolkit

The following section is taken directly from the Training of Trainers toolkit.

4.1 THE SESSION PLAN

For each individual training session within your Training Program you should create a **session plan**. If you create a Daily Plan **first** it will be very easy to create session plans. You can just cut and paste the material in your Daily Plan into your session Plan.

You can use a template which makes it very simply. **Annex 4** contains a blank Session Plan Template. The session plan is created **for your benefit**, not for the benefit of the participants. You will use the plan to guide your training. It will provide a summary of each and every session of your training program.

The following is an example of a Session Plan that has been completed for the session on an Introduction to the Rules of Evidence from the training program for judges on the Rules of Evidence:

Session Plan:	
Training Program	An Introduction to the Rules of Evidence
Topic	The Rules of Evidence
Outcomes	That participants will be reasonably able to: <ul style="list-style-type: none"> • Explain the types of evidence that may be presented to a court. • Describe the concept of relevance of evidence. • List the reasons why evidence may not be admissible into court. • Explain the purpose of the Rules of Evidence.
Trainer	Margaret Barron
Time – 90 mins	Content: An introduction to the rules of evidence
Start	INTRODUCTION
10 mins	<p>Get attention: Tell an interesting story</p> <p>Link to learner's previous interest/experience: You are all Judges who hear evidence presented in cases before your court. It is important to understand the Rules of Evidence which determine whether particular evidence should be admitted for consideration by the court.</p> <p>Outcomes (learning outcomes): Discuss the learning outcomes listed above</p> <p>Structure of the session: Session will be divided into four sessions (see sub-topics below)</p> <p>Safety and housekeeping: Morning tea will be held at end of session</p> <p>Stimulate motivation - what is in it for the learner? Judges must know the Rules of Evidence in order to carry out their judicial functions effectively.</p>

	Sub-topics	Methodology	Summary / Assessment	Resources
20 mins	Types of evidence	Presentation	Questions	PowerPoint
	Sub-topics	Methodology	Summary / Assessment	Resources
20 mins	Concept of relevance of evidence	Case Study	Questions	Handouts
	Sub-topics	Methodology	Summary / Assessment	Resources
20 mins	Reasons for evidence not being admissible	Brainstorm	Game	Whiteboard and pen
	Sub-Topics	Methodology	Summary / Assessment	Resources
10 mins	Purpose of the Rules of Evidence	Presentation	Quiz	PowerPoint
10 mins	<ul style="list-style-type: none">• Conclusion: COFF			
Ends	Outcomes and summary- review your learning outcomes. Feedback – obtain feedback from participants. Future – what will be the content of the next training session? The Hearsay Rule.			
Special Requirements / Preparation / Comments:				

4.2 LEARNING OBJECTIVES AND LEARNING OUTCOMES

Each Training Program should have a **learning objective**. This is the broad purpose of the training? For example if you are delivering training to judges on the Rules of Evidence the learning objective may be:

For participants to gain knowledge of the Rules of Evidence that will assist them in determining what evidence is admissible in court hearings.

Learning Outcomes

Each session in a Training Program should have **Learning Outcomes**. They will be listed in the session plan. They explain what participants will be able to do at the end of the training session and how well they will be able to do it. For example, the learning outcomes for our session on an Introduction to the Rules of Evidence were:

Participants will be reasonably able to:

- *Explain the types of evidence that may be presented to a court.*
- *Describe the concept of relevance of evidence.*
- *List the reasons why evidence may not be admissible into court.*
- *Explain the purpose of the Rules of Evidence.*

You will notice that all the outcomes begin with a verb e.g. 'explain', 'list' and 'describe'. This makes it possible to measure if these outcomes have been achieved. This can be done by assessing participants during training. You could give participants a short quiz to assess

understanding. We will talk more about assessment later in this handbook. See page 28 of the Toolkit. **Annex 5**, pg. A-13, contains a list of helpful verbs that can be used to write your learning outcomes.

4.3 DETERMINING TOPICS AND CONTENT

How do you work out the content of a training program and the content of each session? There are a number of questions you can ask yourself to help you develop topics and content:

- What were the results of your Training Needs Analysis?
- Who are your participants?
- What are the participants' backgrounds and needs: are they newly appointed or more experienced? What are their roles and duties? What do they need to know and do? What existing experience do they possess on the subject?
- What is the time available for the session?
- How complex should the training be?

Planning the content using the sticky note method

One method of creating content is to use sticky notes. This is the process:

1. Identify possible content i.e. brainstorm all ideas related to the topic. Write each idea on separate sticky notes.
2. Analyse content: divide the sticky notes into 3 piles:
 - i. **must know** (content that **must** be presented).
 - ii. **should know** (content that is important but not essential).
 - iii. **could know** (content that could be presented but is not important or essential).
3. Sort the content: put into themes or families. Create a name for each theme.
4. Sequence the content: deal with general material first and then more specific material. Deal with known to unknown.

Themes

Each theme or family will be the content for one session in your training program.

The great benefit of using the sticky note method is you can move sessions and content around very easily if you wish.

Possible delivery content for judicial and non-judicial officers

See **Annex 6**, pg. A-14, for a list of possible topics to teach judicial and non-judicial officers.

See **Annex 7**, pg. A-16, for an example training programme on Customer Service.

5.0 DELIVERING THE TRAINING

5.1 INTRODUCTION

The introduction to each training session is very important. One way of introducing a session is to use the acronym **GLOSSS**. When delivering your training make sure you have covered each part of the **GLOSSS**.

Each letter stands for:

G: Get Attention

L: Link to participant's previous experience of learning

O: Summarise the **learning outcomes** for the session

S: Explain the **structure** of the session

S: Safety / housekeeping: tell participants about housekeeping matters e.g. where facilities are, when lunch will be held etc...

S: Stimulate participants: tell participants why this training is important to them.

Let's look at each part of the introduction in detail.

- **G: Get Attention**

You can gain the audience's attention in a number of ways:

- Present an interesting case
- Use quotation
- Use some statistics
- Tell an extraordinary story
- Talk about some current events
- Use humour.

- **L: Link to participant's previous experience of learning**

Each participant brings to training previous knowledge and experience. Your introduction can remind them about this and tell them how this training will link to that knowledge and experience.

- **O: Summarise the learning outcomes for the session**

State the session's learning outcomes. This will explain what the participants will be able to do at the end of the session and how well they will be able to do it.

- **S: Explain the structure of the session**

Summarise the content you will cover in the session. This information is in your session plan. You will have your content divided up into sub-topics and the plan will tell you how long you will spend on each sub-topic.

- **S: Safety/housekeeping:**

You need to tell participants about housekeeping matters e.g. where facilities are and when lunch will be held.

- **S: Stimulate participants:**

Remind participants why this training is important to them. Explain how they will be able to use it in their day to day work.

5.2 DELIVERING THE BODY (CONTENT) OF THE SESSION

1. Beginning of session

- Make sure you have any handouts ready to be distributed.
- Make sure you have all training resources you will use during the session ready.
- State the session's key points.
- Explain each point in brief.
- Explain how the topic relates to and affects the participants.

2. Body

- Begin by restating each key point.
- Explain and present information.

- Present the essential content, then the important, and then the good to know information.
- Use examples and illustrations to help explain the points.
- Use verbal and visual materials.
- Present an example of each idea.
- Emphasise and repeat the point under discussion.
- Present problems, cases and questions.
- Wait to receive participants' responses.
- Assess whether responses indicate that the participants understand the key points.
- Present the responses, solutions and explanations.
- Provide a brief summary at the end of each key point.

3. Conclusion

Concluding each training session is important. Present a logical ending that illustrates the structure and result. Use **COFF** to conclude your session.

- **C: Conclude**
- **O: Revisit your learning outcomes to check they have been achieved**
- **F: Gain feedback from participants**
- **F: Talk about the future** e.g. what the next session will cover or what the next training program will cover.

Annex B: Orientation Workshop Materials

A.1 Regional Lay Judicial Officer Orientation Course Agenda

Time	Sun – 19 th INTRODUCTION	Mon – 20 th JUDICIAL LIFE	Tues – 21 st SENTENCING	Wed – 22 nd CRIMINAL TRIALS	Thurs – 23 rd CIVIL DISPUTES	Friday – 24 th EVIDENCE & MANAGING CASES
8.45am		Announcements	Announcements	Announcements	Announcements	Announcements
9.00-10.00	Faculty Briefing	1. Role of courts, judicial & court officers Palmer with Panel <ul style="list-style-type: none"> Fundamentals of judicial life 	7. First appearances Puni, Maina <ul style="list-style-type: none"> Preparation Ensuring people understand Litigants in Person Taking pleas Remands and bail 	13. Elements of offence Puni, Maina <ul style="list-style-type: none"> What constitutes a criminal offence Onus / burden of proof. Trial process Practical examples 	19. Civil cases (inc. land) Mansfield, Young <ul style="list-style-type: none"> Differences between civil and public law Onus / burdens of proof Claims, counterclaims and how to hear them Land cases 	25. Evidence Mansfield, Young <ul style="list-style-type: none"> Principles of evidence Admissibility Vulnerable parties Expert evidence Documentary evidence Problems of evidence
10.00-11.00	Faculty Briefing	2. Transition to the bench Palmer with Panel <ul style="list-style-type: none"> Qualities important for the office Stress and health 	8. Sentencing remarks Young	14. Verdicts and judgments Young <ul style="list-style-type: none"> Assessing credibility Evidence, and weight Structuring a decision. Oral decisions Written decisions. 	20. Civil decisions Mansfield, Young <ul style="list-style-type: none"> Common causes Claims and counterclaims Decision-making Remedies and damages 	26. Trial management Puni <ul style="list-style-type: none"> Records of evidence Difficult lawyers Judicial intervention.
11.00-11.15	Morning Tea	Morning Tea	Morning Tea	Morning Tea	Morning Tea	Morning Tea
11.15-12.45	Faculty Briefing	3. Judicial conduct and ethics Palmer with Panel <ul style="list-style-type: none"> Practical problems Conflicts of interest When to disqualify Demeanour 	9. Sentencing principles and practice Young <ul style="list-style-type: none"> Considering the options Delivering sentence. 	15. Family and sexual violence Puni <ul style="list-style-type: none"> Sexual assault Consent Evidence from children Special considerations Closing the court. 	21. Workshop exercises: Decision-making Mansfield, Young	27. Registry and case management Fonua <ul style="list-style-type: none"> Time standards Court diary, files Listing, adjournments. Records and reports
12.45-1.45	Lunch	Lunch	Lunch	Lunch	Lunch	Lunch

1.45-2.45	Reception & registration	4. Due process and fair trial Mansfield <ul style="list-style-type: none"> ◆ Independence, opportunity to be heard, timely disposal ◆ Constitutional rights ◆ Natural justice ◆ Unconscious bias, prejudice 	10. Workshop exercises Sentencing Young	16. Workshop exercises Puni, Maina	22. Workshop exercises Decision-making (cont'd) Mansfield, Young	28. Customer service Fonua
2.45-3.00	Afternoon Tea	Afternoon Tea	Afternoon Tea	Afternoon Tea	Afternoon Tea	Afternoon Tea
3.00-4.00	Opening session Palmer & Armytage <ul style="list-style-type: none"> ◆ Welcome, objectives, ◆ House-keeping 	5. Fundamentals of justice Armytage <ul style="list-style-type: none"> ◆ Seven themes 	11. Workshop exercises Sentencing (cont'd) Young	17. Workshop exercises (cont'd) Puni, Maina	23. Communicating effectively Armytage	29. Open forum Chair with Panel Opportunity to discuss issues that have arisen during the week
4.00-4.45	Participants introductions Palmer & Armytage \	6. Your jurisdiction Young <ul style="list-style-type: none"> ◆ Sources of law ◆ When to act, and not ◆ Finding answers ◆ Judges' bench books 	12. Workshop exercises: Judgments and verdicts Young	18. Court Visit Palmer	24. Workshop exercises: Communication Armytage	Closing session Chair with Panel Certificates Ceremony.
4.45-5.00		Wrap-up and review	Wrap-up and review	Wrap-up and review	Wrap-up and review	

A.2 Introduction & Goals PowerPoint Presentation



PACIFIC JUDICIAL
STRENGTHENING INITIATIVE



Regional Lay Judicial Orientation Course

20-24 November 2017
Honiara, Solomon Islands

Opening Session

- Hon Chief Justice Sir Albert Palmer
- Dr Livingston Armytage, Technical Director, PJSI
- Faculty of Presenters



This Initiative



PJSI is funded by the
New Zealand Government
and implemented by the
Federal Court of Australia



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Welcome





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Goals



The purposes of this orientation course are to:

1. promote competence by assisting lay judicial officers to perform your judicial duties
2. improve the quality of justice that you deliver.

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A.3 Sessions 1-3: Panel Discussion PowerPoint Presentation

 <p>PACIFIC JUDICIAL STRENGTHENING INITIATIVE</p>  <p>Regional Lay Judicial Orientation Course</p> <p>20-24 November 2017 Honiara, Solomon Islands</p> <p>Session 1-3: Panel Discussion Faculty</p> 	<p>Sessions 1-3</p>  <ol style="list-style-type: none"> 1. Role of courts, judicial officers and court officers 2. Transition to the bench 3. Judicial conduct and ethics
<p>Judiciary and Courts</p>  <ul style="list-style-type: none"> <input type="checkbox"/> Judiciary: third branch of Government <ul style="list-style-type: none"> <input type="checkbox"/> Legislative <input type="checkbox"/> Executive <input type="checkbox"/> Judicial <input type="checkbox"/> The job <ul style="list-style-type: none"> <input type="checkbox"/> apply the law to settle disputes <input type="checkbox"/> uphold the rule of law <input type="checkbox"/> protect citizens from arbitrary state interference 	<p>Judicial Independence</p>  <ul style="list-style-type: none"> <input type="checkbox"/> Judicial Independence <ul style="list-style-type: none"> <input type="checkbox"/> doesn't benefit judges <input type="checkbox"/> ensures fair and impartial hearings <input type="checkbox"/> no interference
<p>Judges' Relationships</p>  <ul style="list-style-type: none"> <input type="checkbox"/> Judicial values: Bangalore Principles <ul style="list-style-type: none"> • Independence • Impartiality • Integrity • Propriety • Equality • Competence and diligence 	<p>Other Relationships</p>  <ul style="list-style-type: none"> <input type="checkbox"/> with other judges <input type="checkbox"/> Discussions of cases <ul style="list-style-type: none"> <input type="checkbox"/> With Judges <input type="checkbox"/> With lawyers <input type="checkbox"/> With family/ friends <input type="checkbox"/> Formality in court <ul style="list-style-type: none"> <input type="checkbox"/> Treatment of litigants <input type="checkbox"/> Treatment of lawyers <input type="checkbox"/> Treatment of self represented litigants <input type="checkbox"/> Court staff

Judicial Conduct



- ☐ **Judicial conduct**
 - ☐ In court
 - ☐ Bias or appearance of
 - ☐ Disqualification - the process
 - ☐ Punctuality
 - ☐ Diligence at work
 - ☐ prompt hearing
 - ☐ Fair share of work
 - ☐ Timely judgments
- ☐ **Private conduct**
 - ☐ Gifts
 - ☐ Personal advantage
 - ☐ Joining organisations
 - ☐ Friendships
 - ☐ Socialising

Contempt



- ☐ local statute ?
- ☐ inherent power
- ☐ judicial deafness and blindness
- ☐ Adjournments
- ☐ removal from court
- ☐ Fair process

Constitution



- ☐ Core provisions
- ☐ Key relationships
- ☐ Purpose and function

The 'Rule of Law'



- ☐ What is the *Rule of Law*?
- ☐ Principles of fair trial
- ☐ Rules of 'natural justice' and 'procedural fairness'

Adversarial Trial



- ☐ How the court system works
 - ☐ Role of Judge
 - ☐ Role of bar, lawyers
 - ☐ Unrepresented or 'pro se' litigants
 - ☐ Legal aid
 - ☐ Appeals and review

Community



- ☐ Relationships
- ☐ Interests and activities
- ☐ Role
- ☐ Outreach

A.4 Session 1: Regional Lay Judicial Officer Orientation Course PowerPoint Presentation



PACIFIC JUDICIAL
STRENGTHENING INITIATIVE




Regional Lay Judicial Orientation Course


20-24 November 2017
Honiara, Solomon Islands

Session 1: REGIONAL LAY JUDICIAL OFFICER
ORIENTATION COURSE
Presentation by the Chief Justice Sir Albert R.
Palmer CBE.




Presentation Outline: "The Role of the Judiciary" 


1. Where does the Judiciary fit into the picture in the overall Government Structure?
2. Who is the Judiciary or what is the Judiciary, its composition, structure, who makes up the Judiciary, who are the players in it?
3. What are its functions, what does it do?
4. What are its powers?
5. What are its duties?
6. The Criminal Justice System.
7. The Independence of the Judiciary.
8. Access to Justice.

1. Where does the Judiciary fit into the picture in the overall Government Structure? 

- i. Starting Point: Constitution sets out the position of the Judiciary in the Country.
- ii. Constitutional Democracy. Where the Constitution is supreme and not Parliament. Contrasted with Parliamentary Supremacy.
- iii. Judiciary responsible for interpreting the Constitution and the laws. Power to declare any law invalid where it conflicts and is inconsistent with the Provisions of the Constitution.



- **Para. (a) of the Preamble to the Constitution** declares that the Judiciary is one of three arms or branches of Government that exercises the **Power of the People** on their behalf – the Constitution vests an awesome responsibility to those three arms.
- All Power is vested in Our People and is exercised on their behalf by:
 - The Legislature
 - The Executive, and
 - The Judiciary.
- The three arms or Government exists to serve the People.



