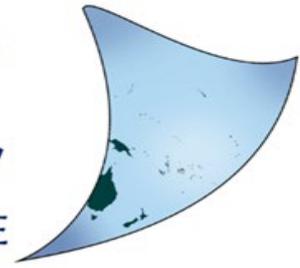




PACIFIC

JUDICIAL STRENGTHENING INITIATIVE



Pacific Judicial & Court Reform Resource Collection

Volume 1: Core Skills





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These resources are available for downloading from the Federal Court of Australia's website - www.fedcourt.gov.au

Keywords: Judicial reform, court reform, judicial orientation, judicial mentoring, judicial decision-making

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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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.

The Partner Courts are: Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Republic of Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.

PJSI was delivered by the Federal Court of Australia on behalf of the New Zealand Ministry of Foreign Affairs and Trade.

Toolkits

Through their practical, step-by-step guidance these toolkits have supported partner courts to implement their reform and development objectives locally. As the PJSI reaches its conclusion, it is hoped that these resources will continue to be of value to law and justice sectors and development practitioners globally.



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Pacific Judicial Development Programme

JUDGES' ORIENTATION TOOLKIT

September 2014





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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/pjdp/pjdp-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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PJDP TOOLKITS

Introduction

For over a decade, the Pacific Judicial Development Programme (PJDP) has supported a range of judicial and court development activities in partner courts across the Pacific. These activities have focused on regional judicial leadership meetings and networks, capacity-building and training, and pilot projects to address the local needs of courts in Pacific Island Countries (PICs).

Toolkits

Since mid-2013, PJDP has launched a collection of toolkits for the ongoing development of courts in the region. These toolkits aim to support partner courts to implement their development activities at the local level by providing information and practical guidance on what to do. These toolkits include:

- ***Judges' Orientation Toolkit***
- Annual Court Reporting Toolkit
- Toolkit for Review of Guidance on Judicial Conduct
- National Judicial Development Committee Toolkit
- Family Violence and Youth Justice Project Workshop Toolkit
- Time Goals Toolkit
- Access to Justice Assessment Toolkit
- Trainer's Toolkit: Designing, Delivering and Evaluating Training Programs

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, PJDP aims to build local capacity to enable partner courts to address local needs and reduce reliance on external donor and adviser support.

PJDP is now adding to the collection with this new toolkit: ***Judges' Orientation Toolkit***. Much of the content of this toolkit is sourced from PJDP's Regional Orientation Course, and a number of Training-of-Trainers Workshops which have been piloted and conducted around the Pacific between 2010-15. This toolkit provides practical guidance on managing key aspects of your training program, and contains many useful templates, checklists and advice for trainers. It has been piloted in the Federates States of Micronesia and Tokelau.

Use and support

These toolkits are available on-line for the use of partner courts at <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>. We hope that partner courts will use these toolkits as / when required. Should you need any additional assistance, please contact us at: pjdp@fedcourt.gov.au

Your feedback

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

Dr. Livingston Armytage
Team Leader,
Pacific Judicial Development Programme

September 2014



Mr. Kapilly Capelle, Director, FSM Supreme Court, in action.

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ABBREVIATIONS

CJ	-	Chief Justice
FSM	-	Federated States of Micronesia
M&E	-	Monitoring and Evaluation
MFAT	-	New Zealand Ministry of Foreign Affairs and Trade
MSC	-	Managing Services Contractor - Federal Court of Australia
NJDC	-	National Judicial Development Committee
PIC	-	Pacific Island Country
PJDP	-	Pacific Judicial Development Programme ('Programme')
RTT	-	Regional Training Team
TNA	-	Training Needs Assessment
ToT	-	Training-of-Trainers
USP	-	University of South Pacific

1.0 CONTEXT FOR THIS TOOLKIT

1.1 PURPOSE OF THIS TOOLKIT

The purpose of this toolkit is to enable your court to plan, organise and conduct orientation training for new judicial or court officers as and when needed. Orientation training, which is sometimes also called 'induction training', aims to equip new appointees to the courts to undertake their duties competently. In the past, these officers may have been appointed without the benefit of any structured training or, alternatively, they have had to travel overseas to receive training. This toolkit is specially designed to provide your court with practical guidance on how to provide that training *locally* and at the time when it is most needed, that is, either shortly before / after appointment.

1.2 SCOPE OF TOOLKIT

This toolkit is designed to help you plan, design, manage and conduct your first local orientation course. It will take you across all the major issues from A-Z. In doing so, it will present you with the key questions which you will need to answer. As senior members of your judiciary, you will be best placed to answer these questions - in whatever capacity you exercise: as Chief Justice, senior judge, registrar or member of your National Judicial Education Committee. So, basically, this toolkit will help you to answer the: '*who, when, where, what, how and by whom*' of judicial orientation. With its help, you will be able to pilot your first training. Once there, you're on the way to becoming your own orientation expert, and can refine your approach with the benefit of your own local experience.

1.3 HOW THIS TOOLKIT CAN BE USED

It is designed as a short manual, or guide book, to explain what needs to be done, by whom, and when in a series of practical tasks set out in an orderly manner. These tasks are not difficult as long as you take an opportunity to prepare for them – and this toolkit can help you to prepare. Some sample documents are annexed to this toolkit to provide examples which may be relevant and useful. If you have any questions after reading this toolkit, please email PJDP: pjdp@fedcourt.gov.au for any additional assistance.

1.4 DOES YOUR COURT NEED THIS TOOLKIT?

If your court already has – or will soon have - new appointees who are unfamiliar with their new duties either as judicial or court officers, then the answer is 'yes'. While it is likely that some appointees have had to make do without orientation training in the past, this toolkit will help them to become familiar with their new roles, and it will help you to help them do so. In this way, the courts will operate smoothly in providing services to your community.

1.5 WHO SHOULD READ THIS TOOLKIT?

This toolkit is intended to be used by experienced officers selected by or on behalf of the Chief Justice to be responsible for the training of new appointees to perform their roles as either judicial or court officers. These senior officers may be members of your National Judicial Development Committee (NJDC) and / or the Regional Training Team (RTT) who are judges, magistrates, registrars or other court officers who are experienced and expert with the workings of the court and the duties of the new appointees. These experienced officers will serve as trainers of the new appointees during the orientation course - and will also serve as role models and mentors, leading by example and helping as and when needed after the course is completed.

1.6 OTHER TOOLKITS WHICH MAY BE HELPFUL

PJDP has produced a number of other toolkits as part of its commitment to helping Pacific Island courts to perform their functions as effectively as possible. In particular, you may find the following toolkits are also relevant and useful in preparing for your orientation training, including:

- **National Judicial Development Committee Toolkit** – explains the process of structuring and planning court's professional development activities.
- **Trainers' (designing, delivering and evaluating programs) Toolkit** – explains how to develop and conduct training programmes and workshops.
- **Project Management Toolkit** – explains the role and tasks of court officers with responsibilities for managing and implementing their court's development activities, as *project managers*.

These toolkits are available at: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>.

1.7 GETTING STARTED

You can start by reading through this toolkit, talking with your Chief Justice or his/her representative about what is required, and then following the step-by-step guide.

1.8 DO YOU NEED ANY FUNDING?

Once you have decided on who will participate in the training and how the training will be conducted, you should prepare a budget in order to identify the costs involved. You have three options for funding this budget: first, these expenses should be funded by the court. If there is no available funding, the second option is to apply for special funding from the Government. The final option, which only arises if you have exhausted the first two, is to seek funding assistance from PJDP using the Responsive Fund procedure.

The form and guidelines for making an application to the Responsive Fund can be found in the Project Management Toolkit, *Annex 5*.



Hon. Chief Justice Rodriguez,
Supreme Court of Pohnpei, FSM.

2.0 BUILDING JUDICIAL COMPETENCE THROUGH ORIENTATION

2.1 DEFINING SOME KEY TERMS

For the purpose of this Orientation Toolkit, some key terms are defined as follows:

- *Appointee* – someone who is nominated to a particular office (in the court system); this may be a judicial or an administrative appointment; the appointee may be law-trained or more commonly lay (non-law-trained).

- *Competence* – having the necessary ability to perform a role successfully; competence has three components relating to: knowledge, skills and attitudes.
- *Court officer* – generic description for someone employed to perform managerial or administrative duties in the court system.
- *Judicial officer* – generic description for a (lay or law-trained) judge or magistrate; someone who exercises the duties of judicial office, and performs the functions of judging under the Constitution of the Pacific Island Country.
- *Orientation* – a professional development course giving information and related assistance to new members of the judiciary in order to promote their competence – sometimes, also called professional induction, to introduce a new appointee to their duties.
- *Professional development* – acquisition of knowledge, skills and attitudes for career advancement; continuing process of supporting people in the workplace to understand and perform their role better.

2.2 OBJECTIVE OF ORIENTATION TRAINING

The objective of orientation training is to build the competence of newly-appointed judicial and / or court officers to perform their duties to an appropriate standard of 'competence', which is defined below. The standard of competence should be set by local judicial leaders. For an explanation of how to develop competence / performance benchmarks, see *Annex 8*, of the *Project Management Toolkit*.

2.3 COMPETENCE

The most important idea in any judicial orientation course is agreeing on the goal of building professional competence. Orientation training is the first step in a career-long journey of professional development towards expertise and excellence. 'Competence' is the quality which describes the 3 major elements of expertise, or proficiency, which are important for trainers. These elements are (i) knowledge, (ii) skills and (iii) attitudes.

Competence describes both the *nature* of the expertise (that is, the content and the form of judging), and also the *level* of proficiency (that is, the standard of judging). Orientation training is generally introductory, aiming to help new appointees to transition into doing their job. The content of orientation training is fundamental and the level of instruction is basic. Sometimes in practice judicial appointees with more experience who have not received initial training may also participate. When this happens, facilitators should encourage participants to share and exchange their experience as a means of building competence. Orientation training plays an important role in laying the foundations for competence and is built on later with continuing or in-service training and experience.

2.3.1 Knowledge

One of the key objectives of orientation training is to promote knowledge. The idea of knowledge describes the facts and information which are acquired through experience or education. It is an awareness or familiarity gained through either experience of a fact or situation or through training. Knowledge is the theoretical or practical understanding of a subject, in this case, the functioning of courts and the role(s) of judicial and/or court officers. Examples of key knowledge for judges include essential information on: criminal and civil law and rules; examples of knowledge for court officers include information on court processes and procedures. Trainers require particular techniques for conveying knowledge. These techniques generally involve short lectures or seminars where the trainer conveys information which helps participants to 'know' something.

For example, a session plan on *the laws evidence* might specify: 'At the end of this session, participants will know and able to explain the principal rules of evidence, and the special requirements of documentary and expert evidence.'

2.3.2 Skills

Another key objective of orientation training is to develop professional skills. Skills build on existing levels of knowledge to describe what judicial and court officers 'do' in order to perform their duties. Examples of key skills for judges include legal research, decision-making and judgment-writing; examples of skills for court officers include case filing, customer service and maintaining registers. Trainers require particular techniques for developing skills. These techniques generally involve workshops and exercises where the trainer provides participants with an opportunity observe and practice to 'do' something.

For example, a session plan on *writing judgments* might specify: 'At the end of this session, participants will understand the principles of judgment writing and able to write a brief judgment that contains the key elements and features of a good judgment.'

2.3.3 Attitudes

The third objective of orientation training is to develop professional attitudes and values. These may be both professional and personal, and they describe how people behave and perform their role. Attitudes and values are very important elements of competence. Examples of attitudes and values for both judicial and court officers include the key qualities which are required in leadership, honesty, impartiality, integrity, professionalism and public service. Trainers require particular techniques for developing attitudes. These techniques generally also involve workshops and discussions where the trainer provides participants with an opportunity to role-model on how to 'be' a judicial or court officer appropriately.

For example, a session plan on *judicial conduct and ethics* might specify: 'At the end of this session, participants will understand apply and demonstrate how to apply the Bangalore Principles of Judicial Conduct appropriately in the local context.'

2.4 DESIGNING YOUR INSTRUCTIONAL APPROACH

In any given training situation, the competence of new appointee to perform his / her role will usually combine elements of knowledge, skills and attitudes / values. For this reason, trainers should think about how to promote effective learning by integrating a range of instructional techniques which may include short lectures / seminars to convey information ('*knowing*'), workshop exercises to develop and practice skills ('*doing*'), and peer-based discussions to highlight professional attitudes / values ('*being*').

For more information, turn to the section on *detailed session planning* later in this toolkit (see **section 4.3.5**); and also look at *section 4.2* of PJDP's *Trainers' Toolkit* which can be found at <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/PJDP-trainers-toolkit.pdf>.

3.0 IDENTIFYING TRAINING NEEDS

The best place to start your planning is to ask the question: *Who do you want to train?* Answering this question will set the direction for designing your orientation course and steer most of your logistical preparations. This is called the 'needs-driven' approach because focusing on specifying the precise nature of the needs of participants will determine the training to be delivered.

3.1 SELECTION: WHO WILL BE TRAINED?

The Chief Justice is responsible for nominating who will attend orientation training; but whom should s/he nominate?

First consider who is about to be appointed – over, say the next year - or who has been recently appointed – over, say the past year, to work in your courts. These people will be the most likely recipients of orientation training because delivering training within this 24-month period is most timely for orientation purposes. Officers appointed longer ago will of course also benefit from training, but the later it is delivered the less useful it will be in helping both appointees and the court to operate most efficiently.

3.2 ROLES AND RESPONSIBILITIES

The next planning question to answer is: *What role(s) do appointees perform: are they judicial or court officers?* This question is important because the answer will determine what the content of training should be. Some of the orientation needs of new appointees are general, that is, common to all appointees; but some needs vary according to role. At this stage, you must select whose needs your orientation course will address. You will have three options:

- a) judicial officers;
- b) court officers; or
- c) both.

If you chose (a), the content will be largely judicial, focusing on the role of judges and magistrates. If you chose (b) the content will be more managerial / administrative, focusing on the role of court officers and clerks. If you chose (c), the content will need either to focus mainly on issues of shared relevance or, alternatively, spread across both.

The advantage of (c) is that it provides training for all new appointees; the disadvantage is that the content becomes either more general for all or less relevant for some participants. Over the years, PJDP has experimented with conducting both approaches – each has its strengths and weaknesses: combining both spreads the benefits and enables different actors to understand the others' roles, but covers the relevant topics more thinly; focusing on either (a) or (b) enables better focused content but for a narrow group, so other new appointees may miss out.

What is most important for your planning process is to clearly recognise that this is a key decision that greatly influences your training's aim and objectives (discussed in **section 4.1**, below), and that you make your choice understanding the consequences.

3.3 PRIOR QUALIFICATIONS, TRAINING AND EXPERIENCE

The next key question to address is: *What are the qualifications of participants?* This is crucial because the answer will determine the level of instruction to be provided. You have three choices here:

- law-trained;
- lay, that is, non-law trained; or
- both.



Associate Justice Philip reports using flip-chart

Statistically, it is estimated that about three-quarters (3/4) of all justice sector employees working the Pacific region – that is, all judicial or court officers in whatever role – are lay actors. So the probability is that most – and possibly all – of your new appointees will be non-law trained. But not necessarily: many of your judicial officers may be law-trained, that is, graduates in law from USP or another law school.

The nature of appointees' qualifications will have a substantial impact on training needs and will affect both the content and the level of instruction of your orientation course. Lay appointees will benefit from the most elementary explanations about how the justice system works and the role(s) of judicial / court officers, while law-trained appointees will benefit from a higher-level of training which focuses on realigning their existing theoretical knowledge and (any) professional experience into judicial practice.

Over the years, PJDP has experimented in conducting orientation training for both law-trained and lay appointees. In our experience, we have found combining both groups to be relatively unsatisfactory for both; that said, courts sometimes need to orientate appointees with both qualifications. If possible,

we recommend that you avoid trying to conduct orientation training for both groups in the same course. But, once again, what is most important for your planning process is to clearly recognise that this is a key decision and that you make your choice understanding the consequences.

Another matter to ascertain is the nature and extent of prior professional experience and any relevant training. Clearly, someone with 2-3 years of on-the-job experience has already learnt a lot. But the question is: have they learnt the right things? Sometimes in life we have no choice but to muddle along without much guidance and to do the best we can. So, don't assume training isn't still needed; formal training may still be very useful to 're-orientate' (and even correct the wrong) lessons which have been learnt. But if participants have already undergone reputable training, there's little benefit to be served in repeating that training.

3.4 METHODOLOGIES FOR ASSESSING NEEDS

The next planning question is: *What is the content of orientation training?* As explained, the answer will depend on who is being trained, their roles, qualifications and prior experience. *But what - specifically - do they need training on?*

The answer to this question is found by undertaking a 'Training Needs Assessment' (TNA); see *section 3.4* of PJDP's *Trainers' Toolkit* - <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/PJDP-trainers-toolkit.pdf>. The purpose of the TNA is to identify and analyse the needs for training. It does this in a 4-step process, as follows:

- 1) The TNA identifies the performance requirements of the court in terms of the knowledge, skills, and abilities required to perform the appointees' tasks.
- 2) It ascertains the appointees' existing levels of competence.
- 3) It specifies the 'competency gap' which the orientation course should aim to fill.
- 4) The objective for the orientation course will then be specified to fill that 'gap.'

There are a number of common methodologies, or ways, to undertake this assessment, including: interviews, surveys, observation, reviewing court and other data.

3.4.1 Interviews

If you are not already familiar with the job requirements and the competence of the appointees, interview someone who is, by organising a meeting to itemise the tasks of the role, the competences required, and the 'gaps' to be addressed in the training. For an explanation on how to undertake a 'gap analysis', see *Tool 7* of the *Project Management Toolkit*.

3.4.2 Surveys

In larger jurisdictions, it may be more efficient to gather this information by circulating a survey, or questionnaire, among experienced members of the judiciary and management, and possibly also members of the bar who can often also add very useful insights on what training may be needed. In small Pacific Island Countries, it is often more useful to do this orally.

3.4.3 Observation

Another straight forward methodology is to observe the proceedings of the court or its registry to form your own impression of the required tasks and the key competences for appointees. Sometimes, this can be a simple and very useful technique for identifying where training may help improve performance, for example, better communication skills or improved time management.

3.4.4 Reviewing Court Data and Other Research

Finally, it can be helpful to take a look at court records and any related data. Other relevant data or reports may have been conducted by universities and/or sponsored by donors. This may reveal, for example, that file records are not being kept in a uniform manner, that files are getting lost, or that some cases are suffering from excessive delay. Any of these findings can be useful in deciding what the content of training should be.

4.0 DESIGNING THE COURSE

4.1 OBJECTIVES AND AIMS

This section extracts from section 4.3 of *PJDP's Trainer's Toolkit*: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/PJDP-trainers-toolkit.pdf>.

Writing an aim may sound academic, but it is vitally important. It is very important that you, the planners, know what you want to achieve, and that that understanding is shared by the presenters and the participants - that there is a common understanding of what the activity is meant to achieve. What will be its outcome/s, more than what will be the inputs. It is for you to decide that, not the presenters.

- An *aim* is where you want to be ultimately: the outcome.
- An *objective* is what you want to do to get to that outcome.

A good way to write aims and objectives for a seminar or workshop is to put yourself in the shoes of a participant and ask: "*what do I want out of this seminar or workshop?*" So, not what you aim to do as the planner, but what will be the desired outcome for a participant. Then keep in those shoes and ask: "*what can we do during the seminar or workshop which will best help me, the participant, to achieve that aim?*"

Objectives and Aims Example

Seminar: The new Code of Conduct for Court Officials

Aim

The aim of this seminar is that all court officials will carry out their work in accordance with the new Code of Conduct for Court Officials.

Objectives

The objectives of this seminar are that Court officials will:

- 1 Understand why a Code of Conduct has been introduced.
- 2 Have a good knowledge and understanding of the new Code.
- 3 Be able to apply the Code in various situations, particularly those where there is some uncertainty.

It is a good idea to set objectives and aim for both your course and each session in it because this keeps presenters on-track and shows participants where they are going. It also helps the designer to ensure that each session supports / contributes to achieving the overall course's aim.

4.2 COURSE CONTENT

As the result of undertaking your training needs assessment, you will then be able to select the topics that should be considered for inclusion in the training. For this purpose, it is useful to use a *Content Planner* to help to list and address identified needs. This planner organises selected topics by their category: substantive law; court procedure; judicial skills; ethics and conduct; judicial management / administration; and general/other.

4.3 ORIENTATION: CONTENT PLANNER

This planner provides you with a simple tool to identify and list topics for training, and then to plan and structure your orientation course to ensure you address those topics in an orderly manner. List the needed topics by category in the table below:

SUBSTANTIVE LAW	COURT PROCEDURE	JUDICIAL SKILLS	ETHICS & CONDUCT	JUDICIAL MANAGEMENT	GENERAL / OTHER

4.3.1 Orientation Contents

Once you have selected your topics to be included in the orientation course, the next step is to map your course outline. The duration and structure of the orientation course will be determined by a number of factors. PJDP's preferred duration is an intensive 5-day course, because this makes the most of bringing everyone (both participants and faculty) together in one place at the same time. But you may prefer shorter or longer; you may also wish to structure the course differently, for example, in a series of days over several weeks or weekends.

4.3.2 Sample Course Outline: Duration and Structure

You are in the best position to decide the duration and structure of your local orientation course, taking into account availability of faculty and participants, budgetary and logistical considerations. Most important, it should suit your situation and fit available opportunities.

Over the years, PJDP has piloted a 5-day structure on a regional basis. Based on PJDP's 5-day structure, the following sample for an orientation course is been adapted for piloting at the local level in FSM, as an example only. The content in this sample may / may not suit your situation and the needs of your appointees and will need to be adapted to your local context. Note that this course is prefaced with a clear statement of its educational objectives, and a description of the faculty of presenters. See: **Annex 3**.

4.3.3 Designing Daily Plans

This section extracts from section 4.1 of PJDP's Trainer's Toolkit: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/PJDP-trainers-toolkit.pdf>.

Creating a Daily Plan will give you an overview of the whole of your training program. Such a plan can be used for a training program of any length even a program lasting less than a day.

You can create a Daily Plan in a Word document by creating a table with six headings across the top of the table. Identifying the time you have, the topic you will cover, learning outcomes, training methods and aids that will be used during training and the name of the facilitator.

Let's assume we are training judges on the Rules of Evidence. This is an example of an extract from your Daily Plan:

Training Program for Judges on an Introduction to the Rules of Evidence

Time	Topic	Learning outcomes	Training Methods	Training Aids	Facilitator
9.00-10.00 am 60 Minutes	Introduction to the Rules of Evidence	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 • Explain the 'best evidence' rule • List the reasons why evidence may not be admissible into court. 	Presentation Group Discussion Case studies	PowerPoint Whiteboard Case Study questions	Margaret Barron

Your plan would continue and would provide a summary of every training session you proposed to deliver in relation to your training program on the Rules of Evidence.

4.3.4 Designing Session Plans

This section extracts from PJDP's Trainer's Toolkit: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/PJDP-trainers-toolkit.pdf>.

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 simple. *Annex 2* (in the *PJDP Trainer's Toolkit*) 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 – 60 mins		Content: An introduction to the rules of evidence			
Start	5 mins	INTRODUCTION Get attention: Tell an interesting story 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. Outcomes (learning outcomes): Discuss the learning outcomes listed above Structure of the session: Session will be divided into four sessions (see sub-topics below)			
		15 mins	Sub-topics	Methodology	Summary / Assessment
		Types of evidence	Presentation	Questions	PowerPoint
15 mins	Sub-topics	Methodology	Summary / Assessment	Resources	
		Concept of relevance of evidence	Case Study	Questions	Handouts
15 mins	Sub-topics	Methodology	Summary / Assessment	Resources	
		Reasons for evidence not being admissible	Brainstorm	Game	Whiteboard and pen
5 mins	Sub-topics	Methodology	Summary / Assessment	Resources	
		Purpose of the Rules of Evidence	Presentation	Quiz	PowerPoint
Ends	5 mins	Conclusion: 'COFF' Outcomes & 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:			

4.3.5 Session Planning Tool

A blank 60-minute **Session Planning Tool** is annexed as a template for your own use. This tool includes a 10-point check-list and criteria for feedback to presenters: see **Annex 2**.

5.0 PREPARING AND CONDUCTING THE COURSE

5.1 TEACHING FACULTY

Next, you need to establish the teaching faculty. The faculty is your most important human resource because these are the people who will actually train the new appointees. So selecting the right people for the faculty is essential. You should select your faculty members from senior experienced local judicial and / or court officers, and possibly including: senior members of the legal profession / academia / government. They should possess three key qualities - or selection criteria - being:

- expert in the allocated topic(s);
- respected by their peers as role-models; and
- good teachers.

The first two qualities may be obvious and easily recognised, but the third less readily so. This is because a senior expert is *not* automatically a naturally good teacher. S/he may know their subject perfectly but still have difficulties explaining it well to others. Being a good teacher requires special skills and outlook: clarity, patience and technique, to name a few qualities. Experience in training of course builds these qualities. But where do you get your first experience? The answer is found in what we call 'Training-of-Trainers' (ToT), below.



Hon. Chief Justice Aliksa, Supreme Court, Kosrae, FSM.

5.2 TRAINING-OF-TRAINERS (TOT), AND NATIONAL / REGIONAL TRAINING TEAM (RTT)

Training-of-Trainers (ToT), which is also called 'faculty development'. The purpose of ToT is to develop competent trainers - that is, to equip topic experts with the knowledge, skills as attitudes required to promote effective learning. This requires some understanding of educational theory which is a big subject that educational experts devote their careers studying. For the present purpose of establishing the training faculty, you may need some immediate practical help. This is why PJDP has conducted numerous ToT's in order to establish a Regional Training Team (RTT). The RTT comprises certified trainers from across the region, some of whom come from your PIC. So, include them in your faculty!

PJDP has also developed a separate *Trainers' Toolkit* which can be found at: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/PJDP-trainers-toolkit.pdf>. This PJDP *Trainers' Toolkit* explains the following topics:

- 1 Learning and Training Theory
 - 1.1 What is training?
- 2 Adult Learners
- 3 Learning Styles

- 3.2 Kolb's Learner Classification
- 3.3 Why are learning styles important?
- 3.4 The Training Cycle
- 4 Designing Your Training Program
 - 4.1 The Daily Plan
 - 4.2 The Session Plan
 - 4.3 Learning objectives and learning outcomes
 - 4.4 Determining topics and content
- 5 Delivering the training
 - 5.1 Introduction
 - 5.2 Delivering the body (content) of the session
- 6 Presentations Techniques
 - 6.1 Traditional Techniques
 - 6.2 Workshop Facilitation Techniques
 - 6.3 Large Groups Methods
 - 6.4 Small Groups
- 7 Papers, Handouts and Materials
- 8 Training Games
- 9 Some Golden Rules
- 10 Questions
- 11 Hearing and Listening
- 12 Non-verbal Communication
- 13 Presentation Aids
- 14 Common Problems for Presenters
- 15 Assessment of training
- 16 Evaluation of Training
- 17 Methods of evaluating training
- 18 Monitoring Training
- 19 Financial Planning for training
- 20 Step by step guide to creating a training program.



Small group exercise discussions

5.3 SAMPLE ToT 'REFRESHER' COURSE

We strongly encourage you to conduct a ToT with your trainers *before* conducting the orientation course. The duration of this ToT can vary depending on your situation, though ideally we recommend 2-3 days shortly before the course. This ToT will be invaluable to helping your faculty to understand their role, prepare for their sessions, practice their teaching skills and develop materials. You should use your RTT members to facilitate this ToT for your new faculty. If needed, PJDP can also help provide an expert trainer to (co)-facilitate your ToT, funded by an application to the Responsive Fund. An example of the ToT conducted in FSM while piloting this toolkit is annexed for your reference: see **Annex 1**.

5.4 PRESENTATIONS TECHNIQUES

There is no "best" way for presenting information to adult learners. Generally, **lectures** are more suitable for transferring knowledge, and **workshops** are more suitable for developing skills and attitudes. You will, over time, develop an appropriate personal communication technique, which will be somehow unique in nature. Presentation methods vary depending on the audience type, the purpose and the topics.

For a more detailed discussion, look at *section 6* of *PJDP's Trainer's*

Toolkit: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/PJDP-trainers-toolkit.pdf>.



Associate Justice Falcam reports using flip-chart.

5.5 PAPERS, HANDOUTS AND MATERIALS

This section extracts from *section 7* of *PJDP's Trainer's Toolkit*: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/PJDP-trainers-toolkit.pdf>.

Your faculty should prepare papers, handouts and materials that can be copied and circulated to participants at sessions, where possible. These materials provide valuable support for your presentation, and assist participants to learn more effectively.

These paper and handouts should provide a summary guide of key points, and allow participants to record any notes that they find important or useful. They are most helpful when coordinated with other presentation aids such as power-point slides (if available).

5.6 POWERPOINT AND OVERHEAD PROJECTOR

Presenters who use PowerPoint presentations and overhead projectors are considered as:

- Better prepared.
- More persuasive and credible.
- More exciting and attracting.
- Better able to communicate.



Mr. Daniel Rescue Jr., FSM Supreme Court, General Counsel presents on onus of proof.

This technique is helpful in reducing the speech time (lecturing), as the theoretical content is covered with a high level of retention.

Using PowerPoint presentations can be very effective when:

- The PowerPoint is used as an adjunct to other training resources.
- Each slide contains a small amount of information.
- Slides contain simple charts, photos or graphics to illustrate a point.

However note that PowerPoint presentations are not effective when:

- Each slide contains masses of written information.
- Each slide contains overly complicated charts or diagrams.
- The presenter simply reads off the slides.



Associate Justice Nickontro Johnny in full flight.

6.0 MANAGEMENT AND ADMINISTRATION

This section extracts from section 4 of PJDP's National Judicial Development

Toolkit: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/PJDP-National-Judicial-Development-Committee-NJDC-Toolkit.pdf>.

6.1 VENUE

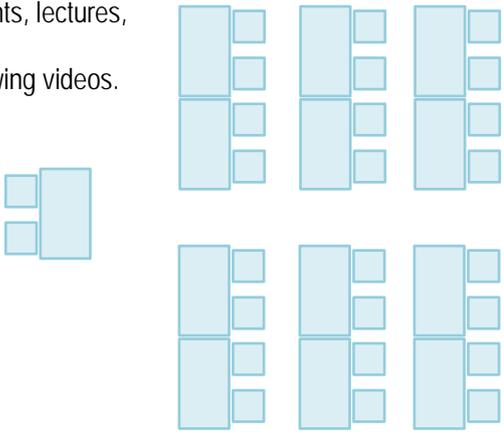
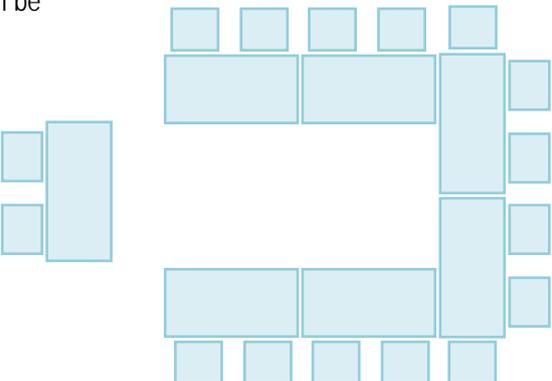
So far as the venue is concerned, the important thing is to book it early! If the course is to be in the court house, reserve the meeting room. If the venue is to elsewhere, make sure the venue confirms the booking.

6.1.1 Facilities and equipment

Depending on the requirements of your faculty, make sure that the training room is equipped with a white-board and / or flipchart, plus marker pens. If power-points will be used, you will also need a computer, projector and screen.

