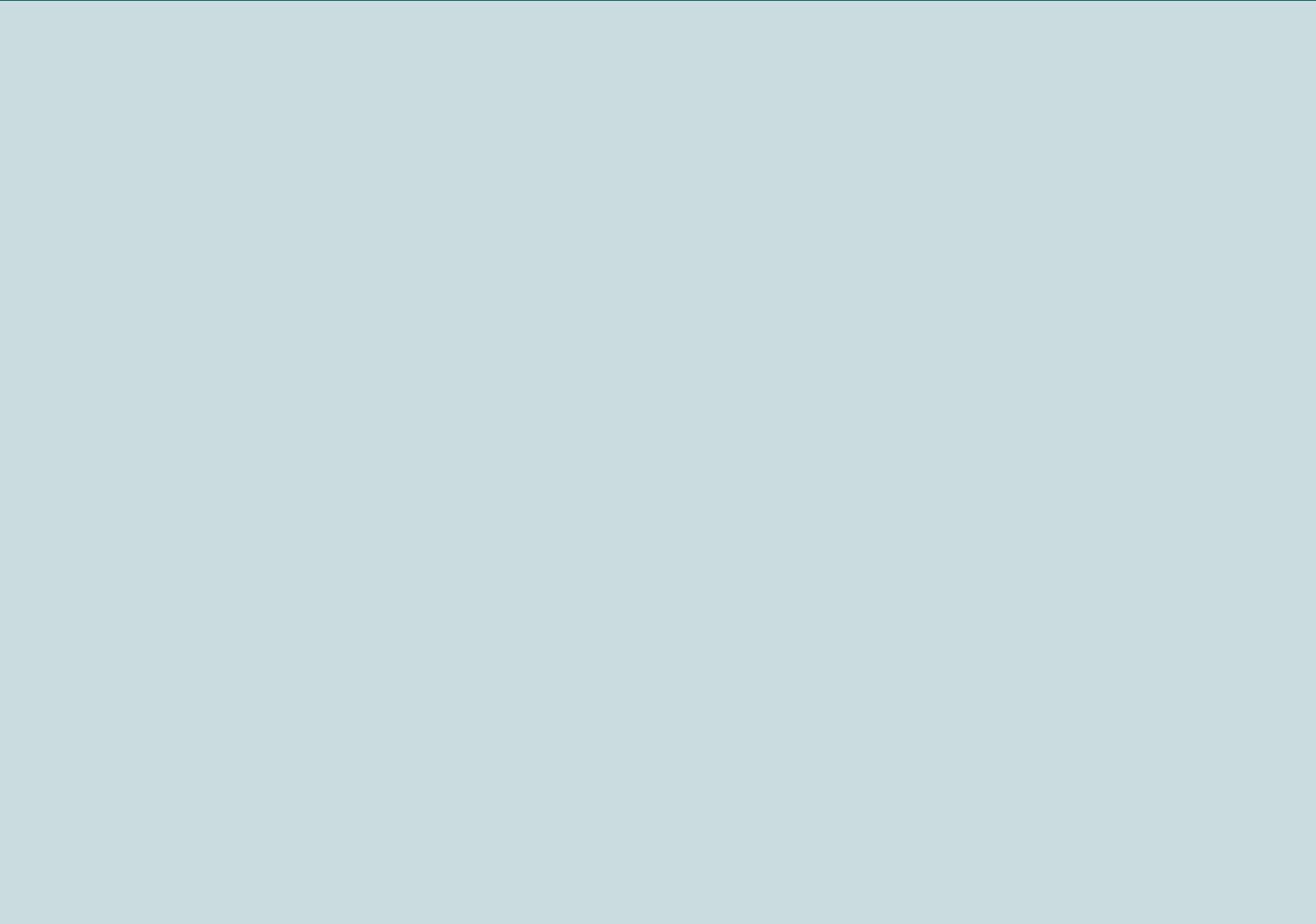




# *JUDICIAL DECISION-MAKING TOOLKIT - ADDITIONAL DOCUMENTATION*

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





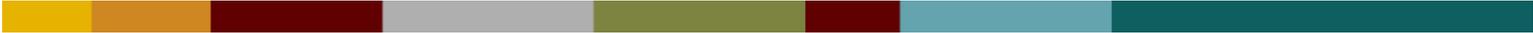


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ANNEX 1: POWERPOINT PRESENTATION