- **Note:** Power stated/defined in the Constitution and Laws of Solomon Islands. It is not absolute power or uncontrolled power.
- 3 arms are **Equal** in status, **but** different, perform different functions and exercise different powers separately.
- Concept of Separation of powers important - that each is able to exercise its power and thereby fulfill its role.
- Provides checks and balances between the three arms of Government.
- This forms the bedrock on which the Rule of Law is built.
- When each is able to perform their functions and exercise their powers independently fulfilling the constitutional mandate of our people.



This power is given to us.

- The Parliament/Legislature makes the law
- The Executive implements the law, controls the political policy, the public service and the budget
- The Judiciary is the "weakest" branch – does not exercise its power unless called upon to do so by a case before it – it interprets and applies the law.

2. Who is the Judiciary or what is the Judiciary, its composition, structure, who makes up the Judiciary, who are the players in it?



- Solomon Islands has a unified Judicial system, which means that the head of the Judiciary is the Chief Justice.
- **Structure:**
It consists of:
 - **The Court of Appeal** – appellate court, the final court – sits in Honiara only. Deals with appeals from the High Court.
 - **The High Court** – unlimited jurisdiction in criminal and civil cases – sits in Honiara and major Provincial Centres. Also deals with appeals from the Magistrates Court and CLAC in respect of land disputes. Has powers of review over decisions of inferior courts and general supervisory role of the administration of justice, including the legal profession.



- **The Magistrates' Court** – limited criminal jurisdiction and more limited civil jurisdiction – sits in Honiara, the Provincial capitals and has tours to major centers. Hears appeals from the Local Courts.
- **The Customary Land Appeals Court** – deals with appeals from the Local Court (primarily) on customary land disputes.
- **The Local Courts** – small criminal and civil jurisdiction and is located in provincial districts. Also deals with customary land disputes and disputes in custom (currently taken up with this only).

Key Players in the Judiciary:



- **Judges** includes Justices of Appeal. Each Judge is independent of each other. The Chief Justice is “first among equals” and cannot direct Judges in their duty.
- **Magistrates** includes Lay Magistrates (not law trained, entry point now raised to a law qualification).
- **Members (Lay Justices)** of the Local Courts and CLAC.
- Lawyers also play a crucial role.

3. What are its functions, what does it do?



- The core function or role of the Judiciary is to hear and determine criminal and civil cases brought before it. To hear disputes or issues of law brought before it and to make determinations on them according to law.
- Important therefore that courts are able to sit on a regular basis to be able to perform their core function of making decisions.

4. What are its powers?



- In Criminal Cases Judges and Magistrates exercise a lot of power in terms of the guilt and liberty of individuals. E.g. in a rape or murder case issue of guilt is very important because it can affect the liberty of a convicted person where sentences of imprisonments may be imposed. In a serious case liberty may be removed for a number of years; this is a big responsibility.
- In civil cases, make orders, awards which can amount to millions of dollars; can restrain activities etc.; judicial review of decisions of Government authorities.

5. What are its duties?



- Duty to do right to all without fear or favour, ill-will or affection **according to the rule of law.**
- Duty to be impartial, not biased, not showing favouritism, and to ensure that the decision given is right in law.
- Duty to ensure that the process in which that decision is arrived at is fair, level playing field and right in law as well.
- Process/procedure is equally important in which decisions are arrived at. The process is fair and efficient re listing of cases, civil or criminal. Things like payment of filing fees, service of documents or summons, applications in the case, notice, statement of the case, defence, enforcement (Sheriff's office) etc. etc.
- Each step taken is as important as the final result.

6. The Criminal Justice System

- One of the major functions of the courts is the part it plays/fulfills in the Criminal Justice System. The CJS consists of five pillars.
 - The Police – RSIP - Law enforcement;
 - The Prosecution – consists of the Director of Public Prosecution Office and Prosecution section in the Police Force;
 - The Public Solicitor's Office – Defence Counsels, provides representation for accuseds, offenders. Also includes the Private Legal Profession;
 - The Courts – Trials and sentencing role; and
 - Corrections and Rehabilitation – Prisons



- Each works **with** the others, none works **for** the others (notion of independence maintained).

The basic principles:

- Everyone is equal before the law;
- Everyone is entitled to the due process of the law;
- Everyone is presumed to be innocent until proven guilty; and
- Everyone is entitled to their liberty, unless confined by a lawful order.

7. The Independence of the Judiciary

- It is important that the power entrusted to the Judiciary is exercised without outside influence (impartial, objective and fair).
- It is wrong to try to attempt to influence in any way a Judge, magistrate or any member of the L/Ct or CLAC in the exercise of his decision.
- Primarily refers to the relationship with the Executive.
- Equally important and relevant to all other arms of Government's efficient performance and achievement and fulfillment of their functions. Ensuring the independence of the Judiciary is important.
- See The Commonwealth (Latimer House) Principles on the Accountability of and the relationship between the three branches of Government

The independence of the Judiciary can be measured in three ways:



- Security of Tenure.**
 - Appointments for Judges and Magistrates is independent based entirely on merit.
 - Tenure of office, age of retirement now raised to 70 and beyond.
 - JISC, an independent body; composition is also fair and representative. Section 137(4) of the Constitution
 - Procedure for removal for Judges and other Constitutional Offices, is specified by the Constitution. Protected by Constitution.
 - Salaries paid from Consolidated fund. Cannot be reduced etc. without their consent.
 - o Independent body to determine and review terms and conditions for Judicial Officers. Composition of members important to keep in mind. Same case with CPH. This is a neglect, an oversight and needs to be rectified. Inimical to good governance and judicial independence.
- Compare with the Members of Parliament (Entitlements Commission). In PNG this is done by one body Salaries and Remuneration Commission for all leaders.



ii. Financial Independence.

- Linked with institutional independence. The provision of sufficient or adequate funding to enable the judiciary perform its function to the highest standards.
- Listing of cases, circuits and tours done by the courts but the finance/funding is controlled by outside persons. The courts should have direct control of finance/funding. Listing and scheduling of court circuits often cancelled because of unavailability of funds.



iii. Institutional Independence.

- The courts must be able to carry out their functions without any restrictions, inducements, pressures, threats or interference from any individual, corporate body, institution or Government entity.
- The Judiciary's needs must not be made to be seen to be dependent on the Executive or the exercise of any decision by any Government Minister or Officer from the Finance Ministry. Should facilitate payments for the needs of the Judiciary of-course according to proper processes, but should not withhold payments unnecessarily or refuse payments. Where funds are available these should be released as soon as possible.

8. Access to Justice



- “Open justice”. Unfettered public access to proceedings in the courts is a fundamental aspect of the conduct of our courts.
- Inherited from the British legal system; that the doors of the court must remain open to the public.
- Enshrined in our Constitution – as a fundamental right and freedom section 10 (9): “Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.”
- Court may exclude:
 - where interest of justice may be prejudiced;
 - Interests of decency, public morality, welfare of persons under 18 years, protection of private lives of persons;
 - Interests of defence, public safety or public order.



- This principle goes as far back as 1649 in the trial of Lieutenant-Colonel John Lilburne for high treason at the Guildhall of London when it was said: “... by the laws of this land all courts of justice always ought to be free and open for all sorts of peaceable people to see, behold and hear, and have free access unto; and no man whatsoever ought to be tried in holes or corners, or in any place, where the gates are shut and barred, and guarded with armed men”

3. Open Justice and Independence of the Judiciary



- The public and community should be able to have confidence that the courts will treat everyone fairly and justly without fear or favour, ill will or affection.
- Whenever there is a grievance or dissatisfaction, the public should feel confident to run to the court when all other peaceful means of resolving their dispute fails.
- The courts must continue to be seen as the last bastion of hope that people can turn to. But that is only possible where the community’s trust and confidence in the independent and impartial nature of the judicial system remains strong. The community should be able to see that the Judiciary continues to stand firmly as the protectors of the Rule of Law in our developing jurisdictions. **STOP.**

2. Open Justice and Public Confidence



- Judge Felix Frankfurter, in Baker v. Carr 369 US. 186 (1962) at 267 described the courts authority succinctly when he said:
- “**The court’s authority – possessed of neither the purse nor the sword – ultimately rests on sustained public confidence in its moral sanction.**”
- The credibility of the court and its authority depend so much on public confidence in its processes and systems.
- Public confidence is premised upon transparency of the courts processes in the community’s eyes. People do not trust what they do not understand. People are naturally suspicious of anything they cannot see in operation.
- This is part of the reason why there is the requirement that the Legislature operates in public.

1. Open justice and the Public Interest



- The principle of Open Justice serves the public interest through 3 ways.
- **1. Accountability:**
- The courts and its processes exist to serve the public and the community.
- Accountable for the way and manner in which justice is administered through its doors; from the moment a case is filed or a complaint lodged to completion, whether in court orders that are issued, a conviction, case dismissed, or acquittal.
- The process by which a court conducts its affairs reflect the aspirations and values of the community. They give effect to the community’s interest in the enforcement of law and order in the community and the peaceful resolution of disputes between members of the community and the State.
- Public has an interest in knowing whether or not the courts do in fact achieve those vital objectives, and whether they do so,
 - fairly, in the sense of treating equally all who come before the Court, whatever their status, colour, religion, ethnic background, creed etc.,
 - justly, in the sense of an adjudication that accords with law, and
 - efficiently, having regard to the public and private resources that are invested in our justice system, that delays are minimised.

A.5 Session 4: Due Process and Fair Trial PowerPoint Presentation



PACIFIC JUDICIAL
STRENGTHENING INITIATIVE


**Regional
Lay Judicial Orientation Course**

20-24 November 2017
Honiara, Solomon Islands

Session 4: Due Process and Fair Trial
•Justice (R) John Mansfield




Due Process and Fair Trial



1. Why is this important?
2. What does this mean?
 - a. Independence
 - b. Fair hearing
 - c. Timely judgement


Independence of Judge



Two Elements:

- Actual independence
- Perceived independence


Independence of Judge



- What to do if there is a challenge to your independence.
- What to do if you are concerned about your independence or perceived independence.

4

Opportunity to be heard



Notice of Hearing


- Adequacy
- Non attendance of party or counsel

Evidence

- Controlling Evidence
- Submissions / Controlling Submissions

Discussion...

Judgments



Judgments need to be provided in good time.

Why is this important?

Techniques that can assist you:

- Taking notes;
- Structuring the submissions provided.

A.6 Session 5: Fundamentals of Justice PowerPoint Presentation



PACIFIC JUDICIAL
STRENGTHENING INITIATIVE



Regional Lay Judicial Orientation Course

20-24 November 2017
Honiara, Solomon Islands

Session 5: Fundamentals of Justice
• Dr Livingston Armytage, Technical Director, PJSI






2

Fundamentals of Justice


Attitudes and Values of Judicial Officers



Key Themes:

1. Administer law under the Constitution
2. Independence and accountability
3. Impartiality and ethics
4. Fairness – procedural fairness, due process
5. Accessibility
6. Competence
7. Service to the community


Constitution of RMI: 1979



- **Article V1: Judiciary**
 - Includes Community Court
- **Article 11: Bill of Rights**
 - s.4: Due Process and Fair Trial

Bill of Rights


CONSTITUTION OF RMI
Article 11



BILL OF RIGHTS

1. Freedom of Thought, Speech, Religion
2. Slavery
3. Unreasonable Search & Seizure
4. **Due Process & Fair Trial**
 - a. Life, liberty and property
 - b. Prescribed amount of time and process
 - c. Trial
 - d. Criminal procedure rights
 - i. to be informed promptly of charge
 - ii. prompt judicial determination of guilt
 - iii. speedy and public trial before impartial tribunal
 - iv. adequate time and facilities to prepare defence
 - v. defend self or through legal assistance of choice, free if needed
 - vi. to be confronted by witnesses against him
 - vii. obtain witnesses in his favour
5. Just Compensation
6. Ordeal & Unusual Punishment
7. **Habeas Corpus**
12. Equal Protection
14. Access to Judicial Processes
15. Legal Services

A Question of Fairness



- What is fairness?
- Is fairness = neutrality?
- Is fairness = sameness?
- Is fairness = local or universal?
- Is fairness about the *process* only or also *outcome*?
- Why is it important?
- How can you provide it?

Rules of 'Natural Justice' Procedural fairness and due process



Two 'common law' rules to ensure fair hearings:

- a. the opportunity to be heard
- b. the decision maker must be unbiased.

Fairness



UN Int. Covenant on Civil & Political Rights 1976

1. Equality before the courts, fair public hearing, by competent independent tribunal established by law, public judgments (exc. security, juveniles, matrimonial)
2. Right to be presumed innocent
3. Minimum guarantees
 - a. Adequate time to prepare defence
 - b. Tried without undue delay
 - c. Right to defend self or through legal assistance
 - d. Examine, cross-examine witnesses
 - e. Interpreter
 - f. Protection from self-incrimination
4. Juvenile procedure
5. Right to review by higher court
6. Rule against double-jeopardy: tried only once

A.7 Session 6: Your Jurisdiction PowerPoint Presentation



NEW ZEALAND
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PACIFIC JUDICIAL
STRENGTHENING INITIATIVE



Regional Judicial Orientation Course
20-24 November, 2017 - Honiara, Solomon Islands


Session 6 – Your Jurisdiction:
• Sir Ron Young



Your Jurisdiction 

Your statute – criminal and civil jurisdiction.


- What you can do and what you can't.
- Examples.

Your Jurisdiction 


Substantive law
What is it?

Procedural law
What is it?

Text books
One of each.

Your Jurisdiction 

- Case authorities.
- How to use them.

Your Jurisdiction 

Judge's Bench Book

- Access and use.

A.8 Jurisdiction Hand Out

YOUR JURISDICTION

You are a member of a Court which is set up by a statute that has been passed by your local Parliament. In that statute or in other statutes there will be a description of what you, as a Judge in a particular Court can and cannot do. The same will apply to all the Courts in your country. This is called a Court's jurisdiction – it really tells you the extent of what you can do in Court. It is essential you know the exact extent of your jurisdiction – this really is your first responsibility as a Judge – to know and understand what you can and cannot do in the criminal, Civil and Land Courts.

Your criminal law statute is likely to tell you what crimes you can hear, determine and sentence. Often the statute will give a maximum period of imprisonment you can impose. In many of the Islands, this seems to be about two to three years' imprisonment.

In civil law the statutes will typically say – you can hear these types of cases, e.g. contract cases, tort cases, land cases sometimes, and there will be a monetary limit for the claim.

The laws you need to know in criminal and civil law typically divide themselves between substantive law and procedural law.

Substantive Law

To take examples – your Crimes Act or Penal Code or similar will tell you what are crimes and generally the definition of the crime. For example, assault – this will generally be defined as – “the intentional application of force to the person of another.” These are really just fancy words for deliberately trying to or succeeding in hitting someone.

This is a substantive law – it deals with the substance of what crimes are. Sometimes in criminal law there is a gap in statute law, e.g. no definition of particular crime. You will then need to look at other countries – in the Pacific Islands/Australia/New Zealand/UK/Canada. How have they dealt with the “gap” in your jurisdiction. You can use their approach in your country where there is a gap in your statute law.

Substantive civil law is generally not found directly in statute law in the Islands, but arises either from breaches of statutes or from the common law. The common law is a body of law developed over the centuries by the Courts – this body of law is concerned with the enforcement of legal rights; redress for any legal wrong or injury or breach of any legal duty.

Again, look at how the Courts in similar countries have dealt with your area of concern. You will need to refer to text books and case law.

Procedural Law

The other type of law – apart from substantive – is procedural law.

What you need to know, especially in both criminal law and in civil law, are processes that are used - in crime, to get a person to Court charged with a crime and to deal with that person according to law; - and in civil cases, the process by which such cases proceed to and are heard in Court.

There really is no alternative to your study of these procedural laws for your country, to understand them and to be familiar with them. The easiest way can often be to obtain a copy of the relevant statute, e.g. Criminal Procedure Act, or the Civil Procedure Code and take it with you in to Court. For example, the Criminal Procedure Code in the Solomons, as well as identifying the jurisdiction of the Magistrates Court, also has sections on how a case should proceed through Court. It deals with such topics as who can prosecute in Magistrates Court, summons, dispensing with personal attendance of a defendant, bail, charges or information and 27 sections on procedure in trials before Magistrates Courts. You will all have to a greater or lesser degree, similar provisions. To do your job you need to know or have immediate access to these procedural rules – It is you making sure you know the procedural law.

And in most jurisdictions, there is a Code of Civil Procedure which details the rules by which civil cases come to Court and are tried in Court. You need to know these rules. They should always be with you in Court.

And so these statutes or codes describe a process for bringing litigants before the Courts and hearing their case to a conclusion.

These statutes, substantive and procedural are not always easy to follow. This brings us to the next topic – access to and use of text books.

Text Books

Try to have one, up-to-date and kept up-to-date, text book on each legal topic – Australian New Zealand or UK or, if any, Pacific Island. The text books may not be identical to the law in your country but the important principles will likely be the same. Look for simple straightforward text books. The Australian and New Zealand Courts will likely help in providing free text books. It is essential to keep them up-to-date.

If possible you should have a substantive criminal law text book which identifies the common crimes and their legal ingredients; and if possible a criminal procedure text which helps with criminal procedure.

As to civil text books, this is more difficult. I imagine most of your civil cases will be contract or negligence cases apart from the specialist land cases. A text book on straightforward contracts and a text book on tort will be essential. There may not be a text book on Civil Procedure in your country but the Civil Rules should be straight forward. I stress you need to study them and know them.

And so, this is the second source of your law – the first Statutes, the second, text books.

Previous Court Decisions

The next resource is access to and reading previous Court decisions. Not all of you will have ready access to a wide range of previous Court decisions but many of you will have access to PacLii. This is a great source of information including previous decisions from around the Pacific Islands, as well as the statutes from many Islands.

Ordinarily the lawyers involved in any case you have may refer you to a case they think is relevant. A few hints on how to deal with this. First, insist that they provide you with a copy of the case. It is their responsibility to do this. Second, have the lawyer specifically tell you what this case decided, where this is referred to in the case and most importantly why this case will help you decide the case before you.