6.1.2 Room settings

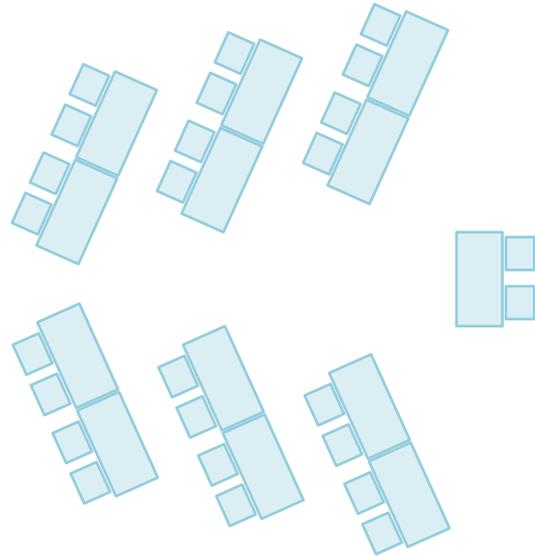
The room or rooms in which the seminar or workshop is to be held should be laid out to best facilitate the educational format/s being used.

<p>Theatre style Seated in rows with the speaker at the front.</p>	<p>Good for formal events, lectures, panel discussions, demonstrations, viewing videos.</p>  <p>The diagram shows a room layout for a theatre style setting. It features a speaker's area at the front with a small table and two chairs. The room is filled with rows of rectangular tables, each with two chairs on either side, facing the front.</p>
<p>U shape A three sided square, or even four sides of a square. The presenter sits at one end.</p>	<p>Good for discussions, questions, large group case studies, and practical exercises, such as a simulated court activity.</p> <p>If a PowerPoint presentation is being made or a video shown, sometimes it can be difficult for all participants to see the screen.</p>  <p>The diagram shows a room layout for a U-shaped setting. A speaker's area with a table and two chairs is positioned at one end of a U-shaped arrangement of rectangular tables. Each table has two chairs on its outer side, facing the center of the U.</p>

'Fishbone' setting

Tables are organised in two rows and set at an angle facing both forward and inwards to see both the presenter and other participants.

Good for sessions which combine large group presentations enabling participants to see central screen, together with small-group discussions without changing table settings mid-session.

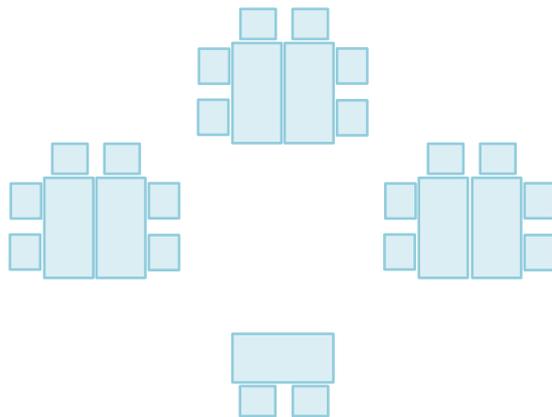


Collection of tables scattered around the room

Round, square or rectangular tables with chairs on three sides - the side closest to the presenter is left blank so that no one has their back to the presenter.

Good where there are to be small group discussions or case studies or, even in some cases, practical exercises.

The advantage is that participants do not need to leave their place and move to another place in the room, or another room, in order to be in their small group. (Moving is often very disruptive and often takes longer than expected.)

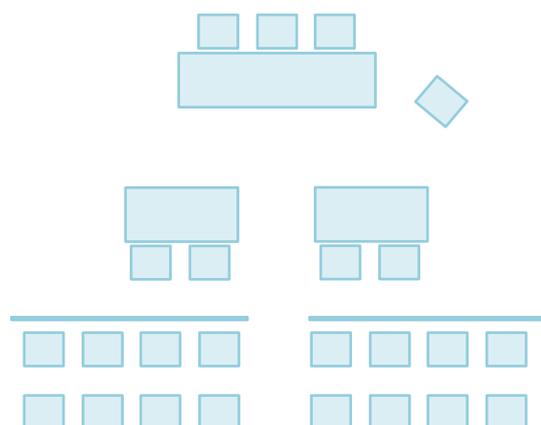


Court room style

Set up like a court room, with bench, counsel's table, etc.

Good where the workshop involves practical exercises where participants perform roles in a court room.

Make sure that those participants not active at any time can see what is happening.



6.1.3 Room setting examples



Panel discussion using a 'Hollow U' setting.



Presenter using 'Fish-bone' setting.



'Fish-bone' setting is suitable for both plenary and small-group discussions.

6.2 LOGISTICS

This is important, so should not be overlooked. Looking after participants while they are attending the training, and organising transportation for participants to / from their homes, is all part of managing the course. Ensure that these arrangements are made and communicated with adequate notice for all involved: court, faculty and participants.

6.2.1 Accommodation

If the course is residential, select the accommodation arrangements to be conveniently located near to the training venue, in order to avoid inconvenience and delays.

6.2.2 Transport

Make transport arrangements as early as possible, because there is nothing more embarrassing to find that all is arranged but there is no seat on the flight for the presenter!

In addition to making arrangements for the presenters, it may sometimes be necessary to make arrangements for some of the participants. This may be ground, sea or air transport depending on your geography.

6.2.3 Refreshments

Arrangements may need to be made for catering. If the seminar or workshop is at the Court House, a caterer may need to be hired. Separate to the meeting room, make sure there will be a place for the food to be laid out and set up so that the participants will not be disturbed. If it will be in the same room as the seminar or workshop, the tables should have been set up previously and, as much as possible, should be in a place where the food can be laid out quietly. If an outside venue is being used, the details of the catering need to be confirmed.

Make sure that the coffee, tea, cold drinks and food will be laid out in such a way that there will not be undue congestion when participants go to get their food or drink. This can be a cause of frustration if they have to wait too long.

6.2.4 Per diems

Participants are probably entitled to per diem – living allowances – for leaving home to attend and participate in the training; the amount of this allowance should offset the value of meals etc. which are provided by the course. See also: PJDP's *Project Management Toolkit*.

6.2.5 Checklists

Checklists can help you remember to do what you need to do.

See **Annex 4** for 3 checklists from PJDP's *National Judicial Development Toolkit*: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/PJDP-National-Judicial-Development-Committee-NJDC-Toolkit.pdf>, which relate to:

- i. Checklist: seminar / workshop equipment, materials and catering planning.
- ii. Checklist of things to prepare or assemble on the day before the seminar or workshop.
- iii. Checklist of things to check and do on arrival at the venue.

6.3 BUDGETING

The following passage extracts *Tool 4* from PJDP's *Project Management Toolkit*: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>.

Key Steps in Developing an Activity or Project Budget

Step 1: *List* all possible expenditure items for your project, identify what each item costs, and the number of items you will need. A list of possible cost areas / items is found in *Annex 11*.

Step 2: *Prioritise* the list of expenditure items to identify: which costs are *critical* to an activity; and those costs that are *not critical* to implementing the activity.

Step 3: *Develop* a draft budget document including all relevant *critical* and *non-critical* costs. An *Example Budget Template* is found in *Annex 12*.

Step 4: If the draft budget is more than the available funding - make *realistic reductions* to *quantities* or *non-critical* costs.

Step 5: Allow for a *contingency amount* to enable unforeseen circumstances to be addressed. A contingency is often calculated as a percentage (between 2% and 5%) of the total budget.

Step 6: *Review / finalise*. Before finalising, always ensure that someone else has proofed the budget for accuracy, and to check that all costs are captured.

See also: *Annex 12* of the *Project Management Toolkit* which provides a template budget example.

6.4 MONITORING AND EVALUATION

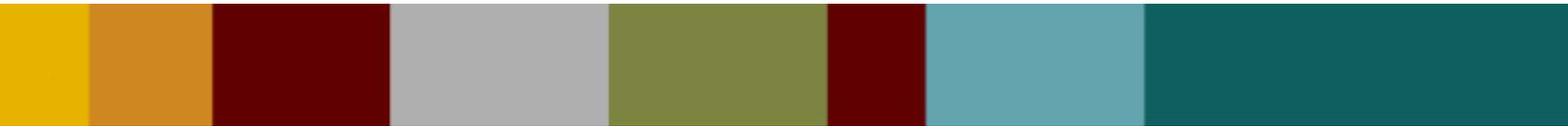
Evaluation is important because it is part of a process of self-improvement. Once the course is over, it is important to complete an evaluation. This evaluation has two major purposes:

- Did the course achieve its own aims and objectives? This should be assessed in terms of the extent to which the course built competence and closed the 'gap' originally targeted to be addressed.
- What can be done to improve future orientation courses? Consideration should be given to identifying the needs for ongoing training within the context of your ongoing judicial development program.

You can find a sample evaluation form at *Annex 6*.

6.5 REPORTING

Once you've completed the orientation, you will probably need to make a report to your Chief Justice and / or funding body. For assistance in this regard, take a look at *Annex 22* of the *Project Management Toolkit*: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>.



JUDGES' ORIENTATION TOOLKIT - ADDITIONAL DOCUMENTATION

Available at: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>



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ANNEX 1: TOT 'REFRESHER' AGENDA (SAMPLE)

JUDICIAL ORIENTATION COURSE Train-the-Trainer (ToT) Workshop

Pohnpei: Wed 4– Fri 6 June 2014

Agenda

DAY 1

WEDNESDAY 4 JUNE: REFRESHER

08:45–09:00		Welcome
09:00–10:00	Session 1	Introduction – Orientation faculty and course
10:00–11:00	Session 2	Local orientation toolkit – draft for piloting
11:00–11:15		<i>Refreshments</i>
11:15–12:15	Session 3	Trainers' toolkit – refresher
12:15–13:15		<i>Lunch</i>
13:15–14:15	Session 4	Facilitation skills – refresher
14:15–15:15	Session 5	Papers and materials
15:15–15:30		<i>Refreshments</i>
15:30–16:30	Session 6	Power-points
16:30–17:00		Review of day.

DAY 2

THURSDAY 5 JUNE: PLANNING & PREPARATION

08:45–09:00		Review of day 1
09:00–10:00	Session 7	Planning your session(s)
10:00–11:00	Session 8	Session planning: preparation solo/groups
11:00–11:15		<i>Refreshments</i>
11:15–12:15	Session 9	Your session(s): objectives, structure, content, technique
12:15–13:15		<i>Lunch</i>
13:15–14:15	Session 10	Your session(s): papers and materials
14:15–15:15	Session 11	Your session(s): cont'd
15:15–15:30		<i>Refreshments</i>
15:30–16:30	Session 12	Your session(s): power-points
16:30–17:00		Review of day.

DAY 3

FRIDAY 6 JUNE: PRACTICE

08:45–09:00		Review of day 2
09:00–10:00	Session 13	Practice sessions and feedback
10:00–11:00	Session 14	Practice sessions and feedback: cont'd
11:00–11:15		<i>Refreshments</i>
11:15–12:15	Session 15	Practice sessions and feedback: cont'd
12:15–13:15		<i>Lunch</i>
13:15–14:15	Session 16	Review of Local orientation toolkit – feedback Review of workshop.

ANNEX 2: SESSION PLANNING TOOL

Session Plan:				
Training Program	JUDICIAL ORIENTATION PROGRAM			
Topic				
Objective(s)	The purpose of this session is to: [Q: Specify which: <i>Knowledge, skills, attitudes?</i>]			
	<ul style="list-style-type: none"> • • • 			
Outcomes	As a result of attending, will be reasonably able to: [Q: <i>Do what and how well?</i>]			
	<ul style="list-style-type: none"> • • • 			
Trainer				
Time – 60 mins	Content:			
Start	INTRODUCTION			
>5 mins	Get attention: Introduce yourself. Tell an interesting story. Use an ice-breaker. Joke? Link to learner's previous interest/experience: Outcomes (learning outcomes): Discuss the learning outcomes listed above Structure of the session: Session will be divided into four sessions (see sub-topics below)			
Body	Sub-topics	Methodology	Summary /Assessment	Resources
20 mins		Presentation	Questions	PowerPoint
	Sub-topics	Methodology	Summary /Assessment	Resources
15 mins		Case Study	Questions	Handouts
	Sub-topics	Methodology	Summary /Assessment	Resources
15 mins		Brainstorm	Game	Whiteboard and pen
End	Conclusion:			
>5 mins	Review your learning outcomes Summarise key points Check participants' grasp by asking them to summarise. ...			



CHECKLIST (x10)

- 1. Needs
- 2. Topic
- 3. Objectives
- 4. Outcomes
- 5. Content
- 6. Structure
- 7. Timing
- 8. Techniques
- 9. Papers / materials
- 10. Aids

PRESENTATION FEEDBACK

Criteria

- 1. Relevant (to need)
- 2. Clear
- 3. Orderly
- 4. Concise
- 5. Complete
- 6. Compelling
- 7. Useful
- 8. Strengths: ...
- 9. Weaknesses: ...
- 10. Suggested improvement(s): ...

ANNEX 3: ORIENTATION COURSE (SAMPLE)

LOCAL ORIENTATION WORKSHOP for FSM MUNICIPAL AND ISLAND COURT JUDGES

June 9–13 2014
Governors Conference Room

OBJECTIVES

The purpose of this orientation course is to promote 'judicial competence' by assisting newly-appointed *lay* (that is, non-law trained) judicial and court officers to perform their duties, and to promote excellence in the delivery of justice across the Pacific region.

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

- i. Gather newly appointed lay judicial and court officers across the Pacific region to share, exchange and develop professional experience.
- ii. Develop judicial knowledge, skills and attitudes, and promote understanding of the judicial role and conduct on/off the bench.
- iii. Develop effective techniques of courtroom and registry control.
- iv. Familiarise the basic principles and practice of procedural fairness in criminal and civil proceedings.
- v. 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.
- vi. Strengthen judicial identity and develop a national professional resource network, including building the capacity and experience of local judicial and court trainers.

FACULTY

- | | |
|-----------|--|
| 1) CJBR | Hon. Benjamin Rodriguez, Chief Justice Pohnpei Supreme Court |
| 2) AJNJ | Hon. Nickontro W. Johnny, Associate Justice, Pohnpei Supreme Court |
| 3) DR. LA | Dr. Livingston Armytage, PJDP Team Leader |
| 4) SA DR | Mr. Daniel Rescue Jr.– FSMSC Staff Attorney/Acting General Counsel |
| 5) CC KK | Mr. Kohsak M. Keller, FSMSC Chief Clerk of Courts |
| 6) SB | Mr. Samuel Bailey, Former Court General Counsel, FSMSC |
| 7) MW | Marciano Wakuk, Kosrae State Mediator, State Court Administrator |
| 8) KC | Mr. Kapilly Capelle, NC and FSMSC Director |
| 9) CJABA | Hon Aliksa B. Aliksa, Chief Justice Kosrae State Court |

PARTICIPANTS

We expect around 25 lay judges of municipal, island and land courts across FSM as participants.

LOCAL ORIENTATION WORKSHOP AGENDA (SAMPLE)

Time	Day 1	Day 2	Day 3	Day 4	Day 5
8:45–9:00	Opening Introduction	Announcements House Keeping	Announcements House Keeping	Announcements House Keeping	Announcements House Keeping
9:00–10:00	1. Fundamentals of Judicial Life– Role of judicial officials—Panel (CJBFR, AJNJ, LA, CJ Santos, SB)	7. Due Process Principles, equality and fair trial– (DR)	12. Evidence– (DR)	16. Family Court and Juvenile Justice– (AJNJ and CJABA)	22. ADR (MW and LA)
10:00–11:00	2. Transition to judgeship, qualities important to the office –Panel:(CJBFR, AJNJ, LA, CJ Santos, SB)	8. Elements of Offence– (DR)	13. Civil Matters– (DR)	17. Pro se/self–represented Litigants: Issues and Services (AJNJ and LA)	22. ADR Exercise (MW)
11:00–11:15	Break				
11:15–12:15	3. Judicial conduct and ethics in and out of court– (LA and KC)	9. First Appearance– (AJNJ)	14. Civil Decisions– (AJNJ and SB)	18. Trial management– (KK and SB)	23. Wrap–up, Open forum (KC, LA, NJAJ)
12:15–1:15	Lunch				
1:15–2:15	4. Your Jurisdiction– (CJ BR and AJNJ)	10. Verdicts and Judgments– (SB)	15. Courtroom Management– (KK and SB)	19. Case Management– (KK and DR)	Evaluation (KK, SB)
2:15–2:30	Break				
2:30–3:30	5. Court Management– (KC and SB)	11. Sentencing Principles and practices– (AJNJ and KK)	15. Exercise– Decision –Making– (SB and DR)	20. Time Standard– (KC, KK, DR, SB)	Closing (CJBR & LA)
3:30–4:30	6. Leadership Principles– (LA)	11. Exercise– Judgments and Verdicts	15. Exercise– Decision –Making cont.	21. Effective Communication (LA)	
4:30–5:00	Wrap–up/Review	Wrap–up/Review	Wrap–up/Review	Wrap–up/Review	

ORIENTATION COURSE: FACILITATORS

- | | |
|------------|---|
| 10) CJBR | Hon. Benjamin Rodriguez, Chief Justice Pohnpei Supreme Court |
| 11) AJNJ | Hon. Nickontro W. Johnny, Associate Justice, Pohnpei Supreme Court |
| 12) DR. LA | Dr. Livingston Armytage, PJDP Team Leader |
| 13) SA DR | Mr. Daniel Rescue Jr. – FSMSC Staff Attorney/Acting General Counsel |
| 14) CC KK | Mr. Kohsak M. Keller, FSMSC Chief Clerk of Courts |
| 15) SB | Mr. Samuel Bailey, Former Court General Counsel, FSMSC |
| 16) MW | Marciano Wakuk, Kosrae State Mediator, State Court Administrator |
| 17) KC | Mr. Kapilly Capelle, NC and FSMSC Director |
| 18) CJABA | Hon Aliksa B. Aliksa, Chief Justice Kosrae State Court |

ANNEX 4: CHECKLISTS

ANNEX 4.1: CHECKLIST: SEMINAR / WORKSHOP EQUIPMENT, MATERIALS AND CATERING PLANNING

SEMINAR / WORKSHOP PLANNING CHECKLIST

[NAME OF SEMINAR]

[DATE]

EDUCATIONAL

Session	Name of session & presenter	Equipment needed	Materials to be provided
1		<input type="checkbox"/> Microphone/s <input type="checkbox"/> Powerpoint projector <input type="checkbox"/> Videoplayer & TV <input type="checkbox"/> Whiteboard <input type="checkbox"/> Flipchart	<input type="checkbox"/> Paper <input type="checkbox"/> Talk outline <input type="checkbox"/> Powerpoints <input type="checkbox"/> Case study <input type="checkbox"/> Practical exercise <input type="checkbox"/> Article/s <input type="checkbox"/> Legislation
2		<input type="checkbox"/> Microphone/s <input type="checkbox"/> Powerpoint projector <input type="checkbox"/> Videoplayer & TV <input type="checkbox"/> Whiteboard <input type="checkbox"/> Flipchart	<input type="checkbox"/> Paper <input type="checkbox"/> Talk outline <input type="checkbox"/> Powerpoints <input type="checkbox"/> Case study <input type="checkbox"/> Practical exercise <input type="checkbox"/> Article/s <input type="checkbox"/> Legislation
3		<input type="checkbox"/> Microphone/s <input type="checkbox"/> Powerpoint projector <input type="checkbox"/> Videoplayer & TV <input type="checkbox"/> Whiteboard <input type="checkbox"/> Flipchart	<input type="checkbox"/> Paper <input type="checkbox"/> Talk outline <input type="checkbox"/> Powerpoints <input type="checkbox"/> Case study <input type="checkbox"/> Practical exercise <input type="checkbox"/> Article/s <input type="checkbox"/> Legislation
4		<input type="checkbox"/> Microphone/s <input type="checkbox"/> Powerpoint projector <input type="checkbox"/> Videoplayer & TV <input type="checkbox"/> Whiteboard <input type="checkbox"/> Flipchart	<input type="checkbox"/> Paper <input type="checkbox"/> Talk outline <input type="checkbox"/> Powerpoints <input type="checkbox"/> Case study <input type="checkbox"/> Practical exercise <input type="checkbox"/> Article/s <input type="checkbox"/> Legislation

CATERING

Tick when arranged

	Name of caterer	Contact details	Cost
			\$

ANNEX 4.2: CHECKLIST OF THINGS TO PREPARE OR ASSEMBLE ON THE DAY BEFORE THE SEMINAR OR WORKSHOP

[NAME OF SEMINAR] CHECKLIST FOR THE DAY BEFORE

- Extension cord
- Double adapter
- Any signs you will need to put up
- List of participants
- Name tags (if needed)
- Presenters' materials – paper, outline, powerpoint, etc
- Laptop or iPad for powerpoints (if needed)
- Felt pens (if needed)
- Evaluation forms
- Box for participants in which to place their completed evaluations
- Presentations/gifts (if needed) for presenters

ANNEX 4.3: CHECKLIST OF THINGS TO CHECK AND DO ON ARRIVAL AT THE VENUE

[NAME OF SEMINAR]

CHECKLIST OF THINGS TO CHECK AND DO AT THE VENUE

Things to check

- Find out who is the contact person at the venue, in case you need to contact them during the seminar or workshop
- Check that the room is clean, including the tops of tables.
- Check that the room is set up as arranged.
- Check where the light switches are, and that there is sufficient lighting.
- Check that there is the right number of chairs (and tables) – not too few and not too many.
- Check that the chairs, and tables if necessary, for presenters are in the right place and are adequate.
- Check that the microphones, if being used, work properly.
- Check that any audio visual equipment is in place and works properly.
- Check that powerpoints, if being used, are loaded onto the laptop or iPad.
- Check that the airconditioning is working properly.
- Check where the toilets are, and there is signposting to them.
- Check that the toilets are clean.
- Check that the area for food and drink is ready, and is in a place where participants won't be disturbed.
- Check that the catering is ready, unless it is being delivered later.
- Check that there is a table for registrations.

ANNEX 5: TRAINEES' CERTIFICATE (SAMPLE)



PACIFIC JUDICIAL DEVELOPMENT PROGRAMME

Certificate of Successful Completion

is hereby awarded to:

(name and title)

For completing the

Municipal and Island Court Judges Orientation Course

9 – 13 June 2014: Pohnpei, Federated States of Micronesia

Hon. Chief Justice Benjamin Rodriguez
Chief Justice, Pohnpei Supreme Court

Dr. Livingston Armytage
Team Leader, PJDP

PJDP is implemented by the Federal Court of Australia with funding support from NZ MFAT

ANNEX 6: COURSE EVALUATION FORMS: PRE & POST (x2)

PACIFIC JUDICIAL DEVELOPMENT PROGRAMME
LOCAL ORIENTATION DELIVERY TOOLKIT IMPLEMENTATION
POHNPEI, FEDERATED STATES OF MICRONESIA: 8– 13 JUNE, 2014

Pre-training Questionnaire

Please answer the following questions. This questionnaire will help the faculty to understand your particular training needs and focus training during this orientation course. It will also help us to assess what you have learned from the training at the end of the course.

Question 1: What are some common barriers to accessing justice?

Question 2: What are the basic principles of 'natural justice' and why are they important?

Question 3: List some of the fundamental principles of case / trial management:

Question 4: What are the differences between the onus/burden of proof and the standard of proof in criminal and civil cases:

Question 5: List the key steps in judicial decision-making?

Question 6: List types of vulnerable people; and list what international treaties/conventions are applicable:

Please rate your level of knowledge and skills before the Orientation Course regarding the following matters by ticking / checking ONE square per question only:

Question 7: Applying the principles of judicial ethics in your day-to-day role

No Understanding

Good Understanding

Strong Understanding

Excellent Understanding

Question 8: Applying the principles of case management in your day-to-day role

No Understanding

Good Understanding

Strong Understanding

Excellent Understanding

Question 9: Structuring your judicial decision-making

No Understanding

Good Understanding

Strong Understanding

Excellent Understanding

Question 10: Understanding the practical differences between criminal and civil procedure.

No Understanding

Good Understanding

Strong Understanding

Excellent Understanding

Question 11: Addressing the needs of victims of crime

No Understanding

Good Understanding

Strong Understanding

Excellent Understanding

Thank you for your time and assistance with completing this form!

PACIFIC JUDICIAL DEVELOPMENT PROGRAMME
LOCAL ORIENTATION DELIVERY TOOLKIT IMPLEMENTATION
POHNPEI, FEDERATED STATES OF MICRONESIA: 8– 13 JUNE, 2014

Post-training Questionnaire

Please rate your satisfaction regarding the quality and value to you of the Orientation Course by ticking / checking ONE square per question only:

Question 1: How having completed the course, how confident do you feel in your role?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Less Confident</i>	<i>Same Confidence</i>	<i>More Confident</i>	<i>Much More Confident</i>

Question 2: Were the aims of the orientation course clear, and were they achieved?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Not Achieved</i>	<i>Reasonably Achieved</i>	<i>Substantially Achieved</i>	<i>Fully Achieved</i>

Question 3: Was the information presented practical and useful to you as a judicial/court officer?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Not Useful</i>	<i>Limited Usefulness</i>	<i>Quite Useful</i>	<i>Extremely Useful</i>

Question 4: Were the materials provided by the trainers relevant to the training and useful?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Not Relevant</i>	<i>Limited Relevance</i>	<i>Quite Relevant</i>	<i>Extremely Relevant</i>

Question 5: Did you find that the trainers and the presentation were effective and allowed for adequate participation, discussion, practical presentations, and interaction?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Not Effective</i>	<i>Limited Effectiveness</i>	<i>Quite Effective</i>	<i>Extremely Effective</i>

Question 6: Overall, were you satisfied with the orientation course?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Not Satisfied</i>	<i>Reasonably Satisfied</i>	<i>Quite Satisfied</i>	<i>Extremely Satisfied</i>

Please rate your level of knowledge and skills after the orientation course regarding the following matters by ticking / checking ONE square per question only:

Question 7: Applying the principles of judicial ethics in your day-to-day role

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Understanding	Good Understanding	Strong Understanding	Excellent Understanding

Question 8: Applying the principles of case management in your day-to-day role

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Understanding	Good Understanding	Strong Understanding	Excellent Understanding

Question 9: Structuring your judicial decision-making

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Understanding	Good Understanding	Strong Understanding	Excellent Understanding

Question 10: Understanding the practical differences between criminal and civil procedure

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Understanding	Good Understanding	Strong Understanding	Excellent Understanding

Question 11: Addressing the needs of victims of crime

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Understanding	Good Understanding	Strong Understanding	Excellent Understanding

Question 12: Briefly describe the *most* useful experience(s) of the Workshop.

Question 13: Briefly describe the *least* useful experience(s) of the Workshop.

Question 14: Do you wish to offer any other comments or suggestions for improvements for this Workshop?

Finally, please re-answer the substantive questions asked at the start of this course. This will help us to assess your acquisition of knowledge during the course, and enable us to refine our ongoing training approach.

Question 15: What are some common barriers to accessing justice?

Question 16: What are the basic principles of 'natural justice' and why are they important?

Question 17: List some of the fundamental principles of case / trial management:

Question 18: What are the differences between the onus/burden of proof and the standard of proof in criminal and civil cases:

Question 19: List the key steps in judicial decision-making?

Question 20: List types of vulnerable people; and list what international treaties/conventions are applicable:

Thank you for your time and assistance with completing this form!

ANNEX 7: BUDGET TEMPLATE

This section extracts from PJDP's Trainer's Toolkit: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>

Expenses

Items	Insert estimated cost, if applicable	Notes
Venue hire	\$	
Presenters' fees/honorarium	\$	
Presenters' accommodation costs	\$	
Presenter/s' travel costs	\$	
Participants' travel costs	\$	
Participants' per diem	\$	
Participants' accommodation costs	\$	
Catering costs	\$	
Equipment hire	\$	
Other costs eg. printing or couriering of materials	\$	
TOTAL OF COSTS	\$	

Sources of revenue to meet these costs

Court budget	\$	
Other source/s	\$	
TOTAL OF REVENUE	\$	
NET SITUATION	Expenses met: Shortfall:	

SAMPLE POWERPOINT PRESENTATION 1: INTRODUCTION AND WELCOME

PACIFIC JUDICIAL
DEVELOPMENT PROGRAMME

JUDICIAL ORIENTATION COURSE

Pohnpei: Sun 8 - Fri 13 June 2014

Introduction and Welcome
Sunday 8 June: 4:00 - 5:00pm
Opening Panel Discussion



1

Purpose



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 you deliver in the municipal courts of FSM.

4



2

Workshop approach



The focus of this course is to develop 3 key qualities:

1. *judicial knowledge*
2. *skills*
3. *ethical attitudes*

3



3

Objectives



1. Share, exchange and develop professional experience
2. Develop judicial knowledge, skills, attitudes, and promote understanding of the judicial role
3. Develop effective techniques of courtroom control
4. Familiarise basic principles and practice of procedural fairness
5. Explain the special interests of parties coming to court
6. Strengthen judicial identity and develop a national resource network.

5

SAMPLE POWERPOINT PRESENTATION 2: FUNDAMENTALS OF JUDICIAL LIFE

PACIFIC JUDICIAL
DEVELOPMENT PROGRAMME

JUDICIAL ORIENTATION COURSE

Pohnpei: Sun 8 - Fri 13 June 2014

Fundamentals of Judicial Life
Mon. 9 June: 9:00 - 10:00am

Panel Discussion



Fundamentals of Judicial Life

Role of Judicial Officers

Key Themes:

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

SAMPLE POWERPOINT PRESENTATION 3: JUDICIAL CONDUCT AND ETHICS

PACIFIC JUDICIAL
DEVELOPMENT PROGRAMME

JUDICIAL ORIENTATION COURSE

Pohnpei: Sun 8 - Fri 13 June 2014

Judicial Conduct & Ethics
Monday 9 June: 11:35 - 12:15pm

Kapilly Capelle & Livingston Armytage



Judicial ethics



1. What are ethics?
2. How are they different to:
 1. Laws?
 2. Morals?
 3. Community practices?
3. Why are they important?

Question:

Do you trust this man?



Bangalore Principles

What are they?



1. Independence
2. Impartiality
3. Integrity
4. Propriety
5. Equality
6. Competence and diligence

Objective of session



The purposes of this session is to:

1. Highlight the importance of judicial ethics
2. Explain the Bangalore Principles.

Case study examples



Exercise



1. Explain why judges should be ethical
2. Outline the major parts of a code of judicial conduct

SAMPLE POWERPOINT PRESENTATION 4: FSM MUNICIPAL COURT

FSM MUNICIPAL COURT WORKSHOP



June 9-13, 2014
Chief Justice Benjamin F. Rodriguez

Branches of government

- National and State Government
 - Judiciary
 - Executive
 - Legislative
- Municipal Government
 - Municipal Court
 - Mayor
 - Municipal Council

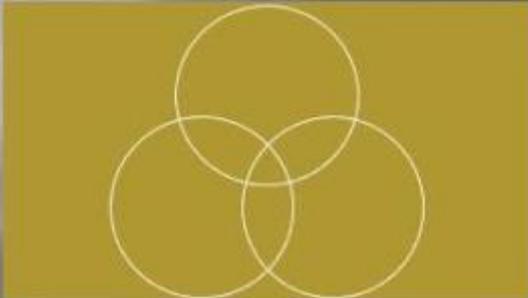
Outcomes

- Describe the concept of jurisdiction
- Explain the jurisdiction of the municipal courts
- Distinguish the different types of jurisdictional issues

Sources of Jurisdictions

- Constitutions
- Statutes/Ordinances
- Case Law

Relationship Among Court Levels



Jurisdiction - general principles

- A court may have jurisdiction over:
 - People
 - who reside or are domiciled within the municipality
 - Property, and
 - that is situated within the municipality
 - Cases

Types of Jurisdiction

- **General or Specific**
 - **General:** the court may hear all cases not restricted by the Constitution or by statute
 - o Eg. State Courts
 - **Specific:** jurisdictional limits are set forth in the Constitution or by statute
 - o Eg. FSM National Court Municipal Courts
- **Exclusive or Concurrent**
 - **Exclusive:** it is the ONLY court that can legally decide the case
 - o Eg. FSM National Court alone can hear cases affecting officials of foreign gov't, disputes between states, admiralty/ maritime cases, and cases where the national gov is a party except where land is "at issue"
 - **Concurrent:** when two or more courts can legally decide the case

Appellate process explained

- When a case is appealed, the higher court will either affirm or reverse the decision of the lower court
 - **Affirm** - the higher court agrees with the lower court's judgment
 - **Reverse** - the higher court disagrees and is overturning the lower court's judgment
- Yap/Pohnpei State Courts are courts "of record"
 - this means that they are legally required to keep records of cases, filings, and proceedings

Jurisdiction of yap and pohnpei municipal courts

- **Yap (Code Title 4, §162)**
 - **Civil**
 - o over the whole municipality
 - o over natural persons residing or domiciled in the municipality
 - o over property within the municipality where the parties are natural persons
 - **Criminal**
 - o As prescribed by statute (none)
- **Pohnpei**

Appellate process ctd.

