



# JUDICIAL ORIENTATION SESSION PLANNING TOOLKIT

January 2018



FEDERAL COURT  
OF AUSTRALIA





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Toolkits are evolving and changes may be made in future versions. For the latest version of the Toolkits refer to the website - <http://www.fedcourt.gov.au/pjsi/resources/toolkits>

Note: While every effort has been made to produce informative and educative tools, the applicability of these may vary depending on country and regional circumstances.

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# PJSI Toolkits

## Introduction

The Pacific Judicial Strengthening Initiative (PJSI) was launched in June 2016 in support of developing more accessible, just, efficient and responsive court services in Pacific Island Countries (PICs). These activities follow on from the Pacific Judicial Development Program (PJDP) and endeavour to build fairer societies across the Pacific.

## Toolkits

PJSI aims to continue ongoing development of courts in the region beyond the toolkits already launched under PJDP. These toolkits provide support to partner courts to help aid implementation of their development activities at a local level, by providing information and practical guidance. Toolkits produced to date include:

- Access to Justice Assessment Toolkit
- Toolkit for Public Information Projects
- Enabling Rights & Unrepresented Litigants Toolkit
- Judges' Orientation Toolkit
- Trainer's Toolkit: Designing, Delivering and Evaluating Training Programs
- Toolkit for Review of Guidance on Judicial Conduct
- Family Violence/Youth Justice Workshop Toolkit
- Time Goals Toolkit
- Reducing Backlog and Delay Toolkit
- Judicial Decision-making Toolkit
- Toolkit for Building Procedures to Handle Complaints about Judicial Conduct
- Annual Court Reporting Toolkit
- Project Management Toolkit
- National Judicial Development Committee Toolkit
- Human Rights Toolkit
- Gender and Family Violence Toolkit
- **Judicial Orientation Session Planning Toolkit**

These toolkits are designed to support change by promoting the local use, management, ownership and sustainability of judicial development in PICs across the region. By developing and making available these resources, PJSI aims to build local capacity to enable partner courts to address local needs and reduce reliance on external donor and adviser support.

PJSI is now adding to the collection with this new toolkit: **Judicial Orientation Session Planning Toolkit**. This toolkit aims to provide support and guidance to trainers in the creation of their training workshops. The session plans outlined

## Use and Support

These toolkits are available online for the use of partner courts. We hope that partner courts will use these toolkits as/when required. Should you need any additional assistance, please contact us at: [pjsi@fedcourt.gov.au](mailto:pjsi@fedcourt.gov.au)

## Your feedback

We also invite partner courts to provide feedback and suggestions for continual improvement.

**Dr. Livingston Armytage:** Technical Director,  
Pacific Judicial Strengthening Initiative, January 2018

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## Abbreviations

- ADR - Alternative Dispute Resolution
- FCA - Federal Court of Australia
- NZ MFAT - New Zealand Ministry of Foreign Affairs and Trade
- PIC - Pacific Island Country
- PJDP - Pacific Judicial Development Programme
- PJSI - Pacific Judicial Strengthening Initiative
- RTT - Regional Training Team

# 1 Introduction

## 1.1 What are Session Plans?

This new Toolkit was introduced to assist faculty members to prepare their sessions as part of the PJSI's Judicial Orientation activities; it is based on PJSI's Regional Lay Judicial Officer Orientation Course, conducted in Honiara, Solomon Islands, in November 2017.

Session Plans are outlines which provide the content that will be used in training sessions. They are guides that can be used to create sessions. The Session Plans provided in this Toolkit were used in an orientation workshop, and can be used for future workshops. Each Session Plan comprises of three segments. The '*Learning outcomes*' section specifies the session objectives and the learning goals that participants should be able to achieve by the end of the session. Learning outcomes are able to be measured to determine if they have been achieved. The next section is the '*Core content.*' This is the substance that will be taught during the session. Finally there is a list of '*Relevant readings/resources*' that can be referred to in order to teach the content. Session Plans are essential preparation for every training session - however, they are not the only preparation you should do.

## 1.2 How to use the Session Plans

Session Plans provide a guide for the outline of a session, and the topics that should be covered. It is important that you prepare additional materials for your session. Each session will have an introduction, and body, and a conclusion. You will need to determine the structure for your session, including how much time you will spend on each topic. In your introduction you should summarise the learning outcomes of the session and explain the structure of the session. It is also important to get participants attention when you begin and to remind them why the training is important to them. A model (blank) Session Plan is annexed to this Toolkit at page 23 for the assistance of presenters.

The core content in the Session Plan provides a list of topics that should be covered in order to achieve the learning outcomes. You can also create topics directly based on the learning outcomes. If participants should be able to explain something by the end of the session, it is important that you explain it to them during the session. You must determine how you will explain each point. In order to do this, think about the information you must present. Consider how to do this so that the learning outcomes can be achieved. You can use examples, illustrations, and present questions to participants to engage them in the material. The Session Plans include a list of additional resources, which can be used to further inform the content of your session. If you wish participants to read these resources, make sure you bring them to the training session, or let them know beforehand.

Once you have discussed the core content you should conclude your session by revisiting the learning outcomes and checking that they have been achieved. You can also gain feedback from your participants and talk about what the next session or training program will cover.

## 2 Example Orientation Agenda

Please find below an example of an Orientation Workshop conducted in Honiara, Solomon Islands from 20-24 November, 2017.

### REGIONAL LAY JUDICIAL OFFICER ORIENTATION COURSE

**20-24 NOVEMBER 2017**

Mendana Hotel, Honiara, Solomon Islands

This 5-day residential course will be conducted on **20-24 November**, and is preceded by a 2-day ToT refresher/preparatory meeting on **18-19 November** for all members of the faculty.

#### OBJECTIVES

The purpose of this judicial orientation course is to promote the competence of newly-appointed non-law trained (lay) judicial officers being judges and magistrates to perform their duties, and to promote excellence in the delivery of justice across the Pacific region.