If you refer to any case in your judgment, make sure it is relevant to your case and explain explicitly why it has helped you decide your case.

If there is a lawyer on the other side of your case, you will need to ask that lawyer what their view is of the case and its relevance. If they say the meaning of the case is different then have them be specific – why is the case different? – why is the case irrelevant? (if they say this).

JUDGES BENCH BOOK

The next source of information is the Judge's Bench book. These books can contain both procedural and substantive law. They are really a bit like a text book, but one that has been written especially for Judges generally by Judges. They are very valuable. You may not have a bench book especially for your Court. Ask other Courts around the Pacific, e.g. State Magistrates Courts in Australia, District Court in New Zealand for copies of their bench books. Most will be happy to send you a copy. But a word of caution – these bench books have been developed for specific jurisdictions. They may not reflect the law in your country.

Bicknell Young – Vanuatu Judicial – Jurisdiction

A.9 Session 7: First Appearances PowerPoint Presentation



PACIFIC JUDICIAL
STRENGTHENING INITIATIVE



Regional Judicial Orientation Course
20-24 November, 2017 - Honiara, Solomon Islands

Session – 7 :
Justice Leonard R. Maina



The Initiative



PJSI is funded by the
New Zealand Government
and implemented by the
Federal Court of Australia




2

Custom man from Santa Cruz





TOPIC : FIRST APPEARANCE



- ☐ Preparation
- ☐ Ensuring people understand
- ☐ Litigants in Person
- ☐ Taking pleas
- ☐ Remands and bail

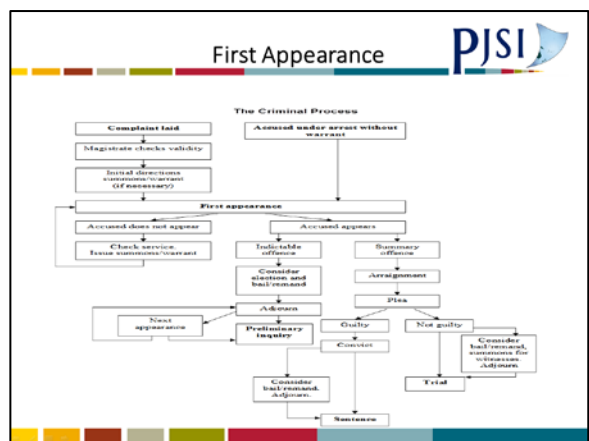
References/Documents



Bench/Hand Books


- ☐ Cook-Islands-Justices-Bench-Book-Second-Edition-2012,
- ☐ Kiribati Magistrates' Bench Book,
- ☐ Solomon Islands Magistrate Bench Book 2004,
- ☐ Solomon Islands Local Court Hand Book 2005,
- ☐ Tokelau Handbook for Commissioners,
- ☐ Tonga Magistrates Bench Book,
- ☐ Tuvalu-Courts-Bench-Book-2004,
- ☐ Vanuatu Magistrate Bench Book 2004,
- ☐ Others

All available in website in the Pac LLI (USP)



Nice tumas longo mi 




First Appearance 


General

An accused, on first appearance, will be present:

- after arrest and in Police custody;
- after arrest and on Police bail or notice; or
- on summons.

Process up to First Appearance 

- Personal Interest
- Validity of the Charge
- Joined Charges
- Joined Accused
- Summons for Attendance
- Transferring the Case


First Hearing 

Some or all of the following are of concern:

- The integrity of the charge (if not already considered);
- Non appearance, therefore summons and warrants;
- Legal representation;
- Plea, including fitness to plead;
- Election;
- Remands in custody;
- Bail;
- Adjournments

Flower belong mi 



Ensuring people understand 

- How to address people.
- Language.
- Explaining the contents of the charge.
- Explaining how the court process is to work

Litigants in Person



Arraignment

- Identification of the accused
- First ascertain accused person who he or she is. Record full name, address and age.
- Accused person might be a juvenile and treat a juvenile accused differently to adults.

Taking pleas



- What is a plea?
- What is its significance?
- Can you change a plea? On what basis?
- How can the plea be best obtained?

Plea Guilty



- Charge is read to the accused
- Accused plea guilty
- Facts read to the court
- Accused understand and agree to the facts
- Convict
- Sentence

Remands and bail



- What is a remand and what is an adjournment?
- Why should a case be adjourned and how many times?
- What is bail and why do we grant bail?
- What is its significance?
- What happens if bail is breached

Nice Bird belongo mi



Dealing with young people



Guidelines – Young offenders

- Age - under 14 years (many Pacific Islands countries),
- Check if under age,
- If the Police do not know the age of accused the court should verify the person's age with the parents or by birth records.

Dealing with a Young Person Privately



- Court to deal with the young person a little more privately,
- Best to announce that the public will be excluded from the hearing,
- Only family of the young offender, or who is part of the court process is able to stay.

Assistance for the Young Person

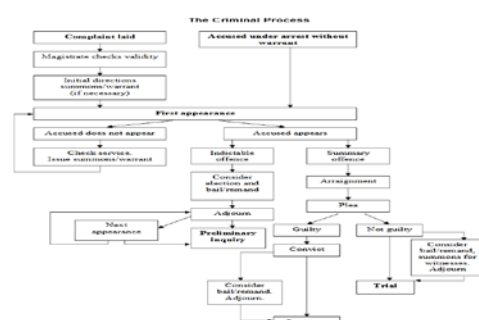


- Plea of a young person - presence of the young person's parent or guardian is present:
 - Can give useful advice to the young person; and
 - Usually have valuable information on the young person's position
- Plea - use simple language in order to make a young/person understand what is going on.

Second World Japanese's huts - Tulagi



First Appearance



Conclusion

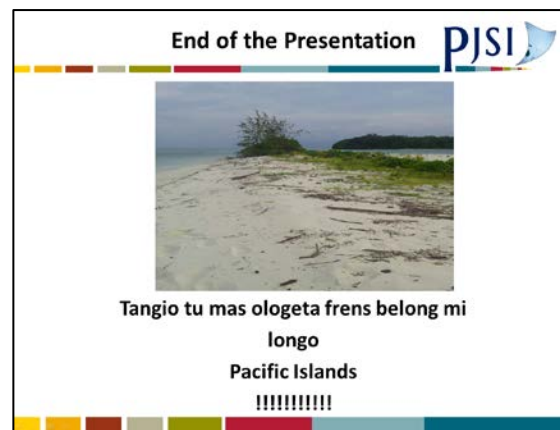


- Justice/Magistrate/Commissioner need to understand the charge/claim, appearance i.e. summons and warrants Legal representation, Plea, including fitness to plead, Election, Remands in custody, Bail and Adjournments,
- Ensuring people understand, talk to or the language and explaining the contents of the charge/claim and explaining how the court process is to work,

Conclusion Continues



- Litigants in Person - identification/first ascertain right person/accused. Check if he is juvenile.
- Taking pleas - charge is true or not, if is true a brief summary of the facts is read, facts are true or not. Note the elements of the offence.
 - Guilty plea - enter, convict and impose a sentence
 - Not Guilty - hearing, found guilty, convict and sentence.
- Remands and bail - remand to a hearing date, estimate of hearing time; or release the defendant on bail on conditions. Give reason for refusing bail.



A.10 Session 8: Sentencing PowerPoint Presentation



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Regional Judicial Orientation Course
20-24 November, 2017 - Honiara, Solomon Islands

Session - Sentencing:
• Sir Ron Young




Sentencing



General Remarks

- The process
- Purposes of sentencing
- Who is the audience


Sentencing



Template for remarks

- CHARGES – identify each plus maximum penalty
- PLEA – whether Guilty or Not Guilty and conviction after trial
- FACTS
 - after trial
 - after guilty plea
 - disputed
 - aggravating and mitigating


Sentencing



Template for remarks

- OFFICIAL REPORTS
 - probation
 - psychiatric


Sentencing



Template for remarks


- SUBMISSIONS – prosecution and defense
 - summary of main points
 - suggested sentence
- VICTIM IMPACT – how delivered?

Sentencing




Template for remarks

- START SENTENCE
 - relevant aggravating and mitigating facts
- PERSONAL CIRCUMSTANCES
 - adjust sentence up or down

Sentencing 


Template for remarks

- GUILTY PLEA DEDUCTION
-early or late
- GENERAL COMMENTS ON CRIME

Sentencing 

Template for remarks

- SENTENCE – cumulative or concurrent

Sentencing 

Other Matters

- Court conduct
- Appellate decisions
- Establishing the facts
- Fines/Reparation
- Cumulative and Concurrent sentences
- Drunkenness
- Previous convictions
- Age of defendant
- Disabilities of defendant

A.11 Sentencing Exercise Example PowerPoint Presentation



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20-24 November, 2017 - Honiara, Solomon Islands

Sentencing
• Sir Ron Young



Sentencing

Charge 1

John Wambula you are for sentence having pleaded guilty to assaulting your wife.

Maximum penalty two years imprisonment.

Sentencing

Facts

One evening you had been drinking. You said your wife was nagging you. You then hit her on the face causing a cut to her mouth and a bleeding nose.

Your wife and children then hid in the bushes outside of your house. When the police arrested you, you threatened to "get her".

Sentencing

Probation

The probation report notes you and your wife have been together for 20 years and have three children.

You told the probation officer that your wife was nagging you and you lost your temper. Your wife told the probation officer she wants your violence to stop.

Sentencing

Submissions

The prosecutor says you should be sent to prison because of the seriousness of your assault and your past.

You told me you now regret what you did and will try to mend your way.

Sentencing

Start Sentence

This was a serious violent assault on your partner. This happened in front of your children. It drove them out of the house.

The facts justify a start sentence of 6 months imprisonment.

Sentencing



Personal Circumstances

As to your personal circumstances, you have three previous convictions for assault, two of which relate to your wife.

This makes this assault much worse. This should increase your start sentence by one month, to total 7 months imprisonment.

Sentencing



Comment & Sentence

John Wambula, this was a bad assault on your wife. There can be no reason or excuse to do this. This is the third time you have assaulted her.

A sentence of imprisonment is the proper sentence. You are sentenced to 7 months imprisonment on the charge of assault.

A.12 Sentencing Template

SENTENCING

1	CHARGES & MAXIMUM PENALTY
2	PLEA (Guilty or conviction after trial)
3	FACTS (Summary of relevant facts)
4	OFFICIAL REPORTS (e.g. Probation, Medical)
5	SUBMISSIONS (First from prosecution; second defence; summary of main points)

6	VICTIM IMPACT (Brief description if known)
7	START SENTENCE (Based on facts of crime only)
8	PERSONAL CIRCUMSTANCES ADJUSTMENT (Based on “good” and “bad” of defendant’s circumstances)
9	GUILTY PLEA DEDUCTION (How long after charge)
10	GENERAL COMMENTS (Bring all of the above together)
11	SENTENCE ON EACH CHARGE (Identify whether sentences on multiple charges are concurrent or cumulative)

SENTENCING GENERAL

You will be sentencing a defendant if he or she has pleaded guilty to a crime or has been convicted after a trial of a crime – after you have heard all the evidence and given a judgment which finds the defendant guilty.

General Remarks

The first thing you must have (if there has been a guilty plea) is a summary of the facts on which the prosecution say you should sentence the defendant. If the sentencing comes after a trial, then you will know the facts on which the defendant is to be sentenced.

Before you begin sentencing, make sure with the prosecution and defendant that you have all the reports, if any, you should have. You will then need to hear submissions about sentencing from the prosecution and defence.

In most countries the prosecution make the first submission. They should tell you what they say the sentence or the range of sentence should be and why.

Next the defence. If the defendant does not have a lawyer you will need to ask him/her what he/she wants to say and how the defendant responds to the prosecution submissions.

Sometimes, if the defendant raises a new point, you may need to go back to the prosecution and ask their view. The key is fairness – have both sides had a chance to tell you what they want about your sentencing?

There are a wide variety of purposes of sentencing. The most common are rehabilitation and deterrence. You will need to consider which of those principles apply in your sentencing. Often neither will be relevant. But if you are convinced rehabilitation is called for then obviously your sentence will reflect that – often giving a defendant another chance coupled with a sentence designed to help e.g. probation. As to deterrence, caution should be exercised in placing too much weight on deterrence. Generally the threat of a prison sentence does not stop most people from offending, simply because they do not think of or do not think there will be any consequences for what they do. And so a stiff sentence may be better justified on the basis that this is a sentence which matches the seriousness of the crime.

Reasons – The Audience

Who is the audience for your sentencing remarks? First and foremost, the defendant. He/she is entitled to know why you are imposing the sentence you are. Secondly, the victim(s) if any and the public. The Courts are public institutions. Telling the wider public what you are doing and why especially in the criminal courts will help boost public confidence in courts. Lastly, your audience is an Appellate Court. If you give clear concise reasons for your sentence, then the Appellate Court can do their job – assess whether you got it right.

SENTENCING TEMPLATE

Charges

You must be clear exactly what charges the defendant is to be sentenced on. When you have the court file check the charges, the section in the relevant statute (Crimes Act or

other criminal statute) and check the maximum penalty for each charge. Make sure you have jurisdiction to sentence the defendant.

Your sentencing remarks should begin with you recounting each charge and the maximum penalty.

Has the defendant pleaded guilty or been convicted after trial

You will know which charges the defendant was convicted on after trial before you. Make sure the charges you are sentencing on are the same charges on which you convicted the defendant.

If there is a guilty plea, again check each guilty plea has been recorded in writing by a judicial officer and you are sentencing only on those charges the defendant has pleaded guilty to. Your sentencing remarks must say whether the defendant pleaded guilty, (and when in relation to when the charges were filed), or whether the defendant was convicted after trial.

SUMMARY OF FACTS

Three aspects are important here.

- (a) Make a note of the legal ingredients of each charge, e.g. what do the prosecution need to prove if the charge is theft? Check that the summary of facts details each ingredient of each charge, e.g. assault, if they do not raise this with the prosecution.
- (b) Identify and note the aggravating features relating to the facts. Examples of aggravating features:
 - Violence
 - Hostility to victim because disability/race/religion etc.
 - Multiple defendants
 - Use of a weapon
 - Abuse of power/trust
 - Planning
 - Invasion of home
- (c) Identifying mitigating factors relating to offending. Examples:
 - Provocation
 - Defendant played a minor role
 - Voluntary consumption of alcohol NOT mitigation.

The summary in your remarks should be brief and to the point but covering aggravating and mitigating factual matters.

Official Reports

Some of you will have access to organisations which can provide you with reports about the defendant, e.g. Probation Officer reports. These will typically include information about the defendant's background and of particular importance, information about needs the defendant may have about which, if addressed, may avoid re-offending. Obviously this is very important and may well significantly affect your decision on sentencing. If it is possible to impose a sentence that is designed to stop offending in the future it is in everyone's interests that you do so.

There may also be medical reports including psychological or psychiatric reports.

- In your sentencing remarks, you do not need to refer extensively to these reports. A very brief summary of the essential points and support for any sentences you will impose is sufficient.
- Some probation reports may make a recommendation as to the sentence. While of some value, you do not need to impose this sentence. It is for you and you alone to decide on correct sentence.

Summary of Submissions of Prosecution and Defence

This is a summary of the main points. You should briefly over those parts of the submissions which are either aggravating, make the case worse, or mitigating, reduce the seriousness of the case. Both sides should be equally covered.

If a particular sentence is suggested by either side, include this suggestion in your summary. If the defence want, for example, a respected person from the defendant's village to speak about the defendant personally (not about the offending) then welcome this.

Victim Impact

You may have a written victim impact report before sentencing or perhaps a victim will come to court and want to speak personally or through the prosecution. You should always allow the victim to speak but you should make it clear:

- (a) The victim is there to speak about the effect of the crime on them
- (b) It is not an opportunity to abuse the defendant or his/her family

You will need to include a brief comment in your remarks about the effect on the victim.

Start Sentence

This is the sentence you would impose based on the facts alone – for this start sentence ignore the defendant's personal circumstances. Go to the list of aggravating and mitigating factors and see which if any one present in this case. Given these conclusions, where do the facts of this case fall, from the least serious to the most serious offence of this type; where the maximum sentence could be the start sentence.

A brief summary of the facts focussing on the aggravating and mitigation features is required at this stage. Then you should say – "Therefore the start sentence is",

Personal Circumstances

First, identify in your remarks if there are any aggravating personal circumstances, e.g. offending while on bail or when subject to another sentence. Those circumstances might justify a small increase in the start sentence.

Second, identify the mitigating personal circumstances. These circumstances are likely to justify a deduction from the start sentence, e.g. good character.

Be specific about how much the increase or deduction from the start sentence is and include this in your remarks.

Guilty Plea

You now have a start sentence, plus or minus personal aggravating or mitigating factors. If the defendant has pleaded guilty he/she will be entitled to a deduction. The deduction is

typically a maximum of 25% to 33% of the above sentence. The maximum is only given where the guilty plea is at the earliest reasonable opportunity. The later it is before trial, the lower the percentage, e.g. if guilty pleas one to two days before trial then perhaps only 10% to 15%.

In your remarks you must specify the percentage and the actual deduction made in months.

Is the sentence appropriate?

You will then have a final sentence. Then stand back and think about whether this is a fair sentence overall for this offence and this offender.

Be cautious about too many aggravating and mitigating add-ons or deductions, e.g. in mitigation including guilty plea, a total of 50% deduction from start sentence would be at the very top of the range.

Final Statement

Finally at the end of your sentence, tell the defendant explicitly what the sentence is:

Mr X on the charge ofyou are sentenced to

Add on here any specific conditions, e.g. terms of probation, time to pay, fine, amount of compensation etc.