- State Trial Courts conduct an appeal "**De Novo**" (new)
 - this means the State Court begins a new trial including any new testimony and evidence
 - o the Municipal Court's record will still be considered
- Appellate Courts conduct an appeal **without considering new evidence**
 - only the lower court's record will be used
 - the lower court's decision will be reversed only if it was "Clearly Erroneous"
 - o that no evidence in the record supports their decision

Appeals

- **Definition:**
 - an appeal is when a party asks a higher court to review the decision of a lower court
 - o Yap State Code Title 4, §147, Pohnpei Municipal Code...
- **Removal**
 - when a higher court transfers jurisdiction of a case from the jurisdiction of a lower court
 - o Yap State Code Title 4, §166, Pohnpei Municipal Code...
- **Remand**
 - when a higher court transfers jurisdiction of a case to a lower court

THANK YOU

SAMPLE POWERPOINT PRESENTATION 5: COURT MANAGEMENT



**PACIFIC JUDICIAL
DEVELOPMENT PROGRAMME**

Local Orientation Pilot Program

09-13 May, 2014
Peilapalap, Pohnpei

Samsel Bailey, Esq.
Counsel, Guam Judiciary
(Former General Counsel, FSMJC)

Kapilly Capelle
Director, FSM JC
PJDP RIT Member

1



OUTCOMES:

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

- 1) state the purpose and responsibilities of court
- 2) define four management principle tasks with examples
- 3) list judicial and administrative responsibilities

4



Session 5

Court Management

09 June, 2014
Pohnpei, FSM

2



Session Overview:

- * What is a Court, its purpose and responsibilities.
- * Review four(4) Management principle tasks and examples of each task.
- * Discuss what are the judicial responsibilities and administrative responsibilities
- * Quiz

3



Objectives:

- 1) Explain court's purpose and responsibilities
- 2) Describe four management principle tasks
- 3) Discuss judicial and administrative responsibilities

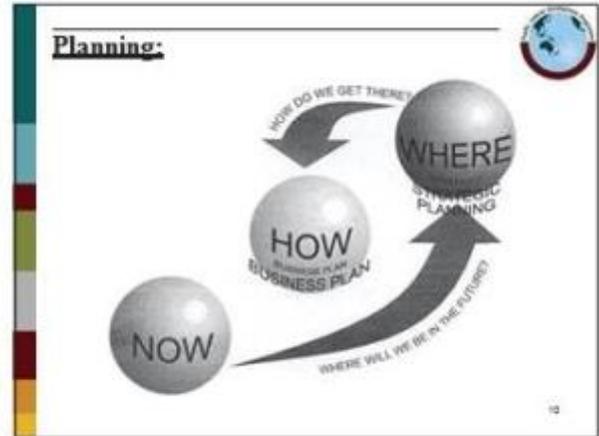
3



A Court _____

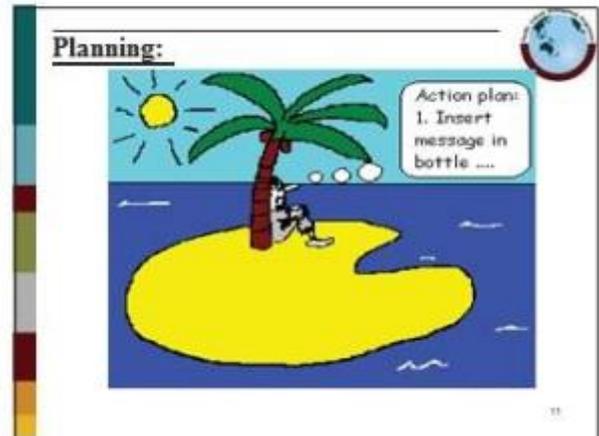
- *often a governmental institution.
- *a tribunal with the authority to judge
- *medium, central mean and venue for resolving legal disputes .

4



Court's purpose and responsibilities:

Courts exist to do justice by resolving disputes, penalize and deter crime, administering law, ensuring due process of law, providing for equal protection, guaranteeing liberty, maintaining rule of law, enhancing social order,



What is Management?

Planning,

Organizing,

Leading,

Controlling

Planning:

Court Needs?

Judicial needs

Administrative needs

Organizing



12

Leading:

- Setting high standard of conduct for self
- Consistent and always present
- Give high priority to duty
- Conduct meetings to keep employees informed of priorities and direction
- Delegate responsibility
- Know your employees

13

Organizing

*Creating committees to oversee new initiatives and/or projects
(e.g. Development and Implementation of Strategic Plan, IT etc.)

*Establishing internal procedures (policy) on case filing, case assignments and calendaring.

*Developing manuals of procedures for services and functions

*Others

14



15

Leading:



16

Controlling:

- Employee Performance Evaluation
(Consistently acknowledge good behavior and discipline bad behavior)
- Judicial and Employee Codes of Ethics
- Reporting (Cases, Finances, Accomplishments)
- Internal Auditing
- Inventory

17

Controlling:



19

Administrative Responsibilities:

- Strategic Planning
- Human resource
- Fiscal resource
- Asset, technology, information and material resources management
- Administrative policies and guidelines
- Capacity building/Training
- Reporting

20

Controlling:



"Harold hasn't completely let go."

21

Quiz

- 1) State the purpose of the Court purposes and its responsibilities.
- 2) List 4 management principle tasks and give an example of each
- 3) Identify 5 judicial and 5 administrative responsibilities

22

Judicial Responsibilities:

- Case Management System
- Court Procedures
- Court Rules
- Enforcement
- Post judgment matters and services

23

Thank you

24

SAMPLE POWERPOINT PRESENTATION 6: LEADERSHIP PRINCIPLES

PACIFIC JUDICIAL
DEVELOPMENT PROGRAMME

JUDICIAL ORIENTATION COURSE

Pohnpei: Sun 8 - Fri 13 June 2014

Leadership Principles
Monday 9 June: 3:30 - 4:30pm
Livingston Armytage, PJDP



Some definitions



My definition of a leader . . . is a man who can persuade people to do what they don't want to do, or do what they're too lazy to do, and like it.

Harry S. Truman, 1884-1972, Thirty-third President of the United States.

The first job of a leader is to define a vision for the organization. . . . Leadership is the capacity to translate vision into reality.

Objective of session



The purposes of this session is to:

1. Explain judicial leadership
2. Explore where leadership is needed.

Goals of Leadership



- Courts perform constitutional role
- Judiciary serves community, addresses needs
- Improve justice delivery system:
 - Fair
 - Accessible to all
 - Independent and accountable
 - Efficient and timely
 - Competent
- Y Raise public trust

What is Judicial Leadership?



1. Who is a leader?
2. What do leaders do?
3. How to leaders lead?

Six qualities



1. Promoting justice:
 - promoting accessibility, responsiveness, fairness, efficiency
 - for court users and community; non-users are potential claimants of rights
2. Concern to bring to life the values of justice enshrined in the Constitution
3. Focus on judicial excellence and highest qualities of justice
4. Attitude or outlook to **proactively solve problems** that impair the quality of justice
5. Reforming - **continuous improvement** – in the administration of justice
6. Actions (personal + institutional) to **deliver 'more just' outcomes**

Six behaviours

What leaders do ...



1. Provide vision and context for the changes to be made
2. Are prepared to take risks
3. Have conviction
4. Model the behaviour that the desired changes will bring
5. Communicate the changes in ways that engage and influence others
6. Build relationships and trust in the organisation

7

Your action plan



12

So, what are the needs for leadership in FSM?



Diagnosis - judicial sector assessments:

- Delay – problem or symptom?
- Access to justice
- Legal empowerment
- Independence and integrity
- Capacity-building
- Service delivery
- Change management
- Quality of justice

Y Needs for judicial leadership.

8

Exercise



So, what are the needs for leadership in FSM?

- Access to justice?
- Delay?
- Independence and integrity?
- Training?
- Service delivery?
- Legal empowerment?
- Change management?
- Quality of justice?
- Others ...?

5

SAMPLE POWERPOINT PRESENTATION 7: DUE PROCESS



DUE PROCESS
Judicial Orientation Training
June 2014

THE GOVERNMENT



LEARNING OUTCOMES

- Identify the section of the FSM Constitution that serves as the basis for the right to Procedural Due Process
- Know what constitutes the Notice requirement
- Know what constitutes the Opportunity To Be Heard requirement

DUE PROCESS – SOURCE/AUTHORITY

- FSM Constitution Article IV § III
 - A person may not be deprived of life, liberty, or property without due process of law, or be denied the equal protection of the laws.
 - All 4 States have the Due Process Clause in their constitutions
 - The Constitution is the Supreme Law of the Land, anything in conflict with the Constitution will be deemed unconstitutional

STRUCTURE OF THIS SESSION

- FSM Constitution
- Notice
- Opportunity To Be Heard
- Class Exercise

DUE PROCESS

What is Due Process about?

- In plain English terms, it is about Fundamental Fairness and Natural Justice.
- Also, to Prevent the government from making an Erroneous Decision.

NATURAL JUSTICE

- The rule against bias and the right to a fair hearing.
 - The basis for the rule against bias is the need to maintain public confidence in the legal system.
 - The right to a fair hearing requires that individuals should not be penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case.

DUE PROCESS

PROCEDURAL DUE PROCESS SAMPLE

- Barack Obama is employed by the Kolonia Town Government as a police officer, and has been employed for 5 years. Obama is sick with the flu and does not come to work for 5 days. He does not have any sick leaves. When Obama comes back to work, the police chief tells him to complete a report on a crime within three days. Obama does not complete the report after three days. The following week, the police chief tells Obama to gather his belongings and go home because he has been fired.

Keep these facts in mind as we go through Procedural Due Process

2 TYPES OF DUE PROCESS

- Substantive Due Process
 - Rationale or legitimacy of government interest
- Procedural Due Process
 - Notice
 - Opportunity to be Heard

PROCEDURAL DUE PROCESS

- Notice
 - That something has been, or is going to happen to you by the Government.
- Opportunity to be Heard
 - A chance to present your side of what happened.

SUBSTANTIVE VS. PROCEDURAL DUE PROCESS EXAMPLE

- John Rambo has a claim filed against him in the Pohnpei Supreme Court for back child support. The Pohnpei State Legislature passed a law in 2012 to enforce child support payments to protect the welfare of children born out of wedlock. Without going through the judicial process, an Order was entered against John Rambo for back child support payments.
 - Substantive Due Process
 - The government's legitimate interest in enacting and enforcing Child Support to protect children born out of wedlock.
 - Procedural Due Process
 - The Order entered against John Rambo without going through the judicial process.

NOTICE

- Must be informed as to WHY a certain action is being taken.
 - In writing
 - Facts
 - What happened?
 - Based on Authority
 - For example, if an employee is AWOL (absence without leave), then he is in violation of Section 10.5 of the FSM Public Service System Regulations.
 - Be given an opportunity to Appeal
 - 52 F.S.M.C. 154 requires that an appeal be filed with the FSM Personnel Officer within 15 calendar days of notice. If you don't file an appeal, it may constitute a waiver.

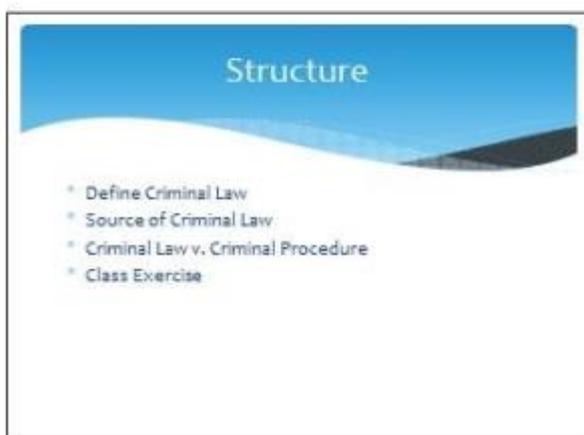
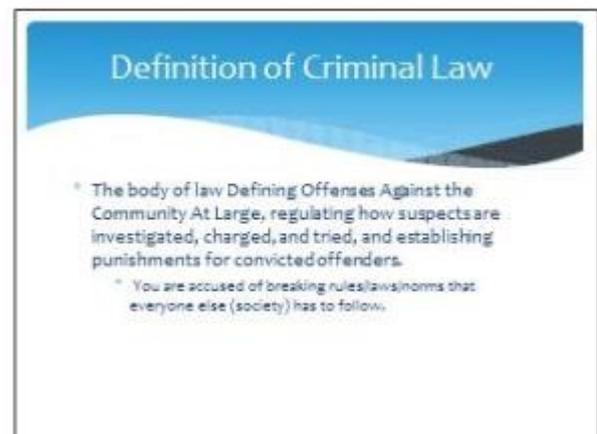
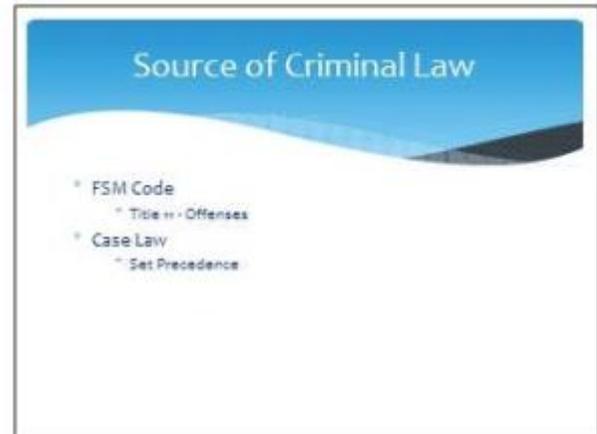
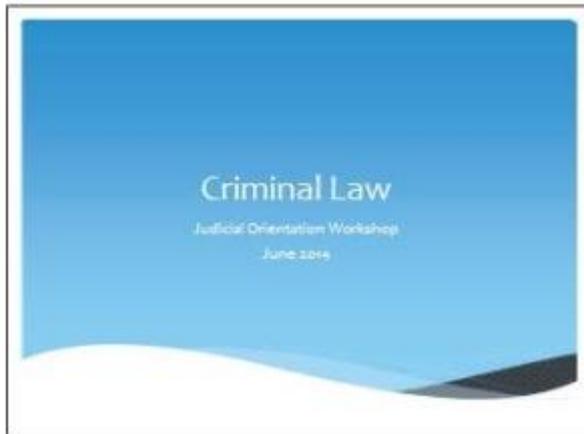
OPPORTUNITY TO BE HEARD

- Hearing – 52 F.S.M.C. 155
 - Neutral Tribunal
 - 52 F.S.M.C. 153 governs the configuration of an appeal panel – Ad Hoc Committee
 - Submit Evidence
 - Confront Witnesses
 - Recorded
- Recommendation made by the tribunal to either Uphold or Reverse the termination
- If not satisfied with the decision, file with the Court
 - Failure to Exhaust Administrative Remedies issue

DUE PROCESS CLASS EXERCISE

- Jet Li owns a parcel of land in Kitti. Jackie Chan owns the parcel next to Jet Li's land. There is a portion of land below the two parcels that is in dispute as to ownership. Jet Li claims he bought the land from Bruce Lee. Jackie Chan says that Bruce Lee gave it to him as a gift. Notice of a meeting and land survey for all land owners in the area was given, and a survey team surveyed the land. Based on this survey, ownership was given to Jackie Chan. Jet Li was not present during the meeting and the survey. **Is there a violation of Due Process? If yes, if you were the Judge, what would your Judgment be?**

SAMPLE POWERPOINT PRESENTATION 8: CRIMINAL LAW



Burden of Proof Onus of Proof Burden of Persuasion

- Proof Beyond a Reasonable Doubt
 - The standard that must be met by the prosecution's evidence in a criminal prosecution: that no other logical explanation can be derived from the facts except that the defendant committed the crime, thereby overcoming the presumption that a person is innocent until proven guilty.

Elements of a Crime

- Pay specific attention to the language of the law.
 - "and", "or", "may", "shall", etc.

Definition of Elements of a Crime

- element of a crime is one of a set of facts that must all be proven to convict a defendant of a crime. Before a court finds a defendant guilty of a criminal offense, the prosecution must present evidence that, even when opposed by any evidence the defense may choose to present, is credible and sufficient to prove beyond a reasonable doubt that the defendant committed each element of the particular crime charged.

Elements (Examples)

<p>Murder</p> <ul style="list-style-type: none"> Killing of Another with Malice Aforethought (premeditation, intent, motive) 	<p>Robbery</p> <ul style="list-style-type: none"> Illegal taking of another's property By violence or intimidation
--	---

Elements of a Crime

The Constituent Parts of a Crime

- Mens Mea (Guilty Mind)
- Actus Res (Guilty Act)
- Causation

Murder

- Michael Jackson finds out that Chuck Norris stole one of his pigs. Michael knows that Chuck works at Telecom. The next day after Chuck stole the pig, Michael goes to Telecom with a knife, and waits in the parking lot. Thirty minutes later, Chuck walks out, Michael runs towards him yelling "Chuck, you thief, I'm going to kill you," and stabs Chuck to death. Is Michael guilty of Murder?
 - Murder: Killing, of Another, with Malice Aforethought (Premeditation, intent, Motive)

Robbery

- 10 Magic Johnson runs into the Bank of FSM, pulls out a gun, throws an empty bag at one of the tellers, and demands money. The teller, Michael Jordan, tells Magic "It's not too late for God to forgive you, put down the gun." Magic has a change of heart, drops the gun, and runs out of the bank. Is he guilty of Robbery?
- 10 Robbery = illegal, taking of another's property, by violence or intimidation

Class Exercise

- 10 [11] Quarterly seminar.
- (1) person who, with intent to steal, publicly intimidates, threatens, or punts, or
- (2) engages in fighting with others, tumultuous or threatening behavior, or
- (3) takes unreasonable risks, or
- (4) in a public place, communicates an obscene language, or makes an obscene gesture;
- (5) through verbal threats, causes any lawful assembly, or meeting of persons, or
- (6) refuses to leave or possession (title) of
- (7) engages in the transportation in a public place and refuses to comply with a lawful order of the police to depart, or
- (8) causes a disturbance or physical offensive violation to any law enforcement or
- (9) other purpose.

(1) Shall be guilty of robbery, unless the user commits, thereafter be imprisoned for a period of not more than six months or fined not more than \$100, or both, but the fine imprisonment.

Source: Title 16, §4099 (1) 4099

Elements (Examples)

11 FSMC 203 (1) (a) (b)

(c) A person commits the crime of conspiracy if he or she agrees with one or more persons to:

- (a) commit any crime;
- and
- (b) any party to the conspiracy, commits an overt act in furtherance of the conspiracy.

11 FSMC 1002 – Illegal Possession of Firearm

No person shall manufacture, purchase, sell, possess or carry any firearm, dangerous device, or ammunition other than as hereinafter provided.

Exercise

- 10 What may Elvis be charged with?
- 10 If you were the Judge, and you find him guilty, what would your sentence be?

Class Exercise

- 10 Elvis lives at Nihco Marine Park. One evening, he gets drunk, walks out into the middle of the road, and starts yelling, swearing, and throwing rocks. The traffic on the road is backed up because of the disturbance. Elvis is arrested by the Pohnpei State Police.

SAMPLE POWERPOINT PRESENTATION 9: SENTENCING PRINCIPLES AND PRACTICES

Sentencing Principles and Practices

**ORIENTATION WORKSHOP
FSM MUNICIPAL AND ISLAND COURT
JUDGES
DATE: JUNE 9-13, 2014
VENUE: GOVERNOR'S CONFERENCE ROOM**

Structure

- 1-What are the principles of sentencing?
- 2-What are the purposes of sentencing
- 3-What are your sentencing tools?

OBJECTIVES

The Learning objective of this session are:

- 1-Define principles of sentencing
- 2-Explain 5 goals/ purposes of sentencing
- 3-List what are the available sentencing tools

Principles of sentencing

1. Least restrictive to accomplish goals
2. Let the punishment fit the crime
3. Don't do the crime if you can't do the time
4. Eye for an eye
5. Balance of overall sentencing, consistency and appropriate individual concerns

Outcomes

That participants will be able to reasonably:

- 1-Define principles of sentencing
- 2-Explain 5 goals/purposes of sentencing
- 3-List what are the sentencing tools

What are the goals/purposes of sentencing

- 1-Retribution
- 2-Restitution
- 3-Rehabilitation
- 4-Removal
- 5-Deterrence

1-Retribution

- a-If a person has knowingly done wrong, he deserves to be punished
- b-Payback
- c-Eye for an Eye
- d-Revenge

4-Removal

- a.Imprisonment, deprives offender of opportunity to cause crimes by removing from society
- b. Protects public
- c.Not a long-term solution to crime
- e-May be costly

2-Restitution/Restoration

- a-Compensate the victim for losses suffered.
- b-Restore victim to state before the offense
- c-Defendant caused harm and should repair the harm
- d-If not possible to calculate precise amount of loss, a reasonable estimate may be awarded

5-Deterrence

- a. Individual deterrence-The punishment deters the offender from future crime
- b. General deterrence-The punishment deters others from crime
- c. Public Safety
- d- Prevents crimes
- e- Public perception satisfied

3-Rehabilitation

- a. Modify offender's behavior and ways of thinking so he does not offend in the future
- b. Goal is to protect the public, not punish the offender
- c- Looks to future, not the past
- d- Justified through benefit to society by reducing crime
- e- Public may see it as "soft on crime"

Title 64 of Pohnpei State Code: Corrections and Rehabilitation

Subsection 1-101 of Chapter 1; provides that in imposing or suspending execution of sentence, due recognition shall be given to customs;

Subsection 1-102 of Chapter 1; provides that prior to imposing of sentence consideration be given to evidence of good or bad behavior, including prior criminal record of defendant.

Sentencing Tools

- 1-Imprisonment (Retribution, Deterrence & Removal)
- 2-Suspended Sentence
- 3-Probation (Reoffend, Public require harsher punishment & rehabilitation helped for not in jail)
- 4-Intermediate Confinement

Creative sentences

-For 15 years Defendant harassed his neighbor, who adopted two disable children. Offenses include drawing feces on neighbor's car windshield, and once urinated feces on wheelchair for the disable children. Defendant was sentenced to hold the sign for five hours on Sunday, serve 15 days in jail and seven months on probation. Defendant was ordered to complete 100 hours of community service, anger management classes and personal counseling.

Sentencing Tools (2)

- 5-Suspended Imposition of sentence-
- 6-Fine
- 7-Restitution
- 8-Forfeiture
- 9-Community service
- 10-Work Release
- 11-Creative Sentences

Creative sentencing



Activity

- In small group of 5 discuss;
- a) What sentencing tools or options are available in your jurisdiction?
 - b) How effective are they?
 - c) Appoint a spokesman to Report?

Review

- 1) Explain the Principles of Sentence
- 2) We discussed the purposes of sentencing and give examples of those 5 goals
- 3) We list several sentencing options / tools

End of Presentation

Thank you all so very much

AJ Nickonoro Johnny	Belan Yoma	Kohak M. Keller
Associate Justice	NJO	CCOC
PSC	FSMSC	FSMSC

SAMPLE POWERPOINT PRESENTATION 10: EVIDENCE

Evidence

Judicial Orientation
Training
June 2014

Source of Evidentiary Rule in FSM

- FSM Rules of Evidence
 - Each State has Rules of Evidence that is identical to the FSM Rules of Evidence
- Case Law
 - Precedence

Outcomes

- To be able to identify the Source of Evidentiary Rule in the FSM
- Define Evidence
- Distinguish Admissible v Non Admissible Evidence
- Better understand Relevancy and Hearsay

Definition of Evidence

- Something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact.

Structure

- Source of Evidentiary Rule in the FSM
- Relevancy
- Direct Evidence
- Circumstantial Evidence
- Expert Testimony
- Hearsay

Admissible v Non Admissible

- Admissible
 - Admitted into evidence
- Non Admissible
 - Not admitted into evidence

Relevance

- Rule 401
 - evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Direct Evidence

- Evidence based on Personal Knowledge or Observation and that, if true, proves a fact without inference or presumption.

Relevancy Example

- Elvis lives at Nihco. He gets drunk one evening, goes out onto the road, and starts yelling, screaming and throwing rocks. Traffic is backed up in both directions because of the disturbance. David is arrested by the Pohnpei State Police for Drunk and Disorderly Conduct.
 - Relevant evidence:
 - Testimony of Police officers
 - Police report
 - People in the community who heard or saw David
 - Rocks thrown

Circumstantial Evidence

- Evidence based in Inference and not on personal knowledge or observation.

Some Types of Relevant Evidence

- Direct Evidence
- Circumstantial Evidence
- Expert Testimony
- Admission of Evidence Before Trial

Expert Testimony

- Evidence about a scientific, technical, or professional issue given by a person Qualified to testify because of Familiarity with the subject or Special Training in the field.

- Rule 702

Admission of Evidence

- Trial
 - Parties Stipulate and Mark Exhibits

Hearsay Exceptions

Under Rule 801-806, there are 32 Hearsay Exceptions.

We will focus on Rule 803 (2) :

Excited utterance. A statement relating to a startling event or condition made while the declarant was *under the stress of excitement* caused by the event or condition.

Hearsay Definition - Rule 801 (c)

- "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Hearsay example

- At a murder trial, Manny Alik testifies that on the night of the murder, Dohsis Yinug was talking to Manny on the phone, then all of a sudden, Dohsis yells "oh no, I just saw Martin Mori shoot George Bush."
- Declarant = Manny because he is testifying as to what Dohsis told him
- Statement = "oh no, I just saw Martin Mori Shoot George Bush."

Hearsay

- Hearsay evidence is non admissible, UNLESS, it falls under one of many exceptions from Rule 801 to 806
- Hearsay video clip

Hearsay example

- Conclusion: Because Manny is testifying as to what Dohsis told him, this is Hearsay. However, under the Excited Utterance exception, because Dohsis's statement was made while observing Martin shoot George, the Excited Utterance exception applies, and the testimony is therefore admissible.

SAMPLE POWERPOINT PRESENTATION 11: CIVIL MATTERS



SOURCE AND AUTHORITY OF CIVIL LAW IN THE FSM

- FSM Rules of Civil Procedure
 - All 4 FSM States have similar Rules of Civil Procedure
- Case Law
 - Set Precedence on Civil Issues
 - FSM Dept. of Finance, et al., v. Udot Municipality

OBJECTIVES

- To know the source and authority of Civil Law in the FSM
- To be able to define Civil Law in the FSM
- Identify the Burden of Proof in Civil cases
- To know the common Remedies sought in Civil cases

DEFINITION OF CIVIL LAW

- Of or relating to PRIVATE RIGHTS and REMEDIES that are sought by action or suit, as distinct from criminal proceedings.

STRUCTURE

- Source and Authority of Civil Law
- Definition of Civil Law
- Burden of Proof
- Procedural Mechanisms
- Group Exercise

BURDEN OF PROOF IN CIVIL MATTERS

- "Preponderance of the Evidence"
 - The greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.
- "More likely than Not"
- "That one side has more evidence in its favor than the other."

CIVIL V. CRIMINAL

⊗ Burden of Proof

- Preponderance of the Evidence v. Proof Beyond a Reasonable Doubt
- What is at stake = Money v. Person's Liberty

CIVIL V. CRIMINAL MECHANISMS

- Some Procedural Mechanisms
 - Counterclaims (Civil)
 - Plaintiff v. Defendant (Claim)
 - Cross Claims (Civil)
 - Plaintiff v. Defendant 1 Defendant 2
 - Constitutional Challenges (Criminal/Civil)
 - Search Warrant issued not based on Probable Cause
 - Violation of Due Process

CIVIL V. CRIMINAL

⊗ Judgment v. Verdict

- Judgment in Favor of _ v. Guilty/Not Guilty

CIVIL V. CRIMINAL MECHANISMS

- Motion for Summary Judgment (Civil) Rule 56 (c)
 - No Genuine Issues of Material Fact
- Plea (Criminal)
- Motion to Dismiss Charges (Criminal)

CIVIL V. CRIMINAL

⊗ Time

- Article IV § VI - Right to Speedy Trial
- Criminal matters tend to move quickly
- Liberty v. Money

TYPICAL AREAS OF CIVIL LAW

- ⊗ Contracts
- ⊗ Torts
- ⊗ Property
- ⊗ Post Judgment/Collection

SOME REMEDIES IN CIVIL MATTERS

- ⊗ Injunction
- ⊗ Money Damages
- ⊗ Restitution
- ⊗ Specific Performance
- ⊗ Order in Aid of Judgment (Post Judgment)
- Garnishment

- Rocky Balboa borrowed \$10,000 from the Bank of Guam. Rocky has not paid anything, he defaulted on the loan, and Judgment was entered in favor of the Bank. Rocky is employed by the FSM National Police and his take home pay is \$600 per month. Every month he spends \$300 on his necessities (food, kids tuition, fuel, living expenses, etc.), \$100 on family obligations, \$100 to maintain his pig pen and farm, \$50 on church activities, and \$50 on sakau. As the Judge, would you garnish any of Rocky's pay to apply towards the judgment? If so, how much?

6 F.S.M.C. 1409

- At any time after a finding for the payment of money by one party to another and before any judgment based thereon has been satisfied in full, either party may apply to the Court for an order in aid of judgment. Thereupon the Court, after notice to the opposite party, shall hold a hearing on the question of the debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding. In making this determination the Court shall allow the debtor to retain such property and such portion of his income as may be necessary to provide the reasonable living requirements of the debtor and his dependents, including fulfillment of any obligations he may have to any clan, lineage, or other similar group, in return for which obligations he, or his dependents, receive any necessary part of the food, goods, shelter, or services required for their living.

SAMPLE POWERPOINT PRESENTATION 12: CIVIL DECISIONS



CIVIL DECISIONS



JUDGMENT VS. DECISION

Must make findings of fact and conclusions of law instead of referring to the evidences relied upon.



DEFINITIONS

Civil Decision: Facts found as true by a preponderance of the evidence to support a legal conclusion.

Criminal Decision: Facts found as true beyond a reasonable doubt to support a finding of violation of a criminal statute.



COMPONENTS OF A CIVIL DECISION:

I.R.A.C.

