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**JUDGMENT**



# 1 A Structured Approach to Defended Criminal Cases

Decision making is a process of applying particular facts to the relevant law.

You must adopt a judicial approach, which will divert you from reaching conclusions before all the evidence and arguments have been placed before you.

The way to do this is to employ a structured approach.

There are three tasks:

**1. To be clear what the defendant is charged with and all the essential elements of the offence/s:**

For the defendant to be found guilty, **every element** of the offence must be proven beyond reasonable doubt. It is vital that you are clear about the elements that must be proved.

**2. To determine what the facts of the case are - what happened, what did not happen:**

The defendant is presumed to be innocent and the prosecution must prove that he or she is guilty. This is done by reference to the evidence produced.

This may involve assessment of the credibility of witnesses and the reliability of their evidence.

**3. To make your decision:**

This is done by applying the facts to the law.

You must make the decision. Under no circumstances should you ask anyone else to decide the matter.

## 2 Note Taking

A suggestion is to note each element of the charge on a separate sheet of paper. As the evidence is given, note it as it relates to each of these elements. This method can provide a helpful framework for your decision.

### 3 Delivering your Judgment

You must deliver your judgment in every trial in open Court, either immediately after the termination of the trial or at some subsequent time. You may simply explain the substance of the judgment, unless either party requests the whole judgment to be read out.

If you reserve your decision to a later date, you must notify the parties when your judgment will be delivered.

The defendant should be present when you deliver your judgment. Every judgment must be written in English and contain:

- the offence of which, and section of the *Penal Code* or other Act under which, the defendant is charged;
- the point or points for determination (the issues);
- the decision on each of those points; and
- the reasons for the decision.

In the case of an **acquittal**, you must direct that the defendant be set at liberty.

In the case of a **conviction**, include the sentence either at the same time or at a later date, as appropriate.

Sign and date the judgment in open Court at the time you deliver it.

Note, however, that if the defendant pleads guilty, your judgment need only contain the finding and sentence or other final order.

See *ss154 and 155 CPC*.

See *Suresh Pratap & Premila Wati t/a/ Pratap Stone Crushing & Screening Works v G L John Limited*, Civil Appeal ABU 42 of 2000. Although this is a civil case, it is relevant in that the Court of Appeal set aside an entire judgment of the High Court on the basis that the ends of justice had not been met. Among other things, the Court:

- noted that giving reasons is always good judicial practice and there is an apparent and desirable need for a properly expressed and reasoned judgment;
- found there were deficiencies in the determination of issues – all must be finally determined; and
- questioned the validity of the practice of another judge signing the judgment instead of the trial judge and commented that the dangers surrounding it are apparent and to be avoided.

### **3.1 Judgment Format**

The format on the following page is a useful format for making and delivering your decision. This must be applied to each charge.

It is a good idea to have the ‘losing’ party in mind when giving your reasons – make sure you address all their evidence and submissions thoroughly.

## ***Criminal Judgment Format***

### **Introduction**

What the case is about.

What is alleged by the prosecution in the summary of facts.

### **The law**

What must be proved beyond reasonable doubt.

The elements of the offence.

### **The facts not in dispute**

The facts that are accepted by the defence.

The elements that those accepted facts prove.

### **The facts in dispute**

The facts that are disputed by the defence. These are usually the issues (points for determination) in the case.

Your finding of the facts, with reasons. Which evidence you prefer and why.

### **Apply the facts to the law**

Apply the facts as you have found them to the elements of the offence.

Do the facts prove all the essential elements?

### **Deliver your judgment**

This will be conviction or acquittal.

Structure your judgment before delivering it.

Make sure you give adequate reasons and that the parties understand.

### **Orders**

Pronounce any orders as to costs, return of exhibits, etc.