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**CIVIL:
JUDGMENT**

1 Decision Making

The decision you make following the conclusion if a civil proceeding is to be made by you alone. Although help as to meaning of the law can be sought from textbooks and legal counsel, the decision cannot be made by anyone other than by you.

1.1 Principles Governing Decision Making

There are three principles which collectively translate into the general duty to act fairly:

- you must act lawfully;
- affected parties have a right to be heard;
- you must be free from bias.

The principles are intended to ensure:

- the fair, unbiased and equal treatment of all people; and
- the exercise of any discretion only on reasoned and justified grounds.

Adhering to these principles does not guarantee that the Court has made a good decision. It does mean, however, that the Court is likely to have followed a process that is designed to introduce many of the relevant and critical factors, and exclude prejudice and irrelevant material and considerations.

You Must Act Lawfully

This principle is concerned with what the governing legislation or rules require.

There are several aspects to the principle of lawfulness:

- You must act within the authority of the law;
- You must take into account all the relevant considerations and must not take into account irrelevant considerations; and
- You must not give away your discretionary power.

Ask yourself:

- “Do I have jurisdiction to hear and determine the matter?”
- “What are the considerations I must take into account?”
 - ⇒ Look to the appropriate legislation and common law to work out what you must be satisfied of. Factors unrelated to those issues will be irrelevant.
- “Have I taken into account anything irrelevant?”

Affected Parties Have a Right to be Heard

All parties must have a full and fair opportunity to be heard before the decision is made.

The purpose of this principle is to ensure that the Court considers all relevant information before making its decision.

Throughout the hearing process, ask yourself:

- “Am I giving each party a fair opportunity to state his or her case?”

You Must be Free from Bias

You should not allow your decision to be affected by bias, prejudice or irrelevant considerations.

You must not have an interest in the matter from which it might be said you are biased.

- It is not necessary to show actual bias, the appearance of bias is sufficient.
- Bias might be inferred where there is a relationship to a party or witness, a strong personal attitude that will affect your decision, or a financial interest in the matter.

Ask yourself:

- “Is there any factor present which could amount to bias, or the perception of bias, if I hear this matter?”

Consequences of a Breach of the Principles

If these principles are not adhered to, your decision may be reviewed on appeal.

There are other consequences of breaching the principles. These include:

- a person being unlawfully affected;
- expense, hardship and emotional turmoil; and
- a loss of faith in the system of justice.

2 A Structured Approach to Making a Decision

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

You must not reach a conclusion before all the evidence and arguments have been heard. The way to do this is to employ a structured approach.

There are three tasks involved:

4. To be Clear What the Court is Being Asked to Do

In civil cases, be clear about what the claimant is asking the Court to do. For the claim to be successful, the claimant must prove the claim on a balance of probabilities.

5. To Determine What the Facts of the Case Are - What Happened, What Did Not Happen

Facts are proved by producing evidence. To determine the facts, you will need to assess the credibility of the witnesses and the reliability of their evidence.

Credibility: “Is the evidence believable?” “Can it be believed?” “Is the witness being honest?”

Reliability: “Should I believe the witness?” “Is the evidence accurate?” “Could the witness be mistaken?” “How good is their memory of what happened?”

When considering oral evidence, take into account not only what has been said but also how it has been said. How you assess the demeanour of a witness can be a valuable aid in judging his or her credibility and reliability.

You may accept parts of the evidence of a witness and reject other parts.

A witness may be cross-examined for the sake of disproving their credibility.

6. To Make Your Decision

This is done by applying the law to the facts.

Only you can make the decision. Under no circumstances may the clerk or anyone else decide the matter.

3 Note Taking

You will have to decide between yourself and the clerk who will record the minutes of proceedings. If the clerk records the minutes, it is still advisable that you keep your own personal record to keep track of the evidence.

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

4 The Judgment

You must give judgment in a civil proceeding by:

- setting out the relevant evidence;
- stating your finding of the facts;
- stating your findings of law and the application of these to the facts;
- giving your reasons for your decisions; and
- making orders as a consequence of your decisions: *Rule 13.1(1) Civil Procedure Rules*.

Your judgment must set out the entitlement of a party to payment of money or other form of final relief: *Rule 13.1(2) Civil Procedure Rules*.

A copy of the judgment must be given to the parties and also made available to the public: *Rule 13.1(4) Civil Procedure Rules*.

The format at the end of this chapter is a useful format for making and delivering a civil decision.

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 so they know they have been heard.

Remember that it is important to:

- consider all the evidence given and either accept it or reject it; and
- give reasons.

5 Delivering Your Judgment

As far as practicable, you must give judgment at the end of the trial and fix the amount of costs at the same time: *Rule 13.2(3) Civil Procedure Rules*.

Until you sign and seal a separate judgment, your writing of the terms or orders on a file is sufficient proof that the order was made, and its date and terms: *Rule 13.3 Civil Procedure Rules*.

In practice, it is a good idea to always read out the whole of the judgment each time so that there is no possibility of confusion or that two versions of your judgment are circulating.

6 Tips for Writing a Good Judgment

When writing a judgment, there are a number of points you should keep in mind to help you create the best judgment possible.

8. Think about your audience:

- You are not only writing for the parties but for all others who may read the judgment. This includes the legal profession who are interested in knowing the law, the media who may be reporting on the case, Parliament who will be considering legislative changes, the public and other Magistrates and the Supreme Court.

9. Write your judgment as soon as possible after the conclusion of the trial as possible:

- Try to write a first draft of your judgment while the evidence and issues are still fresh in your mind. You can then put this draft aside and rewrite it later for clarity and to check for any matters you may have missed the first time.
- Writing judgments as soon as possible will also ensure that your workload does not become unmanageable as unwritten judgments pile up.

10. Stick to the issues:

- Avoid *obiter dicta* and comments that are unnecessary to the determination of the issues.

11. Be clear in your writing:

- Whenever possible, use short clear sentences without unnecessary legal jargon or archaic terminology.
- Use short sentences.
- Try to use the active voice. For example, write, “A contracted B” rather than “B was contracted by A”.

12. Include clear statements on evidentiary issues in the judgment:

- Although you may internally remind yourself of certain evidentiary provisions, writing them in the judgment will ensure your decision is not appealed because it is unclear whether you acted in accordance with them.

13. Include highlights of counsel submissions:

- This will let the lawyers know that you have taken their arguments into consideration and will help them and other lawyers better determine the state of the law.

14. When delivering your judgment orally, be dispassionate to show your neutrality:

- Consider having a police officer present in Court if your judgment has the potential to cause disruption among the public present in Court or the parties.

7 Civil Judgment Format

1. Introduction

- The first paragraph must say what the case is about. Set the scene for the case.

2. Brief summary of the facts

- Set out the material facts of what is alleged by each party. Only refer to those facts that are relevant to the issues to be determined.

3. The Law

- Set out which party has the burden on which issues.
- The standard of proof will be on a balance of probabilities.
- What needs to be proved at law? Set out the legal principles which apply, referring to the legislation and common law where appropriate.

4. Determining proven facts

- Identify relevant facts that are not in dispute.
- Identify relevant facts in dispute. These are usually the issues (points for determination).
- Make rulings on facts in dispute and give reasons.
 - ◻ Which evidence you prefer and **why**. Questions of credibility and reliability must be dealt with here.

5. Apply the law to the facts

- Determine what aspects of the applicable law have been proved from the facts.

6. Orders and costs

- What orders, if any, must the Court make?
- Set up the enforcement conference if necessary.
- Ensure you deal with any procedural orders such as costs, return of exhibits, etc.