- Issue Rule
- Application
- Conclusion



CIVIL VS. CRIMINAL

1. Different Standards of Proof
2. Different Onus



KEY STEPS IN DECISION MAKING

1. Clear identification of the issue or issues
2. Proper and clear recitation of the rule
3. Well researched and supported application of the facts (believed or not) to the rule
4. Precise decision
5. Explained opportunity to appeal

I.R.A.C. SPOTTING EXERCISE



- Motion for Summary Judgment
- Motion to Continue
- Motion to Dismiss
- Motion for an Order to Show Cause
- Video Clips



HYPOTHETICAL

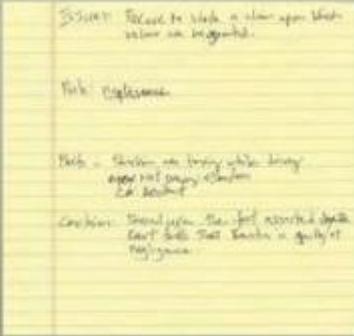


- Penskin gets into an car accident with his wife Maileene while driving his taxi. Maileene files a complaint against Penskin for negligence. In her complaint Maileene alleges that at the time of the accident Penskin was texting while driving and that his failure to pay attention caused the car accident. Penskin files a motion to dismiss arguing he had no duty to his wife.

HYPOTHETICAL



- Island Development Bank files a complaint against Rohro for breach of contract when he fails to pay back his loan. Rohro files an answer where he admits he failed to pay back the loan but asserts he did not because he got in a car accident and is no longer able to work. Island Development Bank moves for summary judgment.



Summary: Plaintiff seeks a summary judgment on negligence.

Plaintiff: Negligence.

Defendant: Defendant was driving while driving approximately 100km/h.

Conclusion: Defendant should not be held liable for negligence.



RULE



- Motion for summary judgment:
 - No disputed issue of material fact
 - Entitled to judgment as a matter of law



Summary: Plaintiff seeks a summary judgment on negligence.

Plaintiff: Defendant has a duty to drive carefully on the road.

Defendant: Defendant pleads that duty was not breached while driving.

Conclusion: Defendant should not be held liable for negligence.

Reasoning: Defendant did not owe a duty of care to Plaintiff.

Application of standard is specific to negligence.

It is foreseeable damage is caused.



RULES

- Motion to Dismiss:
 - Failure to state a claim upon which relief can be granted.
- Negligence:
 - Defendant owed plaintiff a duty
 - Defendant breached his duty
 - Defendant's breach proximately caused Plaintiff's harm
 - Defendant has measurable damages

TEST

Issue: Define issue

Rule: Recite the rule

Application: Apply facts to the legal rule

Conclusion: Decide

HYPOTHETICAL

- After Island Development Bank gets a judgment against Selino for \$5,000.00, in post judgment proceedings Selino agrees and the court orders that Selino has the ability to pay \$50 a month toward repayment of the judgment. Selino makes two payments and then stops. One year later the Bank moves and the court sets the matter for an order to show cause and the Bank requests that Selino be held in contempt.

TEST

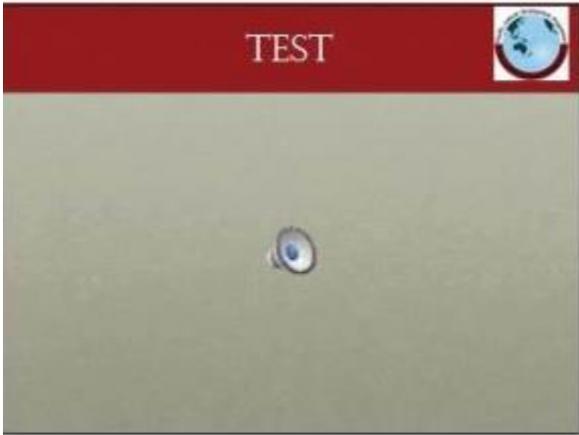


RULES

- Motion for Order to Show Cause:
 - Facts which show the offending party had
 - a valid order
 - Had knowledge of the order
 - Had the ability to comply with the order
 - Failed to comply with the order

TEST





SAMPLE POWERPOINT PRESENTATION 13: COURT ROOM MANAGEMENT

COURT ROOM MANAGEMENT

WHO IS RESPONSIBLE?

RESPONSIBILITIES OF THE JUDGE

- Dress Code
- Media coverage rules: radio newspaper
- Courtroom Procedures (Clerks/Bailiffs)
- Courtroom Rules: eating, drinking, loud talking, cell phones, video, cameras
- Courtroom Assignments: attending court hearing rotation schedule
- JO or Bailiff's duties and responsibilities: court security, escort judge, call case, translate, administer oaths
- Clerk Duties: prepare files, attend hearing, manage exhibits and evidence, record proceedings.
- Staff Attorney/Clerks: take notes, prepare draft decisions
- Public: attend hearings
- Timelines
- Maintenance

DISCUSSION AND APPLICATION

HYPOTHETICALS:

- Employee, litigant, attorney, boss, is not dressed properly for Court
- Newspaper or radio wants to cover court hearing
- Clerk or Bailiff or other support staff are falling asleep in court hearings
- Litigant or public are drawing pictures on Court property
- The papers in the file belong another case
- Parties were not served, only one party was served
- Construction outside the court
- Equipment or recording machine is not working

VIDEO CLIP



SMALL GROUP EXERCISE

- Develop a policy of timeliness, behavior, demeanor and dress, list standard for exceptions



VIDEO CLIP



TEST

On a blank piece of paper and without the use of notes list all of the responsibilities of a Judge.

Believe in your Policies
Enforce them strictly and uniformly

SAMPLE POWERPOINT PRESENTATION 14: TRIAL MANAGEMENT



TRIAL MANAGEMENT

— 03 —

WHO'S THE BOSS?



PRE-TRIAL

Joint pretrial statement:

- list of witnesses/testify
- Uncontested legal issues
- Contested issues
- Uncontested Facts
- Contested Facts
- Uncontested Exhibits / Evidence
- Contested Exhibits / Evidence

Pretrial Hearing:

- Motions
- Marking exhibits

Video Clip



Handout

GI Chief Judge Martin Yimug's Pretrial Order



PRINCIPLES OF TRIAL MANAGEMENT

1. NOTICE
2. ACCESSIBILITY
3. EQUITY
4. CLARITY
5. ORDER
6. RESPECT



Trial

- 1) Call of the Case
- 2) Procedures: Opening statement, plaintiff's case, defendant's case, Rebuttal
- 3) Witnesses-Direct examination; Cross examination and Redirect examination, use of exhibits
- 4) Objection: Reasoning/Opposition/Reply-Decision
- 5) Closing arguments (plaintiff-defendant-reply)
- 6) Court decision

Exercise Hypotheticals

- Attorney arguing with witness or repeating same questions;
- Witness uncooperative
- Crying witness
- Disruptive Public
- Video Clips

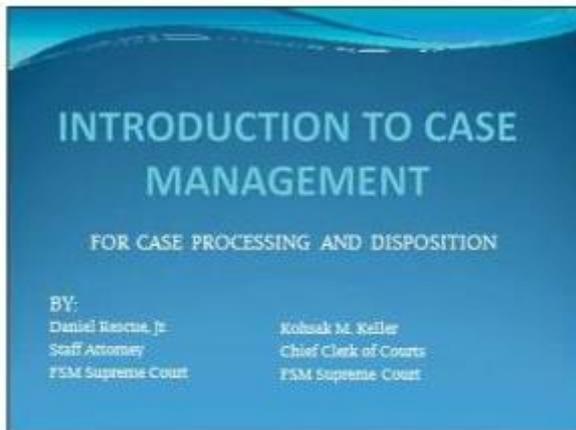
Video Clips



Video Clip



SAMPLE POWERPOINT PRESENTATION 15: INTRODUCTION TO CASE MANAGEMENT

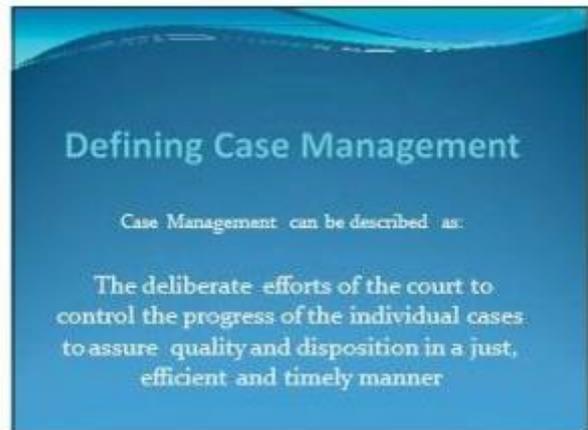


INTRODUCTION TO CASE MANAGEMENT

FOR CASE PROCESSING AND DISPOSITION

BY:
Daniel Riosua, Jr
Staff Attorney
FSM Supreme Court

Kohsak M. Keller
Chief Clerk of Courts
FSM Supreme Court



Defining Case Management

Case Management can be described as:

The deliberate efforts of the court to control the progress of the individual cases to assure quality and disposition in a just, efficient and timely manner



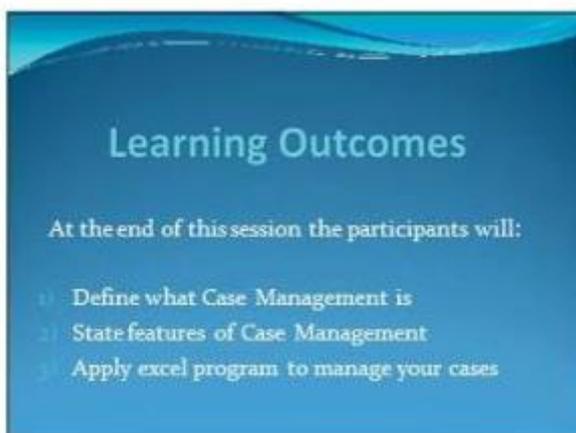
Contents of this Session

- 1) Defining Case Management
- 2) 8 Keys Case Management Points



Key Point 1 - Time Goal

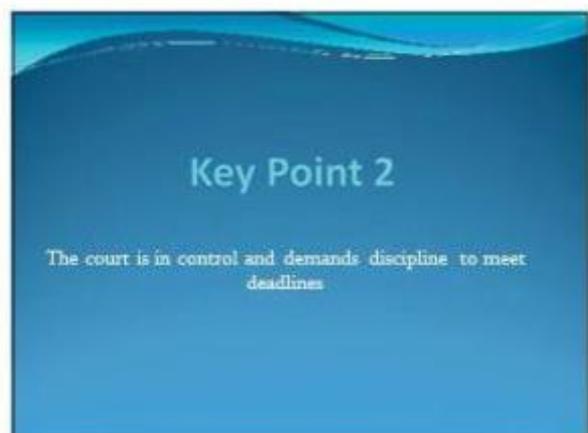
1. The Court supervises the pace of litigation



Learning Outcomes

At the end of this session the participants will:

- 1) Define what Case Management is
- 2) State features of Case Management
- 3) Apply excel program to manage your cases



Key Point 2

The court is in control and demands discipline to meet deadlines

Key Point 2-Control (2)

CASE MANAGEMENT IS ABOUT LEADERSHIP AND THE COURT BEING IN "CONTROL"

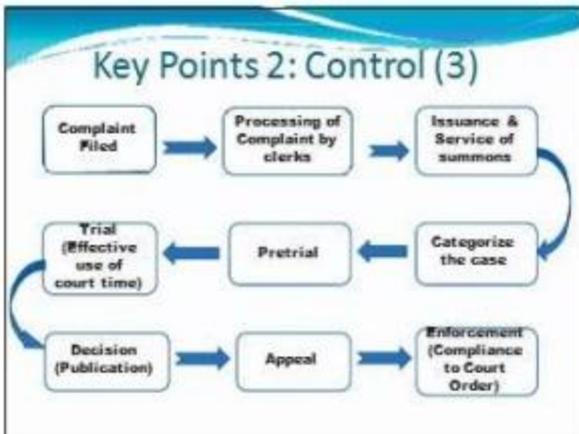
- The Schedule
- Caseflow
- Lawyers
- Resources

Key Point 3- Differentiation of Cases

A formal system for Differentiating Cases

- Cases involving children
- Custody Cases
- (Criminal) Land Cases
- Small Claim Cases
- Old Cases
- Complex Cases
- Matters of public importance

Cases are treated & scheduled according to needs



Key Point 3- Differentiation of Cases

- Special categories of cases might be so sensitive or of such public significance that they require special attention and a FAST TRACK e.g. crimes of violence against women, children, and some commercial cases
- Fast Tracking accelerate the cases through the system to ensure a prompt resolution
- Features may be: reduction of time for service of the evidence brief, setting matters for oral argument, counsel provides case summary statements, fast-tracking for early pleas, faster processing in the registry

Key Point 3-Differentiation of Cases

3. Different types of cases are identified and treated according to needs
Known as Differentiated Case Management-DCM

Key Point 4 – Preparation

4. The court demands **preparation** before filing and for court events

Cases must be prepared before filing

Key Point 5- Minimal Continuances

5. This is a **strict continuance policy**

Key Point 7- Technology

7. **Technology** is maximized to record and report on the caseload

Key Point 5- Minimal Continuances

Effective Continuance Practices:

- 1) Increase reliability and predictability of the entire system
- 2) Strengthens expectations that the case will proceed
- 3) Decrease the pending caseload
- 4) Communicate a presumption that continuance will more like than not, be denied
- 5) Require Good Cause
- 6) Are recorded on the file

Demonstrate use of Technology

FSM Supreme Court Spreadsheet or Excel Program.

-Input of information

-Sorting

- 1) Case Type
 - 2) Case Status
 - 3) Presiding Judge
 - 4) Assignment of Staff
 - 5) What State Generating
- Report in Word document

Key Point 6- Early identification of issues

6. The **real issues** for adjudication are **identified** early

Key Point 8-Teamwork

8. Judges, Administrators and Clerks work together intensely as a team to manage the caseload

Key Point 8 – Team Work

Roles and Effective Case Management

Assistant clerks	Senior Clerks/Attorneys	Judges
Case Information & Flow	Judicial	Adjudication
Administrative & Record Keeping	Preparation, Processing & Enforcement	Exercise of Judicial Power
<ol style="list-style-type: none"> 1. Review of new files for basic compliance 2. Registration & Case Numbering 3. Case Processing 4. Records management 5. Forms 	<ol style="list-style-type: none"> 1. Compliance screening 2. Differentiate cases 3. Time Goals & major event management 4. Allocation case to Judge 5. Scheduling conferences 	<ol style="list-style-type: none"> 1. Early & continuous judicial control 2. Early identification of issues in dispute 3. Elimination of frivolous claims 4. Firm & credible trial date 5. Realistic Scheduling

REVIEW (2)

5- There is a strict continuance policy

6- The real issues for adjudication are identified early

7- The use of technology to manage the case load is maximized

8- Judges, Administrators and clerks work together as a team, to manage the caseload

Key Point 8 – Team Work (2)

Roles and Effective Case Management

Assistant clerks	Senior Clerks/Attorneys	Judges
Case Information & Flow	Judicial	Adjudication
Administrative & Record Keeping	Preparation, Processing & Enforcement	Exercise of Judicial Power
<ol style="list-style-type: none"> 6. Providing information 7. Statistics gathering & report preparation 8. Resources co-ordination e.g. personal, court rooms & audio 9. Communication 	<ol style="list-style-type: none"> 6. Post Trial & Enforcement 7. Legal research and support 8. Manage exhibits 9. Record & Communicate 10. Manage court rooms & Resources 	<ol style="list-style-type: none"> 6. Continuance management 7. Courtroom management 8. Create opportunities to settle 9. Use of performance reports 10. Resources consciousness

END OF PRESENTATION

Thank you all so very much.

REVIEW

1 The court supervises the pace of litigation

2 The court is in Control and demands discipline to meet deadlines

3 Different types of cases are identified and treated according to needs

4 The court demands preparation – before filing and for court events

SAMPLE POWERPOINT PRESENTATION 16: TIME STANDARDS



**PACIFIC JUDICIAL
DEVELOPMENT PROGRAMME**

Local Orientation Pilot Program
09-13 May, 2014
Peiiapalap, Pohnpei

Samuel Salley
Daniel Resoue Jr.
Kohsek Keller
Kapilly Capelle

1



Outcome

- 1) To define Time Goal/Standard
- 2) To list some of the benefits
- 3) Implement a TG/S policy

4



Session 21

Time Standard
12 June, 2014
Pohnpei, FSM

2



Structure

- 1) What is Time Goal/Standard
- 2) Importance of TG
- 3) Benefits of TG
- 4) How to go about making one

3



Objectives

- 1) To introduce and explain the concept of Time Goal/Standard
- 2) Examine benefits of TG
- 3) Promote awareness of the importance of timely disposition of cases.

3



What is Time Goal/Standard?

Is a guideline (a control mechanism/tool) for Case Management System (CMS) to ensure cases are processed and disposed in a reasonable time.

4



A Reasonable Time

Each case is individual and requires an amount of time to fairly, necessarily and conveniently complete, as soon as circumstances permit.

7



- The first step in developing and introducing an effective case management system is to **set goals for the time it should take to process each category of case i.e. the time it takes from the filing of a case to its disposal.**
- The second step is to develop systems and processes to assist the court meet those goals.

10



Is it important?

- In FSM fair and speedy trial is a constitutional right of every citizen and resident.
- Efficiency of justice: providing final judgements with fairness within a reasonable time
- It is almost universal now that citizens expect, and in many places demand, their courts to deliver justice in a fair and timely manner.

8



Status quo

- No policies.
(Policies are in the making in the State and FSM Courts)
- Municipal?

11



- A court cannot hide behind procedural or other defects in its judicial processes to avoid responsibility for delays
- The fact that parties are responsible for the conduct of proceedings does not excuse judges from ensuring timely disposition of cases.

9



Benefits of TG policy:

- Define delay to avoid or decrease delay
- Transform the way your court thinks about case processing
- Stop cases getting "lost in the system"
- Define a consistent process and expectation
- Improve quality and efficiency
- Help courts be transparent and accountable
- Help courts meet international standards of judicial administration

How to develop Time Goal/Standards ? 

- Two key performance standards:
 1. Time standards/ goals for: **INTERMEDIATE/INTERVAL EVENTS AND TO FINAL DISPOSITION**
 2. Time goals for: **THE ENTIRE COURT CASELOAD.**

12

THE END 



13

- PJDP Toolkit 
- FSMSC Experience

14

"Justice delayed justice denied" 

- "A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free society/people. However, couple things could destroy that confidence and do incalculable damage to society:
 - 1) that people come to believe that courts' inefficiency and delay will drain even a just judgment of its value;
 - 2) that people come to believe the law – in the larger sense – cannot fulfill its primary function to protect them and their families in their homes, at their work, and in public places."

Chief Justice of the United States [Warren E. Burger](#) noted in an address to the [American Bar Association](#) in 1970.

15

SAMPLE POWERPOINT PRESENTATION 17: EXERCISES AND CUSTOMER SERVICE

PACIFIC JUDICIAL DEVELOPMENT PROGRAMME

Regional Judicial and Court Officers' Orientation Course

2-7 December, 2012 – Port Vila, Vanuatu

Session Name: Exercises, Customer Service

Name: John Ailee



1

Customer Service

What is in it for me

- Registry Staff – As front officer of the court, your actions, attitude and behaviour helps to shape the perspective of the court user as to what the court is about.
- Judicial Officer – a useful guide to keeping your actions, attitude and behaviour in line with your oath of office.
- What is customer service?



2

Customer Service

WHY BOTHER?

SOME NUMBERS TO THINK ABOUT

- 96% of dissatisfied customers don't complain.
- 82% of dissatisfied non-complainers will not return.
- Dissatisfied people will tell 9 to 10 others about their negative experience.
- Some will tell 20 or more.



3

Customer Service

Key Questions

- What is customer service generally and from the perspective of the court?
- Who are the court's customers?
- What are the customers' expectations?
- Why do the customers have those expectations?
- Having explore the above, what, then, is good or appropriate customer service expected from the courts?



4

What is Customer Service

"Customer service is a series of activities designed to enhance the level of customer satisfaction – that is, the feeling that a product or service has met the customer expectation." – wikipedia



5

Who are the customers?



6

**What do the customers want?
What do they dislike?**



7

Customer's Needs

- Security
 - *focus on guarantees and have a fear of taking risks.*
- Social
 - *need to be appreciated and have a fear of being ignored.*
- Results
 - *focus on results and have a fear of failing.*

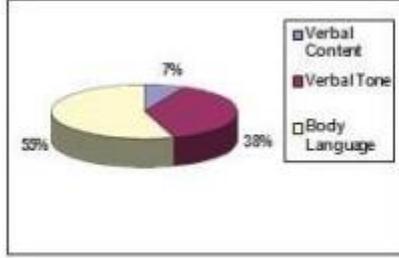
8

Good/Appropriate customer service

- Activity
 - *Work in pairs*
 - *Write down one word that you think sums up 'good/appropriate customer service'*
 - *Give meaning/definition to each letter of the word*
 - *Feedbacks*

9

Components of communication



Component	Percentage
Verbal Content	59%
Verbal Tone	38%
Body Language	7%

10

Good/Appropriate customer service

• P.E.S.P.I.T.

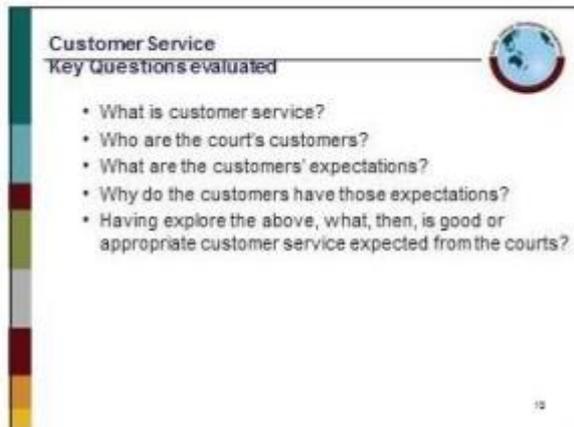
- Recognize the inherent worth of all human beings
- Eliminate derogatory words and phrases from your vocabulary
- Speak with people – not at them... or about them
- Practice empathy – walk in their shoes
- Earn the respect of your co-workers through your actions
- Consider feelings of others before you speak and act
- Treat everyone with dignity and courtesy

11

Expectations of Quality

Golden Rule ...	Platinum Rule...
o Treat others as you want to be treated.	o Treat others the way they want to be treated.

12



Customer Service
Key Questions evaluated

- What is customer service?
- Who are the court's customers?
- What are the customers' expectations?
- Why do the customers have those expectations?
- Having explore the above, what, then, is good or appropriate customer service expected from the courts?

19



Pacific Judicial Development Programme

JUDGES' ORIENTATION TOOLKIT

PJDP toolkits are available on: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>





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

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) Enoka 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 – 19th INTRODUCTION</i>	<i>Mon – 20th JUDICIAL LIFE</i>	<i>Tues – 21st SENTENCING</i>	<i>Wed – 22nd CRIMINAL TRIALS</i>	<i>Thurs – 23rd CIVIL DISPUTES</i>	<i>Friday – 24th EVIDENCE & 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	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) Savage, Mansfield <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 Savage, Mansfield <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	<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	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, Fonua <ul style="list-style-type: none"> ◆ Sexual assault ◆ Consent ◆ Evidence from children ◆ Special considerations ◆ Closing the court. 	21. WORKSHOP EXERCISES: <i>Decision-making</i> Savage, Mansfield	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	<i>Lunch</i>	<i>Lunch</i>	<i>Lunch</i>	<i>Lunch</i>	<i>Lunch</i>	<i>Lunch</i>
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 <i>Sentencing</i> Young	16. WORKSHOP EXERCISES Puni, Maina	22. WORKSHOP EXERCISES <i>Decision-making (cont'd)</i> Savage, Mansfield	28. CUSTOMER SERVICE Fonua, Puni
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	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 <i>Sentencing (cont'd)</i> Young	17. WORKSHOP EXERCISES <i>(cont'd)</i> 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: <i>Judgments and verdicts</i> Young	18. COURT VISIT Palmer Courtroom scenarios?	24. WORKSHOP EXERCISES: <i>Communication</i> 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	

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
- 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.pacii.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
- *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 Session¹: 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

¹ 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)

Session Plan:				
Training Activity:				
Topic:		<i>(specify)</i>		
Objective(s):		The purpose of this session is to: <i>(specify)</i> <ul style="list-style-type: none"> • Knowledge • Skills • Attitudes 		
Outcomes:		As a result of attending, participants will be able to: [Q: <i>do what well?</i>] <ul style="list-style-type: none"> • • 		
Trainer:				
Time – (60) mins:		Content:		
Start	>5 mins	<u>INTRODUCTION</u>		
		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
End	>5 mins	<u>Conclusion:</u>		
		Summarise content Review learning outcomes Check participants’ grasp by asking them to summarise.		



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	<p>INTRODUCTION</p> <p>Get attention: Tell an interesting story</p> <p>10 mins 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	<p>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.</p>			
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 Armutage, Technical Director, PJSI
- Faculty of Presenters



2

This Initiative



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



2

Welcome



3

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.

Objectives

1. Share, develop professional experience
2. Develop judicial knowledge, skills, attitudes
3. Develop techniques of courtroom control

1. Familiarise principles practice of procedural fairness
2. Explain special interests of parties coming to court
3. Strengthen judicial identity and resource network.

Approach

1. Judicial **competence**
 - o Knowledge
 - o Skills
 - o Attitudes
2. Regional - not jurisdiction-specific
3. 'Active' learning
 - Participation – discussion, questions
 - Practice - learning by doing

Agenda

Time	Activity/Topic	JUDICIAL LIFE (JUDICIALS)	JUDICIALS (JUDICIALS)				
08:30-09:00	Breakfast						
09:00-09:30	Registration						
09:30-10:00	Opening Remarks						
10:00-10:30	Session 1: Introduction to the Judiciary						
10:30-11:00	Session 2: The Role of the Judge						
11:00-11:30	Session 3: Courtroom Control						
11:30-12:00	Session 4: Procedural Fairness						
12:00-12:30	Lunch						
12:30-13:00	Session 5: Judicial Decision Making						
13:00-13:30	Session 6: Judicial Writing						
13:30-14:00	Session 7: Judicial Ethics						
14:00-14:30	Session 8: Judicial Health and Well-being						
14:30-15:00	Session 9: Judicial Leadership						
15:00-15:30	Session 10: Judicial Innovation						
15:30-16:00	Session 11: Judicial Future						
16:00-16:30	Session 12: Judicial Legacy						
16:30-17:00	Session 13: Judicial Inspiration						
17:00-17:30	Session 14: Judicial Reflection						
17:30-18:00	Session 15: Judicial Appreciation						
18:00-18:30	Session 16: Judicial Farewell						

Faculty

- Chief Justice Sir Albert Palmer, Solomon Islands
- Chief Justice Patrick Savage, Niue
- Justice (R) John Mansfield, Australia
- Justice (R) Sir Ronald Young, New Zealand
- Judge (R) Enoka Puni, Samoa
- Registrar Fatima Fonua, Tonga
- Dr Livingston Armytage, PJSI

Participants

Who are you and what do you need?

In 2 minutes, please:-

- 1.Name and court
- 2.Current role
- 3.Years of judicial experience
- 4.Prior training
- 5.What do you want from this course?

Pre-course survey



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

PACIFIC JUDICIAL
STRENGTHENING INITIATIVE

Regional Lay Judicial Orientation Course

20-24 November 2017
Honiara, Solomon Islands

Session 1-3: Panel Discussion
Faculty

Judiciary and Courts

- Judiciary: third branch of Government**
 - Legislative
 - Executive
 - Judicial
- The job**
 - apply the law to settle disputes
 - uphold the rule of law
 - protect citizens from arbitrary state interference

Judges' Relationships

- Judicial values: Bangalore Principles**
 - Independence
 - Impartiality
 - Integrity
 - Propriety
 - Equality
 - Competence and diligence

5

Sessions 1-3

1. Role of courts, judicial officers and court officers
2. Transition to the bench
3. Judicial conduct and ethics

Judicial Independence

- Judicial Independence**
 - doesn't benefit judges
 - ensures fair and impartial hearings
 - no interference

Other Relationships

- with other judges**
- Discussions of cases**
 - With Judges
 - With lawyers
 - With family/ friends
- Formality in court**
 - Treatment of litigants
 - Treatment of lawyers
 - Treatment of self represented litigants
 - Court staff

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A-12

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:

- i. **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. Presumed innocent of crime until proven guilty
 - c. Bail
 - d. Criminal procedure rights
 - i. to be informed promptly of charge
 - ii. prompt judicial determination of guilt/innocence
 - iii. speedy and public trial before impartial tribunal
 - iv. adequate time and facilities to prepare defence
 - v. defend self or person 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. Cruel & 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
FOREIGN AFFAIRS & TRADE
Aid Programme

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

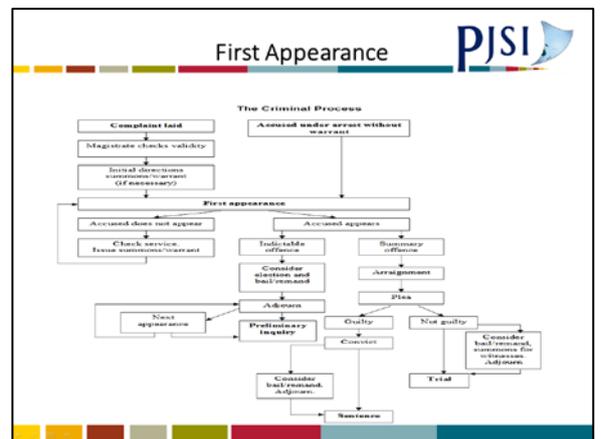
- Preparation
- Ensuring people understand
- Litigants in Person
- Taking pleas
- Remands and bail

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

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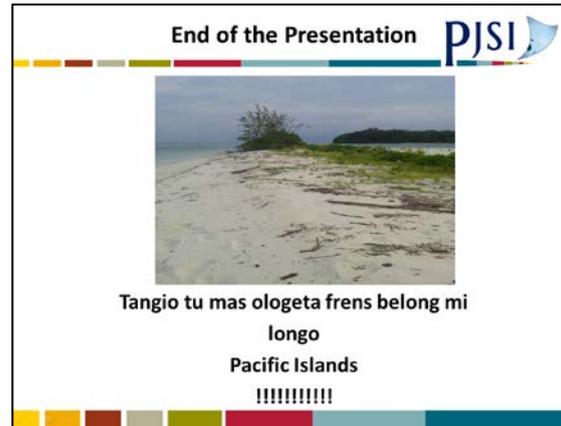
    graph TD
        A[Completed bail] --> B[Magistrate checks validity]
        B --> C[Initial directions summons, warrant if necessary]
        C --> D[First appearance]
        D --> E[Accused does not appear]
        D --> F[Accused appears]
        E --> G[Check return, issue summons/warrant]
        F --> H[Indictable offence]
        F --> I[Summary offence]
        H --> J[Consider detention and bail remand]
        I --> K[Assignment]
        J --> L[Adjourn]
        K --> L
        L --> M[Pre-trial]
        M --> N[Next appearance]
        M --> O[Preliminary inquiry]
        M --> P[Guilty]
        M --> Q[Not guilty]
        O --> R[Consider bail remand, Adjourn]
        P --> R
        Q --> R
        R --> S[Trial]
        S --> T[Consider bail remand, summons for trial, Adjourn]
        T --> U[Sentence]
    
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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

PACIFIC JUDICIAL STRENGTHENING INITIATIVE

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



PACIFIC JUDICIAL STRENGTHENING INITIATIVE



Regional Judicial Orientation Course
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 cover 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 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

PJSI

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

PJSI

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.