Because this is a regional course, its emphasis is on the development of generic judicial knowledge, skills and attitudes, rather than jurisdiction-specific law and procedure. In particular, this judicial orientation course will:-

1. Gather newly appointed lay judicial officers from across the Pacific region to share, exchange and develop professional experience;
2. Develop judicial knowledge, skills and attitudes, and promote understanding of the judicial role and conduct on/off the bench;
3. Develop effective techniques of courtroom control;
4. Familiarise the basic principles and practice of procedural fairness in criminal and civil proceedings;
5. Explain the special interests of parties coming to court including juveniles, victims of crimes including sexual and gender-based violence, people with disabilities and those with language barriers.
6. Strengthen judicial identity and develop a regional professional resource network, including building the capacity and experience of local judicial and court trainers.

#### FACULTY

**Regional Training Team** - The RTT will comprise the 'core' faculty of experienced judicial trainers who are responsible for the design oversight and quality of the course; members of this 'core team' will present sessions and workshops. Members of this faculty are:

- Chief Justice Sir Albert Palmer, Justice (R) John Mansfield, Justice (R) Sir Ronald Young, Justice Leonard Maina, Judge (R) Enoke Puni, Registrar Fatima Fonua and Dr Livingston Armytage.

#### PARTICIPANTS

This course will include 29 lay participants from 12 Pacific Island Countries (PICs) who are members of the Pacific Judicial Strengthening Initiative (PJSI). Most participants' experience is between 0-3 years, though some have between 6-8 and one has 13 years – see participants' details attached. These PICs are Cook Islands, Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Niue, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, and Vanuatu.

<i>Time</i>	<i>Sun – 19<sup>th</sup> INTRODUCTION</i>	<i>Mon – 20<sup>th</sup> JUDICIAL LIFE</i>	<i>Tues – 21<sup>st</sup> SENTENCING</i>	<i>Wed – 22<sup>nd</sup> CRIMINAL TRIALS</i>	<i>Thurs – 23<sup>rd</sup> CIVIL DISPUTES</i>	<i>Friday – 24<sup>th</sup> EVIDENCE &amp; MANAGING CASES</i>
8.45am		<i>Announcements</i>	<i>Announcements</i>	<i>Announcements</i>	<i>Announcements</i>	<i>Announcements</i>
9.00-10.00	Faculty Briefing	<b>1. ROLE OF COURTS, JUDICIAL &amp; COURT OFFICERS Palmer with Panel</b> <ul style="list-style-type: none"> <li>◆ Fundamentals of judicial life</li> </ul>	<b>7. FIRST APPEARANCES Puni, Maina</b> <ul style="list-style-type: none"> <li>◆ Preparation</li> <li>◆ Ensuring people understand</li> <li>◆ Litigants in Person</li> <li>◆ Taking pleas</li> <li>◆ Remands and bail</li> </ul>	<b>13. ELEMENTS OF OFFENCE Puni, Maina</b> <ul style="list-style-type: none"> <li>◆ What constitutes a criminal offence</li> <li>◆ Onus / burden of proof.</li> <li>◆ Trial process</li> <li>◆ Practical examples</li> </ul>	<b>19. CIVIL CASES (INC. LAND) Savage, Mansfield</b> <ul style="list-style-type: none"> <li>◆ Differences between civil and public law</li> <li>◆ Onus / burdens of proof</li> <li>◆ Claims, counterclaims and how to hear them</li> <li>◆ Land cases</li> </ul>	<b>25. EVIDENCE Mansfield, Young</b> <ul style="list-style-type: none"> <li>◆ Principles of evidence</li> <li>◆ Admissibility</li> <li>◆ Vulnerable parties</li> <li>◆ Expert evidence</li> <li>◆ Documentary evidence</li> <li>◆ Problems of evidence</li> </ul>
10.00-11.00	Faculty Briefing	<b>2. TRANSITION TO THE BENCH Palmer with Panel</b> <ul style="list-style-type: none"> <li>◆ Qualities important for the office</li> <li>◆ Stress and health</li> </ul>	<b>8. SENTENCING REMARKS Young</b>	<b>14. VERDICTS AND JUDGMENTS Young</b> <ul style="list-style-type: none"> <li>◆ Assessing credibility</li> <li>◆ Evidence, and weight</li> <li>◆ Structuring a decision.</li> <li>◆ Oral decisions</li> <li>◆ Written decisions.</li> </ul>	<b>20. CIVIL DECISIONS Savage, Mansfield</b> <ul style="list-style-type: none"> <li>◆ Common causes</li> <li>◆ Claims and counterclaims</li> <li>◆ Decision-making</li> <li>◆ Remedies and damages</li> </ul>	<b>26. TRIAL MANAGEMENT Puni</b> <ul style="list-style-type: none"> <li>◆ Records of evidence</li> <li>◆ Difficult lawyers</li> <li>◆ Judicial intervention.</li> </ul>
11.00-11.15	<i>Morning Tea</i>	<i>Morning Tea</i>	<i>Morning Tea</i>	<i>Morning Tea</i>	<i>Morning Tea</i>	<i>Morning Tea</i>
11.15-12.45	Faculty Briefing	<b>3. JUDICIAL CONDUCT AND ETHICS Palmer with Panel</b> <ul style="list-style-type: none"> <li>◆ Practical problems</li> <li>◆ Conflicts of interest</li> <li>◆ When to disqualify</li> <li>◆ Demeanour</li> </ul>	<b>9. SENTENCING PRINCIPLES AND PRACTICE Young</b> <ul style="list-style-type: none"> <li>◆ Considering the options</li> <li>◆ Delivering sentence.</li> </ul>	<b>15. FAMILY AND SEXUAL VIOLENCE Puni, Fonua</b> <ul style="list-style-type: none"> <li>◆ Sexual assault</li> <li>◆ Consent</li> <li>◆ Evidence from children</li> <li>◆ Special considerations</li> <li>◆ Closing the court.</li> </ul>	<b>21. WORKSHOP EXERCISES: <i>Decision-making</i> Savage, Mansfield</b>	<b>27. REGISTRY AND CASE MANAGEMENT Fonua</b> <ul style="list-style-type: none"> <li>◆ Time standards</li> <li>◆ Court diary, files</li> <li>◆ Listing, adjournments.</li> <li>◆ Records and reports</li> </ul>
12:45-1:45	<i>Lunch</i>	<i>Lunch</i>	<i>Lunch</i>	<i>Lunch</i>	<i>Lunch</i>	<i>Lunch</i>
1.45-2.45	RECEPTION & REGISTRATION	<b>4. DUE PROCESS AND FAIR TRIAL Mansfield</b> <ul style="list-style-type: none"> <li>◆ Independence, opportunity to be heard, timely disposal</li> <li>◆ Constitutional rights</li> <li>◆ Natural justice</li> <li>◆ Unconscious bias, prejudice</li> </ul>	<b>10. WORKSHOP EXERCISES <i>Sentencing</i> Young</b>	<b>16. WORKSHOP EXERCISES Puni, Maina</b>	<b>22. WORKSHOP EXERCISES <i>Decision-making (cont'd)</i> Savage, Mansfield</b>	<b>28. CUSTOMER SERVICE Fonua, Puni</b>
2.45-3.00	<i>Afternoon Tea</i>	<i>Afternoon Tea</i>	<i>Afternoon Tea</i>	<i>Afternoon Tea</i>	<i>Afternoon Tea</i>	<i>Afternoon Tea</i>
3.00-4.00	<b>OPENING SESSION Palmer &amp; Armytage</b> <ul style="list-style-type: none"> <li>◆ Welcome, objectives,</li> <li>◆ House-keeping</li> </ul>	<b>5. FUNDAMENTALS OF JUSTICE Armytage</b> <ul style="list-style-type: none"> <li>◆ Seven themes</li> </ul>	<b>11. WORKSHOP EXERCISES <i>Sentencing (cont'd)</i> Young</b>	<b>17. WORKSHOP EXERCISES <i>(cont'd)</i> Puni, Maina</b>	<b>23. COMMUNICATING EFFECTIVELY Armytage</b>	<b>29. OPEN FORUM Chair with Panel</b> Opportunity to discuss issues that have arisen during the week
4.00-4.45	PARTICIPANTS INTRODUCTIONS Palmer & Armytage	<b>6. YOUR JURISDICTION Young</b> <ul style="list-style-type: none"> <li>◆ Sources of law</li> <li>◆ When to act, and not</li> <li>◆ Finding answers</li> <li>◆ Judges' bench books</li> </ul>	<b>12. WORKSHOP EXERCISES: <i>Judgments and verdicts</i> Young</b>	<b>18. COURT VISIT Palmer</b> Courtroom scenarios?	<b>24. WORKSHOP EXERCISES: <i>Communication</i> Armytage</b>	<b>CLOSING SESSION Chair with Panel</b>  Certificates Ceremony.
4.45-5.00		Wrap-up and review	Wrap-up and review	Wrap-up and review	Wrap-up and review	