MISCELLANEOUS MATTERS

Court Conduct

These are just my personal views:

- I have the defendant stand throughout sentencing unless the defendant cannot do so or the sentencing is very long.
- I always refer to the defendant by his or her full name or as Mr or Ms - never just by their surname.
- Never use abusive language no matter what the defendant has done.
- Keep the emotion in court to a minimum.
- Refer to yourself in the first person, e.g. "I am satisfied..." not "The Court

Other comments

I am not a great fan of mentioning appellate court sentencing decisions in my remarks to a defendant. Obviously most defendants will not have a clue what you are talking about. If you are concerned to let the appellate court know you have followed their decision at sentencing, you could just say –

"I have taken into account relevant appellate sentencing decisions."

In your written remarks you could include in brackets or at the bottom of the page a reference to the actual decision.

Establishing the Facts

You must be clear before sentencing that you are sentencing on an agreed set of facts of the offending. If the sentencing comes after a trial, then it is your view of the facts from that trial on which you should sentence.

On a guilty plea, unless all the important facts raised by the prosecution are accepted by the defence, then you may have to have a hearing to establish or otherwise disputed facts. You should only do this if the disputed facts really are vital to your sentencing.

If the fact in dispute is aggravating, then ordinarily the prosecution must prove beyond reasonable doubt.

If the disputed fact is mitigating, then generally defence to prove on balance of probabilities.

Fines

One of the most common sentences many of you will impose will be a fine. How do you know how much the fine should be? Just bring a “normal” sentencing approach to the problem. First, what is the maximum fine for the offence? That gives you an idea about how seriously Parliament treated the offence. Secondly, what are the facts? Is this a serious offence of its type or at the bottom end of seriousness? This will help you place the fine in the range between \$1 and the maximum. Obviously the more serious the offence of its type, the greater up the scale you go.

Of particular importance here is the ability to pay. There is not much point in fining someone who cannot pay. They will just be back in front of you again in a few months. You can order weekly or monthly payments. But be careful about these payments extending beyond 12 months. Generally defendants just do not pay for longer than 12 months.

Often you can be faced with a fine and a claim for reparation. Prefer a reparation order to a fine. Better the victim be recompensed than paying the State a fine.

CUMULATIVE AND CONCURRENT SENTENCES

This is definitely a tricky area. It applies whenever a defendant faces sentence for more than one offence. Should the sentences for each crime be cumulative or concurrent?

The fundamental point to keep in mind is that when you consider the total sentence to be served for all the offending ask yourself – is it a fair sentence? Sometimes you will get to a fair sentence by cumulative sentences, sometimes by concurrent sentences.

Some Guidelines

- a) Where you have a series of charges arising from the same incident or close to each other generally the sentences will be concurrent. Identify the most serious offence (on the facts of the case not on the maximum penalty) and let the sentence on that offence reflect all of the criminal actions of the defendant. Then impose proper sentences for the other offending and make that concurrent on the longest sentence.
- b) Where you have a series of criminal charges that are from different incidents, hours, days or longer apart, generally the sentences for the different incidents will be cumulative.

Once you have added the sentences together (cumulative) stand back and assess whether the final sentence is too long for the overall criminal offending. Often this is the case in cumulative sentences. In that case reduce the sentence for all offending so that the total

sentence is not excessive. There are many exceptions to these rules, but the above is a good guide.

Drunkenness

Generally drunkenness, resulting in an inability to remember the offending or a claim that a defendant was too drunk to have malicious intent and thus a reason to reduce a sentence, is rarely available. The general proposition is that the defendant has voluntarily drunk the alcohol, taken the drugs, and the defendant must take the consequences.

Previous Convictions

Whether or not a defendant has previous criminal convictions can be relevant in sentencing.

If a defendant has no previous convictions and is otherwise of good character then this may be a personal mitigating factor which reduces the start sentence.

The situation with a defendant with previous convictions is more difficult. If a defendant has recent past convictions for similar offending to the current charges, then that can be a reason for a very modest increase in sentence – typically a few months' increase in prison for serious offending. **But** caution that it does not seem that you are punishing the defendant twice for the same crime. It may be best reserved for serious repetitive offenders.

Age

If a defendant is young or very old that may be relevant to sentencing. As to youth, every effort should be made to keep young people out of prison if that is possible given the crime. There are a number of good reasons for this. If a young person can be kept away from prison as a youth, he or she is much less likely to commit crimes as an adult. Young people are less culpable, less responsible than mature adults for their offending. Their brains are not fully developed. They are less able than adults to understand the consequences of what they are doing. So do everything you reasonably can to keep young people out of prison. But if it must be prison, make the period as short as possible.

It is reasonable to discount sentences for very old defendants. It will be much more difficult for them to serve a sentence. **But** old age should not prevent defendants from escaping responsibility.

Disabilities

When considering a sentence, you will need to take into account whether the defendant has any physical or mental disabilities. Such disabilities can be a reason to reduce an otherwise proper sentence. However, before a disability might reduce a sentence it must be significant. Minor physical or mental disabilities do not qualify. As to mental disabilities, this can be relevant in two ways. First, depending on the disability, it could make the defendant less responsible (culpable) than a defendant without that disability. For example, such a defendant may be less able to understand what he has done was wrong or less able to make a logical decision about his action. Secondly, if the sentence proposed is prison, then a mentally unwell person is likely to find prison especially hard. These can be reasons to reduce a sentence length.

As to physical disability, a reduction here primarily relates to the added difficulty such a person may have in prison. The obvious example is a person in a wheelchair. Each day of a prison sentence for such a person will be much harder than that for an able-bodied person.

Bicknell Young – Vanuatu Judicial – Sentencing

A.13 Judgement Writing Template

TEMPLATE FOR JUDGMENT ORAL OR RESERVED

1	INTRODUCTION – A short introduction covering what case is about and the issue(s)
2	THE CHARGE(S) – What are they using language of statute
3	THE LEGAL INCREDIENT OF THE CHARGE(S) AND THE ONUS AND STANDARD OF PROOF
4	UNDISPUTED FACTS
5	DISPUTED FACTS AND A RESOLUTION

6	APPLICATION OF THE LAW in 3 to the facts in 4 and 5 (including “defences”)
7	CONCLUSION: Illustrating that each element of each charge has been proved beyond reasonable doubt or not proved
8	FORMAL DECISION: (Use wording of charge and “beyond reasonable doubt”)

A.14 The Role of a Judge Hand Out

Role and Functions of a Judge

The Branches of Government

The Legislative branch of Government makes the rules – the statutes and regulations (the law).

The Executive branch, generally the political party or parties that are governing together with the Public Service administer the rules. The Judiciary who are responsible for interpreting the “rules” in the context of disputes between citizens and the state and citizens.

And so, the job of a Judge is to apply the law to settle disputes.

Judges must uphold the law. That is, they must honestly and conscientiously apply the law as the Judge believes it to be to the dispute before them. In doing so Judges are upholding the rule of law an essential aspect of a democracy. Finally, the Judge stands between the State and the individual. The Judge’s job is to make sure the State obeys the law like everyone else. The state, whether as the police or a Government Department are not above the law. You as a Judge are there to make sure the citizen is protected from unlawful state action.

The Bangalore Principles set out six basic principles for Judges to be guided by.

1. Independence

Judges must be free to decide the cases before them without interference, whether from the State or anyone else. This “independence” is not for the Judge’s benefit – it protects the rule of law. Litigants must be reassured that Judges will not be influenced by anything other than the merits of the case before them. Only then can there be a fair and impartial hearing for all who come before the Courts.

2. Impartiality

This means that Judges must do their job without favour, bias or prejudice.

3. Integrity

This means that Judges will ensure their behaviour and conduct is above reproach.

4. Propriety

Judges will not act improperly.

5. Equality of treatment

Judges shall ensure all who appear in Court are treated equally.

6. Competence and Diligence

Judges will keep themselves trained, skilled and educated to perform their role. Being a Judge will have priority over all other roles.

Other Relationships

Judges

Having good relationships with your fellow judges is very important. It will create a supportive environment for all. Support and guidance from fellow Judges can be especially important for new Judges. It is acceptable to discuss a case you have to decide with other Judges. This can be especially so with the management of litigation. However, and this is a big however, the final decision must be yours and yours alone. You can listen to other Judges BUT you must exercise your independent judgment in deciding the case.

With lawyers

A friendship with a lawyer is not prohibited and it is not necessary on appointment as a Judge to give up friendship with lawyers. BUT you must never discuss a case before you with a lawyer other than in Court. And if you have a close friendship with a lawyer then you will need to think carefully whether you should disqualify yourself in any case on which the lawyer friend appears in Court (see disqualification process below).

With friends; family

You must never discuss a case before you, while it is proceeding, with friends or family. Where a friend or family member appears before you as a witness or a lawyer you will need to consider whether to disqualify yourself.

For example: You might disqualify if a close friend is an important witness in a case.

You might disqualify if the lawyer is a close relative in a contentious case.

In Court – lawyers / litigants

You will need to try to keep a balance between formality and informality. Always address lawyers/witnesses/parties formally – Mr, Mrs, Miss or whatever is preferred.

You set the tone in Court. If you appear angry, aggressive, or nervous then this will be transmitted to the others in the Court and the Court will become a difficult place to manage. Be calm, talk quietly but firmly, take your time to consider matters, don't interrupt too often and generally wait until someone has had their say before questioning. Don't speak to lawyers about their case out of Court. Don't speak to litigants or witnesses about the case out of Court. Ensure all parties and their lawyers (if any) are present in Court (or have had the chance to be present) when you hold a hearing about the case.

Never add to a decision given in Court or in a reserved decision.

Self-Represented Litigants

Once again have no contact out of Court. As we have said always be patient and courteous. It is difficult to strike the right balance between helping a self-represented litigant and taking over their case. Too much help and you take over their case, too little and you may not know or understand their case.

You should have prepared before the case begins a clear explanation of the process of hearing - for example which party starts, calling of witnesses, submissions etc. Do not use legal terms. Be clear about what you expect. If you can understand the self-represented litigant's case then you can at least direct the litigant toward relevant matters. And this is the most difficult aspect – making sure only relevant matters are dealt with.

Relationship with Court Staff

Court staff obviously play a vital role in the efficient running of your Court. You must always treat them with courtesy and respect.

Your relations with them should be friendly but professional. It is not appropriate to have a personal friendship with a Court staff member. Their role is to support you to do your job. And so, it is important you let them do their job. But they must let you do your job. You must not let Court staff interfere at all in your job as a Judge. If an attempt is made to do so you must firmly but politely tell them they must not do so. The Court staff are members of the Executive arm of Government – you are a member of the Judiciary. And so, as we have discussed their job is to provide administration support for carrying out the rules set by Parliament and your job to interpret those rules. You can and should work together co-operatively with Court staff for the efficient running of the Court. But always keep in mind the different roles.

Judicial Conduct

In Court

This has already been covered. Always have an open mind.

Bias or Appearance of Bias and Disqualification

Bias or the appearance of bias justifying disqualification of a Judge from sitting on a case can arise in at least these situations:

- A conflict of interest
- Where a relationship exists between a Judge and a lawyer/witness or party in a case
- An economic interest of a Judge which may be affected by the litigation
- From earlier expressed opinions by a Judge (generally on a controversial question of law).

Generally, the question of whether a Judge should be disqualified will be raised either by the Judge or the lawyer or a litigant. Where you as a Judge know of a situation which could lead to disqualification you **MUST** disclose the circumstances in full to all parties to the litigation before you.

There are many “tests” for disqualification of a Judge.

One is, “what is it that is said to lead a Judge to decide a case other than on the merits?”

Once that is identified then the question is, “What is the connection between the case and the feared deviation?”

Once the question of disqualification is raised the following process can be used:

- Give the lawyers/litigants the chance to make submissions which focus on the test above.
- Then give a ruling either disqualifying or carrying on.

Sometimes it just seems easier to disqualify. But it isn’t. It places the obligation on another Judge to hear the case. Judges who disqualify too easily can enable judge shopping – litigants trying to get the Judge they think will best suit their case.

Diligence at Work

Three points to this vital aspect:

- Have prompt and on time hearings and hear the cases efficiently.
- Ensure you have a fair share of the work of your Court.
- Ensure your reserved judgments are delivered in a timely way. For example - never more than 3 months.

If you do these three things the quality of justice will be enhanced.

Private Conduct

- Do not accept gifts from litigants or lawyers who appear before you in Court.
- Do not use your Judicial Office to advantage yourself, your family or friends.
- Avoid public controversy, for example you should have no involvement in politics or in controversial issues.
- Take great care in joining public organisations – are they controversial? Mostly ordinary social sports clubs will be ok. It can be better to avoid becoming an office-holder.

Contempt of Court

There are many different kinds of contempt of court. We are concerned with only one – which is where there is disruptive behaviour in the Courts that interrupts the Court case and interferes with your ability to resolve the case before you effectively and efficiently.

The first step should be to check whether there is a statutory provision in your jurisdiction dealing with contempt. If so use it! If not then you have the inherent power to control your Court and to deal with contempt of Court. Some hints.

There is much to be said for judicial blindness and deafness. Sometimes you see something objectionable or hear something. If it is not too serious or not a direct challenge to you and your authority it may be best to simply ignore it. Be to be blind and deaf.


Sometimes offensive behaviour can best be dealt with by the Judge adjourning and taking the heat out of the issue. This can be especially important if there is any threat to you or to Court staff.

Sometimes foolish behaviour in Court can be met by your ordering the person removed from Court (assuming they are not the defendant or a litigation party). Before you do this, you must be sure there is someone – preferably a policeman who can carry out your order.

Finally, if there is a clear case of contempt which cannot be dealt with any other way then we suggest the following process:

- First offer the person the chance to apologise for what they have done. If they do so then that is generally the end of the matter.
- If not then tell the person what the contempt is.
- Give them a chance to see a lawyer.
- Hear submissions from the lawyer.
- Impose punishment. If prison then it should be a matter of days.

A.15 Session 13: Elements of Offences PowerPoint Presentation





PJSI Regional Lay Judicial Officer Orientation Course

20 - 24 Nov, 2017 - Honiara, Solomon Islands

SESSION 13
22 Nov 2017: 09:00 - 10:00pm (60 minutes)


Title: ELEMENTS OF OFFENCES

Facilitator: Enoka Puni

WHAT ARE WE GOING TO COVER IN THIS SESSION?


1. What makes up (constitutes) a criminal offence? Why is that important?
2. What are Onus (Burden) & Standard of Proof in criminal cases? Why are they important?
3. What are the steps involved in a criminal defended hearing and, why are they important in relation to 1 & 2 above?



WHAT CAN YOU EXPECT TO LEARN FROM THIS SESSION

At the end of this session, you will be able to more confidently explain and apply....

1. What makes up a criminal offence, and why that is important?
2. What Onus (Burden) & Standard of Proof are in criminal cases, and why they are important?
3. What the steps in a criminal hearing are, and why are they important in relation to 1 & 2 above?



1. What makes up a criminal offence, and why that is important?


EXERCISE 1 - GROUP (5 minutes)

Discuss the above question and prepare to tell everyone your group's answer.

ANSWER

Elements of the offence - see Annexes 1 & 2


Importance: The elements say what each aspects of an offence is that the prosecution must prove....




2. What are Onus (Burden) & Standard of Proof in criminal cases, and why they are important?

EXERCISE 3 - Group (5 minutes)

Discuss the above question and prepare to tell everyone your group's answer.



Onus/Burden & Standard of Proof in Criminal Cases



The **standard of proof** is the level of proof that must be reached in order to prove what a person wants the court to accept. 'beyond reasonable doubt'

Onus/burden of proof is the duty or responsibility of proving what a person wants the court to accept.

Example

Prosecution

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3. *What* are the steps in a criminal defended hearing and *why* are they important in relation to elements of offences and onus & standard of proof?

EXERCISE 4 - GROUP (7 minutes)

Organise the papers in the envelope in the order of the steps in a criminal defended hearing. Paste them on the butcher paper using blue tag.

7

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EXERCISE 5 - INDIVIDUAL (3 minutes)

Refer to Diagram 1 (Annex 3). Tick each of the stages of the criminal procedure where, knowledge of the elements of offences would be very important?

8

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SUMMARY & ASSESSMENT.

1. What makes up a criminal offence and, why knowing them is very important?
2. What are Onus (Burden) & Standard of Proof and, why are they important?
3. Why are elements of offences important in relation to various steps or stages in criminal defended hearings?

9

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At the *end of this session*, you will be able to *more confidently explain and apply the concepts*:

1. *What* makes up a criminal offence, and *why* that is important?
2. *What* are Onus (Burden) & Standard of Proof in criminal cases, and *why* they are important?
3. *What* are the steps in a criminal hearing, and *why* that is important in relation to the 2 matters mentioned in 1 & 2 above?

10

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NEXT SESSION

FAMILY & SEXUAL VIOLENCE

Tangio tumas

Thank you very much

11

A.16 Session 13: Annex 1

ANNEX 1

Possession of a Weapon

Section

s34(1) Public Order Ordinance (Kiribati)

Description

“Any person is guilty of an offence who, without lawful authority or reasonable excuse, has with him or her any offensive weapon, in any public place”.

Elements

Every element (i.e. numbers 1-6) must be proved by the prosecution (unless it is not disputed)

General

1. The person named in the charge is the same person who is appearing in Court;
2. The date and/or period of time when the offence charged is alleged to have taken place;
3. The place where the offence is alleged to have been committed;

Specific

4. The defendant was in a public place;
5. The defendant had with him an offensive weapon;
6. The defendant did not have lawful authority or a reasonable excuse to have the offensive weapon in a public place.

Commentary

Burden and standard of proof

The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however if the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court. The prosecution must provide evidence to prove that it was **the accused** who committed the offence, i.e. it was **the accused** who had an offensive weapon into a public place.

Public place

“Public place” means any place to which for the time being the public or any section of the public are entitled or permitted to have access (whether on payment or otherwise) and, in relation to any meeting, includes any place which is or will be used for a public meeting: *s2 Public Order Ordinance*.