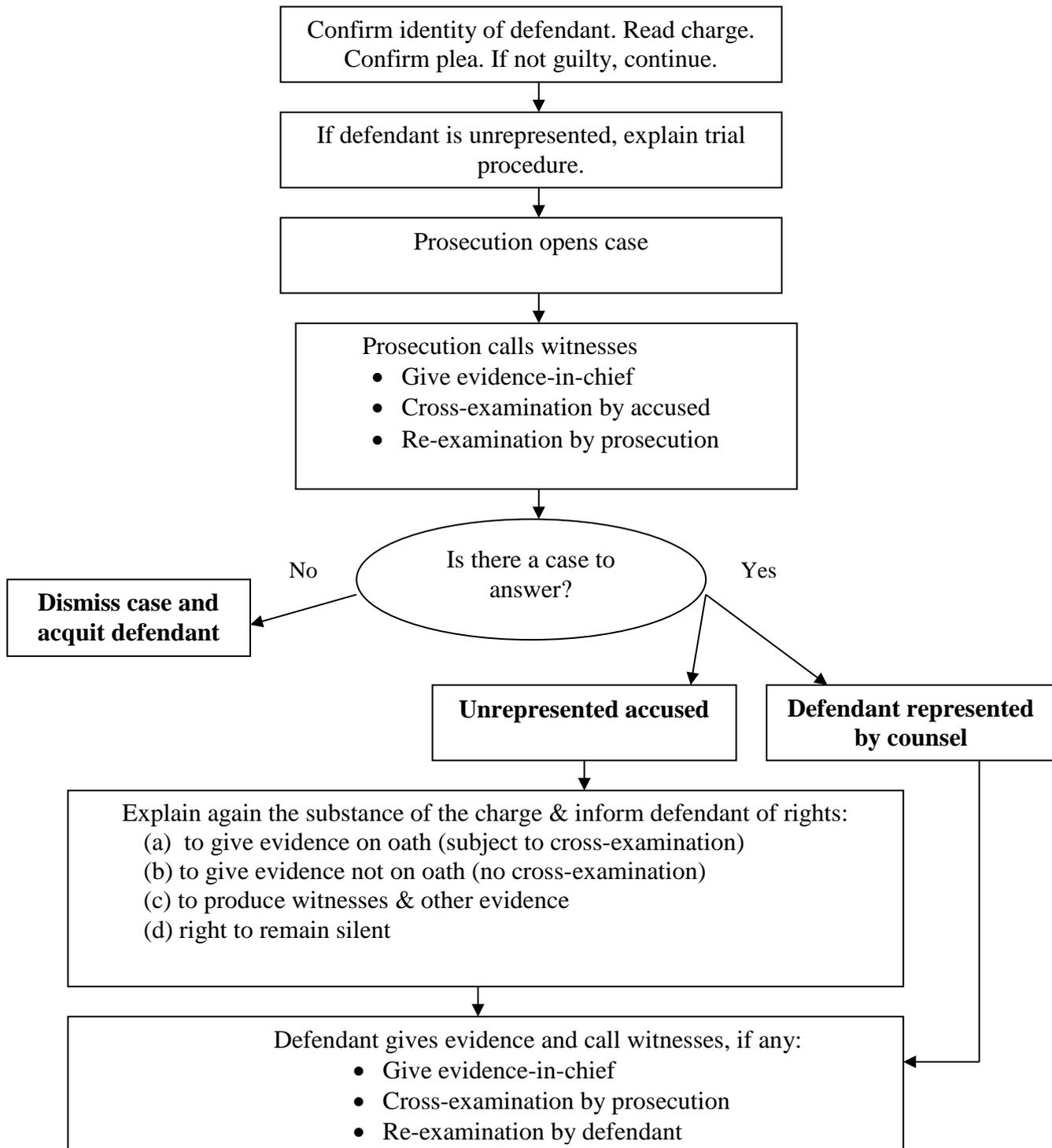
Defences

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

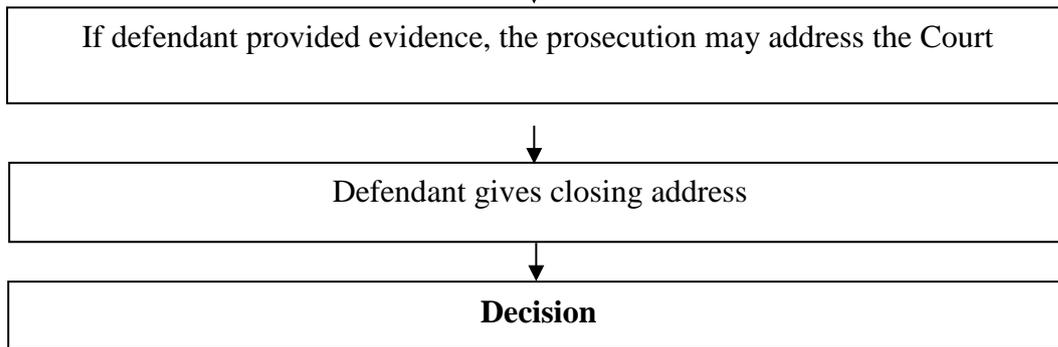
The defendant will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

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..."

1

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

3

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

4

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

5

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.

6

PJSI

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

PJSI

(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

12

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

13

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

14

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

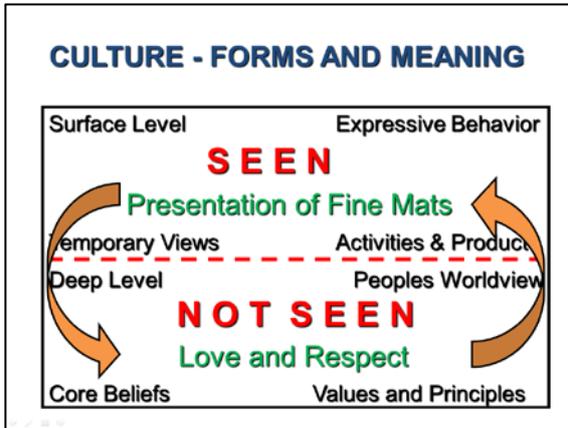
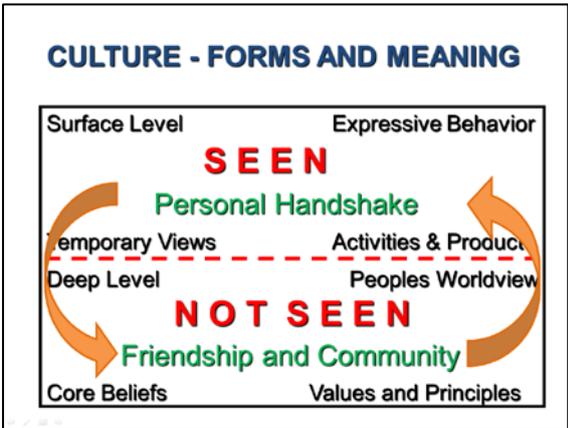
Attended by regional representatives from the Police, NGO's, Government etc

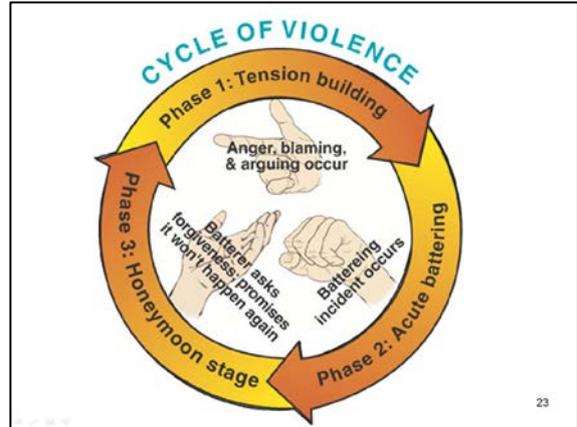
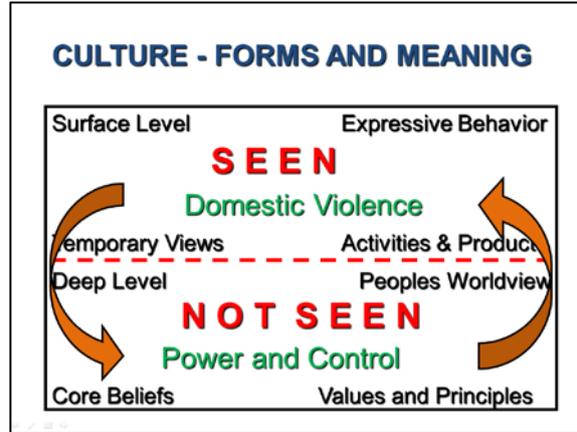
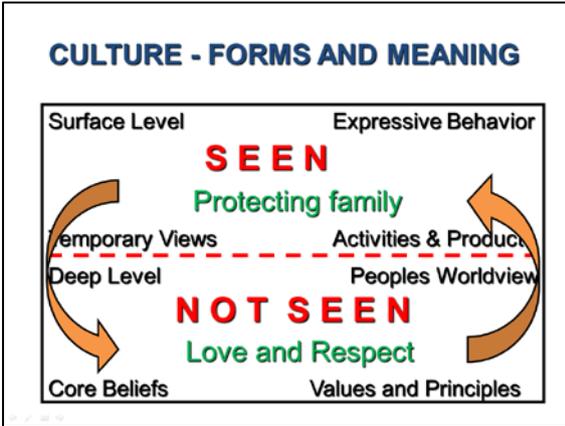
Consider [the use of] Culture & Religion as excuses for DV

15

Culture and Domestic Violence

16





PJSI

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

Group response

Our Government's response

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

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

26

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

- Closing the court
- Consent

Closing the Court. Why?

Open Justice v Closing the Court

27



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.

30

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.

31

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?

32

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

33

NEXT SESSION

WORKSHOP EXERCISES

34

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

PACIFIC JUDICIAL STRENGTHENING INITIATIVE

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 if 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



NEW ZEALAND
FOREIGN AFFAIRS & TRADE
Aid Programme

PACIFIC JUDICIAL
STRENGTHENING INITIATIVE



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

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

NEW ZEALAND
FOREIGN AFFAIRS & TRADE
Aid Programme

PACIFIC JUDICIAL
STRENGTHENING INITIATIVE

Regional Judicial Orientation Course
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. Simply 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 STRENGTHENING INITIATIVE

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.

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:

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    graph LR
      A((Confidence)) --- B((Start at the Start))
      B --- C((Adjoin for consideration))
      C --- D((Seek Advice))
      A --- B --- C --- D
    
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A.30 Session 20: Civil Decision PowerPoint Presentation

PACIFIC JUDICIAL STRENGTHENING INITIATIVE

Regional Lay Judicial Orientation Course

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”.

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)

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
STRENGTHENING INITIATIVE



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.

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2. Brevity

- Long, complex sentences are harder to understand than short simple ones.
- Generally speaking, style manuals recommend that average sentences not exceed about 20 words.
- 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.

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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



PACIFIC JUDICIAL STRENGTHENING INITIATIVE



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 the 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

PACIFIC JUDICIAL STRENGTHENING INITIATIVE

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

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

PJSI

SESSION 17: WORKSHOP EXERCISES in relation to:

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

1

PJSI

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.*

2

PJSI

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*

3

PJSI

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*

4

PJSI

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

5

PJSI

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.

Prosecution

Example

6

PJSI

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

PJSI

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

PJSI

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

PJSI

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

COURT SIMULATION

10

PJSI

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

PJSI

NEXT ACTIVITY

MORNING TEA

Lookem iu (see you later)

12

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



PACIFIC JUDICIAL STRENGTHENING INITIATIVE



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.

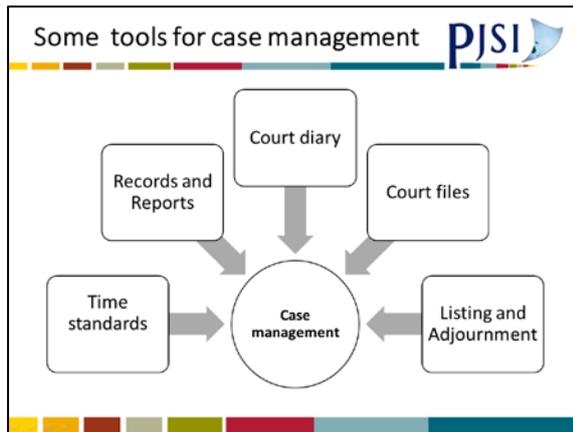
Who should be involved?

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

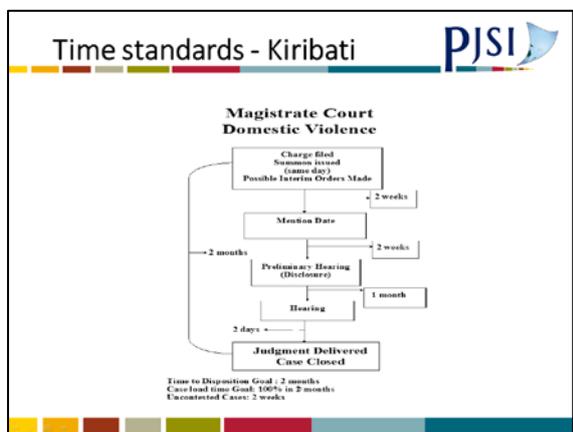
- Time standards tell us:
 - How long a case should take to complete;
 - How long should be allowed between major case events
 - How many cases should be dealt with over a year

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	Completed Percentage
Summary Crime - Adult in custody	5 months	90% in 4 months 100% in 5 months
Summary Crime - Adult in custody	3 months	100% in 4 months
Summary Crime - Adult in custody	2 months	100% in 2 months
Summary Crime - Adult in custody	4 months	10% in 3 months 90% in 5 months
Summary 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	5 months	100% in 5 months
Paternity	4 months	20% in 3 weeks 90% in 4 months 100% in 5 months
Land	12 months	80% in 12 months 100% in 18 months
Boundary Determinations	8 months	80% in 8 months 100% in 14 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 Adjudgments



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!

	important?	Q&A		
35 mins	Sub-topics	Methodology	Summary /Assessment	Resources
	<p>WHO is involved in case management?</p> <p>WHAT are their roles?</p>	<p>Powerpoint</p> <p>Group discussion</p>	<p>Participants to discuss who must be involved and what roles will they play</p>	<p>Powerpoint</p> <p>Butcher papers</p>
40 mins	Sub-topics	Methodology	Summary /Assessment	Resources
	<p>WHAT are some fundamental elements of case management?</p> <p>WHAT/HOW can case management be improved in your own jurisdiction?</p>	<p>Powerpoint</p> <p>Individual work and presentation.</p>	<p>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.</p>	<p>Powerpoint</p> <p>Butcher papers</p>
>5 mins	<p>Conclusion:</p> <p>Summarise content</p> <p>Review learning outcomes</p> <p>Check participants’ grasp by asking them to summarise.</p>			
End				

A.41 Session 28: Customer Service PowerPoint Presentation

PACIFIC JUDICIAL STRENGTHENING INITIATIVE

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

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?

The graphic shows the words 'Customer Service' written in a large, slanted font. Below it are three smiley faces: a green one with a wide smile, a yellow one with a neutral expression, and a red one with a frown. To the right of the faces are three checkboxes. The top one is checked with a red pencil, and the word 'Excellent' is written next to it. Below that is the word 'Average' and at the bottom is the word 'Poor'. A red pencil is shown drawing a checkmark in the top checkbox.

A.42 Session 28: Session Plan: Customer Service

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

	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	<p>Conclusion:</p> <p>Summarise content</p> <p>Review learning outcomes</p> <p>Check participants’ grasp by asking them to summarise.</p>			



Pacific Judicial Development Programme

JUDICIAL ORIENTATION SESSION PLANNING TOOLKIT

PJDP toolkits are available on: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>





Pacific Judicial Development Programme

JUDICIAL DECISION-MAKING TOOLKIT

January 2015





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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/pjdp/pjdp-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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PJDP TOOLKITS

Introduction

For over a decade, the Pacific Judicial Development Programme (PJDP) has supported a range of judicial and court development activities in partner courts across the Pacific. These activities have focused on regional judicial leadership meetings and networks, capacity-building and training, and pilot projects to address the local needs of courts in Pacific Island Countries (PICs).

Toolkits

Since mid-2013, PJDP has launched a collection of toolkits for the ongoing development of courts in the region. These toolkits aim to support partner courts to implement their development activities at the local level by providing information and practical guidance on what to do. These toolkits include:

- Judges' Orientation Toolkit
- Annual Court Reporting Toolkit
- Toolkit for Review of Guidance on Judicial Conduct
- National Judicial Development Committee Toolkit
- Family Violence and Youth Justice Project Workshop Toolkit
- Time Goals Toolkit
- Access to Justice Assessment Toolkit
- Trainer's Toolkit: Designing, Delivering and Evaluating Training Programs
- Reducing Backlog and Delay Toolkit
- Enabling Rights & Unrepresented Litigants
- Toolkit for Public Information Projects
- Toolkit for Building Procedures to Handle Complaints about Judicial Conduct
- *Judicial Decision-making 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, PJDP aims to build local capacity to enable partner courts to address local needs and reduce reliance on external donor and adviser support.

Use and support

These toolkits are available on-line for the use of partner courts at <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits> . We hope that partner courts will use these toolkits as / when required. Should you need any additional assistance, please contact us at: pjdp@fedcourt.gov.au

Your feedback

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

Dr. Livingston Armytage
Team Leader,
Pacific Judicial Development Programme

January 2015

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ABBREVIATIONS

FLOPP	-	Flaw in the Losing Party's Position
HC	-	High Court
IRAC	-	Issue, Rule, Application, Conclusion
LOPP	-	Losing Party's Position
MFAT	-	New Zealand Ministry of Foreign Affairs and Trade
MSC	-	Managing Services Contractor - Federal Court of Australia
PIC	-	Pacific Island Country
PJDP	-	Pacific Judicial Development Project
RMI	-	Republic of Marshall Islands
RTT	-	Regional Training Team
TRC	-	Traditional Rights Court (Marshall Islands)
WAAW	-	Who's Arguing about What
WDWTW	-	Who Did What to Whom

MAKING AND WRITING JUDICIAL DECISIONS: AN ISSUE-BASED APPROACH

This toolkit is primarily intended for use by PJDP's Regional Training Team (RTT) for training purposes in Pacific Island Countries. Part 4, "Writing a Judgment in Five Easy Steps" can be used as a handout for participants in introductory courses taught by the RTT. Part 6, "A Checklist for Judgments and Decisions," can be used by local participants as a guide for self-evaluation to see whether they are practicing the methods taught in the course. It can also be used by RTT as a discussion guide in follow-up sessions facilitated by RTT, or in periodic discussion groups in which the participants provide one another with comments and suggestions about decisions written after they have finished the workshops.

The underlying assumption of the method explained in this toolkit is that decision-making and decision-writing are not separate processes. Writing is not just a means of communication; it is a technology for thinking. The method proposed here requires judges and judicial officers to identify the constituent issues in each case, i.e., the points of contention that must be resolved before a verdict or judgment can be rendered. The generalized pattern of analysis, LOPP/FLOPP (losing party's position followed by the flaw in the losing party's position) is designed to produce decisions based on reasons that are clear both to the writer and the reader. It results in decisions in which the losing party is made to feel "heard."

The image of a "shotgun house," explained in Part 3, provides an overall organizational pattern that judges in many jurisdictions have found useful. A decision based on this model might be regarded as a "product"; the "Five Easy Steps" are directions for assembling that product.

Neither the method nor the product are to be taken as rigid and invariable. Judging and judgment-writing are ultimately subtle arts that cannot be reduced to simplistic formulae. But the methods and the model proposed here can serve as useful tools for producing judgments that are clear, logical, and reader-friendly.

1 INTRODUCTION: FOR THE REGIONAL TRAINING TEAM (RTT)

1.1 SO YOU WANT TO BE A TEACHER

Teaching judgment writing is perhaps more difficult and less difficult than you might imagine.

It is more difficult in that experienced teachers can make it look easy; but their easy performance hides years of preparation, collecting examples, and learning by trial and error.

It is less difficult than it might seem in that you are already an expert in evaluating judgment writing - if only you would trust your instincts. If we can agree that anyone sufficiently literate to read a local newspaper ought to be able to read and understand a judgment that affects their lives, then any judgment or any part of a judgment that you find difficult to understand is probably not well written.

The trick, then, is to be able to identify what makes a judgment hard to read and to devise solutions for the problems.

The problems generally fall into just a few categories: a judgment that is hard to read may be poorly organized; it may have irrelevant information or unnecessary repetition; it may be riddled with pretentious jargon; it may commit numerous stylistic errors - the most common of which is using too many words to say something that could be expressed more efficiently. Another common error is to narrate the proceedings in a trial or hearing, one witness after another, instead of dividing the judgment into issues and putting the various bits of evidence under headings indicating the issues to which they are relevant. Once you learn to identify the problems, the solutions are relatively simple.

Readers often complain that judgments are too long. Obviously, some judgments must be long—particularly if they involve multiple issues, multiple parties, multiple charges, or all of these.

But judgments are often longer than they need to be.

1.1.1 What should a judgment include?

- Anything that influenced the decision;
- Anything the losing party reasonably thinks *ought* to have influenced the decision; and
- Anything about which a reviewing court might be curious.

1.1.2 What should a judgment exclude?

Everything else. Particularly information that has no bearing on the issues. Repeated information. Phrases that could be reduced or eliminated. A good editor has a ruthless blue (or red) pencil that he or she uses to get rid of all the “dead wood” - words that you don't need. As a general principle, every word should earn its right to be on the page.

Since the advent of word-processing programs, the cut-and-paste function is often too tempting for judges to resist. They cut and paste long passages from counsel's submission - “to let them know I've understood their argument,” they say.

Actually, cutting and pasting does not have that effect at all. It merely shows that the judge knows how to cut and paste. The best way for a judge to show that he or she understands an argument is to summarize it in his or her own words.

Cutting and pasting is also responsible for long, block quotations from statutes or precedents, sometimes with a few words in italics or bold face. Often, those few words are all the judge needs to quote. The rest can be paraphrased.

Insecurity is often the motive for this practice. Even experienced judges admit they are afraid that if they summarize the law they might “get it wrong.” Of course, if they can’t get it right, if they can’t express it clearly in their own words, they should be not be using it as the basis of a legal conclusion.

When there is a good reason to quote an entire passage from a statute or precedent, precede the quoted material with a summary in your own words or an indication of what inference you expect the reader to draw from it. In this way, if your readers skip the quoted material, they will still have the benefit of your summary or analysis.

Another common problem is poorly structured sentences. It’s not that the sentences are too long. That’s a myth. A sentence can be more than a hundred words long and perfectly readable if it is properly structured. And a sentence of four or five words can be unintelligible if it is poorly structured or laden with jargon. Still, it is a good idea to be suspicious of sentences that are more than two lines long. They are not necessarily bad; they are bad only if they are hard to read. When they are hard to read, the problem can usually be solved by dividing them into two or three shorter sentences.

Traditional legal writing is often loaded with legalese - words and phrases that, in a good newspaper, would be either defined parenthetically or replaced with ordinary English. Lawyers sometimes justify this language as precise and scientific, even though not one in ten could give a precise definition of *res gestae* or explain why a will is so different from a testament that both words must be used.

People are more likely to respect the law if they understand it. They will be cynical about the courts if they lose a case and cannot figure out *why* they lost. For this reason, judges should avoid technical, foreign, or legalistic words that could easily be replaced by ordinary English.

Former Justice Ian Binnie of the Supreme Court of Canada once said that judgments were written for grasshoppers: readers have to hop on the top, then hop down to the end, and then hop around middle of the judgment in search of what they need to know.

But your readers are not grasshoppers. They are human beings, accustomed to reading left to right, top to bottom. When asked how they read judgments, judges and lawyers often admit that they read exactly as Justice Binnie has indicated. This is a symptom of poor organization. The solution is to apply the metaphor of a “shotgun house” to organize a judgment.

This toolkit will provide you with the basic information you need to become a teacher on two different levels.

The first level is as a facilitator or breakout group leader. A facilitator provides participants with a checklist for evaluating and analysing judgments - and then lets them apply the checklist to their own work. This method can be used in individual tutorials, but many people find that it works best in small groups in which the students read one another’s work and make comments and suggestions. The benefit of group sessions for writers is that they get to see their own writing through the eyes of readers who do not know in advance what the writers are trying to convey. The benefit for readers is that when they spot errors in other people’s judgments they often realise they make the same errors in their own work.

The second level is as a lecturer. This requires selecting a topic that is directly or at least closely related to judgment writing. Lectures are often most effective when they are illustrated with examples - both positive and negative - drawn from actual judgments.

2 THE RAYMOND METHOD

What some people call “The Raymond Method” is a set of principles, practical suggestions, and pedagogical practices gleaned from classical and modern rhetoric as well as from more than thirty years of what might be called field studies - studying judgments in the presence of the judges who wrote them to determine what they were trying to say and, when necessary, to help them to say it more effectively. Some of “the method” is original; but a great deal of it is cobbled together from teachers and philosophers who have studied the art of writing over the course of more than two thousand years.

The method has three essential components:

- A model for organizing a judgment (based on a “shotgun house” metaphor);
- A five-step process for constructing a judgment; and
- A checklist for evaluating judgments and decisions in small-group workshops or individual tutorials.

Essential to all three components is an emphasis on issue-identification and analysis. This issue-driven approach turns out to be useful not just for writing judgments, but also for conducting efficient trials or hearings. And it is as useful for counsel preparing submissions as it is for judges crafting their judgments.

To help you apply the method in your own teaching, this toolkit includes three PowerPoint presentations: “The Shotgun House,” “Five Easy Steps,” and “A Checklist.” For convenience, all three presentations are included in the same file, called “Omnibus,” where they are separated by a few blank slides and title slides. The presentations include several opportunities for application exercises in which the participants are asked to write various parts of a judgment, and then to submit what they write for group discussion. The material for these exercises should be provided by the participants themselves - either judgments they have written in the past or judgments they are in the process of writing.

The first two presentations are designed to help you develop lectures. The third is designed to help you conduct group workshops or individual tutorials. It is generally more effective to use PowerPoint slides as “talking points.” The “talk” is more effective if it is delivered informally, in a conversational manner, inviting the participants to comment, ask questions, and otherwise interact during the presentation.

As you gain experience and develop your own teaching style, you will want to add your own examples to these presentations, even change the style and language of the slides themselves. This will help you master your material and make you a better teacher.

3 THE SHOTGUN HOUSE: A STRUCTURAL MODEL FOR JUDGMENTS

A shotgun house is a very simple structure: it has a front porch, a back porch, and a series of rooms in a straight line between them. Shotgun houses are very common in the southern part of the United States. A floor plan of a shotgun house would look something like this:

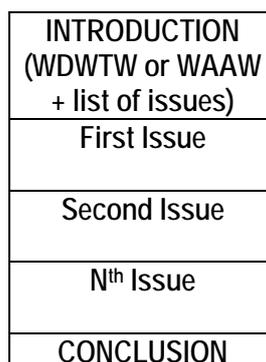


In a real shotgun house there are doors between the rooms, or a narrow corridor down one side. And there could be any number of rooms between the front porch and the back porch. But the basic structure is a metaphor for organizing 98% of judgments. Perhaps more.

The front porch is the introduction. It consists of a brief overview of the facts leading up to litigation - a story telling who did (or allegedly did) what to whom (WDWTW) or who's arguing about what (WAAW). It is almost always best to start with a brief narration - maybe half a page - telling the reader what happened *before anyone set foot in court*. *Not* the procedural history.

A story of this sort provides the context from which the issues arise. It helps the reader understand what's at stake. It lets the litigants know that the judge understands why they are willing to risk the expense, anxiety, and uncertainty of litigation to resolve their issues. And grounding the judgment in a concrete fact situation makes the legal analysis easier for everyone to follow. The introduction should end with a list of issues to be decided - and these issues become the major headings in the body of the judgment.

That back porch is the conclusion. The issues are analysed in the rooms between the front porch and the back porch.



There can be numerous variations on this basic structure. There is no limit to the number of issues that could be raised in litigation, each requiring a room of its own. There could be alternative issues, or alternative arguments about the same issue.

Normally it is possible to move directly from the introduction to the analysis of the first issue. Often, however, judges put all sorts of information about the history of the case (which we probably don't need) or the evidence heard, before they get around to analysing the issues.

Sometimes, however, it is helpful to add a background section between the introduction and the analysis of the issues. Background information can be justified before the analysis of issues in three situations:

- When there are facts common to more than one issue;
- When the same law applies to more than one issue; and
- When there are questions of procedure that still need to be resolved.

When any of these conditions is met, use “BACKGROUND” as a heading to separate the introduction from the analysis of the issues.

INTRODUCTION (WDWTW or WAAW + list of issues)
Background
First Issue
Second Issue
Nth Issue
CONCLUSION

And sometimes it is helpful to treat the issue headings as subheadings under a section called “Analysis.” Like this:

INTRODUCTION (WDWTW or WAAW + list of issues)
BACKGROUND
ANALYSIS First Issue Second Issue N th Issue
CONCLUSION

In many Pacific Island Countries, land law is “customary” or “traditional.” The traditions are generally passed down orally from one generation to the next. They are not codified. They may vary from year to year and even from island to island within a particular country. Land is often owned in common by an extended family group (“bwij” or “jowi” in the Marshall Islands); fee simple ownership may be rare, or even non-existent.

Despite these individual and local differences, the underlying logic of the law remains the same. The judge must determine the facts and decide which law, tradition, or precedent applies to them. The judge must also determine the issues - not just the BIG issues, like who is entitled to use a particular parcel of land or to cultivate a crop on it - but the constituent issues, like whether a will has been validly attested or whether a grant of land should devolve through matrilineal or patrilineal lines, or not at all. These issues may involve questions of law or questions of fact raised by the parties or sometimes by the judge. Resolving them requires local knowledge and expertise.

The patterns of analysis in resolving these issues are no different from those that are common in conventional, western law. See below, section 4.4.

Resolving land and title issues in the Republic of the Marshall Islands (RMI) may be unique in that when a land dispute arises in the High Court, it is generally referred to the Traditional Rights Court (TRC) for resolution. The High Court asks the TRC to answer specific questions - the big issues that need to be resolved in a particular case. The High Court gives great deference to the decisions of the TRC, but prefers that the TRC provide clear reasons for those decisions.

For this purpose, a modification of the “shotgun house” outline has been devised to reflect the flow of litigation from the High Court to the TRC and back again. Although the outlines below are intended for use of the TRC in the Marshall Islands, they may well be useful for traditional courts in other island countries depending on the hierarchical structure of the local judiciary.

I. When the High Court Asks the TRC to Answer One Question.

1. Start with a helicopter view (*Who Did What to Whom* or *Who's Arguing about What*).
2. Copy and paste the question immediately after your helicopter view.
3. Give a short answer to the question and then explain - very briefly - why you answered it that way.
4. List the “constituent issues” if any - the specific questions of fact and law that you had to resolve before you could answer the big question.
5. Turn the constituent issues into **boldfaced questions** and use them as headings.
6. Resolve each constituent issue (LOPP/FLOPP or IRAC*).
7. Write a conclusion, adding any other matters you think are “important to be made known.”

INTRODUCTION (WDWTW or WAAW)
Question Posed by High Court Followed by Short Answer & Why Followed by List of “Constituent Issues”
First Constituent Issue LOPP/FLOPP or IRAC (Conclusion)
Second Constituent Issue LOPP/FLOPP or IRAC (Conclusion)
Nth Constituent Issue LOPP/FLOPP or IRAC (Conclusions)
CONCLUSION Plus summary of reasons if the case is complex. Plus “Other matters the court panel deems important to be made known.”

* For an explanation of LOPP, FLOPP, and IRAC, see section 4.4 below.

II. When the High Court Asks the TRC to Answer *More than One* Question.

1. Start with a helicopter view (*Who Did What to Whom or Who's Arguing about What*).
2. Copy and paste each question immediately after your helicopter view.
3. Give a short answer to each question, and then explain - very briefly - why you answered it that way.
4. Turn the High Court's questions into **boldfaced headings**.
5. Under each heading turn the "constituent issues" into *italicized questions* and use them as subheadings.
6. Resolve each constituent issue using OPP/FLOPP or IRAC.
7. Write a conclusion, adding any other matters you think are "important to be made known."