### The Shotgun House



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FRONT PORCH
BACK PORCH



INTRODUCTION
BACK PORCH



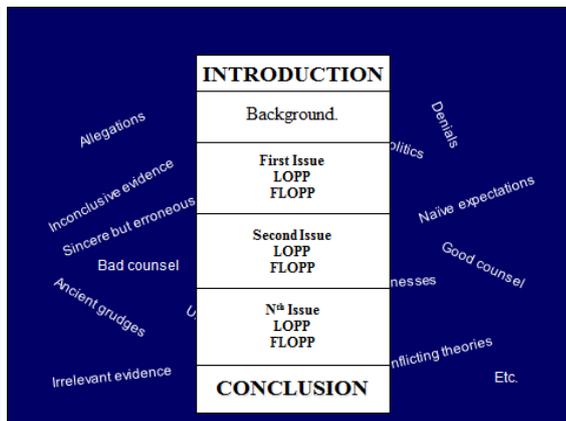
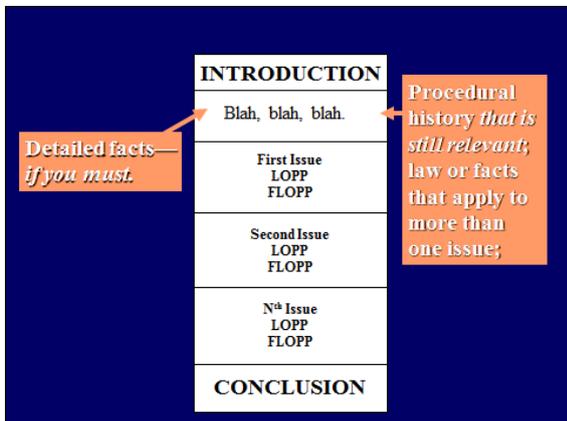
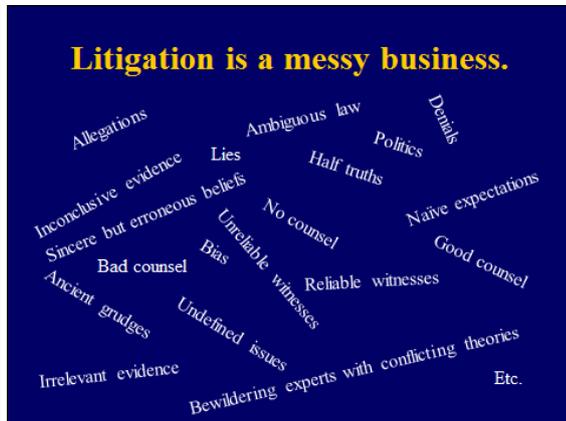
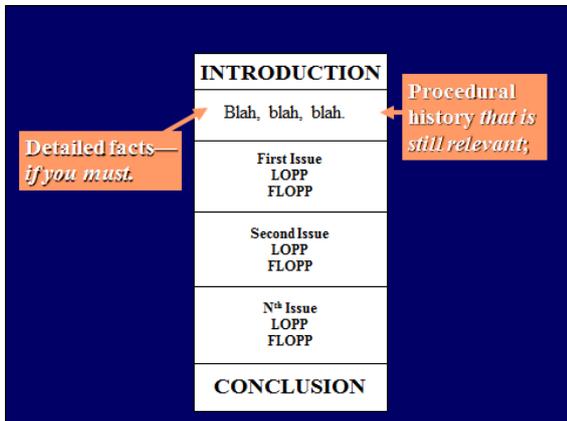
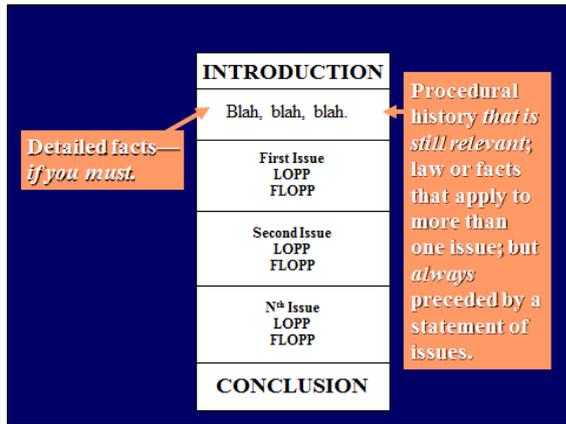
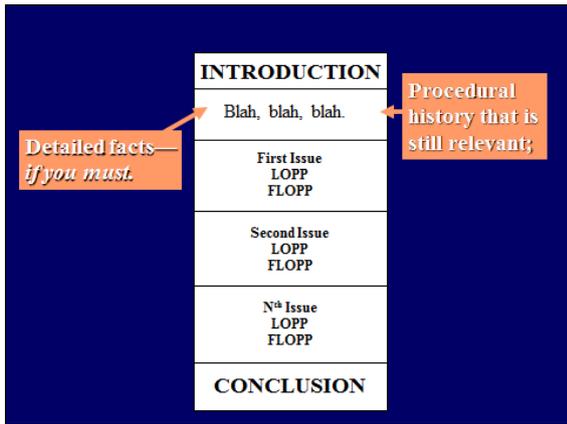
INTRODUCTION
First Issue LOPP FLOPP
Second Issue LOPP FLOPP
N <sup>th</sup> Issue LOPP FLOPP
CONCLUSION

WDWTW/  
WAAW +  
issues in a  
predictive  
order.

Detailed facts—  
if you must.

Analysis &  
disposition of  
each issue.

Recapitulation  
& order.



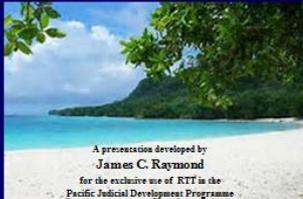
*The challenge is to reduce something as messy as this . . .*

*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



A presentation developed by  
James C. Raymond  
for the exclusive use of RIT in the  
Pacific Judicial Development Programme

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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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**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?

<b>INTRODUCTION</b>
What Did the Contract Specify?
What Are the Damages?
Was there a Contract?
Was there a Breach?
<b>CONCLUSION</b>

**Application Exercise**

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

<b>INTRODUCTION</b>
Was there a Contract?
What Did the Contract Specify?
What Are the Damages?
Was there a Breach?
<b>CONCLUSION</b>

**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.

<b>INTRODUCTION</b>
Was there a Contract?
What Did the Contract Specify?
Was there a Breach?
What Are the Damages?
<b>CONCLUSION</b>

**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, 23<sup>rd</sup> 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, 23<sup>rd</sup> 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.

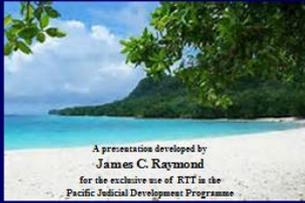
### Application Exercise

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>