Offensive weapon

An “offensive weapon” means any article made or adapted for use for causing injury to the person, or intended by the person having it with him or her for such use either for themselves or for another: *s2 Public Order Ordinance*.

Lawful authority

A person will have lawful authority only if he or she, at the time of the alleged offence, is on duty as:

- a police officer; or
- a special constable; or
- a police or constabulary officer of another territory present in the Kiribati Islands in response to an application by the Government.

See *s16(3) Public Order Ordinance*.

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a reasonable explanation for possessing an offensive weapon in a public place or a defence in legislation or common law.

The defendant will have to establish his/her defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

A.17 Session 13: Annex 2

ANNEX 2

Resisting Arrest and Escape

Section

s125 Penal Code (Cap. 26) (Solomon Is)

Description

“Any person is guilty of a misdemeanour who, on being arrested for an offence, violently resists any police officer arresting him or her, or being in lawful custody, escapes from such custody”.

Elements

Every element (i.e. numbers 1-6 below) must be proved by the prosecution

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. The date or period of time when the offence charged is alleged to have taken place; **and**
3. The place where the offence was alleged to have been committed; **and**

Specific

4. **The accused was being arrested for an offence; and**
5. **The accused violently resisted any police officer arresting him or her.**

OR

4. **The accused was in lawful custody; and**
5. **The accused escaped from that custody.**

Commentary

Burden and standard of proof

The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however if the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was ***the defendant*** who resisted or escaped.

Arrest

s11 CPC provides that any person or police officer may arrest another person acting under a warrant of arrest.

s18 CPC provides that a police officer may, without a warrant, arrest any person whom he or she suspects upon reasonable grounds of having committed an offence.

Escapes

The defended must have escaped from lawful custody, i.e. escape from lawful arrest whilst in the custody of the arresting police officer, or from prison custody.

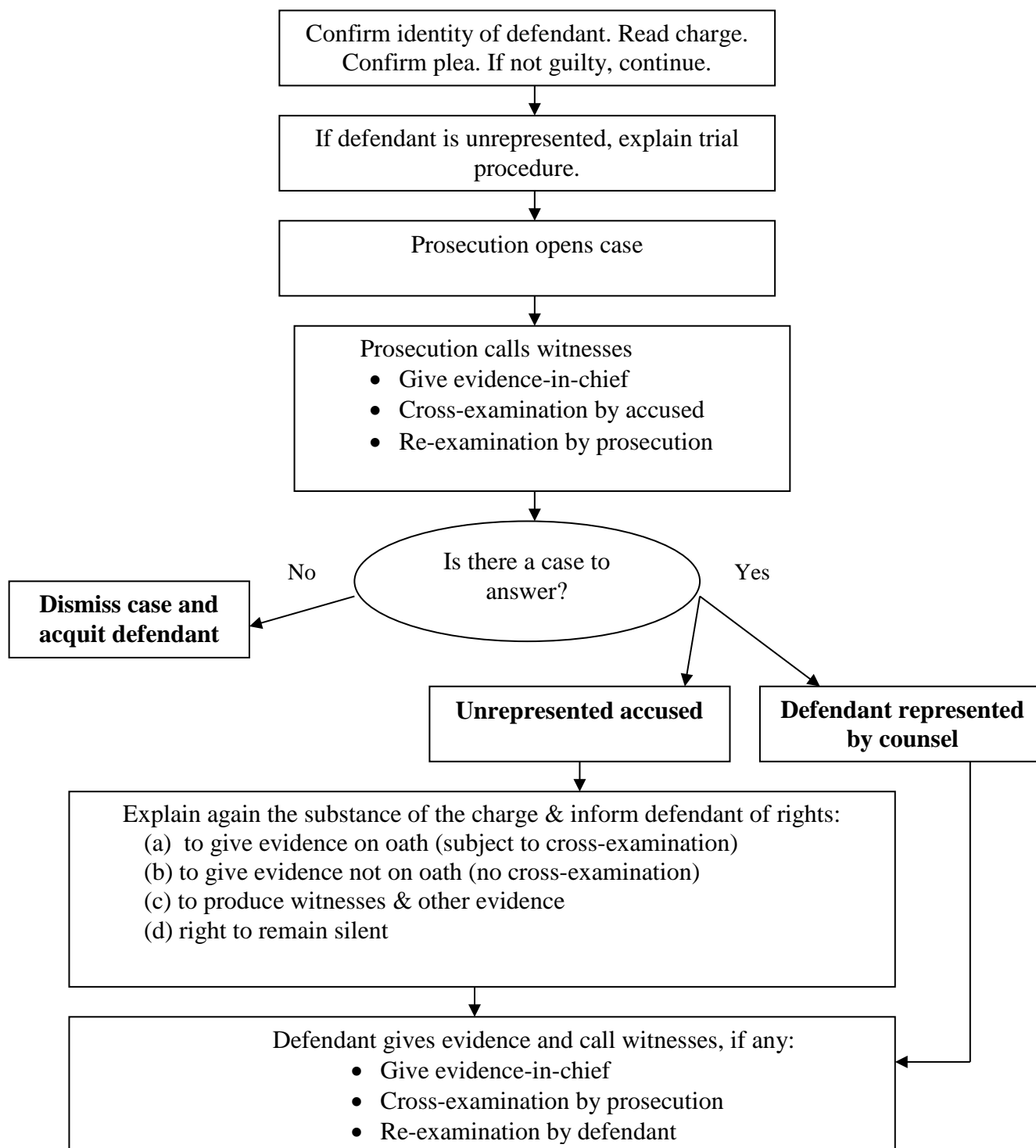
Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

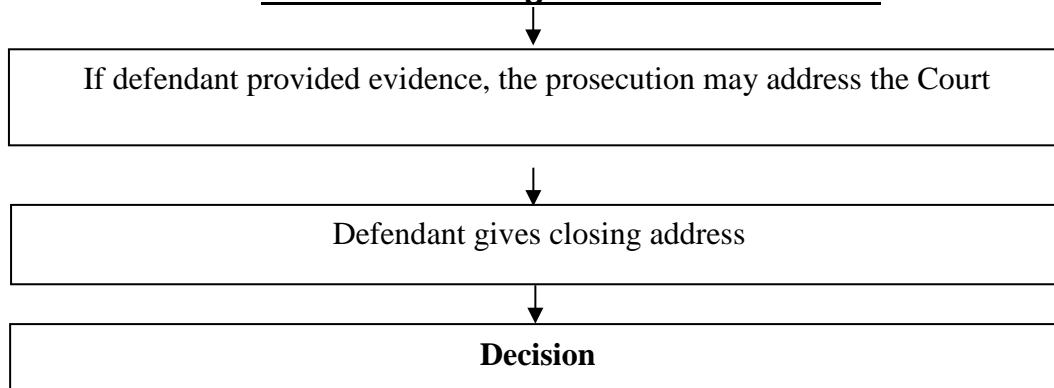
The defendant will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

A.18 Session 13: Annex 3

DIAGRAM 1

Defended Hearing Procedure

Defended Hearing Procedure Continued



A.19 Session 14: Family & Sexual Violence PowerPoint Presentation

MORNING ENERGISER - FUN GAME

The Six Wise Men

I keep six [WISE] ...men
They taught me all I knew;
Their names are What and Why and When
And How and Where and Who...

Adapted from The Elephant's Child rhyme "I Keep Six Honest Serving Men..."

PACIFIC
JUDICIAL STRENGTHENING INITIATIVE

PJSI Regional Lay Judicial Officer Orientation Course

20 - 24 Nov, 2017 - Honiara, Solomon Islands

SESSION 14
22 Nov 2017: 10.00 - 11:00am (60 minutes)

Title: FAMILY & SEXUAL VIOLENCE

Facilitator: Enoka Puni

SUB-TOPICS IN THE PROGRAM?

1. Sexual Assault
2. Consent
3. Evidence from children
4. Special Considerations
5. Closing the court

CHANGES TO THE SESSION SUB-TOPICS.

1. Sexual Assault *(within and outside the family circle)*
2. Consent
- ~~3. Evidence from children~~ - *Will be dealt with in Session 25, Friday morning*
4. Special Considerations - *Family Violence*
5. Closing the court

NEW ORDER OF WHAT WE WILL COVER IN THIS SESSION

1. Family / domestic violence generally
How many have attended a DV awareness program, conference, seminar, workshop etc?
2. Sexual violence within (& outside) the family or domestic environment -
 - ☐ Closing the court
 - ☐ Consent

WHAT SHOULD YOU EXPECT TO GAIN FROM THIS SESSION

At the end of it, you should be better able to explain:

1. What family / domestic violence is, and it's importance to your work as judicial officers.
2. Issues relating to closing the court and consent in relation to sexual violence within (& outside) the family or domestic situations.

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1. FAMILY VIOLENCE / DOMESTIC VIOLENCE

(a) What is Domestic Violence?

(b) What forms does domestic violence take?

(c) Should judicial officers be concerned about it, and why?

Please discuss these questions in your groups and write down your answers to share with others.

7

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The Six Wise Persons

I keep six WISE persons
They taught me all I knew;
Their names are What and Why and When
And How and Where and Who...

Adapted from The Elephant's Child rhyme "I Keep Six Honest Serving Men..."

8

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(a) & (b). What is Domestic Violence & what does it involve (forms of DV)?

i. Your responses

ii. Some definitions

"Violent or aggressive behaviour within the home..."

<https://www.google.com/search?q=Domestic+violence+-+definition&ie=utf-8&oe=utf-8&client=firefox-b>

9

Solomon Is: Family Protection 2014

4. (1) "Domestic violence" is conduct committed by a person (the "offender") against another person with whom the offender is in a domestic relationship, or the threat of such conduct, that constitutes any of the following-

(a) physical abuse;
(b) sexual abuse;
(c) psychological abuse;
(d) economic abuse.

.....

10

Tonga - Family Protection Act [2013]

s4. Meaning of domestic violence

For the purposes of this Act, a person (the "perpetrator") causes domestic violence to another person (the "victim") if -

(a) the perpetrator and the victim are in a domestic relationship; and

(b) beyond the reasonable expectations and acceptances of family and domestic life, an act or omission or threat thereof by the perpetrator -

(i) causes physical abuse, sexual abuse, or mental abuse to the victim or other person at risk; or

(ii) otherwise harms or endangers the health, safety or well-being of the victim or other person at risk.

11

A survey by the Pacific Prevention of Domestic Violence Programme (PPDVP)

A New Zealand Aid funded Partnership Programme between

- ☐ New Zealand Police
- ☐ Pacific Islands Chiefs of Police, and
- ☐ The Australian Federal Police

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Some Pacific Statistics - 2012

Who are the main VICTIMS:

Females were overwhelmingly the victims in all nations (ranging from 82% in Cook Islands to 95% in Tonga)

The main age range of victims ranged between 27 years in Tonga and 37 years in Kiribati

Unemployment high amongst victims from 20% unemployed in the Cook Islands to 81% in Kiribati

Majority of victims married in Kiribati, Tonga, Samoa and Vanuatu, with exception of Cook Islands where majority in de facto relationship

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Who are the PERPETRATORS:

Perpetrators are predominantly male (ranging from 80% in Samoa to 93% in Kiribati)

The main age range of perpetrator is from 28 years in Kiribati and 35 years in the Cook Islands

Majority of perpetrators married in Kiribati, Samoa, Tonga and Vanuatu, in Cook Islands most in de facto relationship

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Other significant finding

One of the main barriers to change is the ***"Tension between customary practice and western approach to justice"***.

Especially significant in Samoa and Vanuatu i.e. chiefly responses

Regional Symposium - Culture & Religion - April 2014, Nadi

Attended by regional representatives from the Police, NGO's, Government etc

Consider [the use of] Culture & Religion as excuses for DV

15

Culture and Domestic Violence

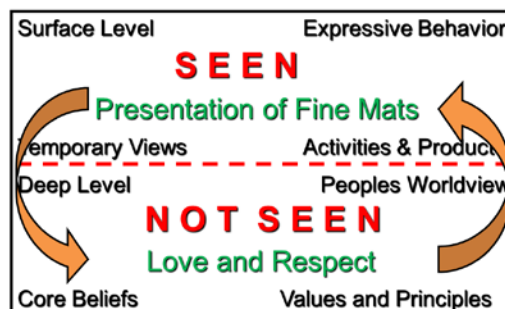


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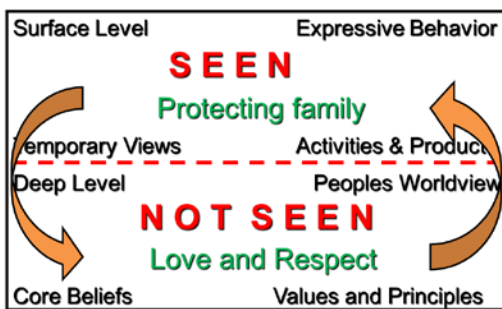
CULTURE - FORMS AND MEANING



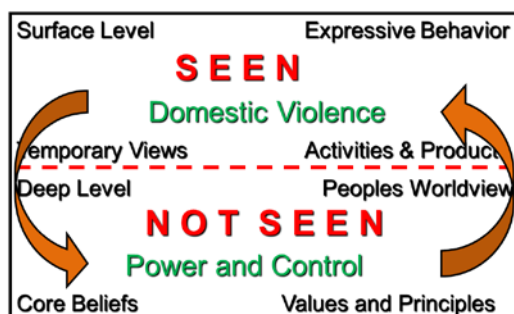
CULTURE - FORMS AND MEANING



CULTURE - FORMS AND MEANING



CULTURE - FORMS AND MEANING



Violence Wheel

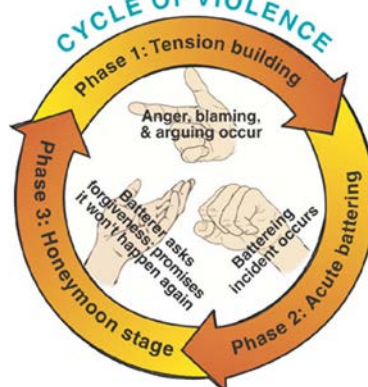
This chart shows the relationship of physical abuse to other forms of abuse. Each part shows a way to control or gain power.



DOMESTIC ABUSE INTERVENTION PROJECT
200 East Superior Street
Durham, Minnesota 55802
(763) 733-0781
www.dadip-model.org

22

CYCLE OF VIOLENCE



23



(c) Should judicial officers be concerned about domestic violence, and why?

Group response

Our Government's response

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Legislation & purpose

Solomon Islands

Family Protection Act 2014

AN ACT TO PROVIDE FOR THE PROTECTION OF FAMILIES FROM DOMESTIC VIOLENCE AND TO PROMOTE THE SAFETY, HEALTH AND WELLBEING OF VICTIMS OF DOMESTIC VIOLENCE AND FOR RELATED PURPOSES.

Republic of Kiribati

Te Rau N te Mwenga Act 2014

AN ACT TO PROVIDE FOR THE PROTECTION OF VICTIMS OF DOMESTIC VIOLENCE, THE PREVENTION AND ELIMINATION OF THE CRIME OF DOMESTIC VIOLENCE WITHIN DOMESTIC RELATIONSHIP, AND FOR RELATED MATTERS

25

Tonga

Family Protection Act [2014]

AN ACT TO PROVIDE FOR GREATER PROTECTION FROM DOMESTIC VIOLENCE, TO INTRODUCE PROTECTION ORDERS, CLARIFY THE DUTIES OF THE POLICE AND PROMOTE THE HEALTH, SAFETY AND WELLBEING OF VICTIMS OF DOMESTIC VIOLENCE AND RELATED MATTERS

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2. Sexual violence within (&) outside of family or domestic environment-

- ☐ Closing the court
- ☐ Consent

Closing the Court. Why?

Open Justice v Closing the Court

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Consent in sexual cases within (& outside) of family or domestic situation.

The defense of consent can apply to crimes for which lack of consent is an essential element of the crime.

The defense of consent doesn't dispute that a criminal act took place; rather, it states that the conduct was permitted by the victim

Example: Assault - application of force by one against another without lawful excuse.

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In cases of rape and sexual assault, both require that the victim did not consent to the sexual conduct occurring, the defense of consent may therefore be available.

Note. There are statutory exceptions.

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Tonga's Criminal Offences Act

118 Rape
(1) Any person committing rape that is to say any person who carnally knows any female -
...
(e) by reason of her consent to such carnal knowledge having been given under fear of death or serious injury,
shall be liable to imprisonment for any term not exceeding 15 years.

Check your local legislation

IS THE DEFENSE OF CONSENT AVAILABLE IN DOMESTIC VIOLENCE CASES?

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PJSI

WHAT DID WE EXPECT TO GAIN FROM THIS SESSION

At the end of it, you should be better able to explain:

1. What family / domestic violence is, and it's importance to your work as judicial officers.
2. Issues relating to closing the court and consent in relation to sexual violence within & outside family domestic violence cases

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PJSI

NEXT SESSION

WORKSHOP EXERCISES

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A.20 Session 14: Annex 1

Definition of Domestic violence in the Solomon Island Family Protection Act 2014

s4. (1) “Domestic violence” is conduct committed by a person (the “offender”) against another person with whom the offender is in a domestic relationship, or the threat of such conduct, that constitutes any of the following—

- (a) physical abuse;
- (b) sexual abuse;
- (c) psychological abuse;
- (d) economic abuse.

(2) Domestic violence may consist of a single act or a number of acts that form part of a pattern of behaviour, even though some or all of those acts when viewed in isolation appear to be minor or trivial.

A.21 Session 14: Annex 2

ANNEX 2

Violence Wheel

This chart uses the wheel to show the relationship of physical abuse to other forms of abuse. Each part shows a way to control or gain power.