<p>INTRODUCTION (WDWTW or WAAW)</p>
<p>Paste questions posed by the High Court. Follow each question with a short answer and why (because ...)</p>
<p>First Question Asked by HC <i>First Constituent Issue</i> LOPP/FLOPP or IRAC (Conclusion) <i>Second Constituent Issue</i> LOPP/FLOPP or IRAC (Conclusion) <i>Nth Constituent Issue</i> LOPP/FLOPP or IRAC (Conclusion)</p>
<p>Second Question Asked by HC <i>First Constituent Issue</i> LOPP/FLOPP or IRAC (Conclusion) <i>Second Constituent Issue</i> LOPP/FLOPP or IRAC (Conclusion) <i>Nth Constituent Issue</i> LOPP/FLOPP or IRAC (Conclusion)</p>
<p>Nth Question Asked by HC <i>First Constituent Issue</i> LOPP/FLOPP or IRAC (Conclusion) <i>Second Constituent Issue</i> LOPP/FLOPP or IRAC (Conclusion) <i>Nth Constituent Issue</i> LOPP/FLOPP or IRAC (Conclusion)</p>
<p>CONCLUSION Plus summary of reasons if appropriate. Plus "Decision plus other matters the court panel deems important to be made known."</p>

4 WRITING A JUDGMENT IN FIVE EASY STEPS

Litigation is a messy business. In the courtroom, the decision maker often struggles to get a handle on what looks like this:



The decision maker's job is to sort through this mess, determine what is relevant and what is superfluous, and then reduce the whole thing to something as tidy as a shotgun house. Unless he or she does this, the judgment is likely to be as messy and incoherent as the trial itself.

The "Raymond Method" provides five steps for constructing an orderly, reader-friendly, issue-driven judgment:

1. Identify the issues and write a case-specific heading for each;
2. Arrange the issues in a sequence that makes sense;
3. Write a beginning, telling the story that gives rise to the issues;
4. Analyse each issue; and
5. Write a conclusion.

Although these five steps are presented in what is arguably the most logical sequence, it is not the *only* sequence. Some judges prefer to write the first paragraph first, or to analyse the issues before doing anything else. Others write the conclusion first, and then write the analysis leading to the conclusion. It is not necessary to follow the steps in the order listed, but it *is* necessary to perform them all eventually. You cannot analyse issues unless you have identified them. And a judgment would be incoherent if the issues were not arranged in an orderly fashion, and incomplete if it lacked an introduction and a conclusion.

4.1 IDENTIFY THE ISSUES AND WRITE CASE-SPECIFIC HEADINGS

Issues are what the litigants are arguing about. They might be arguing about the facts. Or they might be arguing about the law. Or they might be arguing about both.

At the trial level, every element in the statement of claim or every element in the statutory definition of a crime *can* be an issue. But practically speaking, the issues are those elements of the claim or the charge that the respondent or defendant contests.

There are big issues - global issues - like whether a tenant owes rent to a landlord, or whether a defendant is guilty of illegally selling beer on Sunday. But the big issues generally turn on what might be called "constituent issues." In a dispute between a landlord and tenant, the constituent issues might be whether there was a contract, or whether the landlord had for some reason forfeited his or her entitlement to rent, or whether the tenant had in fact made payments. In a case about the illegal sale of alcohol on Sunday, the

constituent issues might be whether the prosecution had correctly identified the person charged, or whether the transaction occurred at all, or whether the beer had been purchased legally on Saturday night and merely collected by the purchaser on Sunday. The constituent issues should become the headings in a shotgun house judgment.

In civil cases a judge can often discover the constituent issues simply by asking the responding party why the plaintiff is not entitled to whatever he or she is claiming. A tenant might say, for example, "That's not my signature on the contract," or might say "I did pay the rent, not in cash, but in repairs I made to the dwelling." Those would be the real issues, the points of contention raised by the responding party. They can be framed as questions to appear at the end of the introduction and used as headings, to divide the judgment into logical parts. The issues might be these:

Was there a valid contract?

Was it signed by the respondent?

What did it require?

Did it allow for alternate means of payment?

Has the respondent violated the contract?

In criminal cases, defence attorneys may be reluctant to identify the issues before the trial begins. Defence attorneys generally like to hear the prosecution's evidence before they identify the elements that have not been proven beyond a reasonable doubt. Those are the issues. Unrepresented defendants are not likely to understand this legal strategy, so asking them to state their defence at the outset may cause them to make self-incriminating statements that they would not make if they were represented by competent counsel.

In a case regarding the illegal sale of alcohol the defendant might admit to allowing a customer to collect beer on a Sunday morning, but the actual sale had occurred the night before. What happened on Sunday was merely transferring goods that had been already purchased legally. These might be the issues:

When did the purchase take place?

Does the law allow the delivery on Sunday of alcoholic beverages previously purchased?

In an introduction, issues can be expressed as "that" statements. For example, in a medical malpractice case, the issues might be stated this way:

Dr. Wong argues that his treatment of Mr. Addison was consistent with the standard of care in emergency room treatment, that his alleged negligence did not cause Mr. Addison's subsequent pain and suffering, and that therefore there should be no award of damages.

Or they may be expressed as "whether" statements:

I must decide whether Dr. Wong failed to meet the standard of care of an emergency room physician in his care and treatment of Mr. Addison, whether Dr. Wong's alleged negligence caused any damage to Mr. Addison, and if so, what would be the appropriate amount of compensation for damages.

Or they may be expressed as questions:

1. Did Dr. Wong fail to meet the standard of care of an emergency room physician in his care and treatment of Mr. Addison?
2. Did the alleged negligence of Dr. Wong cause any damage to Mr. Addison?
3. What is fair compensation for Mr. Addison's damages?

At the end of the introduction, issues may be in bullet point form, or they may be in paragraph form, as long as each issue is phrased succinctly enough to be used as a heading or subheading. As headings, however, particularly in judgments (as opposed to pleadings), issues are best stated as questions.

4.2 ARRANGE THE ISSUES IN A SEQUENCE THAT MAKES SENSE

In a poorly written judgment, headings, if they exist at all, have no apparent logic. They merely announce topics, not issues. Sometimes they seem to be added after the judgment has been written, in an effort to give it an appearance of order.

Headings should be logically arranged: first things first (e.g., jurisdiction, venue, identification of the accused if it is challenged); last things last (e.g., sentence, damages, costs). Although there is no universal rule about typography for headings, they should be in a font - boldface, italics, or underlined - that makes them stand out from the rest of the text.

Sometimes issues are logically independent, and therefore can be addressed in almost any sequence. For example, if the issues are whether sugar ordered by a retailer was delivered on time, whether the sugar was in acceptable condition when delivered, and whether the quantity of sugar in the shipment was what was specified in the contract - these issues are logically independent and could be addressed in any sequence. However, the judge might choose a particular sequence based on considerations other than logic - perhaps beginning with the issue or issues on which the applicant fails followed by the issue or issues on which the applicant succeeds.

Sometimes, however, there is a logical interdependence among the issues: some have to be resolved before the others can be addressed. For example, if the respondent contests the court's jurisdiction, that issue has to be decided first. Or if the defendant raises a question of identification, that issue has to be decided before the elements of the offence can be considered. There is no point in deciding the elements of a charge or the particulars of a complaint or indictment if the court lacks jurisdiction or if the prosecutor or plaintiff cannot prove that the person named is the one who committed the offence. These are called threshold issues.

Sometimes issues other than threshold issues require a particular arrangement. If for example the issues in a case between a manufacturer and a merchant are what the contract specified, what damages are due to the plaintiff, whether there was a valid contract, and whether it was breached, it would not make sense to treat them in that order:

INTRODUCTION
What were the terms of the contract?
What damages are due to the plaintiff?
Was the contract valid?
Was it breached?
CONCLUSION

A more logical sequence would be this:

INTRODUCTION
Was the contract valid?
What were the terms of the contract?
Was it breached?
What damages are due to the plaintiff?
CONCLUSION

If the first issue is resolved in the negative - that is, if the court finds that the contract was not valid - there would be no reason to address the other issues. Similarly, if the third issue is resolved in the negative - that is, if the court finds that the contract was not breached - there would be no reason to address the question of damages.

In criminal cases, the statutory elements are often arranged in a logical sequence and can be turned into headings to organize the body of a judgment. For example, if the charge is sexual assault, the statutory elements (that is, the offence as defined in the criminal code) might be turned into issues / questions like these:

- Did the accused touch the complainant?
- Was the touching deliberate?
- Was it sexual?
- Was it consensual?

The accused might admit some of the elements. Those elements are not really issues. Only the contested elements are issues. If, for example, the accused admits touching the complainant, but denies that it was deliberate (claiming, perhaps, that the touching occurred on a crowded bus making a sudden stop or turn), then the first element (Did he touch her?) is *not* an issue. But the second element is. If the prosecution cannot prove beyond a reasonable doubt that the touching was deliberate, then the defendant must be acquitted without even addressing the other questions. Sometimes a defendant will concede all the elements except the last one: the defendant claims the touching was consensual, the complainant contends the opposite. In a case like this, there would be only a single issue, and it would be up to the prosecution to prove beyond a reasonable doubt that the touching was not consensual.

4.3 WRITE A BEGINNING

An effective beginning does three things:

- It tells Who (Allegedly) Did What to Whom (WDWTW) or Who's Arguing about What (WAAW) *before anyone set foot in court*;
- It sets out the issues to be decided in the order in which they are to be decided; and
- It omits details (names, dates, procedural history, citation of laws or precedents) that have nothing to do with the issues at hand.

In other words, it sets out a "helicopter" view of the facts, followed by a list of constituent issues that the court needs to resolve en route to resolving the case as a whole. It does this without legal jargon and without an alphanumeric soup of citations. If possible, it refers to parties by name, resorting to their positions in court (e.g., plaintiffs, defendants) only when names are not practical (e.g., when there are multiple plaintiffs or defendants).

The helicopter view should be a brief story, composed of uncontested or stipulated facts. If necessary, it can also include contested facts, introducing them with words like “allegedly” or “Mr. Puni contends that...” to let the reader know the validity of these assertions that had to be settled at trial. The introduction should be very short, less than half a page if possible, but no more than one full page. And it should be limited to the facts we need in order to understand the issues that follow.

A conventional beginning, on the other hand - the sort of beginning we would like to avoid - starts out with a procedural history, or a copy of the charge or indictment, or reference to laws that will be applied before we have enough information to know why these laws might be relevant. A conventional beginning often includes details that have no relevance to any of the issues.

The function of a beginning is to provide a context for the issues. In a case involving the sale of alcohol on Sunday, the judge might determine that these are the issues:

- Whether by entering her canteen through a side door Ms. Tavita opened it for business as defined by law;
- Whether Mr. Motumua had in fact purchased the beer on the previous night; and
- If so, whether allowing him to collect the beer that been had purchased earlier constitutes the sale or supply of an alcoholic beverage.

The language is clear enough. But as a reader, you might wonder how these issues arose. A good beginning would satisfy your curiosity like this:

According to two witnesses, Mrs. Eseta Tavita opened her canteen on Sunday, 23rd March 2011 at about 1300hrs and sold beer to Mr. Kaisami Motumua. She has been charged with violation of Section 93(1) of the Alcoholic Drinks Act, which prohibits the sale or supply of alcoholic drinks on Sunday.

Ms. Tavita says she did not actually open her canteen for business, but merely opened a side door to allow Mr. Motumua to get two cases of beer he had accidentally left there after paying for them the night before.

This court must decide three issues:

1. Whether Ms. Tavita opened her canteen for business as defined by law;
2. Whether Mr. Motumua had in fact purchased the beer on the previous night; and
3. If so, whether allowing him to collect the beer that had been purchased earlier constitutes the sale or supply of an alcoholic beverage.

These issue statements could be turned into questions and used as headings.

INTRODUCTION
Did Ms. Tavita open her canteen for business?
Had Mr. Motumua purchased the beer the night before?
Did allowing him to collect beer he had previously purchased constitute the “sale or supply of alcoholic drinks” as defined by Section 93(1) ?
CONCLUSION

4.4 ANALYSE EACH ISSUE

When teaching legal writing it is impossible to avoid going into a bit of legal reasoning. The two are inseparable.

In the South Pacific, there are differences between an inquisitorial system of law (i.e., a system derived from Napoleonic or continental law) and an adversarial system. Local jurisdictions generally reflect the history of colonialism: the adversarial (or common law) system usually survives in places once colonized by the British; the inquisitorial (or continental) system usually survives in places once colonized by the French. Some jurisdictions are a mixture of the two.

In an inquisitorial system, judicial precedent is generally not binding, attorneys are not permitted to ask questions of the witnesses, and judges are required to deliver only their findings of facts and law - not the arguments advanced by the parties. In this system judges may feel free to raise questions that the parties themselves have failed to raise, whereas in the adversarial system judges, at least in theory, act as referees and they are careful *not* to raise issues lest they be perceived as advocates rather than impartial judges.

In an adversarial system, judges defer to courts above their own in applying the law or rules of procedure. In addition, in an adversarial jurisdiction judges often explain why the losing party has lost. By explaining each side's position, the court can make the parties, particularly the losing party, feel heard. This is a very important function of judgment writing, and it can be accomplished with a LOPP / FLOPP pattern of analysis.

When the litigants are arguing about the law - each side saying the other side has cited the wrong law or perhaps has misinterpreted the right law - the simple formula LOPP / FLOPP / Conclusion usually works as a pattern of analysis. LOPP stands for the losing party's position. FLOPP explains the flaw in that position.

LOPP: Mom wants a court in Australia to decide custody under the Hague Convention.

FLOPP: However, Kiribati is not a signatory to the Hague Convention.

Conclusion: Therefore, the Hague Convention does not apply to this case.

LOPP: Alliance Inc. claims its policy limits payment of hospital bills for employees to \$2,000.

FLOPP: However, that policy is at variance with the collective bargaining agreement.

Conclusion: Therefore, the employee is entitled to payment of reasonable hospital bills for a condition incurred while he was employed by Alliance.

Sometimes the conclusion is so obvious from the LOPP and the FLOPP that it does not have to be explicitly mentioned.

Notice that the "law" in question could be a statute, an ordinance, a judicial precedent, a contract, a constitutional provision. For questions of law it is usually unnecessary to put the winning party's position if that position is the same as the court's.

For questions of fact, however, it is usually necessary to summarise each party's position, and then indicate which version the court accepts.

The mother says the father left the infant child unattended for twenty-four hours.

Five unrelated neighbours testified that the father was with the child for the entire period in question.

The court finds... because...

The prosecution has presented evidence that the accused was at the scene of the robbery in Honiara.

The mother of the accused testified that he was attending a tea party with her in Rarotonga at the time.

The court finds that... because...

For findings of fact, you can arrange the allegations of each side in either sequence; it is not necessary to put the losing party's position first. An essential part of resolving a question of fact is the "because" clause in the conclusion. Writing the *reason* for accepting one version of the facts is insurance against relying on certain types of evidence that are known to be unreliable (e.g., eye-witness identification, demeanour of a witness). In addition, if a judgment is appealed, the reviewing court needs to know what evidence the court of first instance relied on in making its finding.

Even if the decision maker has no formal training in law, it is important for him or her to bear in mind a few legal principles, like "burden of proof" and "standard of proof." These terms may seem a bit technical, but they are not difficult to understand, and they are essential to making legally sound findings.

"Burden of proof" refers to who is responsible for proving the alleged facts. Normally it is the moving party - the plaintiff in civil cases, the prosecutor in criminal cases. If the party with the burden fails to provide convincing evidence for his or her version of the facts, the other party automatically wins, even if the he or she says nothing at all.

"Standard of proof" refers to how solid the evidence has to be for a judge to make a decision. In civil cases, the standard is "the balance of probabilities." This means that unless you find the plaintiff's position to be the more likely story, the respondent wins the case.

In criminal cases the standard of proof is "beyond a reasonable doubt." This doesn't mean absolute certainty - there are few things in life about which we can be absolutely certain. But it does mean that you are as sure as a person can be short of absolute certainty. This is because in an effort to avoid convicting innocent people, our laws say all accused people are presumed to be innocent unless the prosecution can prove otherwise with evidence that leaves no reasonable doubt.

The accused doesn't have to say anything at all. It is always (with a few exceptions) up to the prosecution to prove every contested element of the offence beyond a reasonable doubt; it is *not* up to the accused to prove his or her innocence.

In criminal cases, it is the prosecutor's evidence you should regard with a sceptical eye, not the defendant's. You must determine whether the prosecutor's evidence, *in itself*, proves the defendant's guilt beyond a reasonable doubt, regardless of what the defendant says or fails to say.

In addition to questions of law and questions of fact there is a whole host of questions that rely on judicial discretion: sentencing, for example, custody and visitation, damage awards, and whether someone should be released on bail. Often the law (statute or precedent) provides the judge with a list of factors to be taken into consideration when making decisions like these. The factors can be the headings or subheadings of a judgment. If the law does not specify factors, the judge does well to discover what he or she has in fact taken into consideration in reaching a decision and to make those factors clear in heading or subheadings.

When the resolution of a question depends upon the consideration of factors or tests, it may be useful to organize the analysis according to a traditional pattern known by the acronym IRAC: Issue, Rule, Application, Conclusion. The issue can be stated in the heading, followed by the rule, then the facts (application) and the conclusion. Like this:

Should the Accused be Released on Bail?

The guidelines for granting release on bail are...

In this case, the relevant facts are...

Therefore, the accused is (is not) granted release...

4.5 WRITE A CONCLUSION

In simple cases - cases that take up more than, say, five pages in a judgment - the conclusion can be simple:

For the reasons above, the court finds (or I find) that... and orders that...

In explaining findings and orders, judges should be careful not to retreat into legal terminology that is well known to the lawyers, but baffling to other readers. A phrase like "Costs to the applicant," for example, is generally clear to people trained in law - but meaningless to litigants who are not legally trained.

Many readers skip to the end of judgments because all they care about is the result. If you want them to see your reasons as well, summarise them at the end, just before the conclusion orders.

Here is an example of an ending that summarises the judge's reasons in an Australian case in which young people were accused by a neighbour who observed them from some distance smoking what she alleged was marijuana:

Given the serious consequences for the respondents, the Court must carefully consider the quality of the evidence received, particularly as the complainants cannot be subjected to cross-examination. Many of the allegations are lacking in sufficient detail to establish that the alleged activity occurred at the premises at 2318 Retallack Street.

There is very little detail about the involvement of the respondents in the alleged activity; there is insufficient detail to rebut the respondents' submission that the teenagers seen smoking were smoking cigarettes and not smoking marijuana; and, finally, there is little evidence to contradict the respondents' submission that the complaints have been exaggerated at the instigation of their next door neighbours.

For these reasons, I am not satisfied that an inference, on the material before me, can be properly drawn that 2318 Retallack Street is habitually used for illegal drug activity.

Accordingly, the application is dismissed.

Sometimes a judgment can be made stronger by adding a "to-rule-otherwise" argument. This means telling the readers what bad things might happen if the court were to rule the opposite way.

Here is an example of a to-rule-otherwise argument. The case involves a claimant in Palau who was seeking title to land he says was once owned by his clan, but he has no evidence to support his claim.

If the Court allows this Plaintiff to prosecute this action based on its single unsupported claim to "ownership," it would invite scores of similar suits against the Republic. Individuals and clans will see that they can bypass the established mechanisms for the return of public lands, or get a second bite at the apple, simply by filing an action to quiet title based solely on some unsupported claim of "ownership." The amount of resources the Republic would have to expend to defend these cases—including the discovery necessary to try to divine the bases for such unsupported claims of "ownership" - and the burden on the courts in shepherding this litigation, would be unfathomable.

Arguments from consequence are not necessarily "legal" arguments - but they can make a decision seem fair and reasonable.

Sometimes an ending can be used to educate the public or the press. If a notorious crime goes unpunished because the prosecution has been unable to provide evidence beyond a reasonable doubt, it may be wise to explain how the rules of evidence protect everyone from government repression or overzealous prosecution.

5 USING THE CHECKLIST

Lectures can illustrate common problems and practical solutions in judgment writing. But lectures alone are never sufficient in a writing course, any more than lectures would be sufficient to teach rugby or dance or violin. To learn any skill - including writing - students must attempt to put the principles into practice and then have a teacher or coach review their work and, if necessary, make suggestions for improvement.

An essential part of "the method" is to have participants submit writing samples a week or so before the course. Usually one sample per participant is sufficient. Study these samples in advance, looking for both good and bad passages that you can discuss with the writer. Sometimes you can use these passages as examples in your PowerPoint presentations. If you find examples of good writing, there is no harm in identifying the author; but make sure examples of bad writing are presented in a way that the writer's identity cannot be detected. Be prepared: when participants send you writing samples in advance, they expect you to read and respond to them - either in a personal conference or by way of comments and suggestions written on the sample itself. You may find this easier to do if the samples are submitted in an electronic format.

Another essential part of the method is to have the participants write during the course itself, and to discuss their work with one another and with their breakout group leader. The writing assignments can be based on the samples submitted in advance, or if the participants prefer, they can write about any case they know well - a judgment they have written in the past or one they are currently drafting.

When critiquing what the participants write, be honest but diplomatic. People are sensitive to criticism of their writing. We don't mind being told that our knowledge of nuclear physics or Egyptology is lacking. But our writing is so much a part of ourselves that we feel personally attacked if someone criticizes it. In addition, whatever we write generally looks good to ourselves, in part because we already know what we're trying to say. Consider making your suggestions in the form of questions. "Do we really need to know the names of counsel?" "Could we eliminate this repetition by putting the information once, in this place?" "Would it be more helpful to start with the facts leading up to the case instead of with the procedural history?"

Let the participants talk first. Make your own comments and suggestions after everyone else has had a chance to provide theirs. Expect that members of a breakout group will hesitate to say anything about the writing submitted by other members of the group. Part of this hesitancy is polite respect for the writers but part of it may be insecurity based on a belief that writing is a mysterious craft that ordinary people do not know how to evaluate.

Participants are not likely to succeed completely at first. This is normal. We call the method "Five Easy Steps," but in fact the steps are not easy. Judgment writing is an art, not a simple process that can be reduced to a recipe.

A "Checklist for Judgments" is provided in this toolkit in two forms: Microsoft Word and a PowerPoint presentation. You can use either form, or both, to focus the discussion in one-on-one tutorial sessions or in a breakout groups.

The checklist can be used as part of a writing workshop, but it also can be used to conduct follow-up sessions conducted by members of the RTT either in person or with distance learning technologies. Follow-up of this sort is essential if the lessons learned in workshops are to have any lasting effect.

6 A CHECKLIST FOR JUDGMENTS AND DECISIONS

Read the First Page

- Does it say who (allegedly) did what to whom (WDWTW) or who's arguing about what (WAAW) *before anyone set foot in court, in a nutshell, without legal jargon?*
- Does it include names, dates, procedural history, and citation of laws or precedents that have nothing to do with the issues at hand?
- Does it announce the issues in a predictive sequence, *without clutter but not too abstractly?*

Read the Headings

- Have the issues listed in the introduction been turned into questions and used as headings?
- Would the headings make sense to a non-lawyer?
- Are they arranged in a sequence that makes sense?
- If there are additional headings, are they necessary, logical, and helpful?

Read the Background Section (If There is One)

- If it provides procedural history or names of counsel, do we really need this information?
- Is it justified because it contains facts or law relevant to more than one issue?

Read the Analysis of the Issues

- If it is a question of law, does the analysis include an impartial statement of the losing party's position followed by its flaw, clearly stated?
- Is the controlling law or principle cited?
- If it is a question of fact, does it summarise each party's evidence?
- Does the evidence justify the finding?
- Are the standard and burden of proof correctly applied?
- Has the writer made the mistake of narrating the trial or hearing instead of dividing the evidence according to the issues?

Is It Written for Grasshoppers?

- Does the reader have to jump from beginning to end to middle?

Read the Conclusion

- Is the order written in language that would be clear to your next-door neighbour?
- If appropriate, is the analysis succinctly summarised?
- If appropriate, are the consequences of the ruling explained?

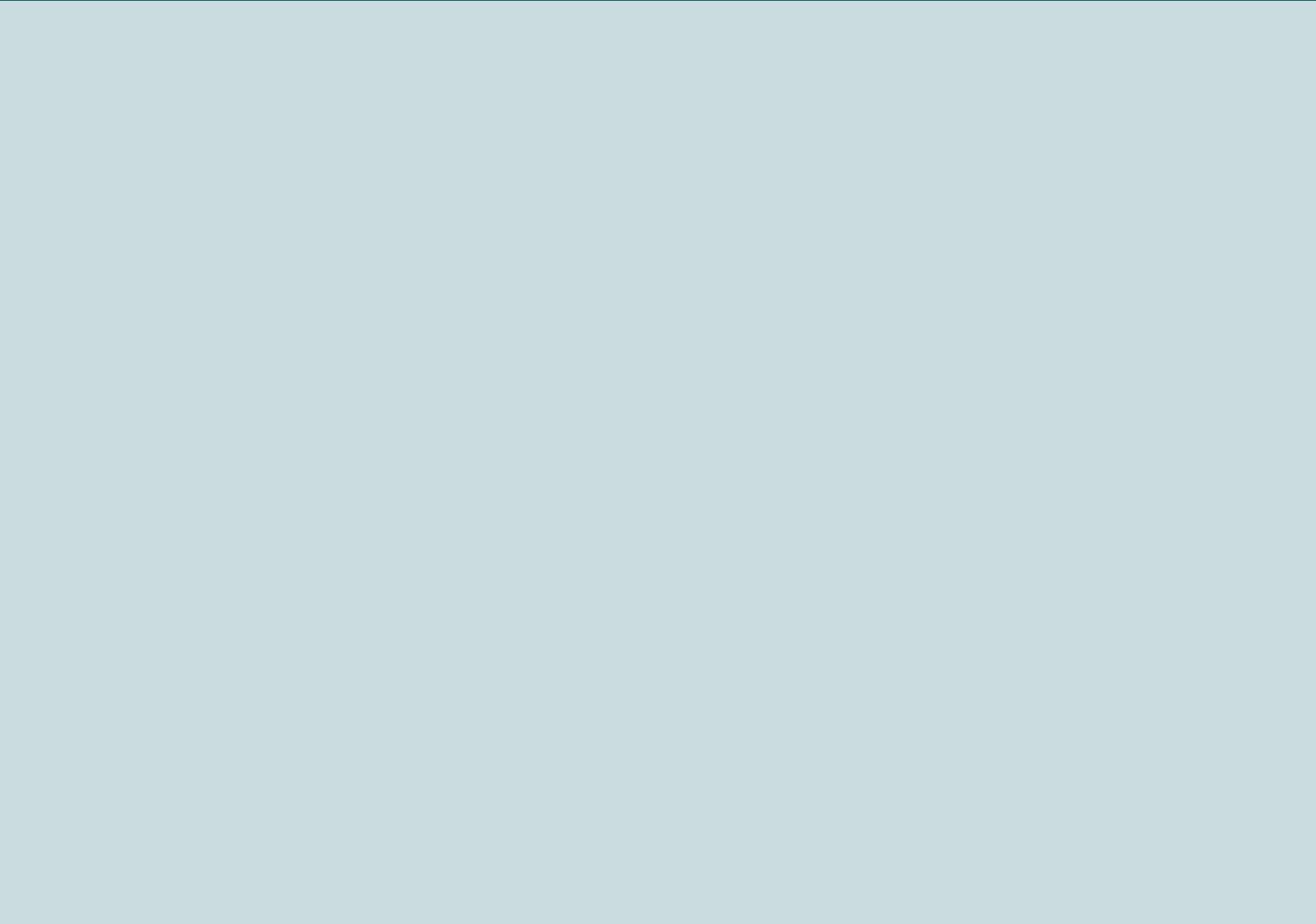
On the whole...

- Are there any words or phrases (e.g., jargon, Latin, or legalisms) that would seem out of place in a good newspaper?
- Are there any sentences more than two lines long that should be broken up?
- Is there any repetition that could be eliminated?
- Does it contain huge patches of cutting and pasting from the parties' submissions (instead of succinct summaries)?
- Does it contain block quotations that are not preceded by summaries?
- What, if anything, could be left out?
- What, if anything, should be added?
- What, if anything, is repeated?
- Will impartial readers feel that the losing party had a fair hearing?
- Will impartial readers be persuaded by the result?



JUDICIAL DECISION-MAKING TOOLKIT - ADDITIONAL DOCUMENTATION

Available at: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>



ANNEX 1: POWERPOINT PRESENTATION

The Shotgun House



A presentation developed by
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 Pacific Judicial Development Programme

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FRONT PORCH
BACK PORCH



INTRODUCTION
BACK PORCH



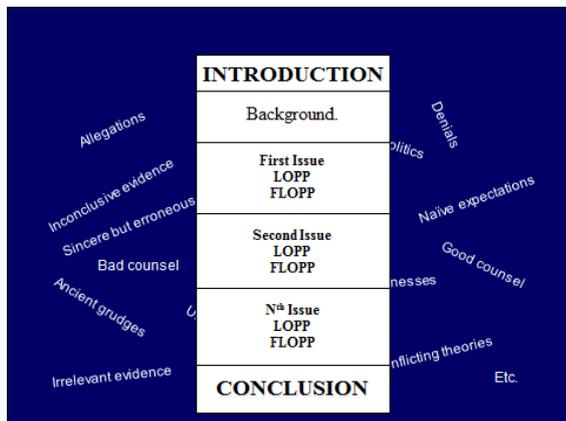
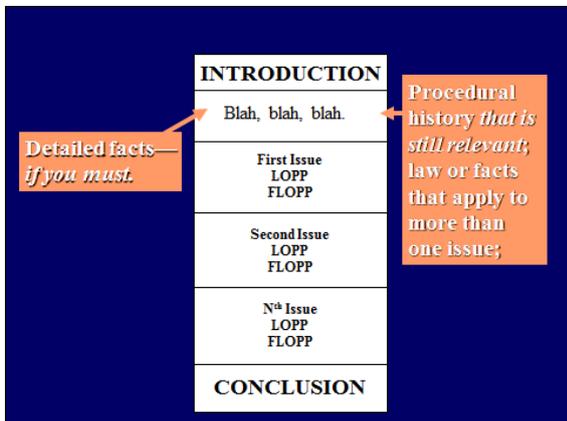
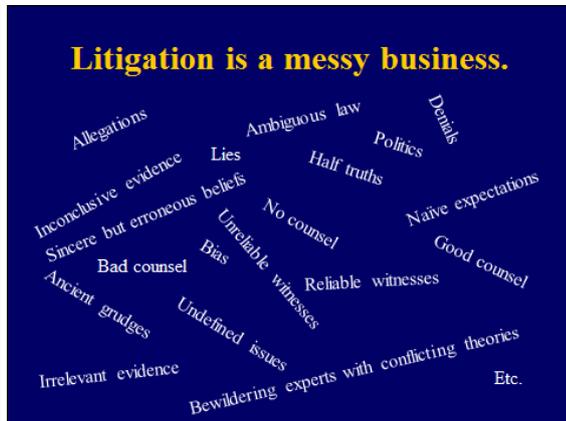
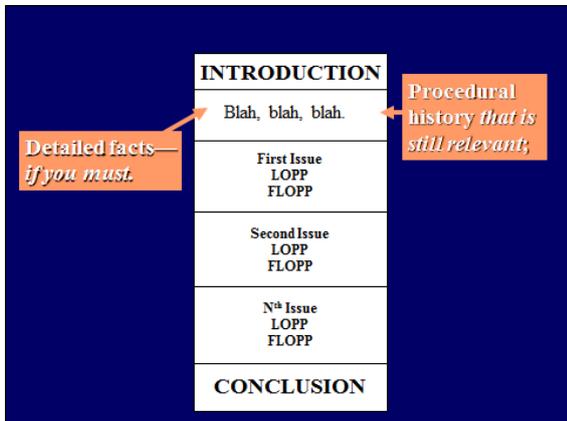
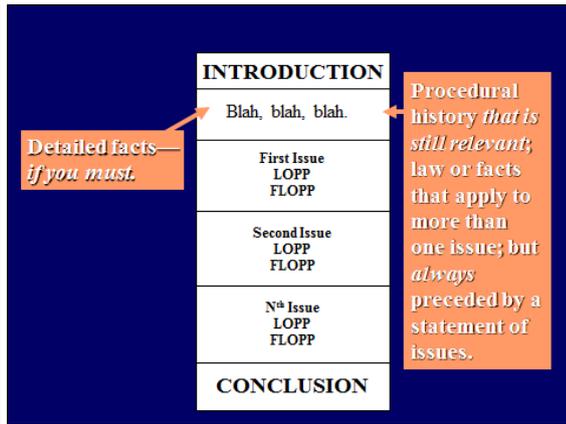
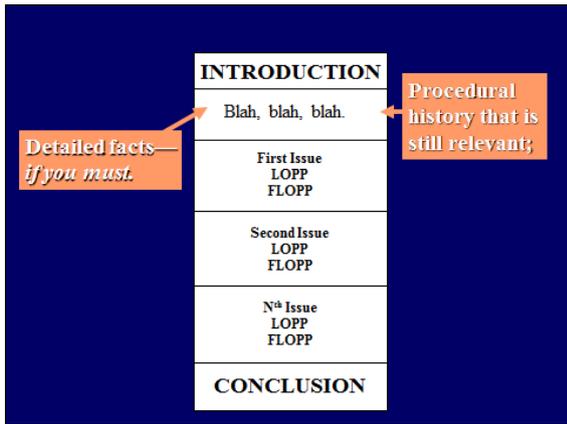
INTRODUCTION
First Issue LOPP FLOPP
Second Issue LOPP FLOPP
N th Issue LOPP FLOPP
CONCLUSION

WDWTW/
WAAW +
issues in a
predictive
order.

