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Junior Bar Committee

INDUCTION HANDBOOK FOR **JUNIOR LAWYERS**



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INTRODUCTION

The Induction Handbook is compiled by USAID Efficient and Effective Justice (EEJ) Activity in collaboration with the Junior Bar Committee, for the benefit of law practitioners who have recently embarked on their professional careers. Its contents intend to facilitate young practitioners navigate those unfamiliar 'next steps' that are essential to both legal practice and membership in the legal profession.

USAID EEJ Activity is designed to equip the justice system in Sri Lanka to meet the needs of society and uphold the rule of law. The five-year project implemented by Chemonics International Inc., works to transition the Sri Lankan judicial system through the improvement of quality and efficiency.

To this end, EEJ works with representatives of the judiciary, court administration, legal profession, and law schools to strengthen the administration of justice and the qualifications and professionalism of justice sector actors.

By collaborating with the Junior Bar Committee of the Bar Association of Sri Lanka, EEJ aims to achieve the common goal of enriching newly enrolled lawyers with knowledge to overcome obstacles that have been identified as being particular to junior lawyers.

This handbook covers subject matter relating to professional ethics and good court conduct, processing both civil and criminal cases through the court system, legal research, other forms of dispute resolution, cultivating an inclusive justice system, and sample pleadings/documents that are vital to any practitioner.

The objectives of this induction handbook are:

To inspire and equip newly enrolled Attorneys-at-Law to progress through their careers positively, and with confidence

To provide key items of information to which junior practitioners may not have access, which will help them navigate legal practice

To communicate to junior practitioners what is expected of them and their roles and responsibilities as members of the legal profession

PROFESSIONAL ETHICS

“

A lawyer is a representative of clients engaged to assert and defend and protect their rights, liabilities and interests, a trusted adviser and counselor, an officer of the legal system having special responsibility for the quality of justice, a member of a profession, and an upright citizen attempting to earn a satisfactory living¹

”

- A.R.B. Amarasinghe



INTRODUCTION

As members of a **"profession,"** lawyers must take care to abide by a code of conduct.

This code is based on **"ethics,"** or values and principles that define the profession.

Hence, they are also referred to as **"professional standards,"** or a set of standards regulating the activities of professionals.

On February 11, 1988 the Supreme Court of Sri Lanka, in the exercise of its Rule making powers under Article 136(1)(g) of the Constitution, made the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988. They were published in the Gazette Extraordinary of December 7, 1988. These Rules were based on a draft code prepared by the Bar Association. The Rules have the force of written law.² However the Rules are not exhaustive. Codes and prescribed guidelines provide minimum standards.

¹ A.R.B. Amerasinghe, Professional Ethics and Responsibilities of Lawyers (Stamford Lake 2003) 24

² Ibid 6

The Difference between a Profession and a Trade or Business

LEGAL PROFESSION

Persons with certain minimum standards of conduct, and of high intelligence, skill, and learning of the law, acquired after extensive intellectual training

Provides an essential service in society

Members of the legal profession hold themselves out as willing to provide their service to all members of the public who may need it

The members of the legal profession work for a living but belong to a body of professionals governed by professional standards

Members of the legal profession voluntarily submit themselves to standards beyond those required of the ordinary citizen by law, both in private and professional life

As professionals, Attorneys-at-Law (AAL) are governed by the Constitution, statutes, and rules promulgated under the Constitution

Members of the legal profession are identifiable by reference to a Register maintained by the Supreme Court of Sri Lanka

TRADE OR BUSINESS

Depends on trade or business, and the qualifications vary. Not every trade or business will be regulated by standards of conduct, and/or involve training

Not every trade or business

Owners of any business or trade could decide segments in the society for which they should provide services as they wish

A trade or business community need not be guided by a body of standards to exist

There is no such requirement in any trade or business

It is not a general factor to recognize any trade or business under the Constitution and special legislation or rules

Employees of any trade or business are not necessarily registered under a specific body and identifiable by reference to any registration number

Supreme Court Rules:

The following are descriptions of the Supreme Court Rules and the rules of conduct they outline for AALs:

Accepting Instructions

In accepting instructions, the AAL should ensure that they act in accordance with the Rules 5 to 14 of the Supreme Court Rules.