DOMESTIC ABUSE INTERVENTION PROJECT

202 East Superior Street
 Duluth, Minnesota 55802
 218-722-2781
www.duluth-model.org

A.22 Session 17: Verdicts and Judgement PowerPoint Presentation



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Regional Judicial Orientation Course
20-24 November, 2017 - Honiara, Solomon Islands

Verdicts & Judgment
• Sir Ron Young




Verdicts & Judgment 


In May, 2016 outside the Port Vila Courthouse, Mr. P and Mr. W were having an argument.

Mr. W claims that Mr. P punched him in the face. Mr. P agrees he punched Mr. W but says he did so in self-defense.

The issue for me to resolve is therefore whether the prosecution has proved beyond reasonable doubt Mr. P did not act in self-defense.

Verdicts & Judgment 

Mr. P is charged that on 18 May, 2016 he assaulted Mr. W contrary to Section ____.


Verdicts & Judgment 

On 18 May, 2016 Mr. P and Mr. W had been summoned as witnesses in a Court case.

They both arrived at the Courthouse at about the same time.

They knew each other and began talking about the case in which they were both to be witnesses.


They had opposing views of the case. They began arguing.

Verdicts & Judgment 

Mr. W said that without warning Mr. P punched him in the face. In cross examination he denied he had raised his voice or his fist or that he had threatened Mr. W.

In contrast Mr. P said that Mr. W was aggressive and that when Mr. W raised his fist he thought he was going to hit him. Mr. P said he then punched Mr. W in self-defense.

Mr. P's witness agreed with Mr. P's evidence. He said Mr. W was threatening and had raised his fist before Mr. P hit him.

Verdicts & Judgments 

I must therefore decide who is telling the truth keeping in mind the prosecution must prove there was no self-defense beyond reasonable doubt.

Verdicts & Judgments



I accept the evidence of Mr. P.

His story about what happened that day is supported by his witness. The witness had no reason to lie. I am satisfied that Mr. P punched Mr. W only after he was threatened by Mr. W and Mr. W raised his fist.

Verdicts & Judgments



The prosecution have proved beyond reasonable doubt Mr. P assaulted Mr. W.

But they have not proved beyond reasonable doubt Mr. P did not act in self-defense.

I have concluded that when Mr. P punched Mr. W he was defending himself.

I am satisfied in the circumstances Mr. P used reasonable force to defend himself.

He punched Mr. W only once. I therefore find Mr. P not guilty of assault.

A.23 Session 17: Credibility PowerPoint Presentation




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Session – Credibility and Reliability:
• Sir Ron Young




Credibility and Reliability 

- What is reliability? - Identification evidence.
- What is credibility?
- Be clear about what factual issues are in dispute
- Why does dispute matter in this case?
- Give reasons for assessment.

Credibility 

- Don't rely on looks/gestures
- Consistency of evidence
 - With previous statement
 - With other evidence given
 - With documentary evidence

Credibility 

- Straight forward answers?
- Motive to lie?
- Record of lying/dishonesty
- Overall does evidence make sense?

A.24 Credibility Template

CREDIBILITY NOTES

When you are considering the evidence of an important witness, you will need to consider two aspects; reliability and honesty.

Reliability

(a): Is the evidence of the witness reliable? Honest witnesses can be mistaken. Is the witnesses evidence accurate on the important points?

For example: It is well established that evidence of identification can be unreliable. A witness sees a crime. It can be a fearful, traumatic experience. The crime involves people they do not know. Later they are asked to identify those involved. They may identify someone they genuinely believe is involved – but they may be mistaken. It is especially important in cases that rely upon identification of the perpetrator that great care is taken.

When considering identification evidence, keep these factors in mind.

- Did the person identifying know the person identified beforehand?
- What were the circumstances of the identification e.g. distance, light, etc.?

Honesty

(b): Is the witness giving honest evidence; are they honestly trying to tell you as the Judge what they know about the case?

Assessing the honesty of a witness is one of the most difficult areas for a Judge, not just reaching a conclusion about which witness is telling the truth and which is not, but giving reasons for your conclusions.

- The first step is to identify what disputes there are about the alleged facts in the case before you.
- Then, does the dispute about a particular fact matter in the case before you?

For example: Does it really matter if one witness said the important events happened at 1.00pm and another witness at 2.00pm? But it may matter if one witness said 2.00pm and another 11.00pm (at night).

If whether or not a witness is telling the truth about a particular matter is vital to a resolution of the case then you will have to decide on the credibility.

Only resolve credibility issues if you need to do so to resolve the case before you.

Once you have concluded whether a witness is telling the truth is vital to the case before you, you will need to give reasons why you think a witness is accurate and/or truthful or inaccurate and/or untruthful.

Generally do not rely upon how a witness looks when giving evidence or what gestures a witness makes or whether a witness hesitates before answering questions. These have been found to be unreliable indicators as to whether a witness is or is not telling the truth.

For example: Judges in the past relied upon a witness's failure to look them or the lawyer questioning them "in the eye". This failure was seen as an indication of lying. As you will all know, for many Pacific Islanders it is very impolite to look a person, especially one of authority, in the eye.

When considering whether a witness's evidence is truthful consider these factors:

- Was the witness's evidence consistent with what the witness had previously said?
- Was the witness's evidence consistent with other accepted evidence, e.g. another witness or importantly documentary evidence?
- When giving evidence, did the witness give straightforward answers or fail to answer questions, or give vague answers?
- Did the witness have any motive to lie?
- Did the witness's evidence "make sense" given what has been established in the case?
- Did the witness have a record of lying or dishonesty?

A.25 Session 17: Judgement Writing PowerPoint Presentation



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20-24 November, 2017 - Honiara, Solomon Islands

Session – Judgment Writing:
• Sir Ron Young




Judgment Writing



Need for Reasons
Preparation for decision
Note taking


Judgment Writing



Template


- Introduction
- The charges
- Legal ingredients
- Undisputed Facts
- Disputed Facts and Resolution (Credibility)
- Application of law to facts
- Conclusion
- Formal Finding

Judgment Writing



- Use plain English and short sentences
- Don't use legal terms unless essential
- Stick to a format
- Avoid maybe/possibly – You must reach a firm conclusion on facts/law

Judgment Writing



Oral Judgments

- Use same format
- Need for preparation
- Note taking
- Short delays

A.26 Judgement Writing Template

JUDGMENT WRITING NOTES

Who is your audience? Need for Reasons

This is really the most important aspect of a judgment. Who are you writing for – and the answer is firstly and most importantly the parties to the litigation, and in particular, your judgment is for the losing party. If a criminal conviction then the essence of a judgment is that you are telling the defendant why he/she has been convicted, and in doing so you are also telling the prosecution why they have succeeded; and of course around the other way if the defendant is found not guilty. If a civil case again you are particularly telling the claimant or defendant who has succeeded and why.

There are other less important audiences. You are writing to tell the public the reasoning and result of the criminal charge or the civil case; and finally you are writing so that any Appeal Court can understand why you reached the decision you did. And so the essence of judging is both the decision and the reasons for the decision.

If you think about writing for the losing party, you will immediately understand your judgment must use straightforward language – no legalisms – focus on the real issues in the case – and make clear findings. If you do this then you will have spoken to your audience.

So keep this in mind – ask the question as you write or prepare an oral decision – Am I telling the losing side why they have lost?

The following is a template for a judgment, whether oral or reserved.

TEMPLATE FOR JUDGMENT

ORAL OR RESERVED

1	INTRODUCTION – A short introduction covering what case is about and the issue(s)
2	THE CHARGE(S) – What are they using language of statute
3	THE LEGAL INCREDIENT OF THE CHARGE(S) AND THE ONUS AND STANDARD OF PROOF
4	UNDISPUTED FACTS
5	DISPUTED FACTS AND A RESOLUTION

6	APPLICATION OF THE LAW in 3 to the facts in 4 and 5 (including “defences”)
7	CONCLUSION: Illustrating that each element of each charge has been proved beyond reasonable doubt or not proved
8	FORMAL DECISION: (Use wording of charge and “beyond reasonable doubt”)

INTRODUCTION

This short section is intended to tell the reader in a few short sentences what the case is about and what the issues are, e.g. assault/defence self-defence.

Example: In May 2016 outside the Pt Vila Courthouse, Mr P and Mr W were having an argument. Mr W claims that Mr P then punched him in the face. Mr P agrees he punched Mr W, but says he did so in self-defence. The issue for me to resolve is therefore whether the prosecution has proved beyond reasonable doubt Mr P did not act in self-defence.

So we have identified basically what happened and what the issue is – self-defence. Note: I have used Mr P and Mr W. I think it is important to use that formal term. Whatever they may or may not have done they are people and entitled to be addressed respectfully.

THE FACTS

What you must keep in mind are these questions –

- What are the undisputed facts?
- What are the disputed facts?

So when describing the undisputed facts – generally those that lead up to the alleged crime you do not need to recount what each witness has said. Simple describe what has happened.

For example –

In the assault case –

“On 18 May 2016, Mr P and Mr W had been summoned to be witnesses in a court case. They both arrived at the courthouse at about the same time. They knew each other and began talking about the case in which they both were to be witnesses. It seems they had opposing views of the case. They began arguing”

The above facts are all agreed. No need to say – the witness said this and the next witness the same. But you have now got to the disputed part of the facts. You now need to recount what each party says about what happened next – the disputed part of the case.

For example, “Mr W said that without warning Mr P punched him in the face. In cross-examination he denied that his voice was raised, or that he threatened to punch Mr P or that he had raised his fist immediately before Mr P had punched.

In contrast Mr W said

I must therefore resolve the conflict between the evidence of these witnesses.

I accept the evidence of Mrand reject the evidence of Mr I do so for these reasons

.”

At the end of this section summarise the disputed facts as you have found them.

The Law:

Describe the laws as relevant to the case. Here the relevant law is self-defence – you would not need to detail the law of assault because the defendant has agreed he assaulted Mr W – but he says his assault is excused because he acted in self-defence.

You need to identify if there is any dispute about what the law is – if there is a dispute you need to resolve it and declare the relevant law. Typically you will need to identify each element of a criminal charge. You will need to say the onus of proof is on the prosecution to prove each element of the charge. You will need to say that the prosecution need to prove each element of a charge beyond reasonable doubt before there can be a conviction. And you will need to identify any other aspects of the case which the prosecution have to prove beyond reasonable doubt – often negatives. For example – self-defence. The prosecution must prove beyond reasonable doubt the defendant did not act in self-defence to prove their case.

Application of Law to Facts and Conclusion

For example, in this case you could say –

“The prosecution must prove that Mr P was not justified in using such force as in the circumstances it was reasonable to use in defence of himself. (The definition of self-defence).

“I have found that Mr P was threatened by Mr W. I have found that Mr W did raise his hand and that Mr P believed Mr W was going to hit him. And so I am satisfied beyond reasonable doubt that when Mr P struck Mr W, Mr P believed he was about to be struck by Mr W. And so Mr P acted in defence when he punched Mr W. I am satisfied in the circumstances Mr P’s reaction was reasonable.

“I am satisfied beyond reasonable doubt it was reasonable in the circumstances for Mr P to strike first. The prosecution therefore have not disproved self-defence beyond reasonable doubt. I therefore find Mr P not guilty of the charge of assault.”

The final sentence is the formal finding.

It is helpful to have some idea what the issues in the trial are before the case begins. Ask the lawyers; ask the defendant. This means you can have a focus on the important facts.

ORAL JUDGMENTS

These are in the same format as a reserved judgment.

The difference is in the preparation.

- You need to know and have written down beforehand the legal ingredients of each charge.
- You need to find out what trial issues are (if possible)
- In civil cases you will have some idea of the issues from the pleadings.
- Get out your template
- From the template, before trial, you should fill in the law section and possibly the “Issues” section and perhaps an introduction.
- Once the trial begins, make notes under each heading – e.g. identify facts not in dispute and facts in dispute. You could use coloured pens for this.
- Do the same for any dispute about the law.
- At the end of the trial your template should be populated with relevant material.
- Do not forget, you need reasons for conclusions.
- In civil cases, use the wording in the claim and defence as a way of describing the case.
- Sometimes it is better to adjourn for an hour or so to structure a decision or even first thing the next morning to deliver judgment.

A.27 Disqualification as a Judge

PACIFIC JUDICIAL STRENGTHENING INITIATIVE

REGIONAL LAY JUDICIAL ORIENTATION COURSE

Day 1 Summary

Some Guidelines

Disqualification as a Judge

1. If either party asks you to disqualify yourself from sitting as a Judge in a case, first ask both parties why you should or should not disqualify yourself.
2. The following are grounds on which you could disqualify yourself:
 - a. If you have any private involvement in the case.
 - b. If you have any financial interest in a case.
 - c. If you have discussed the case privately before trial with any of the parties or witnesses.
 - d. If the case before you has a close relative as a party or a witness.
 - e. If it just feels wrong do not sit.

A.28 Evidence in Case of Police v Mr P

EVIDENCE IN CASE OF POLICE V MR P

Mr P is charged with assaulting Mr W outside the Solomon Islands Magistrates Court at Honiara.

The first witness for the prosecution was Mr W. He said that he had been summoned to Court as a witness to a fight that had occurred between men of his village and the men of Mr P's village. On the day he had been summoned to give evidence he was waiting outside the Magistrates Court. He saw Mr P. He knew Mr P. He was his wife's cousin. He began talking to Mr P about the men from the two villages fighting. Mr P said that it was all the fault of the men from Mr W's village. They had attacked Mr P's village. Mr P said they should all go to prison. Mr W said he told Mr P what he said was wrong. They argued. Mr W said that without warning Mr P punched him in the face and said "you liar". Mr W said he had a bleeding nose and the next day a black eye.

In cross examination he denied he had raised his voice, threatened or raised a fist to Mr P. The prosecution then called Sergeant A to give evidence. He said he had spoken to Mr P about punching Mr W. Mr P said to the police that he had punched Mr W, but he had done so after Mr W had yelled at him, threatened to knock him over and then Mr W had raised his fist. Mr P said he then punched Mr W because he thought Mr W was going to hit him.

Mr P gave evidence. He said what he had said to the police Sergeant was true. Mr W was aggressive. He had threatened Mr P and when Mr W raised his fist Mr P thought he was going to hit him. And so he hit Mr W. It was self-defence. Mr P called a witness. Mr R.

Mr R said he was waiting for his criminal case at the Honiara court when he saw Mr P hit Mr W. He said Mr W was yelling and threatening Mr P telling him he was going to knock him over. It was then Mr P punched Mr W.

The prosecution cross examined Mr P. They said to him he was lying about what happened that day. Mr P denied he was lying.

A.29 Session 20: Civil Cases including Land PowerPoint Presentation



PACIFIC JUDICIAL
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**Regional
Lay Judicial Orientation Course**

20-24 November 2017
Honiara, Solomon Islands

Session 19: Civil Cases including Land
•Justice (R) John Mansfield



Civil Disputes 

Public Law / Administrative Law


Rights (Constitutional or Legislative)

- Citizen v. Citizen
- Citizen v. State/Republic

• Standing


Civil Law (Common Law or Legislative)

- Standing

Civil Disputes 

- What must be proved?
 - Start with the fundamentals!
- Who has onus of proof?
- Standard of Proof?
 - Balance of probabilities


Cont.....

Civil Disputes 

Cont....

- Practical consideration
 1. Is there an obligation to give evidence?
 2. Is there a particular source of knowledge?
 3. Is there direct evidence?
 4. Is there circumstantial (inference) evidence?
 5. Is there an oversight? What to do about it.

4

Civil Disputes 

Claims and other pleadings:

A.Purpose of Claims

- Focus on fairness
- It is important to understand the issue!

B.Using techniques to identify issues

- Is it possible to get an agreement?

C.Claims and cross-claims/counter-claims/third party claims

D.Managing parties and sequence of evidence and submissions

Civil Disputes 

Practical Steps:



```

graph LR
    A((Confidence)) --- B((Start at the Start))
    B --- C((Adjourn for consideration))
    C --- D((Seek Advice))
    A --- C
    B --- D
    
```


A.30 Session 20: Civil Decision PowerPoint Presentation



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**Regional
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20-24 November 2017
Honiara, Solomon Islands

Session 20: Civil Decisions
•Justice (R) John Mansfield



Civil Disputes



Common Issues

Discussion.....


Civil Disputes



Managing multiple claims and cross-claims:



Civil Disputes




Decision Making:

- Evolutionary;
- Make a decision making structure;
- Refer to evidence, your notes and submissions;
- Make up your mind;
- Decide while things are “fresh” or provide decisions “on the spot”.

4

Civil Disputes



Remedies and Damages:

- Informal settlement by parties
- Types of Remedies
 - Directory orders / injunction
 - Damages
- Directory Orders
 - Confine to what is necessary
 - Be clear
- Damages and Compensation
 - Step back and consider any contingencies
- Costs Orders (where applicable)

A.31 Civil Exercises

Civil Exercise 1

Wharf Regulations

Regulation 10

“Storage Charges”

1. Storage charges payable in respect of any cargo intended for import or export and stored at the wharf shall be at the rates per metric tonne given below:
 - a. First week Free
 - b. Second week \$50.00
 - c. Third week \$75.00
 - d. Fourth week \$100.00
2. The storage charges payable under sub-regulation (1) shall be payable within one month from the date the cargo reaches the wharf.
3. Where the storage charges referred to in sub-regulation (1) are not paid within one month from the date the cargo reaches the wharf, an additional charge of \$100.00 per week per metric tonne is payable by the shipper to the wharf operator.
4. After a period of 3 months from the date on which the storage charges are due, the wharf operator may take legal proceedings for the forfeiture and sale of the cargo in question.

S is a shipper, which landed a container loaded to 10 tonnes on the wharf operated by W on 1 January 2016. S removed the container 8 weeks later on 23 February 2016, but did not pay the storage charges to W.