Detailed facts—
if you must.

Analysis &
disposition of
each issue.

Recapitulation
& order.



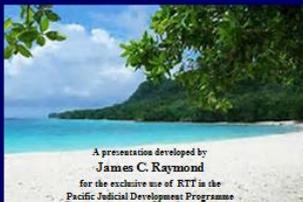
The challenge is to reduce something as messy as this . . .

The challenge is to reduce something as messy as this to something as tidy as a shotgun house.

The challenge is to reduce something as messy as this to something as tidy as a shotgun house.

To meet this challenge, consider following the Raymond method: "Five Easy Steps."

Five Easy Steps



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Where do you find the issues?

In civil cases: in the respondent's statement of defence.

In criminal cases: in the statutory elements that are not conceded by the accused.

Five Easy Steps

1. Identify the issues and write a case-specific heading for each.
2. Arrange the issues in a sequence that makes sense.
3. Write a beginning, telling the story that gives rise to the issues.
4. Analyse each issue.
5. Write a conclusion.

When do you find the issues?

If possible, before the trial or hearing begins.

Five Easy Steps

1. Identify the issues and write a case-specific heading for each.

Generic Headings

Findings of Fact	Issues Presented
Introduction	Statement of the Case
Background	Jurisdiction
Authorities Cited	Applicant's Contentions
Analysis	Respondent's Arguments
Order	Sentence
Costs	Conclusion

Case-Specific Headings

- Was there a valid contract?
- Was it signed by the respondent?
- What did it require?
- Did it allow for alternate means of payment?
- Has the respondent violated the contract?

Application Exercise

Write the issues in a case you know well—either one you sent in advance or another one, perhaps one you are currently working on. Make sure they are in plain language that your non-lawyer friends could understand.

Case-Specific Headings

Did the accused touch the complainant?

Was the touching deliberate?

Was it sexual?

Was it consensual?

Application Exercise

Write the issues in a case you know well—either one you sent in advance or another one, perhaps one you are currently working on. Make sure they are in plain language that your non-lawyer friends could understand. Keep them brief enough to be used as headings.

Application Exercise

Write the issues in a case you know well—either one you sent in advance or another one, perhaps one you are currently working on.

Application Exercise

Write the issues in a case you know well—either one you sent in advance or another one, perhaps one you are currently working on. Make sure they are in plain language that your non-lawyer friends could understand. Keep them brief enough to be used as headings. Try to keep them parallel in form.

Application Exercise

Show your issue statements to your study partner(s).

Five Easy Steps

1. Identify the issues and write a case-specific heading for each.
2. Arrange the issues in a sequence that makes sense.

Application Exercise

Show your issue statements to your study partner(s). Ask for advice and suggestions.

Independent issues can be arranged in almost any sequence.

- Whether the sugar was delivered on time.
- Whether the correct quantity of sugar was delivered.
- Whether the sugar was in acceptable condition when delivered.

Application Exercise

Show your issue statements to your study partner(s). Ask for advice and suggestions. Then return the favor.

Independent issues can be arranged in almost any sequence.

Whether the sugar was delivered on time.
Whether the sugar was in acceptable condition when delivered.
Whether the correct quantity of sugar was delivered.

Independent issues can be arranged in almost any sequence.

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Whether the correct quantity of sugar was delivered.
Whether the sugar was delivered on time.

Independent issues can be arranged in almost any sequence.

Independent issues can be arranged in almost any sequence.

Whether the correct quantity of sugar was delivered.
 Whether the sugar was delivered on time.
 Whether the sugar was in acceptable condition when delivered.

Interdependent issues should follow a logical sequence

What did the contract specify?
 What are the damages?
 Was there a contract?
 Was there a breach?

INTRODUCTION
What Did the Contract Specify?
What Are the Damages?
Was there a Contract?
Was there a Breach?
CONCLUSION

Application Exercise

Arrange or re-arrange your issues in the sequence that makes most sense for this case: logical, chronological, strongest-to weakest, etc.

INTRODUCTION
Was there a Contract?
What Did the Contract Specify?
What Are the Damages?
Was there a Breach?
CONCLUSION

Application Exercise

Arrange or re-arrange your issues in the sequence that makes most sense for this case: logical, chronological, strongest-to weakest, etc. Show your work to your study partner(s) and ask for advice and suggestions.

INTRODUCTION
Was there a Contract?
What Did the Contract Specify?
Was there a Breach?
What Are the Damages?
CONCLUSION

Application Exercise

Arrange or re-arrange your issues in the sequence that makes most sense for this case: logical, chronological, strongest-to weakest, etc. Show your work to your study partner(s) and ask for advice and suggestions. Then return the favor.

Five Easy Steps

1. Identify the issues and write a case-specific heading for each.
2. Arrange the issues in a sequence that makes sense.
3. Write a beginning, telling the story that gives rise to the issues.

According to two witnesses, Mrs. Eseta Tavita opened her canteen on Sunday, 23rd March 2011 at about 1300hrs and sold beer to Mr. Kaisami Motumua.

The purpose of a beginning is to provide a factual context in which the issues make sense.

According to two witnesses, Mrs. Eseta Tavita opened her canteen on Sunday, 23rd March 2011 at about 1300hrs and sold beer to Mr. Kaisami Motumua. She has been charged with violation of Section 93(1) of the Alcoholic Drinks Act, which prohibits the sale or supply of alcoholic drinks on Sunday.

Ms. Tavita says she did not actually open her canteen for business, but merely opened a side door to allow Mr. Motumua to get two cases of beer he had accidentally left there after paying for them the night before.

This court must decide three issues:

- whether Ms. Tavita opened her canteen for business as defined by law;
- whether Mr. Motumua had in fact purchased the beer on the previous night;
- if so, whether allowing him to collect the beer he had purchased earlier constitutes the sale or supply of an alcoholic beverage.

This court must decide three issues:

- whether Ms. Tavita opened her canteen for business as defined by law;
- whether Mr. Motumua had in fact purchased the beer on the previous night;
- if so, whether allowing him to collect the beer he had purchased earlier constitutes the sale or supply of an alcoholic beverage.

Five Easy Steps

1. Identify the issues and write a case-specific heading for each.
2. Arrange the issues in a sequence that makes sense.
3. Write a beginning, telling the story that gives rise to the issues.
4. Analyse each issue.

LOPP Alliance Inc. claims its policy limits payment of hospital bills for employees to NZ \$2,000.

FLOPP However, that policy is at variance with the collective bargaining agreement.

Therefore, the employee is entitled to payment of reasonable hospital bills for a condition incurred while he was employed by Alliance.

For questions of law, LOPP/FLOPP.

For questions of fact, summarise one party's evidence, then the other party's evidence, then say whom you believe and why.

LOPP Mom wants a court in Australia to decide custody under the Hague Convention. . .

FLOPP However, Kiribati is not a signatory to the Hague Convention.

Therefore, the Hague Convention does not apply to this case.

For questions of fact, summarise one party's evidence, then the other party's evidence, then say whom you believe and why.

(You can put either party's position first—winner or loser.)

INTRODUCTION

Mom alleges that Dad left the child unattended.
Five unrelated neighbors testified that . . .
The Court finds that . . . because . . .

The "because" clause is an essential part of a finding of fact.

CONCLUSION

Application Exercise

Choose a question of law or a question of fact in a judgment of your choice.

In criminal law, avoid a "credibility contest."

Application Exercise

Choose a question of law or a question of fact in a judgment of your choice. Write a clear and succinct analysis of that issue in language that litigants not trained in law can easily understand.

The prosecution has presented evidence that the accused was at the scene of the robbery in Honiara.

... and the standard is "beyond a reasonable doubt."

The mother of the accused testified that he was attending a tea party with her in Rarotonga at the time.

The court finds that ... because ...

Application Exercise

Choose a question of law or a question of fact in a judgment of your choice. Write a clear and succinct analysis of that issue in language that litigants not trained in law can easily understand. Show your work to your study partner(s) and ask for comments and suggestions.

Application Exercise

Choose a question of law or a question of fact in a judgment of your choice. Write a clear and succinct analysis of that issue in language that litigants not trained in law can easily understand. Show your work to your study partner(s) and ask for comments and suggestions. Then return the favor.

For the reasons above, the court finds (or I find) that ... and order(s) that. . .

Five Easy Steps

1. Identify the issues and write a case-specific heading for each.
2. Arrange the issues in a sequence that makes sense.
3. Write a beginning, telling the story that gives rise to the issues.
4. Analyse each issue.
5. Write a conclusion.

Decision

Taking everything into account and bearing in mind throughout where the burden of proof lies, I am satisfied Prosecution had discharged the onus required of them to prove that this Defendant had the necessary specific intent or malice aforethought when he inflicted the fatal wound on the Deceased that morning.

In a simple case you can end with the findings and order.

Decision

Taking everything into account and bearing in mind throughout where the burden of proof lies, I am satisfied Prosecution had discharged the onus required of them to prove that this Defendant had the necessary specific intent or malice aforethought when he inflicted the fatal wound on the Deceased that morning. Accordingly I find him guilty as charged and convict him of the offence of murder.

Sentence

There is only one sentence once a conviction is entered for murder, life imprisonment. The Defendant is accordingly sentenced to prison for life.

In a complex or controversial case, consider recapitulating your reasons.

For these reasons, I am not satisfied that an inference, on the material before me, can be properly drawn that 2318 Retallack Street is habitually used for illegal drug activity.

Accordingly, the application is dismissed.

—McMurtry, J.

Given the serious consequences for the respondents, the Court must carefully consider the quality of the evidence received, particularly as the complainants cannot be subjected to cross-examination.

Consider adding a “to-rule-otherwise” ending when it would make your decision more persuasive.

Given the serious consequences for the respondents, the Court must carefully consider the quality of the evidence received, particularly as the complainants cannot be subjected to cross-examination. Many of the allegations are lacking in sufficient detail to establish that the alleged activity occurred at the premises at 2318 Retallack Street.

There is very little detail about the involvement of the respondents in the alleged activity; there is insufficient detail to rebut the respondents' submission that the teenagers seen smoking were smoking cigarettes and not smoking marijuana; and, finally, there is little evidence to contradict the respondents' submission that the complaints have been exaggerated at the instigation of their next door neighbours.

If the Court allows this Plaintiff to prosecute this action based on its single unsupported claim to "ownership," it would invite scores of similar suits against the Republic.

If the Court allows this Plaintiff to prosecute this action based on its single unsupported claim to "ownership," it would invite scores of similar suits against the Republic. Individuals and clans will see that they can bypass the established mechanisms for the return of public lands, or get a second bite at the apple, simply by filing an action to quiet title based solely on some unsupported claim of "ownership."

Application Exercise

Write an ending that recapitulates your reasons or adds an argument from consequence in a judgment of your choice. Show your work to you study partner(s) and ask for comments and suggestions.

If the Court allows this Plaintiff to prosecute this action based on its single unsupported claim to "ownership," it would invite scores of similar suits against the Republic. Individuals and clans will see that they can bypass the established mechanisms for the return of public lands, or get a second bite at the apple, simply by filing an action to quiet title based solely on some unsupported claim of "ownership." The amount of resources the Republic would have to expend to defend these cases—including the discovery necessary to try to divine the bases for such unsupported claims of "ownership" – and the burden on the courts in shepherding this litigation, would be unfathomable.

—Jesse M. Caplan,
NGERCHEMIS CLAN v. REPUBLIC OF PALAU

Application Exercise

Write an ending that recapitulates your reasons or adds an argument from consequence in a judgment of your choice. Show your work to you study partner(s) and ask for comments and suggestions. Then return the favour.

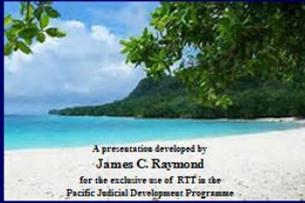
Application Exercise

Write an ending that recapitulates your reasons or adds an argument from consequence in a judgment of your choice.

Additional Exercise

Applying the "Five Easy Steps," write a judgment you are currently working on or re-write a past judgment that you found difficult.

A Checklist for Judgments and Decisions



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Check the Background Section (If There Is One)

- If it provides procedural history or names of counsel, do we really need this information?
- Is it justified because it contains facts or law relevant to more than one issue?

Read the First Page

- Does it say who (allegedly) did what to whom (WDWTW) who's arguing about what (WAAW) *before anyone set foot in court*, in a nutshell, without legal jargon?
- Does it include names, dates, procedural history, and citation of laws or precedents that have nothing to do with the issues at hand?
- Does it announce the issues in a predictive sequence, *without clutter but not too abstractly*?

Check the Analysis of Each Issue

- If it is a question of law, does the analysis include an impartial statement of the losing party's position followed by its flaw, clearly stated?
- Is the controlling law or principle cited?
- If it is a question of fact, does it summarise each party's evidence?
- Does the evidence justify the finding?
- Are the standard and burden of proof correctly applied?

Check the "Floor Plan" as Revealed in Headings

- Have the issues listed in the introduction been turned into questions and used as headings?
- Would the headings make sense to a non-lawyer?
- Are they arranged in a sequence that makes sense?
- If there are additional headings, are they necessary, logical, and helpful?

Check the Analysis of Each Issue

- Has the writer made the mistake of narrating the trial or hearing instead of dividing the evidence according to the issues?

Is It Written for Grasshoppers?

- Does the reader have to jump from beginning to end to middle?

- Does it contain huge patches of cutting and pasting from the parties' submissions (instead of succinct summaries)?

Does it contain block quotations that are not preceded by summaries?

What, if anything, could be left out?

What, if anything, should be added?

What, if anything, is repeated?

Will impartial readers feel that the losing party had a fair hearing?

Read the Conclusion

- Is the order written in language that would be clear to your next door neighbour?
- If appropriate, is the analysis succinctly summarised?
- If appropriate, are the consequences of the ruling explained?

Will impartial readers be persuaded by the result?

Check the Decision as a Whole

- Are there any words or phrases (e.g., jargon, Latin, or legalisms) that would seem out of place in a good newspaper?
- Are there any sentences more than two lines long that should be broken up?
- Is there any repetition that could be eliminated?



Pacific Judicial Development Programme

TRAINER'S TOOLKIT:

DESIGNING, DELIVERING AND EVALUATING TRAINING PROGRAMS

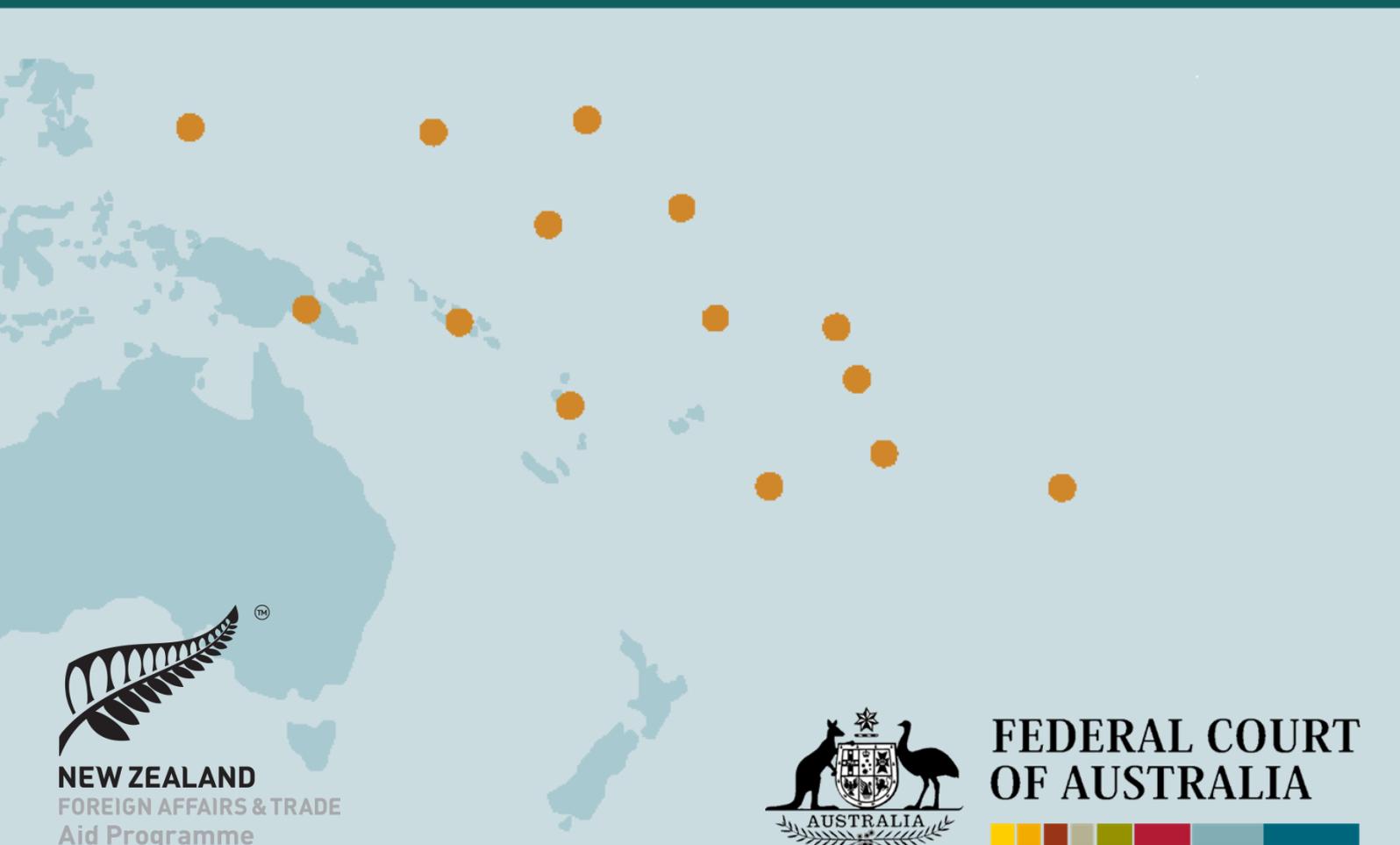
PJDP toolkits are available on: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>





JUDICIAL MENTORING TOOLKIT

November 2018



NEW ZEALAND
FOREIGN AFFAIRS & TRADE
Aid Programme



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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Web: <http://www.fedcourt.gov.au/pjsi>

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
- Efficiency Toolkit
- **Judicial Mentoring 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 Mentoring Toolkit**. This toolkit aims to support and reinforce the judicial education programmes available to new judges around the Pacific under the PJSI, through a quick introduction to the art and science of judging and an established mentoring program with experienced Judges.

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

Your feedback

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

Dr. Livingston Armytage

Technical Director, Pacific Judicial Strengthening Initiative, November 2018

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1. Introduction

Judicial mentoring is where a senior experienced Judge, with the agreement of a new Judge, takes an active interest in the professional development of the new Judge.

The word “mentor” is Greek in origin. Mentor was the trusted friend of Odysseus. When Odysseus went to fight the Trojan War he left his son in the care and direction of Mentor. And so a “mentor” became a trusted advisor, a teacher and a friend.

The idea behind mentoring here is to support the new Judge so as to quickly introduce them to the art and science of judging. This help and support from experienced Judges is the essence of the mentoring relationship.

Judges on appointment do not immediately become experienced fully functioning judicial officers. Like any professional starting a new position, they need help and support from experienced colleagues. The need for help and support is especially important in the Pacific Islands. Often judges in the Pacific Islands work in isolation, and without the support that Judges in more populous countries may take for granted.

If used as intended, the **Judicial Mentoring Toolkit** can give Pacific Island Judges a significant boost *especially* in the first six months of their judicial life. This toolkit will also support and reinforce the judicial education programmes available to new judges around the Pacific.

2. Attributes of a Mentor Judge

What are mentor Judges, what attributes do they need and what should they do?

A mentor Judge has a number of functions. The mentor Judge needs particular skills and characteristics to be effective. Defining the roles necessary for an effective mentor Judge identifies the skills and characteristics required of that Judge.

A Good Mentor Judge Needs:

To be a good listener

The mentor Judge will need to ensure that they are available to the new Judge, and listens and reacts to the new Judge's experiences.

To be a guide

This involves both reactive and proactive action. The mentor Judge must ensure they are available so that there are regular structured meetings between the mentor Judge and the new Judge. The mentor Judge must be available when need arises for the new Judge. Such a guide does not tell the new Judge what to do. She/he offers suggestions as to how to approach, how to analyse and how to research a problem. The mentor Judge points the new Judge in the right direction, but does not direct an appropriate outcome.

To be a supporter

The new Judge will need all the support they can get when they start their new position. They will be anxious about their knowledge and performance. The mentor Judge will need to be a reliable, supportive encourager for the new Judge - someone the new Judge knows they can rely upon.

To be a role model

The mentor Judge will need to have high respect within the judiciary and will need to show the new Judge the highest standard of judging. The new Judge should sit with the mentor Judge as soon as can be arranged following the swearing-in of the new Judge. The mentor Judge will illustrate the attributes of a senior respected Judge.

To provide feedback

Other than appellate judgments, Judges rarely know how they are seen by others. The mentor Judge, by reviewing the new Judge's decisions (after delivery) can provide important feedback. The feedback must be straightforward, honest, specific and constructive. It should identify what has been done well and what can be improved.

To be a facilitator

There will be much about the court administrative arrangements the new Judge will not know. The mentor Judge will need to ensure the necessary relevant information is provided to the new Judge. This will include the relevant arrangements with the Government Department responsible for supporting the new Judge.

To be a confidant in all things

The essence of a mentor system is confidentiality. What is discussed between the mentor Judge and the new Judge is confidential to them. The mentor Judge is not free to discuss any matters relating to the new Judge unless the new Judge expressly consents. Anything less than this standard of confidentiality will undermine the integrity of the relationship. Most importantly, mentoring is not a way for the head of court (or the Chief Justice) to keep tabs on how a new Judge is working out.

The new Judge/mentor Judge contact should wherever possible be in person. Where it cannot be, then the Judges will be able to keep in touch by telephone, email or Skype. The more personal the contact, the more the mentor relationship will be enhanced.

3. Mentor Selection

The head of bench, or the Chief Justice, will need to select a mentor Judge for a new Judge. The new Judge should be consulted. She/he may have views on who might be suitable or unsuitable as a mentor for them. This toolkit sets out (see **Section 2**) the important attributes of a mentor Judge: a good listener, a guide, a supporter, a facilitator, a confidant and above all, a role model. These will be the attributes those selecting the mentor Judge will look for.

A mentor will generally be a highly respected and experienced Judge with patience and empathy, with experience in the new Judge's jurisdiction.

The mentor Judge should, if possible, be selected before the new Judge is sworn in.

Where the mentor Judge is to be chosen from outside of the new Judge's country, then it will be important if at all possible, for the mentor Judge to be familiar with the culture, language and courts of the new Judge's country (see **Sections 7.1-7.4**).

4. Mentor Training

Ideally there will be a formal training day for mentor Judges around the Pacific. However, currently this is unlikely to be possible. The mentor Judge will therefore have to prepare themselves with the aid of this toolkit and any further background material they may wish to read.

We suggest the mentor considers the following before the mentor relationship begins:

- a) Read and understand the toolkit;
- b) Read and understand the checklists provided;
- c) Identify what the mentor Judge considers should be in the mentoring plan including: topics for discussion, meeting arrangements, programme for short and long term sitting by new Judge, and the new Judge's needs;
- d) Research the administrative requirements for the new Judge and ensure court administrators understand their obligations;
- e) Consider how confidentiality can be maintained; and
- f) Consider how the mentor Judge will arrange her/his sitting obligations to accommodate the new Judge's needs.

5. The Mentor Programme

5.1 Introduction

The mentor programme will have three parts:

1. The mentor Judge supporting the new Judge in the necessary administrative arrangements consequent upon appointment;
2. The new Judge sitting with a variety of Judges shortly after appointment; and
3. The programme of support and help between the mentor and new Judge for the first six months after appointment.

All of these will be discussed in greater detail below. Depending on whether the new Judge sits in a large or small jurisdiction, these three parts will have a different focus.

When a new Judge starts work, they will be understandably anxious about the new position. Judging is a very public position. When things go wrong with a Judge the public know. How will Judges handle this pressure?

A system of mentoring by senior Judges is designed to make the transition to a Judge as stress-free as possible. It aims to ensure all the administrative arrangements necessary for a new position taken care of, and it aims to ensure that new Judges are as well prepared as possible for their new public function through the guidance of a senior experienced Judge. This toolkit considers each of the three parts in turn.

5.2 Administrative Arrangements

As with the transition to any new position, the appointment of a new Judge involves a number of administrative arrangements. It is the mentor Judge's function to ensure these administrative tasks are efficiently performed to help with a smooth transition to the new position.

The mentor Judge will first need to identify what help there is for the initial administrative arrangements. Is there a bench book available to the new Judge which includes administrative arrangements? Does the local Court Registrar have the relevant administrative information for the new Judge, or is the new Judge effectively left to her or his own devices? Whatever the situation in the new Judge's jurisdiction, the mentor Judge will have an important role to ensure the administrative introduction of the new Judge covers all that is necessary.

Before Swearing-In

The mentor Judge will need to check (typically with the Court Registrar) to see the appointment process has been properly arranged. This will include ensuring the relevant swearing in has been arranged and the relevant warrant signed with a copy to the Judge and the Court Registrar.

The mentor Judge should discuss with the new Judge what court clothing is appropriate for day to day court sittings.

The mentor Judge should discuss the Judge's salary and ensure the Court Registrar (or other relevant person) has the necessary information (including the Judge's bank account number), so that the

Judge's salary commences at the correct date. The mentor Judge should discuss any systems of travel/accommodation payments and ensure the new Judge has written material explaining the claim system.

The mentor Judge should ensure the new Judge is introduced to all the court staff in the courts in which the Judge will sit. The mentor Judge could undertake these introductions personally or in a circuit court ensure the Court Registrar does so.

The mentor Judge will need to ensure the new Judge is shown her/his office/chambers (if any). The mentor Judge should ensure the new Judge is told what office supplies/equipment the Judge is provided with and how to obtain further supplies. The mentor Judge should ensure the new Judge is aware of what typing support is available and how to obtain that resource.

The mentor Judge should ensure the new Judge is shown the Law Library (if any) available at her/his Court, given any legal resources including bench books and given electronic resources allocated to Judges in her/his jurisdiction. Where training in the use of these resources is required, the mentor Judge should ensure such training is provided.

The new Judge should be introduced to any other Judges in her/his location. Ensuring supportive fellow Judges will significantly help the new Judge's introduction to the new position.

After Swearing-In

The mentor Judge should arrange for the new Judge to visit any local prisons and mental health institutes, and any other organisations that the Judge will have regular contact with.

The mentor Judge should discuss with the Judge responsible for rostering the new Judge to ensure, as far as possible, a measured introduction to the new work at least over the first six months.

The mentor Judge should, if possible, arrange for the new Judge to sit with a variety of other judges with her/his jurisdiction in the first three weeks after swearing in.

The mentor Judge should discuss or arrange for a discussion with a suitable person what particular security arrangements (if any) there are for Judges in her/his jurisdiction. This ideally should include home security and security at court.

The mentor Judge should meet with the Court Registrar and ensure that all relevant administrative arrangements (see above) which are the responsibility of the court have been carried out.

5.3 Sitting with Other Judges

The second part of a mentor system involves the new Judge sitting with a variety of Judges within their jurisdiction (assuming this is possible). In the first few weeks of a new Judge's judicial life (if the Judge is to sit full time, or if not, appropriately adjusted) the new Judge should sit with several judges if this is possible.

When the new Judge sits with these Judges, she/he will not participate in any decision making but will be sufficiently close to "the action" to appreciate and understand what is happening. The new Judge is to listen and observe. After court each day the sitting Judge and the new Judge should discuss the day's events.

The process for sitting with other Judges and experiences different areas of judicial work is explained in greater detail below.

- The new Judge and the mentor Judge should discuss and agree on the particular judicial work the new Judge wants to observe with the variety of sitting Judges. The mentor Judge should ensure the arranged sittings reflect this agreement.
- The mentor Judge should send written instructions to all Judges the new Judge is to sit with. The instructions should include the programme of sitting that has been arranged. The instructions should set out for the new Judge and the sitting Judge the process described below.
- The new Judge should sit with a variety of Judges so that the new Judge sees a variety of judicial styles.

For each Judge the new Judge sits with, the following process should be observed:

- The new Judge and the sitting Judge should meet before court and discuss the cases for the day, and the sitting Judge should identify any particular points for the new Judge to look for.
- The new Judge and the sitting Judge should agree where the new Judge will sit in court. The best position for the new Judge is on the bench sitting beside the sitting Judge.
- Assuming the new Judge sits on the bench with the sitting Judge, the sitting Judge should announce to those in Court that although the new Judge will be sitting on the bench the new Judge will not be participating in any decisions in the Court.
- At suitable times, the sitting Judge should explain (discreetly) to the new Judge what is happening in court and why. Otherwise the new Judge should listen and observe.
- At any break in the court day and at the end of the day the sitting Judge and the new Judge should fully review and discuss the work of the day. The principle should be no question is foolish.
- The new Judge should as a result of discussion with the sitting Judge identify areas where further knowledge/instruction may be needed.
- At the end of each week of this initial programme, the mentor Judge and the new Judge should review the programme and decide if any change in the following week's programme is required.

As the new Judge's confidence grows, it can be appropriate for the new Judge to take over the court from the sitting Judge. Care should be taken that the work to be done by the new Judge is appropriate. At the end of the new Judge's sitting, the day should be reviewed by both Judges.

5.4 Support and Help from the Mentor Judge

The third and final aspect of mentoring is the work done between the mentor Judge and the new Judge relating directly to the new Judge's work. There are three stages to this final aspect of mentoring:

1. The **identification of training needs** by the new Judge and the mentor Judge;
2. The **identification of relevant information** by the mentor Judge for the new Judge; and
3. The **development of a learning plan** which includes the information from the above with goals, priorities and time frames.