Therefore, the AAL must render their professional services to any member of the public without any discrimination whatsoever, however subject to the payment of their professional fees.

Further the AAL should avoid conflict of interest, and if in their opinion is unable to attend to such professional duty with due diligence, should refuse to accept such professional duties.

After Accepting a Retainer³

Once the AAL has accepted a retainer, they are required to perform their duties in compliance with the Rules 15 to 18(a) of the Supreme Court Rules.

Hence, on accepting any professional matter it is the duty of the AAL to exercise their skill with due diligence to the best of their ability and in the best interest of their client.

The AAL should not gain any champertous⁴ advantage from their professional duties and must act with complete frankness and honesty in relation to all dealings with their client.

Ceasing to Act as the Attorney-at-Law

The AAL is bound by the Rules 19 to 26 even after ceasing to act as an AAL on behalf of their client. Therefore, the AAL should not withdraw their services without a good reason to do so.

The AAL is required to provide adequate notice to their client prior to the withdrawal of their professional services.

Fees and Disbursements

When collecting professional fees, the AAL is expected to act according to the Rules 27 to 30(b).

An AAL may in the best traditions of the profession, reduce or waive a fee on account of poverty or hardship to the client or prospective client where otherwise the client would be effectively deprived of legal advice or representation.

An AAL should never use their client's funds held by them in trust for their personal benefit, except with client's permission.

Confidentiality

Since the lawyer-client relationship is considered as a fiduciary relationship,⁵ the AAL is required to keep in strict confidence all information, oral or documentary, acquired by them from or on behalf of the client.

Therefore, an AAL should not be compelled to divulge such information, subject however to the limitations set out in Rule 38. The said duty of confidentiality continues even after the death of their client.

Touting and Advertising

In terms of Rules 39 to 49, an AAL is prohibited from advertising and touting.

An AAL should not under any circumstances by themselves or through another directly or indirectly resort to the practice of touting.

Touting includes engaging the services of a person for a commission to solicit clientele or advertising in any manner to unfairly attract clientele for the AAL.

All professional name boards, material, and stationery of the AAL must conform to the specific criteria set out in these Rules.

Relationship with the Court

The AAL as an Officer of Court must act according to the Rules 50 to 55 in relation to the courts.

An AAL owes a duty to court to assist it in the proper administration of justice without interfering with the independence of the Bar.

An AAL shall not or permit their client to mislead or deceive the court, in any manner or form whatsoever.

Relationship with Other Members of the Profession

As a member of a profession, an AAL is expected to act with courtesy, respect, and fairness towards other members of the Bar in all professional matters.

An AAL should act in accordance with Rules 56 to 61 when dealing with their fellow members of the profession.

³ Retainer – when a lawyer agrees to handle a case on behalf of a client, they are 'retained' in that particular case

⁴ Champertous – to bargain, to aid in, or carry on the case in consideration of a share of the outcome of the suit

⁵ Fiduciary relationship – a relationship based on trust between the parties

Lawyers Attire

In terms of Rules 1978⁶, the attire of Attorneys-at-Law has been prescribed as follows:

Rule 6

The attire for Attorneys-at-Law other than women Attorneys-at-Law shall be as follows:

Black coat and dark or white trousers and black tie, or white National costume, or black sherwani with dark or white trousers.

Rule 7

The attire of women Attorneys-at-Law shall be:

White, black, gray, or mauve saree and jacket, or white, black, gray, or mauve frock below the knee length or black coat and black long trousers up to the ankle with high necked white long-sleeved shirt with collar tucked inside the trouser and black gown/cloak.

Maternity wear shall be a black high necked long frock below the knee length with white long-sleeved shirt and black gown or the saree and jacket of the correct colors as aforementioned with black gown/cloak.

Rule 8

Attorneys-at-Law appearing in the Supreme Court and the Court of Appeal shall also wear a black gown.

It is always important to keep in mind that appearance matters in the practice of law. This does not mean an AAL requires expensive suits and expensive cars.

A bad mechanic with the best equipment and tools will still be a bad mechanic. Expensive clothes and luxury goods will not make one an excellent lawyer.