## 3 Session Plans

### Session 1: Role of the courts, Judicial and Court Officers

#### 1. Learning Outcomes

At the end of this session participants will be able to:

- Explain the doctrine of the separation of powers and its importance;
- Explain the concept of exercising judicial functions;
- List the core duties and responsibilities of judicial and court officers;
- Describe the constitutional power of courts;
- Distinguish powers of the legislature, executive and judiciary branches of government;
- Identify the legislative source of power in your jurisdiction for you to exercise judicial functions; and
- Define the term jurisdiction.

#### 2. Core Content

- The doctrine of the separation of powers and its importance;
- Exercising judicial functions – what does that involve? Example S 158 Exercise Judicial Power *Constitution of the Independent State of Papua New Guinea*;
- Overview of constitutional allocation of powers between legislature, executive and judiciary;
- Concept of jurisdiction; and
- Duties and responsibilities of judicial officers.

#### 3. Relevant readings/resources

- Readings Session 1: Extracts from sections of Pacific Country Constitutions
- *Jurisdiction – Legal Studies Terms*, Youtube video 2.03 minutes:  
<https://www.youtube.com/watch?v=4sq8qGuLZTA>
- The Separation of Powers: <http://lawgovpol.com/separation-of-powers/>

## Session 2: Transition to the Bench

### 1. Learning Outcomes

At the end of this session participants will be able to:

- Explain the role and function of a judicial officer pursuant to the Constitution of their nation;
- Describe the role a judicial officer plays in serving the community;
- List the qualities a judicial officer should exhibit when sitting; and
- Explain the importance of these qualities to ensure appropriate outcomes for the parties to proceedings.

### 2. Core Content

- Administration of the law pursuant to the Constitution;
- Life will be different when you are a judicial officer: How? /private conduct under scrutiny;
- Qualities a judicial officer should exhibit and why: Independence/Accountability/Impartiality/ Fairness/Competence;
- Service to the community; and
- Implications for administration of justice/access to justice if judicial officers don't exhibit above qualities.

### 3. Relevant readings/resources

- PJDP Judges Orientation Took Kit (See Readings File)
- Gramckow, Heike *International Trends – Strengthening Judicial Independence and Accountability* Future Trends in State Courts 2005, National Center for State Courts (See Readings File)
- 'The *Qualities of a Good Judge*' (A Pursuit of Justice: Examining the Intersection of Business, Law and Politics) October 31, 2007 <http://www.apursuitofjustice.com/the-qualities-of-a-good-judge/>

## Session 3: Judicial conduct and ethics

### 1. Learning Outcomes

At the end of this session participants will be able to:

- Define the term ‘ethics’ and distinguish ‘judicial’ ethics;
- Distinguish ethics from laws, morality and community practices;
- Identify the documents that provide assistance to judicial officers with respect to their ethical obligations;
- Explain the purpose of the Bangalore Principles;
- List the six principles embodied in the Bangalore Principles;
- Describe the purpose of a Code of Ethics;
- Identify and resolve from a Case Study ethical issues including which of the six Bangalore principles is relevant;
- Explain the purpose of a Code and Conduct and identify if you are subject to a specific Code of Conduct; and
- Develop strategies for resolving ethical dilemmas.