Both the new Judge and the mentor Judge will together develop the above stages. They will cover the first six months of the life of a new Judge. The mentor Judge will be responsible for ensuring that this stage of the mentoring programme is completed. To do so effectively, the mentor Judge will need to be familiar with any orientation programme the new Judge has or is to attend.

5.4.1 Identification of Training Needs by Mentor Judge

As soon as possible after the announcement of the new Judge's appointment, the new Judge and mentor Judge should meet to identify the new Judge's training needs. **Annex 2** provides a list of issues that may arise in the criminal and civil jurisdictions (it may need to be amended to reflect particular issues in each jurisdiction). This list can be used by the new Judge and mentor Judge to develop a plan which identifies the needs of the new Judge. Further, the new Judge in consultation with the mentor Judge will need to identify what requires immediate attention and what can wait.

Finally, the Judges will need to identify how these learning needs and priorities will be addressed. In particular, the Judges may agree that over the following six months their regular meetings will address (in priority) particular learning needs at particular meetings.

5.4.2 Identification of Relevant Information by the Mentor Judge

There will be considerable material relevant to a new Judge which the new Judge is unaware of. It will be the mentor Judge's responsibility to introduce the new Judge to this material. **Annex 4** identifies this information (each mentor Judge may identify additional information).

The following is a brief summary of some of these issues:

(a) Judicial Ethics

Some judiciaries (for example New Zealand and Australia) have developed guideline booklets for Judges on judicial ethics. If the court in which the new Judge is to sit does not have such a guideline, the New Zealand or Australian guides can be accessed on the relevant electronic site. Further, **Annex 1** is a summary of the Bangalore Principles, an international guide to judicial ethics. The mentor Judge and the new Judge will need to discuss the relevant ethical principles.

(b) Disqualification

A judge may be disqualified from sitting on a particular case for a variety of reasons. This is typically because the Judge has some form of personal interest in the case to be heard. The mentor Judge and the new Judge will need to thoroughly discuss the circumstances under which a Judge may be disqualified from hearing a case and the appropriate process leading up to a decision by the Judge as to whether disqualification is appropriate. The mentor Judge will need to be familiar with any local judicial disqualification decisions and other decisions from common law countries.

There are particular problems in applying established principles of judicial disqualification in small country jurisdictions. Often there will be no other judge available to hear a case if the local Judge disqualifies him or herself. The mentor Judge will need to discuss alternative strategies to deal with such difficulties.

(c) Contempt of Court

This is an area of concern and difficulty for new Judges. Mentor Judges will need to discuss with new Judge's techniques for dealing with disruptive persons in Court. The mentor Judges will need to identify the circumstances under which judicial deafness and blindness are called for. The mentor Judge will need to identify and discuss a process for dealing with a disruptive person where judicial intervention is required. The mentor Judge will need to identify any relevant statutory provision which applies in the new Judge's jurisdiction.

(d) Bench Books and Research Tools

Bench books especially in some Pacific Islands can be particularly valuable for the new Judge. The mentor Judge should introduce the new Judge to the Bench Book. Further the mentor Judge should identify relevant research materials available for the new Judge. Many Pacific jurisdictions have modest and some no physical law libraries. However, there are significant electronic legal resources available. The mentor Judge should assist the new Judge to access these electronic resources (including the Pacific electronic resource www.Paclii.org).

(e) Court Craft and in Court Administration

The mentor Judge should discuss with the new Judge what style and approach the new Judge wishes to take in Court. The new Judge may not have had significant court experience and so understanding the need for Court craft will be important. Such basic information for example, as a lawyer/litigant standing when speaking to a Judge, bowing to those gathered in Court when entering or leaving Court, and ensuring the Court runs in a calm courteous atmosphere is important. The mentor Judge can significantly reduce the new Judge's anxiety by discussing the process for calling and hearing criminal and civil cases so that the new Judge is familiar with in court administration.

(f) Decision making templates

Annexures 5, 6, 7, and 8 are templates for bail decisions, sentencing remarks, a defended criminal case and a civil case. They are designed to give new Judges a structure for some of the basic decision making of a Judge. The mentor Judge should be familiar with these templates. The new Judge should be encouraged to use the templates early in their judicial career. If the templates are followed by the new Judge, then they will have a structure for their decisions which provide for a logical step by step process to reach a rational decision. The mentor Judge will need to be familiar with the templates and how they work.

The templates will ensure all of the factors relevant to each template category are considered by the new Judge. The use of such templates is not compulsory. However, if the new Judge does not wish to use the templates, the mentor Judge should encourage the new Judge to develop their own structure which covers all relevant factors, has a logical sequence and can be used on each occasion a decision and reasoning is required.

5.4.3 Development of Learning Plan

Once the new Judge and the mentor Judge have agreed on what the new Judge's learning needs are, they will need to agree on priorities. The new and mentor Judges should ask the question – "What

does the mentor Judge need to know and understand now?” – and “What is less urgent?” The answer to those questions should help the Judges agree on a priority list.

The next stage is to develop a timetable for meetings between the two judges to allow them to discuss the topics identified in the learning needs assessment as well as providing time for the Judges to discuss the day to day work of the new Judge. This should include a regular review of decisions of the new Judge.

The programme prepared by the Judges will need to:

- Identify the particular learning goals;
- Identify the priorities;
- Identify the relevant time frame;
- Provide for meeting times for in court work review;
- Provide for meeting times for learning needs discussion;
- Provide for meeting times for discussion of administrative needs; and
- Provide for sitting time for the new Judge with other sitting Judges including review.

This programme should be reduced to writing by the mentor Judge and agreed to by the new Judge.

5.4.4 Review of Mentor Programme

After the first few weeks of sitting in other courts or in the new Judge’s own court, the mentor and new Judge should undertake a review of the agreed programme. Adjustments may well be needed to the programme. Such a review should be undertaken at least every two weeks to see if the programme is meeting the learning needs of the new Judge. If it is not changes should be made. Again it is vital that the Judge’s diary ahead specific meetings for specific purposes. The mentor Judge will need to ensure these meetings take place and if for any reason cancelled, an alternative date is arranged.

6. Some Guidance for Mentor Judges

As this toolkit has noted, the function of the mentor Judge is to guide and advise but not direct. However, there will be times when the new Judge contacts the mentor Judge with a problem that requires an immediate answer. In such a situation the best solution may be to give the answer. But the “answer” should never be a direction as to how decide a particular case or even part of a particular case.

Sometimes a procedural problem will arise where the mentor Judge considers she/he can give a “directive” answer. Giving such direct answers should be rare. If they are not, the new Judge may become reliant upon the mentor for a decision. This is the antithesis of a useful mentor relationship.

Where the new Judge has an issue to discuss these questions for the mentor Judge can be useful:

- (a) What are the facts? Check that the new Judge has obtained all the relevant facts;
- (b) Exactly what is the issue – having the new Judge expressly identify (often in writing) exactly what the issue is she/he is concerned about can help with the solution;
- (c) What is the new Judge’s tentative view and why?;
- (d) What are the alternative views, and why?;
- (e) Can the mentor Judge identify any other possibilities and if so what are the arguments for and against?; and
- (f) A review of the strengths and weaknesses of all alternatives will typically point to a particular solution.

Here the mentor Judge gives the new Judge a structure for organising their thoughts, identifying the real issues and marshaling the competing arguments. In the end it is the new Judge who reaches the conclusion about the problem.

Where the new Judge and the mentor Judge identify a lack of knowledge or practice in particular areas of judging, the mentor Judge can develop practice scenarios for the new Judge. For example, if the concern is sentencing the mentor Judge can prepare a set of facts, relevant sentencing submissions and relevant reports for the new Judge to prepare sentencing remarks. The prepared remarks can then be discussed.

7. Mentor Programme – Small Jurisdictions

7.1 Introduction

The essence of the mentor programme should be maintained irrespective of the size of the new Judge's jurisdiction. However, in small jurisdictions adjustments will be required.

In some smaller jurisdictions it will not be possible for a local experienced Judge to be a mentor. Often there will be no such person. Typically the courts will not sit each day and so the Judges will not sit full time. Sometimes they will sit no more than once per month. New Judges in these smaller jurisdictions will especially need the help and support of a mentor Judge. In many of these small jurisdictions, the Judges are on their own. Judicial isolation means increased mentor support is called for.

Chief Justices in these jurisdictions may wish to extend the mentor system beyond the standard six months to accommodate the fact that their courts may not sit every day or every week.

7.2 Who Can Be a Mentor in a Small Jurisdiction?

The ideal mentor is a senior, experienced Judge within the same court level and country as the new Judge. Every effort should be made to identify such a person in each jurisdiction.

Where such a Judge is not available, there may be three alternatives:

1. A Judge within the same country as the new Judge, but a higher level court than the new Judge;
2. A retired (but active) Judge from the same country and jurisdiction or a higher court; and
3. A Judge or a retired Judge from a country other than the new Judge's, but preferably with some connection to the new Judge's country.

A Judge from a Senior Court within the Jurisdiction

There are definite and obvious advantages in choosing a mentor Judge who works within the same country as the new Judge. Such a mentor Judge will know the court system and the rules, practice and substantive law practiced in the new Judge's court.

The disadvantage is that such a mentor Judge might sit on appeals from the new Judge. If such a mentor Judge is appointed then the mentor Judge may feel she/he cannot sit on any appeal from the new Judge while acting as the mentor Judge. Given that a mentor relationship involves high levels of trust and the likely development of personal relationship, hearing such appeals may undermine that relationship. The Judges should follow the standard mentor programme.

Retired Judge within the new Judge's Country

The advantages of such a mentor Judge include those listed above. Further, the retired mentor Judge could have been from either the new Judge's court or a superior court. The concerns about conflict mentioned in above would not arise with a retired Judge. The other advantage is that the retired mentor Judge is likely to be able to have personal contact with the new Judge (as opposed to a mentor Judge who is from another country, as below).

The disadvantages include: the inability of the mentor retired Judge to sit in court with the new Judge and show appropriate judicial conduct, and depending on the time of retirement there may be concern about the retired Judge's understanding of current substantive and procedural law. Preference should therefore be given to a recently retired Judge assuming other necessary attributes of a mentor Judge are present. The Judges should follow the standard mentor programme.

Out of Country Mentor Judge

If no in-country Judge (retired or sitting) is available or none are suitable mentor Judges, then consideration should be given to appointing a suitable sitting or recently retired Judge of another country. If the appointment of such a mentor Judge is being considered and the Judge is a sitting Judge, then the permission of the Chief Justice of the proposed mentor Judge should be sought for the appointment. If the mentor Judge is retired, it will be courteous to let the Chief Justice of the country of the retiree know about the impending appointment. The standard mentor programme will require some adjustment as follows.

7.3 Some Guidance about the Appointment and Functioning of an Out of Country Mentor Judge

If possible the overseas mentor Judge should be known to the new Judge. The overseas mentor Judge should, if possible be familiar with the culture, language and legal system of the new Judge's country. Generally in-person contact will not be possible for the mentor Judge and the new Judge. However with Skype and other electronic support, close contact should be able to be maintained.

The ideal arrangement would involve the mentor Judge travelling to the new Judge's country for an initial meeting. Financial constraints may mean this is not possible but the new Judge's Government may be able to fund such an arrangement. Should such a visit be possible, the Judges should set an agenda to be covered ahead of time.

The agenda could include:

- Ethical issues and judge disqualification;
- The new judge's short-term sitting programme;
- Identification of an administration officer responsible for judicial administration arrangements; and
- The information necessary to complete a mentoring plan.

Such remote mentoring will require much of the mentor Judge. They will need to be familiar with the procedures and peculiarities of the law in the new Judge's jurisdiction. The advantage of out of country mentor Judges includes a broad range of potential mentor Judges to choose from, insight into other jurisdictions and how they solve the many universal legal problems.

7.4 Mentor Programme in Small Jurisdictions with an Out of Country Judge

The mentor Judge and the new Judge will together need to design a particular mentor programme which suits both their needs as soon as possible after the initial meeting.

The programme will need to consider the following issues:

- Administrative Support: Unlike the in-country mentor, the out-of-country mentor is unlikely to have the depth of understanding enjoyed by an in country mentor. The out of country mentor Judge will need to identify a court registrar, or member of the relevant Government Department (Justice or Courts) who has the relevant information and who can inform the new Judge about the administrative arrangements for her/his appointment. The mentor Judge's position will be to ensure that identified person provides all relevant information to the mentor Judge;
- Daily review of the new Judge's work at the initial stage after appointment is unlikely to be possible. It is however vital there be pre-arranged contact between the two Judges. When the new Judge begins sitting in court a review of the work every two weeks or every month should occur. The Judges should consider a pre-sitting review of the cases to be heard and a post-sitting review of the cases dealt with;
- Regular pre-programmed contact to discuss more general judicial issues, for example: ethics, court conduct, and difficult litigant behavior should be provided for;
- The overseas mentor Judge will need to be available for urgent and regular contact with the new Judge. A reliable system of contact between the Judges will need to be established. For example, the mentor Judge might check emails every lunchtime and after court adjourns for the day to identify any urgent request;
- The development of practice scenarios can be especially useful with remote mentoring. The new Judge and the mentor Judge will need to identify where practice is needed. The mentor Judge can develop the practice scenarios based on the areas where practice is needed. After the new Judge has completed the exercise the new and mentor Judge can discuss; and
- The relevant Chief Justice may wish to oversee this programme, not as a check on the new Judge's progress, but as a way of ensuring the mentor programme is being carried out.



JUDICIAL MENTORING TOOLKIT

ADDITIONAL MATERIALS



Annex One – The Bangalore principles of judicial conduct 2002

*(The Bangalore Draft Code of Judicial Conduct 2001
adopted by the Judicial Group on Strengthening Judicial Integrity,
as revised at the Round Table Meeting of Chief Justices
held at the Peace Palace, The Hague, November 25-26, 2002)*

Preamble

WHEREAS the *Universal Declaration of Human Rights* recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the *International Covenant on Civil and Political Rights* guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the *United Nations Basic Principles on the Independence of the Judiciary* are designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

Value 1:
INDEPENDENCE

Principle:

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application:

- 1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- 1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.
- 1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
- 1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
- 1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

Value 2:
IMPARTIALITY

Principle:

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Application:

- 2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.
- 2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

- 2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
- 2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.
- 2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where
- 2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
 - 2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or
 - 2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Value 3:
INTEGRITY

Principle:

Integrity is essential to the proper discharge of the judicial office.

Application:

- 3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Value 4:
PROPRIETY

Principle:

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Application:

- 4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 4.3 A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- 4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- 4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
- 4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- 4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.
- 4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
- 4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
- 4.10 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
- 4.11 Subject to the proper performance of judicial duties, a judge may:
 - 4.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
 - 4.11.2 appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;

- 4.11.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge;
or
- 4.11.4 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
- 4.12 A judge shall not practise law whilst the holder of judicial office.
- 4.13 A judge may form or join associations of judges or participate in other organisations representing the interests of judges.
- 4.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.
- 4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
- 4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Value 5:
EQUALITY

Principle:

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Application:

- 5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").
- 5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

- 5.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.
- 5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

Value 6:

COMPETENCE AND DILIGENCE

Principle:

Competence and diligence are prerequisites to the due performance of judicial office.

Application:

- 6.1 The judicial duties of a judge take precedence over all other activities.
- 6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
- 6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
- 6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
- 6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- 6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
- 6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

IMPLEMENTATION

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

DEFINITIONS

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

"*Court staff*" includes the personal staff of the judge including law clerks.

"*Judge*" means any person exercising judicial power, however designated.

"*Judge's family*" includes a judge's spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.

"*Judge's spouse*" includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

Explanatory Note

1. At its first meeting held in Vienna in April 2000 on the invitation of the United Nations Centre for International Crime Prevention, and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Judicial Group on Strengthening Judicial Integrity (comprising Chief Justice Latifur Rahman of Bangladesh, Chief Justice Bhaskar Rao of Karnataka State in India, Justice Govind Bahadur Shrestha of Nepal, Chief Justice Uwais of Nigeria, Deputy Vice-President Langa of the Constitutional Court of South Africa, Chief Justice Nyalali of Tanzania, and Justice Odoki of Uganda, meeting under the chairmanship of Judge Christopher Weeramantry, Vice-President of the International Court of Justice, with Justice Michael Kirby of the High Court of Australia as rapporteur, and with the participation of Dato' Param Cumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers) recognized the need for a code against which the conduct of judicial officers may be measured. Accordingly, the Judicial Group requested that codes of judicial conduct which had been adopted in some jurisdictions be analyzed, and a report be prepared by the Co-ordinator of the Judicial Integrity Programme, Dr Nihal Jayawickrama, concerning: (a) the core considerations which recur in such codes; and (b) the optional or additional considerations which occur in some, but not all, such codes and which may or may not be suitable for adoption in particular countries.
2. In preparing a draft code of judicial conduct in accordance with the directions set out above, reference was made to several existing codes and international instruments including, in particular, the following:
 - a) The Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association, August 1972.
 - b) Declaration of Principles of Judicial Independence issued by the Chief Justices of the Australian States and Territories, April 1997.
 - c) Code of Conduct for the Judges of the Supreme Court of Bangladesh, prescribed by the Supreme Judicial Council in the exercise of power under Article 96(4)(a) of the Constitution of the People's Republic of Bangladesh, May 2000.
 - d) Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges

- i) Conference and endorsed by the Canadian Judicial Council, 1998.
- j) The European Charter on the Statute for Judges, Council of Europe, July 1998.
- k) The Idaho Code of Judicial Conduct 1976.
- l) Restatement of Values of Judicial Life adopted by the Chief Justices Conference of
- m) India, 1999.
- n) The Iowa Code of Judicial Conduct.
- o) Code of Conduct for Judicial Officers of Kenya, July 1999.
- p) The Judges' Code of Ethics of Malaysia, prescribed by the Yang di-Pertuan Agong on
- q) the recommendation of the Chief Justice, the President of the Court of Appeal and the
- r) Chief Judges of the High Courts, in the exercise of powers conferred by Article
- s) 125(3A) of the Federal Constitution of Malaysia, 1994.
- t) The Code of Conduct for Magistrates in Namibia.
- u) Rules Governing Judicial Conduct, New York State, USA.
- v) Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.
- w) Code of Conduct to be observed by Judges of the Supreme Court and of the High
- x) Courts of Pakistan.
- y) The Code of Judicial Conduct of the Philippines, September 1989.
- z) The Canons of Judicial Ethics of the Philippines, proposed by the Philippines Bar
- aa) Association, approved by the Judges of First Instance of Manila, and adopted for the
- bb) guidance of and observance by the judges under the administrative supervision of the
- cc) Supreme Court, including municipal judges and city judges.
- dd) Yandina Statement: Principles of Independence of the Judiciary in Solomon Islands,
- ee) November 2000.
- ff) Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the
- gg) Constitutional Court, and the Presidents of High Courts, the Labour Appeal Court, and
- hh) the Land Claims Court, March 2000.
- ii) Code of Conduct for Judicial Officers of Tanzania, adopted by the Judges and
- jj) Magistrates Conference, 1984.
- kk) The Texas Code of Judicial Conduct
- ll) Code of Conduct for Judges, Magistrates and Other Judicial Officers of Uganda,
- mm) adopted by the Judges of the Supreme Court and the High Court, July 1989.
- nn) The Code of Conduct of the Judicial Conference of the United States.
- oo) The Canons of Judicial Conduct for the Commonwealth of Virginia, adopted and
- pp) promulgated by the Supreme Court of Virginia, 1998.
- qq) The Code of Judicial Conduct adopted by the Supreme Court of the State of
- rr) Washington, USA, October 1995.
- ss) The Judicial (Code of Conduct) Act, enacted by the Parliament of Zambia, December
- tt) 1999.
- uu) Draft Principles on the Independence of the Judiciary ("Siracusa Principles"), prepared
- vv) by a committee of experts convened by the International Association of Penal Law, the
- ww) International Commission of Jurists, and the Centre for the Independence of Judges and
- xx) Lawyers, 1981.
- yy) Minimum Standards of Judicial Independence adopted by the International Bar

- zz) Association, 1982.
- aaa) United Nations Basic Principles on the Independence of the Judiciary, endorsed by the
- bbb) UN General Assembly, 1985.
- ccc) Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration")
- ddd) prepared by Mr L.V. Singhvi, UN Special Rapporteur on the Study on the Independence
- eee) of the Judiciary, 1989.
- fff) The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia
- ggg) Region, adopted by the 6th Conference of Chief Justices, August 1997.
- hhh) The Latimer House Guidelines for the Commonwealth on good practice governing
- iii) relations between the Executive, Parliament and the Judiciary in the promotion of good
- jjj) governance, the rule of law and human rights to ensure the effective implementation of
- kkk) the Harare Principles, 1998.
- lll) The Policy Framework for Preventing and Eliminating Corruption and Ensuring the
- mmm) Impartiality of the Judicial System, adopted by the expert group convened by the Centre
- nnn) for the Independence of Judges and Lawyers, February 2000.

At its second meeting held in Bangalore in February 2001, the Judicial Group (comprising Chief Justice Mainur Reza Chowdhury of Bangladesh, Justice Claire L'Heureux Dube of Canada, Chief Justice Reddi of Karnataka State in India, Chief Justice Upadhyay of Nepal, Chief Justice Uwais of Nigeria, Deputy Chief Justice Langa of South Africa, Chief Justice Silva of Sri Lanka, Chief Justice Samatta of Tanzania, and Chief Justice Odoki of Uganda, meeting under the chairmanship of Judge Weeramantry, with Justice Kirby as rapporteur, and with the participation of the UN Special Rapporteur and Justice Bhagwati, Chairman of the UN Human Rights Committee, representing the UN High Commissioner for Human Rights) proceeding by way of examination of the draft placed before it, identified the core values, formulated the relevant principles, and agreed on the Bangalore Draft Code of Judicial Conduct. The Judicial Group recognized, however, that since the Bangalore Draft had been developed by judges drawn principally from common law countries, it was essential that it be scrutinized by judges of other legal traditions to enable it to assume the status of a duly authenticated international code of judicial conduct.

The Bangalore Draft was widely disseminated among judges of both common law and civil law systems and discussed at several judicial conferences. In June 2002, it was reviewed by the Working Party of the Consultative Council of European Judges (CCJE-GT), comprising Vice-President Reissner of the Austrian Association of Judges, Judge Fremr of the High Court in the Czech Republic, President Lacabarats of the Cour d'Appel de Paris in France, Judge Mallmann of the Federal Administrative Court of Germany, Magistrate Sabato of Italy, Judge Virgilijus of the Lithuanian Court of Appeal, Premier Conseiller Wiwinius of the Cour d'Appel of Luxembourg, Juge Conseiller Afonso of the Court of Appeal of Portugal, Justice Ogrizek of the Supreme Court of Slovenia, President Hirschfeldt of the Svea Court of Appeal in Sweden, and Lord Justice Mance of the United Kingdom. On the initiative of the American Bar Association, the Bangalore Draft was translated into the national languages, and reviewed by judges, of the Central and Eastern European countries; in particular, of Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Romania, Serbia and Slovakia.

The Bangalore Draft was revised in the light of the comments received from CCJE-GT and others referred to above; Opinion no.1 (2001) of CCJE on standards concerning the independence of the judiciary; the draft Opinion of CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality; and by reference to more recent codes of judicial conduct including the Guide to Judicial Conduct published by the Council of Chief Justices of Australia in June 2002, the Model Rules of Conduct for Judges of the Baltic States, the Code of Judicial Ethics for Judges of the People's Republic of China, and the Code of Judicial Ethics of the Macedonian Judges Association.

The revised Bangalore Draft was placed before a Round-Table Meeting of Chief Justices (or their representatives) from the civil law system, held in the Peace Palace in The Hague, Netherlands, in November 2002, with Judge Weeramantry presiding. Those participating were Judge Vladimir de Freitas of the Federal Court of Appeal of Brazil, Chief Justice Iva Brozova of the Supreme Court of the Czech Republic, Chief Justice Mohammad Fathy Naguib of the Supreme Constitutional Court of Egypt, Conseillere Christine Chanet of the Cour de Cassation of France, President Genaro David Gongora Pimentel of the Suprema Corte de Justicia de la Nacion of Mexico, President Mario Mangaze of the Supreme Court of Mozambique, President Pim Haak of the Hoge Raad der Nederlanden, Justice Trond Dolva of the Supreme Court of Norway, and Chief Justice Hilario Davide of the Supreme Court of the Philippines. Also participating in one session were the following Judges of the International Court of Justice: Judge Ranjeva (Madagascar), Judge Herczegh (Hungary), Judge Fleischhauer (Germany), Judge Koroma (Sierra Leone), Judge Higgins (United Kingdom), Judge Rezek (Brazil), Judge Elaraby (Egypt), and Ad-Hoc Judge Frank (USA). The UN Special Rapporteur was in attendance. The "Bangalore Principles of Judicial Conduct" was the product of this meeting.

Annex Two – Self-Assessment Guide

1	Knowledge of Criminal Jurisdiction	
	<p>Comments:</p> <p> <input type="checkbox"/> Priority <input type="checkbox"/> High <input type="checkbox"/> Medium <input type="checkbox"/> Low </p>	
2	Knowledge of Bail Jurisdiction	
	<p>Comments:</p> <p> <input type="checkbox"/> Priority <input type="checkbox"/> High <input type="checkbox"/> Medium <input type="checkbox"/> Low </p>	
3	Knowledge of Sentencing Jurisdiction	
	<p>Comments:</p> <p> <input type="checkbox"/> Priority <input type="checkbox"/> High <input type="checkbox"/> Medium <input type="checkbox"/> Low </p>	

4	Knowledge of how to conduct a Bail Hearing	
	<p>Comments:</p> <p><input type="checkbox"/> Priority <input type="checkbox"/> High <input type="checkbox"/> Medium <input type="checkbox"/> Low</p>	
5	Knowledge of how to take a plea of guilty or not guilty in a Criminal Case	
	<p>Comments:</p> <p><input type="checkbox"/> Priority <input type="checkbox"/> High <input type="checkbox"/> Medium <input type="checkbox"/> Low</p>	
6	Knowledge of how to conduct a Sentencing Hearing	
	<p>Comments:</p> <p><input type="checkbox"/> Priority <input type="checkbox"/> High <input type="checkbox"/> Medium <input type="checkbox"/> Low</p>	

10	Knowledge of Judicial Ethics	
	<p>Comments:</p> <p> <input type="checkbox"/> Priority <input type="checkbox"/> High <input type="checkbox"/> Medium <input type="checkbox"/> Low </p>	
11	Knowledge of Judicial Disqualification	
	<p>Comments:</p> <p> <input type="checkbox"/> Priority <input type="checkbox"/> High <input type="checkbox"/> Medium <input type="checkbox"/> Low </p>	
12	Knowledge of Evidence Law	
	<p>Comments:</p> <p> <input type="checkbox"/> Priority <input type="checkbox"/> High <input type="checkbox"/> Medium <input type="checkbox"/> Low </p>	

Annex Three – Administrative Checklist Mentor Judge

1	Appointment process arranged	<input type="checkbox"/>
2	Warrant of appointment signed	<input type="checkbox"/>
3	Court clothing discussed	<input type="checkbox"/>
4	Judicial salary and payments	<input type="checkbox"/>
5	Judicial travel/accommodation expenses/arrangements	<input type="checkbox"/>
6	Introduction to Court staff	<input type="checkbox"/>
7	Familiarisation with Judges/office/chambers	<input type="checkbox"/>
8	Provision of office supplies	<input type="checkbox"/>
9	Provision of typing for Judge	<input type="checkbox"/>
10	Familiarisation with law library, electronic resources, and training in the use of these resources	<input type="checkbox"/>
11	Introduction to fellow Judges	<input type="checkbox"/>
12	Visits to prisons, mental institutions etc.	<input type="checkbox"/>
13	Rostering – measured introduction to Sitting	<input type="checkbox"/>
14	Arranged Sitting with variety of experienced Judges	<input type="checkbox"/>
15	Discuss judicial security	<input type="checkbox"/>
16	Introduction to Court Registrar and confirm with Registrar administration arrangements	<input type="checkbox"/>

Annex Four – Topics for the Mentor Judge to Cover

1	Judicial Ethics	<input type="checkbox"/>
2	Disqualification	<input type="checkbox"/>
3	Contempt of Court	<input type="checkbox"/>
4	Bench Books and Research Tools	<input type="checkbox"/>
5	Court Craft	<input type="checkbox"/>
6	In Court Administration	<input type="checkbox"/>
7	Decision-making templates	<input type="checkbox"/>
	(i) Bail	<input type="checkbox"/>
	(ii) Sentencing	<input type="checkbox"/>
	(iii) Defended Criminal	<input type="checkbox"/>
	(iv) Civil	<input type="checkbox"/>
8	Mentor Judge’s Self-Assessment Guide	<input type="checkbox"/>

Annex Five – Bail Template

1	THE CHARGE(S)
2	BRIEF SUMMARY OF FACTS OF THE CHARGES AND PLEA (Guilty or not guilty) IF ANY
3	SUMMARY OF POLICE REASONS FOR OPPOSING BAIL

4	SUMMARY OF DEFENCE REASONS FOR GRANTING BAIL AND ANY CONDITIONS SUGGESTED
5	RELEVANT LAW: (For example, 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, CONDITIONS (if any)

Annex Six – Sentencing Template

1	CHARGES & MAXIMUM PENALTY
2	PLEA (Guilty or conviction after trial)
3	FACTS (Summary of relevant facts)
4	OFFICE 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)

Annex Seven – Oral or Written Judgement (Criminal) Template

1	THE CHARGE(S) – What are they, using language of statute
2	THE LEGAL INGREDIENTS OF THE CHARGE(S) AND THE ONUS AND STANDARD OF PROOF
3	UNDISPUTED FACTS

4	DISPUTED FACTS AND A RESOLUTION
5	APPLICATION OF THE LAW – Apply the law from 2 to the facts in 3 and 4 (including “defences”)
6	CONCLUSION: Illustrating that each element of each charge has been proved or not proved, beyond reasonable doubt

7	FORMAL DECISION: Use wording of charge and “beyond reasonable doubt”

Annex Eight – Civil Cases Template

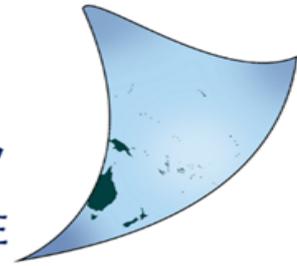
1	INTRODUCTION (A short statement describing what the case is about)
2	SUMMARY OF PLEADINGS (A summary of the claimant’s statement of claim taken from the pleadings and the defendant’s response focusing on what has been agreed and what disputed)
3	INGREDIENTS OF CLAIM TO BE PROVED (as a result of 2 above, a description of what the claimant (or as appropriate, the defendant) has to prove on the balance of probabilities to establish their case)

4	UNDISPUTED FACTS (Describe the relevant facts agreed upon from the evidence)
5	DISPUTED FACTS AND A RESOLUTION (Identify the relevant facts in dispute and resolve the dispute and give reasons for the findings of fact)
6	APPLICATION OF FACTS AS FOUND TO INGREDIENTS OF CLAIM (Use the facts as found in 4 and 5 above and identify whether these facts prove each of the ingredients of the claim to be proved as identified in 3)

7	CONCLUSION : Illustrating that each element of each charge has been proved beyond reasonable doubt or not proved
8	FORMAL DECISION: (Use the wording of charge and “beyond reasonable doubt”)



PACIFIC
JUDICIAL STRENGTHENING INITIATIVE



JUDICIAL MENTORING TOOLKIT

PJSI Toolkits are available on: <http://www.fedcourt.gov.au/pjsi/resources/toolkits>

