



Judgment writing: Oral and reserved

Who is your audience? Need for reasons

This is really the most important aspect of a judgment. Who are you writing for? The answer is firstly and most importantly the parties to the criminal proceeding and, in particular, for any victim(s) involved.

For a criminal conviction, the essence of a judgment is that you are telling the defendant why they have, or have not, been convicted and, in doing so, you are also telling the prosecution why they have, or have not, succeeded.

There are other less important audiences. You are writing to tell the public the reasoning and result of the criminal charge. Finally, you are writing so that any Appeal Court can understand why you reached the decision you did.

The essence of judging is both the decision and **the reasons** for the decision.

When you are judgment writing, you must:

- Use straightforward language – no legal jargon
- Focus on the real issues in the case
- Make clear findings
- Give reasons for your decisions.

If you do this, then you will have spoken to your audience.

The 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, for example, assault/self-defence.

Example:

“In May 2016 outside the Pt Vila Courthouse, Mr Kalosil and Mr Lini were having an argument. Mr Lini claims that Mr Kalosil then punched him in the face. Mr Kalosil agrees he punched Mr Lini, 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 Kalosil did not act in self-defence.”

In the example, the facts and the issue have been identified. Note: Mr Kalosil and Mr Lini are used; it is important to use formal terms of address. They are 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?

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 Kalosil and Mr Lini 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. There is no need to say this witness said this and the next witness said the same.

For the disputed facts of the case, you now need to recount what each party says about what happened next.

For example, in the assault case:

“Mr Lini said that without warning Mr Kalosil punched him in the face. In cross-examination he denied that his voice was raised, or that he threatened to punch Mr Kalosil or that he had raised his fist immediately before Mr Kalosil had punched.

In contrast Mr Lini said ...

I must therefore resolve the conflict between the evidence of these witnesses.

I accept the evidence of Mr and 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 law 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 Lini. 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. You will also need to identify any other aspects of the case which the prosecution have to prove beyond reasonable doubt.

For example, looking at 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 Kalosil was not justified in using such force as in the circumstances was reasonable to use to defend himself. [The definition of self-defence].

I have found that Mr Kalosil was threatened by Mr W Lini, that Mr Lini did raise his hand and that Mr Kalosil believed Mr Lini was going to hit him. I am satisfied beyond reasonable doubt that when Mr Kalosil struck Mr Lini, Mr Kalosil believed he was about to be struck by Mr Lini. Therefore, Mr Kalosil acted in defence when he punched Mr Lini. I am satisfied in the circumstances Mr Kalosil’s reaction was reasonable.

I am satisfied beyond reasonable doubt it was reasonable in the circumstances for Mr Kalosil to strike first. The prosecution therefore have not disproved self-defence beyond reasonable doubt. I therefore find Mr Kalosil 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 focus on the **relevant** facts.

Oral judgments

Follow the same format for oral judgments as you would for reserved judgments.

The difference is in the preparation.

Before the trial:

- You need to know and have written down beforehand the legal ingredients of each charge.
- You need to find out what the trial issues are (if possible).
- Get out your template.

Judicial Pacific Participation Fund

- From the template, before trial, you should fill in the law section, possibly the issues section and perhaps prepare an introduction.

At the trial:

- Once the trial begins, make notes under each heading. For example, 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 contain relevant written material.
- Do not forget, you need reasons for all your conclusions.
- 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.