### 2. Core Content

- ‘Definition of ‘ethics’;
- Judicial ethics – what and why important;
- Difference between ethics, laws, morality and community practice;
- Codes of Judicial Conducts: purpose/ example;
- Judicial oath/affirmation;
- Bangalore Principles: Judicial independence/Impartiality/Integrity/Propriety/Equality/Competence /diligence;
- Specific issues: Conflict of interest/when to disqualify self/demeanour; and
- Technology: Should a judicial officer use social media e.g. Facebook, Instagram, Twitter

### 3. Relevant readings/resources

- PJDP Judicial Conduct Toolkit (See Readings File)
- Readings Session 3: Judicial Oaths from a number of Pacific nations
- Bangalore Principles: <http://www.constitutionnet.org/vl/item/bangalore-principles-judicial-conduct-2002>
- Preventing Corruption in the Judiciary System - a practical guide <http://judicialintegritygroup.org/resources/documents/gtz2005-en-corruption-in-judiciary.pdf>
- Littlefield, D, *Social Media and Judges: What are the Rules?* The San Diego Union Tribune, May 14 2016 <http://www.sandiegouniontribune.com/>

## Session 4: Due process and fair trial

### 1. Learning Outcomes

At the end of this session participants will be able to:

- Explain the concept of 'due process';
- Identify relevant legislation in your jurisdiction that serves as the basis for the right to due process;
- Explain the purpose of the rules of natural justice;
- Describe the content of and purpose of the rule against bias and the right to a fair trial;
- Distinguish substantive and procedural due process; and
- Explain the importance of notice and of the hearing rule.

### 2. Core content

- What is due process? Why important?;
- Legislative source as basis for due process: Constitution/other;
- Rules of natural justice: rule against bias/right to fair trial/notice/hearing rule;
- Unconscious bias/prejudice;
- Difference between substantive and procedural due process/examples; and
- Lack of due process: consequences/remedies.

### 3. Relevant readings/resources

- Readings Session 4: Extracts from Constitutions of Pacific countries guaranteeing due process.
- *What is Due Process?...Basic Rights and Fundamental Fairness*  
<http://resources.lawinfo.com/constitutional/>
- *Due Process of Law* Youtube Video 1.02 mins  
<https://www.youtube.com/watch?v=o8DunckW4y4>
- See Annex A.5 for the materials developed for the Regional Orientation Workshop

## Session 5: Fundamentals of Justice

### 1. Learning Outcomes

At the end of this session participants will be able to:

- Describe concepts that are fundamentals to the administration of justice;
- Explain how a judicial officer will ensure these fundamental concepts are incorporated into their judicial practice;
- Explain and distinguish judicial independence, impartiality and accountability;
- Describe the importance of your country's Constitution and the obligation of a judicial officer to administer the law pursuant to the Constitution;
- Explain the importance of courts being accessible and providing a service to their community; and
- Describe characteristics of judicial competence.

### 2. Core Contents

- Concepts fundamentals to administration of justice;
- Why these concepts are important;
- How judicial officer will ensure concepts are part of their practice;
- Administration of law: importance of the Constitution;
- Independence/impartiality/accountability/competence;
- Fairness: natural justice/due process/consequences or lack of;
- Access to justice: definition/challenges/consequences or lack of;
- Judicial competence: definition/standard/consequences or lack of; and
- Service to the community: standard/expectations/consequences or lack of

### 3. Relevant readings/resources

- Judicial Skills and Abilities Framework 2014 (UK Judicial College) (See Readings File)
- Legal System Basics: Crash Course Government and Politics #18, Youtube video <https://www.youtube.com/watch?v=mXw-hEB263k>
- See Annex A.6 for the materials developed for the Regional Orientation Workshop

## Session 6: Your Jurisdiction

### 1. Learning outcomes

At the end of this session participants will be able to:

- Explain the concept of 'jurisdiction' and distinguish the various types of jurisdiction a court may have;
- Identify the jurisdiction(s) of their court;
- Locate sources of law relating to their court's jurisdiction;
- Describe methods for ascertaining sources of law relating to their court's jurisdiction;
- Explain the function of a court bench book;
- Identify if your court has a bench book to assist you; and
- Identify specific resources that can be used by judicial officers to assist in their judicial tasks.

### 2. Core Content

- Concept of jurisdiction.
- Different types of jurisdiction: monetary/geographical/causes of action/appellate;
- How to identify the jurisdiction of your court?;
- Sources of jurisdiction: Constitution/statutes/ordinances/case law;
- Types of jurisdiction: general/specific, exclusive/concurrent/civil/criminal; and
- Appellate jurisdiction: definition/removal/remand/affirm/reversal/types (de novo/without considering new evidence).

### 3. Relevant readings/resources

- Pacific Legal Information Institute <http://www.pacii.org/>
- PJDP Bench Books <http://www.fedcourt.gov.au/pjdp/benchbooks>
- See Annexes A.7-A.8 for the materials developed for the Regional Orientation Workshop

## Session 7: First Appearances

### 1. Learning outcomes

At the end of this session participants will be able to:

- Explain the function of a first appearance court;
- List the types of matters that will be heard by a first appearance court;
- Describe the obligations judicial officers have when presiding over a first appearance court;
- Explain the requirement for a judicial officer to inform a defendant of their legal rights;
- Define a guilty plea and the process of taking such a plea;
- Explain a disputed facts guilty plea and the action a judicial officer should take if this occurs;
- Define the term bail and the process of granting a defendant bail; and
- Identify situations in which a defendant should be remanded in custody and describe the process of remand.