W issued an invoice to S for storage charges as follows:

Week 1	Free
Week 2	\$500.00
Week 3	\$750.00
Week 4	\$1000.00

Penalty storage charge after week 4:
(29 January 2016 – 31 March 2016 = 9 weeks) \$9000.00

W then sued S for \$9000.00 plus further penalty storage charge accumulatory at \$1000.00 per week. At the time of the hearing another 30 weeks had passed (so the claim was then for a further \$30,000.00).

S disputed its liability.

Questions

What is the real question to decide?

What amount would you give judgment for?

What are the features of the Regulation which guided you to your conclusion?

Civil Exercise 2

W is a 30 year old labourer earning \$100.00 per week. He worked for B in a small factor for some years. In an accident while operating a machine, W cut off the third, fourth and little fingers of his left hand.

W sued B for negligence, because the machine he was operating did not have the guard down, and because he had not been told to work only when the guard was down. B in his court defence said the accident was partly W's fault because he had not put the guard down (contributory negligence).

W went to hospital for 2 days and had treatment for some weeks. When his wounds recovered, he was not given job back by B. He had been unable to find another job by the time of the hearing of his claim.

At the hearing W gave evidence (as above). B was present but did not give evidence. W and his wife also gave evidence about him suffering a lot of pain for a few months, and that he had tried to get other work. His medical expenses had been paid by B.

Questions

What is/are the principal steps/issues?

Who has the onus of proof?

What is the standard of proof?

What decision would you make on W's claim? Why?

Would you reduce his damages (if awarded) for contributory negligence? Why?

What elements would you allow for in W's damages?

What amount would you allow for each element?

Would it make any difference if W was left-handed?

Civil Exercise 3

You are a member of the Land Claim Tribunal.

The dispute is between three Families A, B and C over a section of custom land where they each hold adjacent land.

1. At the hearing, Chiefs A and B appeared for their families, but Family C does not attend. What would you do?
2.
 - a. At the hearing where eventually all families are in attendance you realise you are a member of Family C. What should you do?
 - b. At the hearing (alternatively), you realise that one member of Family C owes you a large amount of money. What should you do?
 - c. At the hearing (alternatively), you realise when Chief C is about to give some evidence that your brother and Chief C have recently had a very public fight and your brother had said that Chief C is a liar. What should you do?
3. At the start of the hearing, Chief C complains that he needs more time to prepare his family claim, and to arrange his witnesses, so he asks for the hearing to be put off or, alternatively, for the hearing to be adjourned after the completion of the evidence of Families A and B. What should you do?
4. Eventually the hearing is completed. Family A has presented 5 witnesses; Family B has presented 4 witnesses; and Family C has presented evidence only of a detailed plan from a surveyor. Chief C decided to give no evidence.
5. The detailed survey plan identified boundaries of Family C's claim, effectively over the disputed area. There is no other survey evidence. What weight should you give to the survey evidence?
6. Family C has also cross-examined each of the other 9 witnesses. To a significant degree, they each accepted that Family C was the original custom owner of the disputed land. However, each would not accept that their family's claim should be refused. With one exception, they did not give, in the end, any cogent evidence to support their family claim. The exception said that the custom land had been transferred by Family C to Family B, based on information given to him by his father, and said that he had seen (but had not read) a contract for transfer of the custom land to his father's possession. His only knowledge was that his father had told him the document was that contract, and had held up some sheets of typed paper.
7. What decision would you make on the custom owner of the disputed land? Would it make any difference if the witnesses' father was still alive, and able to give evidence but was not called to give evidence?

A.32 Sessions 23-24: Communication PowerPoint Presentation



PACIFIC JUDICIAL
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Regional Lay Judicial Orientation Course

20-24 November 2017
Honiara, Solomon Islands

Session 23-24: Communication skills
• Dr Livingston Armytage




This session



- What is effective communication?
- 6 principles of good communication
- Exercise

Communication



- Your role as judge
- Good communication is a professional skill
- Communication is expression to convey meaning
- Legal expression can be very difficult to understand
- Judges must communicate clearly.

Your audience



- What your *audience* hears is more important than what you say
- Focus on your **audience**
 - **Who** is your audience?

Good news story



- Code of Conduct – Competence and Diligence



5

Good communication



1. Clarity
2. Brevity
3. Precision
4. Relevance
5. Directness
6. Order

1. Clarity



- **Ambiguity**

The board sanctioned his conduct
The rent must be paid by the fifth of the month

- **Vagueness**

middle age, reasonable behaviour, good cause.

- **Double-negatives**

no candidate is eligible without having acquired a university degree.

7

2. Brevity



1. Long, complex sentences are harder to understand than short simple ones.
2. Generally speaking, style manuals recommend that average sentences not exceed about 20 words.
3. Unnecessary repetitive words:
 - *you are hereby requested and authorized ...*
 - *null and void*
 - *cease and desist*
 - *fair and equitable*
 - *right, title, and interest ...*

8

Exercise # 1



No person shall prune, cut, carry away, pull up, dig, fell, bore, chop, saw, chip, pick, move, sever, climb, molest, take, break, deface, destroy, set fire to, burn, scorch, carve, paint, mark, or in any manner interfere with, tamper, mutilate, misuse, disturb or damage any tree, shrub, plant, grass, flower, or part thereof, nor shall any person permit any chemical, whether solid, fluid, or gaseous, to seep, drip, drain or be emptied, sprayed, dusted or injected upon, about or into any tree, shrub, plant, grass, flower, or part thereof, except when specifically authorized by competent authority; nor shall any person build fires, or station or use any tar kettle, heater, road roller or other engine within an area covered by this part in such a manner that the vapour, fumes, or heat therefrom may injure any tree or other vegetation.

9

Legal Jargon



- What is it?
- Give some common examples ...
 - ◆ *Habeus corpus*
 - ◆ *beyond reasonable doubt*
 - ◆ *circumstantial evidence*
 - ◆ *mens rea*
 - ◆ *actus rea*
 - ◆ *others:*
- Is it justified?
- If so, when?

3. Precision



- **Technical words and jargon**

Technical or special words can have particular meanings and are sometimes unavoidable. They should be clearly defined:

- *just cause*
- *reasonable doubt*
- *circumstantial evidence*
- *sub judice*

- **Wordiness**

Familiar clusters of words often add no value to communicating, and can be replaced by single words:

- *during the period from*
- *for the reason that*
- *This power of attorney includes the power to deposit in and withdraw from any bank, savings and loan association, credit union, financial institution, brokerage firm, or other custodian of my asset*

4. Relevance



- Avoid unnecessary Information
- Information which is irrelevant to the purpose of the communication, and which the reader/listener does not need to know, diverts attention and confuses meaning.

5. Directness



Action verbs – active voice

Generally speaking, we express meaning more clearly when we correct the tendency to convert verbs and adjectives into abstract nouns. This tendency leads to abstract, indirect and impersonal expression.

- make reference to - **refer**
- effectuate service - **serve**
- initiate a suit against - **sue**
- is dependent on - **depends**

A decision was made by the court to conduct a review of the file
....

6. Orderliness



Key questions:

- What is the purpose of the communication?
- Who is the audience or audiences?
- How should you meet the needs of your audience?
- What is the best structure for your communication?
- How will you communicate: oral or written?

'Body' language



1. Non-verbal communication
1. Is it good or bad?
2. Give examples:

Exercise #2



1. Identify a work-decision you have recently made
2. Outline in writing your decision with your reasons
3. *In pairs*, explain your decision to your partner
4. Critique the clarity of this communication using the 6 principles of good communication.

6 Principles of Good Communication



1. Clarity
2. Brevity
3. Precision
4. Relevance
5. Directness
6. Orderliness

Thank you!



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A.33 Session 25: Evidence PowerPoint Presentation



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Regional Judicial Orientation Course
20-24 November, 2017 - Honiara, Solomon Islands

Session 25 - Evidence:


- Sir Ron Young
- Justice (R) John Mansfield



Evidence 

What is evidence?

- Relevance
- Truthfulness
- Weight

Evidence 

Hearsay

- Statement by a person not a witness
- Exceptions
 - Statement by defendant
 - Unavailability of witness
 - Documentary hearsay

Evidence 


Silence by accused

- Before trial
- At trial
- Comment by Judge

Evidence 

Identification evidence

- Dangers
- Factors to look for

Evidence 

Child Witnesses

- Great care
- Oath or promise
- Control of questioning
- Truthfulness and reliability

Evidence other issues



- Admissions by agreement
- Privilege
- Leading questions
- Opinion Evidence / Expert Evidence

A.34 Evidence Notes

EVIDENCE

What is evidence?

Evidence is what witnesses say in Court and the documents that are produced in Court that are relevant to the case before the Court.

The key point with evidence is relevance.

If the evidence proposed is relevant to the issues in dispute in the Court case before you then with exceptions it will be admissible. And so evidence is generally admissible if it goes to prove or disprove a relevant fact.

If the evidence proposed does not go to prove or disprove a relevant fact then it will not be admissible.

A relevant fact is that which proves or disproves an allegation the prosecution or defence in a criminal case or a claimant or defendant in a civil case need to prove to establish their case or disprove the other side's case.

Generally, a statement or a document is only evidence if the person who for example saw the event makes a sworn statement as to its truth. And the same generally with a document – the person who made the document or signed the document must also swear the document produced in Court is the document made or signed by them. (With exceptions dealt with later).

For example a witness in a case of alleged assault gives evidence he saw one man strike another – obviously this evidence is relevant to the assault charge and admissible. In the same case another witness says he is sure the defendant is guilty because he is a bad man. This evidence does not go to proving an assault – it's simply one man's opinion of another's character and so the evidence is not relevant and it is inadmissible.

Weight of Evidence

Once you are satisfied that evidence is truthful you will then need to decide if the evidence you have heard is reliable. Of course, a witness can be honest but the evidence they give can be unreliable. For example, their memory of a conversation may be poor or an identification of an event may be too far away or too dark to reliably describe what happened. And so you will have to decide what weight you give evidence you have heard when you come to a decision.

Summary of Approach

- Is the evidence you have heard relevant to the case before you?
- If yes, is the evidence given truthful?
- If yes, how reliable is the evidence?

Hearsay

The general rule is that a witness can say what they heard and saw but not give evidence of what someone else heard and saw. And so a hearsay statement is a statement made by a person who is not a witness.

The reason for this rule is straight forward. When a witness says 'I saw Mr A hit Mr B' the witness can be challenged in Court about the reliability and honesty of his evidence. Where a witness says Mr C told him Mr A had assaulted Mr B the reliability and honesty of Mr C can't be challenged because he

is not a witness in Court. And so what the witness told the Court about what Mr C said is hearsay and generally inadmissible.

There is one main exception to the hearsay rule. It is this – Where the defendant has made a statement out of Court about the crime he or she is charged with, it is admissible. This statement is hearsay. It is a statement made by a person who is not a witness. The statement can be made to anyone – policeman, friend, relative, anyone... That person however must come to Court and tell the Court what the defendant has said. The statement made by the defendant must of course be relevant to the charge. It can either admit or deny in whole or in part the charge. As long as the statement meets these conditions it will generally be admissible although a hearsay statement.

Sometimes what the defendant has to say will be in writing for example in a police statement.

Sometimes a witness will give evidence about what the defendant has said to them.

Keep this in mind:

- A defendant may give evidence in Court either denying he/she made the statement or admitting the statement was made but saying it was untrue. You will need to resolve this issue in your decision.
- Sometimes a defendant may challenge a statement he/she made to the police saying it was unfairly obtained and should not be admitted in evidence. Again, you will need to resolve this challenge. Most countries have rules about the admissibility of unfairly obtained evidence.

Generally, hearsay statements can be admissible:

- If the person who made the statement isn't available to give evidence. (Usually this means that the person is overseas or can't be found.)
- And there is reason to believe the hearsay statement is reliable.

If these two situations apply a hearsay statement can be admitted in Court. It will be for you to decide what weight to give this evidence, especially given the person making the statement will not be available for cross examination.

Documentary Hearsay Rules

Most countries that have an Evidence Act will have some rules about the admissibility of documents. You need to be familiar with the rules (if any) in your country.

Generally, the rules on admissibility of documents are stricter in criminal cases than civil cases. A business record is mostly admissible if the person who made it isn't available as a witness or if the person who made the document couldn't reasonably be expected to remember it. For example, evidence of the purchase of an item from a shop may be required. The document may be a receipt given by a shop for a purchase - perhaps some months or years before. It wouldn't be reasonable to expect the shop worker to remember that particular receipt amongst perhaps hundreds or thousands. But the receipt shows it is from the business. The receipt document would be admissible. The person preparing the receipt was doing so as part of their job and there is every reason to expect the document is reliable.

BUT: if the document was say a contract between the parties for the sale of a car. In this case one of the parties who prepared or signed the document would have to give evidence authenticating the document. The hearsay exception rule would not apply. Often with documents the parties to the litigation can agree on its admissibility without argument. A

good approach with a document which is important in a case is to see if the parties can agree that the document be produced in Court by consent.

Silence doesn't mean Guilt

Sometimes before or sometimes after a defendant is charged with a crime they are asked by the police (and sometimes by friends or family) what they have to say in response to the charge. Some defendants reply and what they have to say as long as it is relevant is admissible in Court as an exception to the hearsay rule. Some defendants refuse to say anything in response. Generally, someone accused of a crime is entitled to say to the prosecution, you charged me, you proved it and say nothing in response. And so, silence is the right of an accused person. It is wrong for a Judge to say "well, if the defendant was not guilty they would tell the police when charged or they would have told the police what happened." This is the wrong approach because it reverses the onus of proof. It suggested the defendant has to prove his/her innocence by providing an explanation. They do not. It is for the prosecution to prove beyond reasonable doubt they are guilty.

This approach is emphasised by a warning that Police in most countries are obliged to give to a person suspected of a crime when the Police ask the suspect make a statement. The warning is in these words or similar:

"You do not have to say anything but anything you do say may be recorded and may be given in evidence."

Note the warning – the suspect does not have to say anything – and so it would be unfair to use the suspect's refusal to say anything as an indication of guilt.

Identification Evidence

The most common reason for wrongful conviction of crimes is as a result of mistaken identification evidence. As a result, many countries have developed special rules to deal with the dangers of identification evidence.

The problems have arisen because honest confident witnesses have been certain they can identify a person, typically one they have seen committing or implicated in a crime, when it turns out they have been mistaken. And so the first principle is that a Judge must warn him or herself of the dangers of identification evidence. And there are a set of guidelines for Judges to apply to identification evidence as a way of testing the identification evidence. They are:

- a) Is the person being identified known (and how well) or a stranger to the witness. Obviously, an identification of a person well known to a witness is more likely to be reliable.
- b) What were the physical conditions of the identification.
 - a. In what light? (day/sunny/shade/night)
 - b. From what distance?
 - c. Was there any obstruction?
- c) How long was the person under observation.
- d) How does the description of the person by the witness match any other independent description of the person.

So, keep in mind re identification:

- a) Mistaken identification can lead to a wrongful conviction.
- b) A mistaken witness can be convincing.

- c) Even where there is more than one identification witness they could all be mistaken.
- d) Consider the factors mentioned above regarding reliability of identification.
- e) Where the identification is disputed be cautious in convicting on this evidence alone.

Child Witnesses

Great care should be taken with child witnesses to ensure that if possible they give and that they tell the Court all the relevant information they have.

Your jurisdiction may have provisions for child witnesses to give evidence. Generally, children about 12 years of age and older are capable of taking an oath when they give evidence in the same way as an adult.

And so you should swear in such children to give evidence in the same way as an adult.

For children younger than 12 years of age a different approach is generally required. For such younger children a Judge will normally ask the child to promise to tell the truth when they give evidence in Court. As the Judge you will need to satisfy yourself by questioning the child that he/she understands what a promise is and understands what telling the truth is.

I suggest you should have prepared a series of simple questions for the child designed to see if the child understands a “promise” and “the truth”.

To establish whether the child understands the truth use an example in the Court. You might say to the child – “If I said to you there is no-one in this Courtroom – is that a truth or a lie?” - Hopefully the child says “That is a lie.”

Or you might say to the child, “The man (or woman) seated below me (the Registrar) is wearing a shirt – is that the truth or a lie?” – Hopefully the Registrar is wearing a shirt and the answer is “the truth”!

Once you have satisfied yourself the child can give evidence then you need to carefully control how the child gives evidence.

- If it is possible the child is scared of the defendant consider whether to screen the child from the defendant so that the child can’t see the defendant when giving evidence.
- Make sure the questioning of the child uses simple words easily understood.
- You should not allow a child witness to be harassed or bullied.
- Make sure you take regular Court breaks to help the child’s concentration. If the child becomes upset take a break.
- If the child’s parents or another support person wants to sit beside the child when giving evidence you should allow this. Make sure thought that the parent/support person does not prompt the child.

In some jurisdictions children’s evidence requires corroboration, however there is no evidence that children’s evidence is less accurate or less truthful than an adult’s evidence.

A.35 Evidence Template

Evidence

Admissions

Privilege

Leading Questions

Opinion Evidence / Expert Evidence

A.36 Bail PowerPoint Presentation



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Bail
• Sir Ron Young



Bail




Factors Relevant to Bail

Is there a risk the defendant will not turn up for the next Court hearing if given bail?

Relevant Factors here:


- seriousness of charges
- strength of evidence (difficult to assess)
- record of unreliability that is breaching bail, court orders or previous sentences

Bail



Is there a risk the defendant will interfere with witnesses or evidence?


Bail



Is there a risk the defendant will attend if given bail:

- Character of the defendant including past criminal offending


Bail



What is the likely time until the case is finished:

- If it is a very long time, you will be more likely to grant bail

Bail



Bail Conditions

Any bail condition must relate to the concern you have about bail.

For example, if the concern is not turning up to Court you could impose the following conditions:

1. Report to the police station once or twice a week;
2. not to leave the village; or to
3. surrender their passport to the police.

Bail



Other Matters

If pleaded guilty to a very serious offense, bail is unlikely. If it is a minor offense, bail is likely.