### 2. Core Contents

- Function of a first appearance court: legislation underlying/listing process;
- Defendants who will appear: in custody/on summons;
- Advising defendant of rights: legal advice/legal representation/ adjournment/apply for bail/plead;
- Concept of a guilty plea: process/agreed facts/disputed facts hearing/submissions/sentencing;
- Bail: presumption of bail?/bail legislation/surety/relevant factors/reasons for granting or refusing bail/court adjourned to date to appear; and
- Remand: bail refused/reasons for refusal/ right to appeal/remanded in custody/court adjourned to date to appear.

### 3. Relevant readings/resources

- Court Hearing Explained: Plea of Guilty of Not Guilty? Youtube video 1.20 mins  
[https://www.youtube.com/watch?v=ByQNJz\\_3bc0](https://www.youtube.com/watch?v=ByQNJz_3bc0)
- RACHEL SUBUSOLA OLUTIMAYIN, Case Note: Alfred John H. v The State: A Comment  
<https://www.usp.ac.fj/index.php?id=13325>
- See Annex A.9 for the materials developed for the Regional Orientation Workshop

## Sessions 8-12: Sentencing Principles and Practice

### 1. Learning outcomes

At the end of this session participants will be able to:

- Identify and explain the various aims of sentencing an offender;
- Describe the principles of sentencing;
- Identify any legislation that establishes sentencing principles in your jurisdiction;
- List the available sentencing options;
- Explain how you would determine the most appropriate sentencing option;
- Distinguish mitigating and aggravating factors that may influence the sentence given; and
- Structure and deliver a sentence from a case study.

### 2. Core Content

- What is sentencing?;
- What is its purpose: deterrence (general & specific)/ rehabilitation/ retribution/incapacitation;
- Principles of sentencing – specific legislation to guide you?;
- Available sentencing options/tools: imprisonment/suspended sentence/community service order/restitution/forfeiture/work release/fine/good behavior bond;
- How to decide? Aggravating/mitigating factors;
- How to deliver a sentence?;
- Creative sentencing; and
- Exercises.

### 3. Relevant readings/resources

- Robertson, Bruce, Sentencing Address: Does one Size Fit All, Conference Paper, Journal of South Pacific Law, Volume 2013 (see Readings File)
- Pacific legislation/documentation that guides sentencing
- *Sentencing Act 2016* (Samoa)
- *Criminal Law in the Solomon Islands*, Chapter 59: Sentencing <http://www.paclii.org/cqi-bin/sinodisp/sb/criminal-law/ch59-sentencing.htm?stem=&synonyms=&query=sentencing>
- See Annexes A.10-A.12 for the materials developed for the Regional Orientation Workshop

## Session 13: Elements of Offence

### 1. Learning Outcomes

At the end of this session participants will be able to:

- Define the term ‘criminal offence’;
- Explain the sources of criminal law;
- Explain the concept of ‘elements of an offence’ and how to ascertain these elements;
- Distinguish the mental part of a crime (mens rea) from the physical act of a crime (actus reus);
- Identify offences that require no mental element;
- Explain and differentiate the terms onus/burden of proof and standard of proof;
- Describe the onus/burden of proof in civil and criminal matters; and
- Describe and distinguish the standard of proof required in civil and in criminal matters.

### 2. Core Content

- What is a criminal offence?;
- What are the sources of criminal offences? Statute/common law;
- Two required elements: actus reus and mens reas;
- Intent/Recklessness;
- Presumption of innocence;
- Offences without mens reas – strict liability offences;
- Onus/Burden of proof: definition/ criminal/civil matters;
- Standard of proof: definition/criminal (beyond reasonable doubt)/civil (balance of probabilities); and
- Examples – compare murder to a regulatory offence.

### 3. Relevant readings/resources

- Legal Service of South Australia – Law Handbook Online – *Elements of a Criminal Offence* - <http://www.lawhandbook.sa.gov.au/ch12s03.php>
- See Annexes A.15-A.18 for the materials developed for the Regional Orientation Workshop

## Session 14: Verdicts and Judgments

### 1. Learning outcomes

At the end of this session participants will be able to:

- Explain the difference between a verdict in criminal proceedings and a judgment in civil proceedings;
- Distinguish questions of law from questions of fact;
- Describe the role of the judicial officer in resolving questions of law and fact;
- Identify using examples facts that are agreed between the parties and issues that are in disputes;
- Explain the process of analysing legal issues; and
- Explain the process of delivery a judgment or a verdict.

### 2. Core content

- Definition of verdict/judgment/implications of difference;
- Questions of law/Questions of fact: examples/differences;
- Role of judicial officers in resolving questions of law and fact;
- Agreed facts/facts in issue;
- Identification and resolution of legal issue(s): summary of facts/identify legal issues and relevant facts/arrange in a sequence/analyse each issue (apply law to facts)/conclude in manner consistent with law; and
- Bringing in all together – structuring verdict/judgment.

### 3. Relevant readings/resources

- Jim Raymond, Writing for the Court, Part 3; Five Easy Steps, Youtube Video 7.09 minutes
- Guidelines for Judgement Drafting, Paper presented during the Induction Training Course for newly-appointed Judges of the High Court of Kenya by Mr. Justice Lee G. Muthoga, Judge, United Nations Mechanism for International Criminal Tribunals  
<http://kenyalaw.org/kenyalawblog/guidelines-for-judgement-drafting/>
- See Annexes A.22-A.27 for the materials developed for the Regional Orientation Workshop

## Sessions 15-18: Family and sexual violence

### 1. Learning outcomes

At the end of this session participants will be able to:

- Define the terms ‘family’ and ‘sexual’ violence;
- Describe the extent of family and sexual violence in the Pacific;
- Identify relevant cultural issues relating to family and sexual violence;
- Identify examples of specific legislation addressing family and sexual violence in the Pacific;
- List the types of matters a judicial officer will hear with respect to family and sexual violence;
- Identify mechanisms for protecting the victims of family and sexual violence during court proceedings;
- Explain how children may be the victims of family and sexual violence and describe the process of taking evidence from a child and mechanisms to protect the child; and
- Identify circumstances in which court proceedings should be closed in family and sexual violence matters.

### 2. Core content

- Definition of domestic sexual violence;
- Extent of problem in Pacific: gender equality issues/cultural issues;
- Examples of specific legislation addressing the problem e.g. PNG;
- Orders judicial officers can make to protect victims;
- Civil v criminal proceedings - protection orders/ criminal offences; and
- Children - child victim/ process taking evidence/ closed court.

### 3. Relevant readings/resources

- PJDP Family Violence and Youth Justice Workshops Toolkits (See Reading References)
- **Pacific Legislation Addressing Family and Sexual Violence**
- Pacific Domestic Violence Prevention Programme website (Extensive resources on dv in Pacific) <https://www.ppdvp.org.nz/resources/>

*Family Protection Act 2013 (PNG)*

*Family Protection Act 2008 (Vanuatu)*

*Family Protection Act 2013 (Tonga)*

*Family Protection Act 2014 (Solomon Islands)*

*Family Protection and Domestic Violence Act 2014 (Tuvalu)*

*Family Protection Act 2012 (Palau)*

*Domestic and Family Violence Act (Samoa)*

- See Annexes A.19-A.21 for the materials developed for the Regional Orientation Workshop

## Session 19: Civil Cases

### 1. Learning outcomes

At the end of this session participants will be able to:

- Explain the differences between civil law and criminal law;
- Identify and explain the key elements of areas of civil law and the sources of this law;
- Describe the purpose of civil proceedings and how proceedings are initiated;
- Explain the onus/burden of proof in civil proceedings and the standard of proof required to prove a matter;
- Define terms such as 'claims', 'counterclaims' and the role of the judicial officer in civil proceeding; and
- Describe the remedies the civil law provides and explain how a judicial officer determines an appropriate remedy.

### 2. Core Content

- Definition of civil law;
- Comparison of civil law and criminal law – how proceedings initiated, objective of proceedings, burden & standard of proof & possible outcome of proceedings;
- Sources of civil law – common law and statutes regulate civil proceedings in each country/Rules of Civil Procedure;
- Typical areas of civil law – contract/tort/property;
- Initiation of civil proceedings – claim/counter claim/pre-trial proceedings (discovery/interrogatories) /third party claims/ADR;
- Burden and standard of proof in civil matters;
- Remedies in civil proceedings – damages/restitution/ injunction/specific performance/garnishment; and
- Civil trial/process/judgment/costs/enforcing judgment.

### 3. Relevant readings/resources

- *Criminal and Civil Cases* Youtube video, 2.58 mins.  
<https://www.youtube.com/watch?v=tpR1KD6EIJ8>
- See Annex A.29 for the materials developed for the Regional Orientation Workshop

## Sessions 20-22: Civil Decisions

### 1. Learning outcomes

At the end of this session participants will be able to:

- Distinguish the key features of a civil and a criminal decision;
- Compare the burden and standard of proof in civil and criminal proceedings and the implications of the differences for the judicial officer;
- Define commonly used terms in civil proceedings;
- Explain the key components and the steps required by a judicial officer in reaching a civil decision;
- Identify and explain common motions in civil proceedings;
- Describe the range of civil remedies available to a judicial officer and the requirement that must be satisfied for prescribing such remedies; and
- Apply theoretical principles of civil decision making to hypothetical exercises.

### 2. Core Content

- Refresh on main differences between civil and criminal proceedings: who initiates/objective/outcome/burden and standard of proof;
- Key terms: plaintiff/defendant/third party/claim/counterclaim/motions/pre-trial matters/judgment/appeal/enforcement of judgment;
- Components of a civil decision: IRAC – Issue, Rule, Application, Conclusion;
- Keys steps in decision making: identify the issue/state relevant rule/ apply rule to the facts/conclude;
- Motions: purpose/types of motions – dismiss/summary judgment/order to show cause/how to determine a motion; and
- Exercises.

### 3. Relevant readings/resources

- PJDP Judicial Decision-Making Toolkit (See Readings File)
- Raymond Jim, *Writing for the Court, Part 2 Architecture of a Judgment or Pleading*, Youtube Video 9.04 minutes [https://www.youtube.com/watch?v=pMU1CL\\_nDUY](https://www.youtube.com/watch?v=pMU1CL_nDUY)
- *Civil Remedies*, Youtube Video 49 Seconds, <https://www.youtube.com/watch?v=FrKfU9nYho4>
- See Annexes A.30-A.31 for the materials developed for the Regional Orientation Workshop

## Sessions 23-24: Communicating effectively

### 1. Learning outcomes

At the end of this session participants will be able to:

- Explain the components of the communication process;
- Distinguish verbal and non-verbal communication;
- Identify features of effective communication;
- Explain the importance of judicial officers communicating effectively with court users;
- List the barriers to communicating effectively;
- Practice active listening skills;
- Identify methods to improve verbal and non-verbal communication; and
- Practice communicating effectively.

### 2. Core contents

- Definition of communication;
- The communication process - sender/ medium/ receiver/ feedback;
- Types of communication - verbal/ vocal/ non-verbal;
- Features effective communication - active listening/ eye contact/ posture/ simple language/ questioning skills;
- Benefits of effective communication - quicker problem solving/ better decision making/ more work done/ effective administration justice;
- Barriers to communicating effectively - noise/ jargon/ assumptions/ misconceptions/ language/ culture/ poor listening/ jargon;
- Difference between hearing and listening;
- Active listening - hearing/ interpretation/ evaluation/ respond;
- Tips improving verbal communication - eliminate noise/ get feedback/ speak slowly/ rephrase/ listen carefully and patiently;
- Tips improving non-verbal communication - maintain eye contact/ attentiveness/ appearance/ posture; and
- Exercises.