Bail



Remand

There are three types of remands:

- A remand to the next hearing date;
 - Bail is not required
 - Minor offences
 - Sometimes called an “adjournment”
- Remand on bail
- Remand in custody

A.37 Bail Template

BAIL FORMAT

1	THE CHARGE(S)
2	BRIEF SUMMARY OF FACTS OF THE CHARGE(S) AND PLEA (guilty or not guilty) IF ANY
3	SUMMARY OF POLICE REASONS FOR OPPOSING BAIL
4	SUMMARY OF DEFENSE REASONS FOR GRANTING BAIL AND ANY CONDITIONS SUGGESTED
5	RELEVANT LAW: (e.g. will the defendant return to Court, is the defendant likely to offend if given bail)

6	SUMMARY OF REASONS FOR REFUSING OR GRANTING BAIL: Is there just cause for refusing bail? If granting bail are there any conditions?

A.38 Sessions 17 & 26: Combined Workshop Exercises

SESSION 17: WORKSHOP EXERCISES in relation to:

1. *Elements of offences including domestic violence.*
2. *The criminal trial process incorporating burden & standard of proof.*

SESSION 26: TRIAL MANAGEMENT

1. *Records of evidence - has been dealt with by Justice Sir Ron Young in Session 15 yesterday.*
2. *Judicial intervention including dealing with difficult lawyers and parties.*

WHAT IS PLANNED FOR THIS COMBINED SESSION?

We do some practical exercises incorporating:


- *Elements of offences including domestic violence*
- *Some aspects of the criminal trial process incorporating burden & standard of proof.*
- *Managing trials - judicial intervention*

WHAT CAN YOU EXPECT TO GAIN FROM THIS SESSION:

At the end, you should be able to confidently demonstrate improved skills in:

- *Identifying and applying elements of offences in criminal cases including domestic violence offences.*
- *Conducting criminal trials and correctly applying the principles of burden & standard of proof.*
- *Managing trials including proper intervention*

Onus & Burden of Proof




Elements of the offence

The weight of the burden or standard of proof is 'beyond a reasonable doubt'

The prosecutor:
The person who carries the responsibility (**Onus**) to prove each element of an offence

CORRECTION & CLARIFICATION

Onus/Burden & Standard of Proof in Criminal Cases



Elements of the offence

The standard of proof is the level of proof that must be reached in order to prove what a person wants the court to accept. 'beyond reasonable doubt'

Onus/burden of proof is the duty or responsibility of proving what a person wants the court to accept.

Example

Prosecution

**EXERCISE 1: Elements of Offences**

Individually work out the specific elements of the offence of criminal trespass

s182(1) Penal Code (Kiribati)

Any person is guilty of a misdemeanour, who: enters another person's property with intent to commit an offence...

7



Any person is guilty of a misdemeanour, who: lawfully entered another person's property, and unlawfully remains there with intent to... commit an offence

8

**EXERCISE 2 - Role play: First Appearance & explaining the charge to an represented defendant.**

Defendant is charged with a domestic violence offence under s904(1)(e) of the Domestic Violence Prevention & Protection Act, 2011.

Any person who: continuously and unlawfully restrains the freedom of movement of a family member, commits an act of domestic violence.

9



EXERCISE 3: Criminal trial - elements of offence, onus & standard of proof, note taking, evidence, court control & judicial intervention, decision & delivery.

COURT SIMULATION

10

**WHAT DID YOU EXPECT TO GAIN FROM THIS SESSION:**

You should now be able to confidently demonstrate improved skills in:

- *Identifying and applying elements of offences in criminal cases including domestic violence offences.*
- *Conducting criminal trials and correctly applying the principles of burden & standard of proof.*
- *Managing trials including proper intervention*

11



NEXT ACTIVITY

MORNING TEA

Lookem iu (see you later)

12

A.39 Session 27: Registry and Case Management PowerPoint Presentation



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Regional Judicial Orientation Course
20-24 November, 2017 - Honiara, Solomon Islands

Session - 27: Registry and Case Management
• Fatima Fonua




RIDDLE

- When can you add 2 to 11 and get 1 as a correct answer?
- A man was born in 1898, he is still alive now at the age of 33, how is that possible?




Learning Objectives



By the end of this session, we should be **reasonably** able to:


1. Explain what is case management.
2. Explain why is it important?
3. Identify the key actors for case management and the role of each.
4. List and explain some of the **tools for case management**.

What we are going to cover in this session?





- Case Management
- Some tools for case managements with reference to the Bench books (Sub-Topics on Agenda)
- Share experiences on **how** some of the tools of case management have been used in other jurisdiction

Case management



- What is it?

- **Case management** is a process of managing the case from filing to finalisation by the **Registry**

Why is case management important?



BENCH BOOKS

Goals of case management



- Ensures just and equal treatment of litigants in court
- Promote the prompt and economic disposal of cases
- Improve quality of litigation process
- Maintain public confidence in the court
- Use efficiently the available judicial, legal and administrative resources

Principles of case management



- unnecessary delay should be eliminated;
- it is the responsibility of the Court to supervise the progress of each case;
- the Court has a responsibility to make sure ensure litigants and lawyers are aware of their obligations;
- the system should be orderly, reliable and predictable and ensure certainty;
- early settlement of disputes is a major aim; and
- procedures should be simple and easily understandable.

Who should be involved?



What are their roles?



Internal:

Chief Justice – lead, guide, motivate, monitor

Judges/Magistrates – commit, implement and monitor

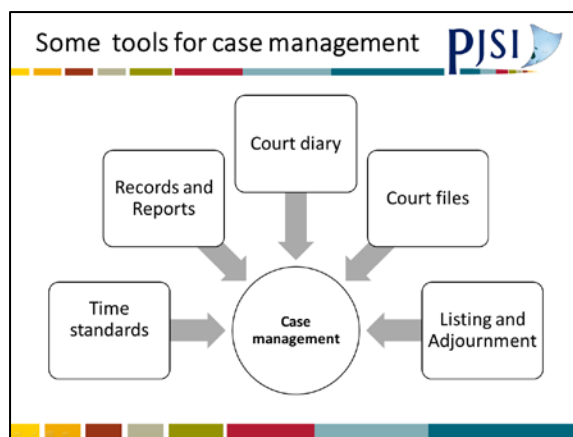
Registry & Court Staff – develop, oversee, implement, monitor, collect and update information

External:

Lawyers and Court Users – Commit, implement and monitor

Judicial and Court Officer





1) Time standards

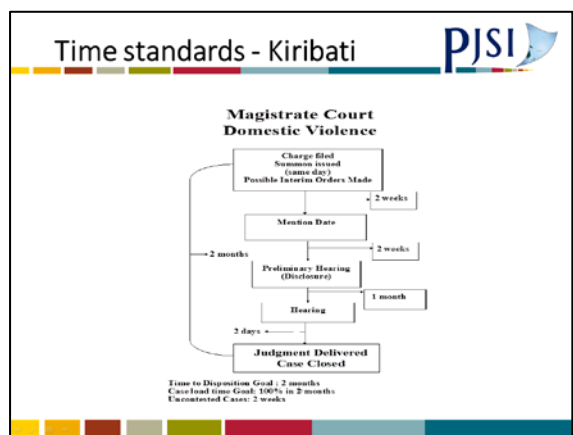
- Time standards tell us:
 - How long a case should take to complete;
 - How long should be allowed between major case events
 - How many cases should be dealt with over a year

Why have time standards?

- Able to track case movement within predetermined times
- Ensure court control
- Measure and monitor delays – thereby defining what is ‘reasonable time’

2 types of Time Standard

- Overall Standard**
Time from filing to finalisation/disposition
- Intermediate event standard**
Time of next events between filing and finalisation/disposition



Time standards – Kiribati (con't)

Case Type	Time Goal	Completion Rate
Serious Crime - Adult in custody	6 months	90% in 6 months 100% in 12 months
Serious Crime - Adult in custody	3 months	100% in 4 months
Summary Crime - Adult in custody	2 months	100% in 2 months
Summary Crime - Adult not in custody	4 months	10% in 4 months 90% in 12 months
Serious Crime - Children in custody	4 weeks	100% in 4 weeks
Summary Crime - Children in custody	3 weeks	100% in 3 weeks
Violence Against Women	2 months	100% in 2 months
Domestic Violence	2 months	100% in 2 months
Civil	6 months	100% in 6 months
Publicity	4 months	20% in 5 weeks 90% in 12 months 100% in 18 months
Land	12 months	80% in 12 months 100% in 18 months
Boundary Determinations	6 months	80% in 6 months 100% in 12 months
Distribution of Monetary Estate	5 weeks	100% in 5 weeks

Time standards – RMI



- **Traditional Rights Court** – 50% of cases are to be cleared within 12 months
- **District Court:**
 - Criminal cases: Clear 80% in 30 days and 100% in 120 days
 - Traffic cases: Clear 80% in 30 days and 100% in 180 days
 - Juvenile cases: Clear 100% in 21 days (not in detention)
 - Domestic violence cases: Clear 90% in 48 hours and 100% in 14 days
 - Small claim cases: Clear 80% in 30 days and 100% in 45 days

2) Court diary



3) Court files



Court files



- Cook Islands – criminal and civil cases
- Vanuatu – Files must be opened in criminal and civil cases

4) Records and Reports



- Record the case (minute books, court clerk)
- Court files (documents filed, notices, judgments, sentence, probation report)
- Statistics (case management system)

Kiribati – Magistrate Bench Book



- Magistrates' Courts are Courts of record and returns of the records must be given as required by the Ordinance or by the Chief Justice: ss3(4), 15 Magistrates' Courts Ordinance.

Tonga – Magistrate Bench Book

- The Magistrate has a duty to ensure a record is properly and correctly kept by the clerk and that all procedural matters, such as taking of oaths by witnesses, are included: See *Taufa v Ma'u* [1994] Crim App No. 349/94 (26 August, 1994).

5) Listing and Adjournments



Solomon Islands

• Local Court Handbook

[3.7] Adjournment

- Cases should generally be adjourned if the party which is applying for the adjournment has a **proper reason** for asking for it. If the **party is being slack** then the granting of an adjournment should be strict. That party **should be warned that the case may be dismissed because of their slackness**.
- In a criminal case,
 - the case should only be adjourned for a period of no more than **30** clear days if the accused person is not in custody; and
 - if the accused person is in custody, the case can only be adjourned for a period not exceeding **15** clear days, see section 191 of the *Criminal Procedure Code* (Ch. 7).

Vanuatu

Vanuatu Benchbook – Criminal case

- The most common reasons for adjourning a case are:
 - the person making the charge does not appear;
 - the witnesses of one of the parties do not appear;
 - legal representation is being sought;
 - a new issue has been raised and a party needs time to prepare a response.

If you commit the person to prison, the adjournment must not be for more than **14** days, the day following the committal being counted as the first day: s130(2) Criminal Procedure Code.

Summary and review

- 1) What is case management?
- 2) Why is it important?
- 3) Who are involved and are their roles?
- 4) What are some tools for case management?
- 5) How these tools can be used to manage the cases?

Next session:

- Session 28: Customer Service

MALO 'AUPITO!

A.40 Plan Registry and Case Management

Session Plan: Registry and Case Management	
Training Activity:	REGIONAL JUDICIAL ORIENTATION COURSE 2017
Topic:	Registry and Case Management
Objective(s):	<p>The purpose of this session is to: <i>(specify)</i></p> <ul style="list-style-type: none"> Enhance the participants knowledge and skills in registry and case management
Outcomes:	<p>As a result of attending, participants will be able to: [Q: <i>do what well?</i>]</p> <ul style="list-style-type: none"> Explain what is case management and why is important? Identify who should be involved in case management and what are their roles? List and explain some of the fundamental elements of case management? Articulate some suggestions on how case management can be improved in your own jurisdiction.
Trainer:	Fatima Fonua
Time – (95) mins:	Content:
Start	<p>Introduction</p> <p>Introduce yourself and explain relevance of topic</p> <p>Outline learning outcomes (above)</p> <p>Explain structure of session: Presentation, Group work and Group Presentation on the fundamental elements of case management.</p> <p>Stimulate interest: The aim of this topic is to get you thinking about how to effectively manage the cases before you so that they are disposed within the necessary timeframes and in a fair manner. This will increase your capability to effectively dispose cases and to avoid unnecessary delays that would lead to complaints or appeals.</p>
>5 mins	

	Sub-topics	Methodology	Summary /Assessment	Resources
10 mins	WHAT is case management?	Powerpoint	Participants to define and explain why it is important	Powerpoint
	WHY is case management	Brainstorm		Whiteboard

	important?	Q&A		
35 mins	Sub-topics	Methodology	Summary /Assessment	Resources
	WHO is involved in case management? WHAT are their roles?	Powerpoint Group discussion	Participants to discuss who must be involved and what roles will they play	Powerpoint Butcher papers
40 mins	Sub-topics	Methodology	Summary /Assessment	Resources
	WHAT are some fundamental elements of case management? WHAT/HOW can case management be improved in your own jurisdiction?	Powerpoint Individual work and presentation.	Get participants to start thinking about the elements and relate to their own jurisdiction. Articulate some suggestions (at least 3) on how/what can be improved in relation to case management. This should be individual work but if there are more than one participant from each jurisdiction, they can work together.	Powerpoint Butcher papers
>5 mins End	<u>Conclusion:</u> Summarise content Review learning outcomes Check participants' grasp by asking them to summarise.			

A.41 Session 28: Customer Service PowerPoint Presentation



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Session - 28: Customer Service
• Fatima Fonua and Enoka Puni



Why bother?




Judicial Officer
Keep attitude, actions and behavior in line with your oath of office

Court Officer
Front officer
Actions, attitude and behavior helps shape the customer's view about the court

2


Learning Objectives




By the end of this session, we should be **reasonably** able to:

1. Explain what customer service is.
2. Explain why customer service is important.
3. Identify who are the customers of the court and what are their expectations/needs?
4. List and explain some general perceptions of the customers about the court service.
5. Identify general shortcomings in customer service (by the court) and suggest ways to improve them.

What is customer service?




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It is the process of ensuring customer's satisfaction with a product or service


"Someone calling themselves a customer says they want something called service."

Why is customer service important?



- Principal purpose of the justice system
- Relate that to customer service
- **Customer service is important to ensure that the Courts (judicial officers and supporting staff) deliver justice through friendly, high quality, fair and non-discriminatory means in order to earn and maintain the trust and confidence of the public for the purposes of social order – Enoka Puni.**

Who are the customers?



Internal customers – persons from other departments or sections within the same organization that collaborate to achieve the same result and meeting the needs of the external customers.

External customers – general members of the public and any organization or group that does not fall within the organization.

What are their needs?



- Internal Customers

- External Customers

Some general perceptions about the court service



Justice System

- Not providing equity and fairness for all
- Lack of trust and confidence because cases takes unreasonably long
- Laws and procedures are outdated
- Criminal justice system favours criminal rather than law abiding citizen
- System not accessible to the poor
- Little public knowledge and understanding of the justice system

Some general perceptions continued



- **Judicial Officers and Court Officers**
 - 1) Impatient
 - 2) Interrupts too much
 - 3) Appears disinterested
 - 4) Bias
 - 5) Lengthy delays in hearing cases and/or delivering decisions (Judicial Officer)
 - 6) Appears not confident (Court Officer)

Exercise:



- Work in groups of 4
- Identify two shortcomings in customer service by the court and court registry.
- Pick one of those two shortcomings and suggest a way to improve them.

Summary and review



1. What is customer service in general?
2. Why is customer service important?
3. Who are the customers and what are their needs?
4. What are some general perceptions of customers about the court service?
5. What are some shortcomings in customer service and how to improve them?



A.42 Session 28: Session Plan: Customer Service

Session Plan: Customer Service				
Training Activity:	REGIONAL JUDICIAL ORIENTATION COURSE 2017			
Topic:	Customer Service			
Objective(s):	<p>The purpose of this session is to: <i>(specify)</i></p> <ul style="list-style-type: none"> Enhance the knowledge, skills and attitude of the participants in customer service 			
Outcomes:	<p>As a result of attending, participants will be able to: [Q: <i>do what well?</i>]</p> <ul style="list-style-type: none"> Explain what customer service is in general and from the perspective of the court. Explain why customer service is important? Identify who are the customers of the court and what are their needs? Explain what are the general perceptions of the customers about the court service? Identify shortcomings in customer service in your jurisdiction and suggest ways to improve them. 			
Trainer:	Fatima Fonua			
Time – (60) mins:	Content:			
Start	<p>INTRODUCTION</p> <p>Introduce yourself and explain relevance of topic</p> <p>Outline learning outcomes (above)</p> <p>Explain structure of session:</p> <p>Stimulate interest:</p>			
>5 mins				
10 mins	<p>Sub-topics</p> <p>WHAT is customer service and from the perspective of the court?</p> <p>WHY is customer service important?</p>	<p>Methodology</p> <p>Powerpoint</p> <p>Brainstorm</p>	<p>Summary /Assessment</p> <p>Participants to explain to one another</p> <p>Brainstorm ideas on why customer service is important and agree on a specific reason/wording.</p>	<p>Resources</p> <p>Powerpoint</p> <p>Whiteboard</p>

	Sub-topics	Methodology	Summary /Assessment	Resources
20 mins	WHO are the customers and what are their needs?	Powerpoint Group presentation	Participants to work in groups and identify customers and their needs based on different scenarios	Powerpoint Whiteboard
20 mins	WHAT are the general perceptions of the customers about the court service? Identify WHAT are some of the shortcomings of customer service in your jurisdiction and suggest ways to improve them	Powerpoint Individual work and presentation	Participants to work individual or in group (with other participants of same jurisdiction) and identify shortcomings in customer service in their own jurisdiction and come up with suggestions on how to improve them	Powerpoint Butcher papers
>5 mins End	<u>Conclusion:</u> Summarise content Review learning outcomes Check participants' grasp by asking them to summarise.			