### 3. Relevant readings/resources

- *What is the Communication Process/Steps of Communication Process*  
<https://thebusinesscommunication.com/what-is-communication-process/>
- Keller, Gary, *THE LISTENING SKILLS OF COURT JUDGES: LESSONS FOR MANAGERS AND LEADERS*
- See Annex A.32 for the materials developed for the Regional Orientation Workshop

## Session 25: Evidence

### 1. Learning outcomes

At the end of this session participants will be able to:

- Define the term 'evidence';
- List the different types of evidence;
- Explain the purpose of evidence in court proceedings;
- Identify the sources of the law of evidence in your jurisdiction;
- Explain the rules of evidence and distinguish concepts such as relevance, admissibility and hearsay;
- Distinguish admissible and non-admissible evidence; and
- Explain the concept of expert evidence and identify when such evidence is permitted in your jurisdiction.

### 2. Core Content

- Definition of evidence;
- Types of evidence: Direct/indirect;
- Oral/documentary/real/expert testimony/circumstantial;
- Sources of the rules of evidence in your jurisdiction;
  - Statute?
- How evidence is tendered at a trial?;
- Rules of evidence;
  - Relevance
  - Admissibility
- Why evidence may not be admissible;
  - Not relevant
  - Hearsay: Rule/Exceptions/Example
  - Expert evidence: exceptions
- Admissible evidence;
  - Judge needs to determine the value of this evidence

### 3. Relevant readings/resources

- Field, David *What is Evidence Law*, The National Legal Eagle, Volume 16, Issue 2, Spring 2010 (See Readings file)
- Pacific legislation re Evidence
  - Evidence Act 2015* (Samoa)
  - Evidence Act 2009* (Solomon Islands)
  - Laws of Tonga 1988*, Chapter 15, Evidence
  - Criminal Law in Solomon Islands*, Chapter 8, Admissibility of Evidence
- See Annexes A.33-A.35 for the materials developed for the Regional Orientation Workshop

## Session 26: Trial Management

### 1. Learning outcomes

At the end of this session participants will be able to:

- List the steps in a civil or criminal trial;
- Describe the role of the judicial officer in a trial;
- Explain the importance of the judicial officer ‘managing’ the trial and identify the principles of effective trial management;
- Identify key responsibilities of the judicial officer pre-trial, during trial and post-trial;
- Explain the role and obligations of the judicial officer when a litigant is self-represented; and
- Identify strategies for dealing with difficult litigants, lawyers and witnesses.

### 2. Core Content

- What is a trial;
- Stages of a trial - Difference between civil and criminal trials;
- Role of judicial officer – key functions: pre-trial/evidence/procedure/post-trial;
- Concept of trial management;
- Principles of effective trial management;
- Self-represented litigants; and
- Strategies dealing with difficult litigants, lawyers and witnesses.

### 3. Relevant readings/resources

- PJDP Enabling Rights and Unrepresented Defendants Toolkit (see Readings File)
- The Judge’s Resource Guide: Managing Jury Trials, National Judicial College (See Readings File)

## Session 27: Registry and Case Management

### 1. Learning outcomes

At the end of this session participants will be able to:

- Define ‘case management’ and its purpose;
- Identify key case management principles and the benefits of each to court users;
- Examine the concept of time goal/standard and explain the benefits;
- Explain the importance of court diaries to list and manage cases effectively;
- Identify the responsibility for listing cases and granting adjournments; and
- Apply principles of case management to practical exercises.

### 2. Core Content

- Definition of Case Management/Key features;
- Key Case Management principles:
  - Time goal
  - Control
  - Differentiated cases
  - Preparation
  - Minimal continuance policy
  - Early identification of issues
  - Technology maximized to record and report on caseload
  - Teamwork
- Time Goal/standard: what is it?/importance/benefits/how to create;
- Time Goal/standard for intermediate/interval events to final disposition;
- Time Goal/standard for entire court case load;
- Use of court diaries to list and manage cases; and
- Whose responsibility is it to list cases/process used/files/adjournments.

### 3. Relevant readings/ resources

- PJDP Time Goals Toolkit (See Readings File)
- PJDP Reducing Backlog and Delay Toolkit (See Readings File)
- Schmucker, Chad, *5 Pitfalls of Poor Case Management*, National Judicial College, <http://www.judges.org/5-pitfalls-of-poor-caseflow-management/>
- See Annexes A.39-A.40 for the materials developed for the Regional Orientation Workshop

## Session 28: Customer Service

### 1. Learning outcomes

At the end of this session participants will be able to:

- Define a 'customer' and explain the concept of 'customer service';
- Explain who are a court's customers;
- List court customer's expectations;
- Identify court customer's needs;
- Identify characteristics of good and bad customer service;
- Explain why it is important for courts to practice good customer service; and
- Describe the consequences of court that practices bad customer service.

### 2. Core content

- Definition of customer service/ why important;
- Why judicial officers should be concerned about customer service;
- Who are a court's customers? Implications;
- Expectations of customers/ reasons for these expectations;
- Characteristics good customer service: what customers like and dislike;
- Characteristics of bad customer service;
- Customer needs: security/ social/ results; and
- Expectations of quality.

### 3. Relevant readings/resources

- *Will Courts be Customer Driven in the Future?: Managing for Superior Customer Service* (See Readings file)
- *Bad Customer Service Montage* (Youtube video 2.19 minutes)  
<https://www.youtube.com/watch?v=bTbHwnxCGal>
- See Annexes A.41-A.42 for the materials developed for the Regional Orientation Workshop

## Additional Session<sup>1</sup>: Alternative Dispute Resolution

### 1. Learning outcomes

At the end of this session participants will be able to:

- Define the term 'Alternative Dispute Resolution' (ADR);
- List ADR methods;
- Explain where litigation sits as an ADR method;
- Define negotiation as an ADR method and identify its advantages and disadvantages;
- Define mediation and conciliation as ADR methods and identify their advantages and disadvantages;
- Define arbitration as an ADR method and identify its advantages and disadvantages;
- Identify and explain ADR methods employed by your court including pre-trial conferencing; and
- Explain methods for promoting settlement of cases.

### 2. Core content

- Definition ADR - Types/ benefits/ continuum;
- Negotiation - definition/ interests/ options/ alternatives/ communication/ relationship/ commitment;
- Negotiation process - formal/ informal, assisted/ non-assisted
- Negotiation - advantages & disadvantages;
- Mediation & Conciliation - definitions/ differences/ court ordered/ examples from Pacific courts – pre-trial conferencing/ role judicial officer – how promote settlement
- Arbitration - definition/ legislation/ process/ advantages and disadvantages; and
- Litigation - definition/ when appropriate/ advantages and disadvantages.

### 3. Relevant readings/resources

- Hassell, Graham, *Alternative Dispute Resolution in Pacific Island Countries* University of South Pacific

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<sup>1</sup> While not presented at the PJSI Regional Lay Judicial Officer Orientation Course in November 2017, some additional sessions that courts may wish to present include Alternative Dispute Resolution, Customary Proceedings and Reconciliation, and Judicial Leadership.

## Additional Session: Customary Proceedings and Reconciliation

### 1. Learning outcomes

At the end of this session participants will be able to:

- Distinguish ‘custom’ from ‘customary law’;
- Define ‘legal pluralism’ and explain the implications of legal pluralism for judicial officers;
- Distinguish race, culture and language;
- Explain how customary law has been integrated or recognized by your country’s legal system;
- Identify specific examples of recognition of customary law in your country either in the criminal or civil law;
- Give examples of cases where the courts have taken into account customary forms of punishment when sentencing an offender;
- Describe how methods of compensation in your country recognize customary principles; and
- Identify situations in which it will necessary to seek the assistance of an interpreter in court proceedings.

### 2. Core content

- Define custom and customary law;
- Legislative recognition of customary law (Constitutions other statutes);
- Definition legal pluralism – what this means in practice for a judicial officer;
- Define and distinguish concepts of race, culture and language/implications for the courts;
- Examples of integration of customary law – Papua New Guinea/Vanuatu/Solomon Islands;
- Practical problems: compensation/ penalty e.g bride price/ customary punishment/ conflict with formal legal system; and
- Use of interpreters.

### 3. Relevant readings/resources

- Constitutions of Pacific nations that recognize customary law
- Newton, T, ‘The Incorporation of Customary Law and Principle into Sentencing Decision in the South Pacific’ *Paper Presented at the History of Crime, Policing and Punishment Conference convened by the Australian Institute of Criminology in conjunction with Charles Sturt University, Canberra 9-10 December 1999*
- Case Note: Customary Reconciliation in Sentencing for Sexual Offences: A Review of Public Prosecutor v Ben & Others and Public Prosecutor v Tarilingi and Gamma – University of the South Pacific <https://www.usp.ac.fj/index.php?id=13326>

## Additional Session: Judicial Leadership

### 1. Learning Outcomes

At the end of this session participants will be able to:

- Define the qualities, characteristics and behaviours a leader exhibits;
- Explain the concept of judicial leadership;
- Identify the goals of judicial leadership; and
- Explain why judicial leadership is important and where judicial leadership is required.

### 2. Core Content

- Definition of a leader;
- What is the role of a leader?;
- Define judicial leadership;
- Need for judicial leadership;
- Goals of judicial leadership: raise public trust/ address needs of community/serves community/improve delivery of justice/perform constitutional role;
- Qualities judicial leaders should possess: promote justice/ensure values in constitution are recognised/strive excellence/quality justice enhanced/reform;
- Behaviours that judicial leaders should exhibit: independent/engaged/enabler of rights/visionary/focused on quality of justice; and
- Problems that judicial leaders will need to resolve: delay/access to justice/quality of justice/independence and integrity/legal empowerment/service delivery/case management.

### 3. Relevant readings/resources

- Evans K, *Made not Born: Learning how to Lead* Judicial College of UK 2015 (See Readings File)
- Stedham Y, *Transformational Judicial Leadership: What, Why, How*  
<http://www.judges.org/transformational-judicial-leadership-what-why-how/>

## 4 Moving Forward: Creating Session Plans

When creating Session Plans that can be used to conduct effective sessions it is important to first consider what the learning objectives of the session are. Learning objectives are what you would like participants to be able to achieve by the end of the session. Learning objectives should first be considered for the complete program. Once this is determined, you can break down the learning objectives down into what should be achieved from each session. It is also important to have a clear structure so you know the content of the session, and how long should be spent on each topic during the session. It is also necessary to consider any other resources that will be used when conducting the session.

A blank template has been included below, which provides an outline for your Session Plan.

## Session Plan Template (Blank)

<b>Session Plan:</b>				
<b>Training Activity:</b>				
<b>Topic:</b>		<i>(specify)</i>		
<b>Objective(s):</b>		The purpose of this session is to: <i>(specify)</i> <ul style="list-style-type: none"> <li>• <b>Knowledge</b></li> <li>• <b>Skills</b></li> <li>• <b>Attitudes</b></li> </ul>		
<b>Outcomes:</b>		As a result of attending, participants will be able to: [Q: <i>do what well?</i> ] <ul style="list-style-type: none"> <li>•</li> <li>•</li> </ul>		
<b>Trainer:</b>				
<b>Time – (60) mins:</b>		<b>Content:</b>		
<b>Start</b>	>5 mins	<b><u>INTRODUCTION</u></b>		
		Introduce yourself and explain relevance of topic Outline learning outcomes (above) Explain structure of session: Stimulate interest:		
xx mins		Sub-topics	Methodology	Summary /Assessment
xx mins		Sub-topics	Methodology	Summary /Assessment
xx mins		Sub-topics	Methodology	Summary /Assessment
<b>End</b>	>5 mins	<b><u>Conclusion:</u></b>		
		Summarise content Review learning outcomes Check participants’ grasp by asking them to summarise.		