However, there is a minimum standard of acceptable appearance that is expected of an AAL.

Always ask oneself "How do I look?" before engaging in professional duties. It is important that the AAL is dressed in a manner that gives the litigant a sense of confidence in the AAL.

A lawyer who is not dressed properly may lose their opportunity to present their case before a learned Judge.

If a Judge addresses an AAL with the words, "Mr. Counsel, I cannot hear you," that may be an indication that you are not properly dressed (unless you addressed the Court in a very low voice and the learned Judge could not actually hear you!)

As a professional, it is important that one reflects "professionalism" in one's attire. Especially lawyers who represent clients before Officers of the Labor Department and similar other forums, it is necessary to dress in a manner that the Inquiring Officer identifies you as a lawyer.

If an AAL is uncertain of how to dress and what type of clothes you should select, it is best to consult a colleague, friend, or an expert in the relevant field and obtain proper advice.

Ethics and Traditions in Relation to Criminal Law Practice

As a criminal lawyer, you may be required to represent the legal interests of the different parties to a criminal investigation or case, including the suspect, accused, witnesses, victim/aggrieved party, party with an interest in a production (such as a vehicle or items of jewelry), which is in court custody or in the custody of the police.

In all the above instances, the AAL is bound by all the Supreme Court Rules outlined above.

⁶ Gazette of the Democratic Socialist Republic of Sri Lanka (Extraordinary) No. 1/4 dated 07.09.1978

Appearing for a Suspect or an Accused

An AAL appearing for a suspect or an accused is duty bound to ensure that the constitutional rights of such persons are safeguarded.

At times the AAL may have to appear in 'unpopular' cases or defend 'unpopular' clients who are accused of crimes. Remember, as per the Rules, the AAL is engaging in a professional duty to safeguard the constitutional rights of such person, no matter what the media or wider society states.

They are expected to act in the "best interests" of the client with "due diligence" to the best of their ability and care. Likewise, it would be unethical to criticize members of the legal profession who choose to represent 'unpopular' clients or appear in 'unpopular cases,' as they are fulfilling their professional duty as an AAL, on behalf of their client.

In these instances, it is also vital to safeguard confidential information of the client and to refrain from revealing sensitive information without the consent of the client (see Rules 31-38).

Representing the Interests of a Victim or Witness

If an AAL is retained to provide legal assistance to a victim of a crime or a witness, they must be aware of the legal provisions and principles that are applicable to such instances.

Section 260 of the Code of Criminal Procedure Act Section 41 of the Judicature Act and the provisions of The Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015, are very important in this regard.

The AAL for the victim/witness may have a role to play in the investigation stage, trial stage, and even at the appellate or revisionary stage of a criminal proceeding.

Traditions in the Criminal Practice

In addition to the above, the AAL must observe certain 'traditions' that are particular to criminal practice. These are noteworthy and are outlined below.

In the High Court, the prosecutor (State Counsel) has a designated table and chair facing the translator/mudaliar and the Judge. The tradition is that only members of the Attorney General's Department and prosecutors from the Commission to Investigate Allegations of Bribery or Corruption would use this facility.

It is also a tradition that if a trial or inquiry is ongoing before a court, at least one member of the private bar should remain within the court, such that the last remaining AAL inside the court-house should not be the prosecutor.

The Hon. Attorney General is the chief legal officer of the State. Particularly concerning criminal investigations and prosecutions, the Attorney General exercises a pivotal role. All officers of the Attorney General's Department are representatives of the Attorney General, and the due respect must be given to them.

Offering a seat to senior members of the Legal Profession and a President's Counsel, is a long-standing tradition, which needs to be safeguarded. Whenever the presiding Judge or Judges are delivering an order or a judgment in open court, all AALs appearing for the case are expected to remain on their feet.



CIVIL LAW PRACTICE



JURISDICTIONS AND CASE TYPES

INTRODUCTION

A civil action has to be filed before a court which has the power to hear and determine (jurisdiction) the legal rights of the parties.

If the case has been instituted before a court which has no jurisdiction to hear and determine, the opposing party is entitled to set up **a plea of want of jurisdiction**.

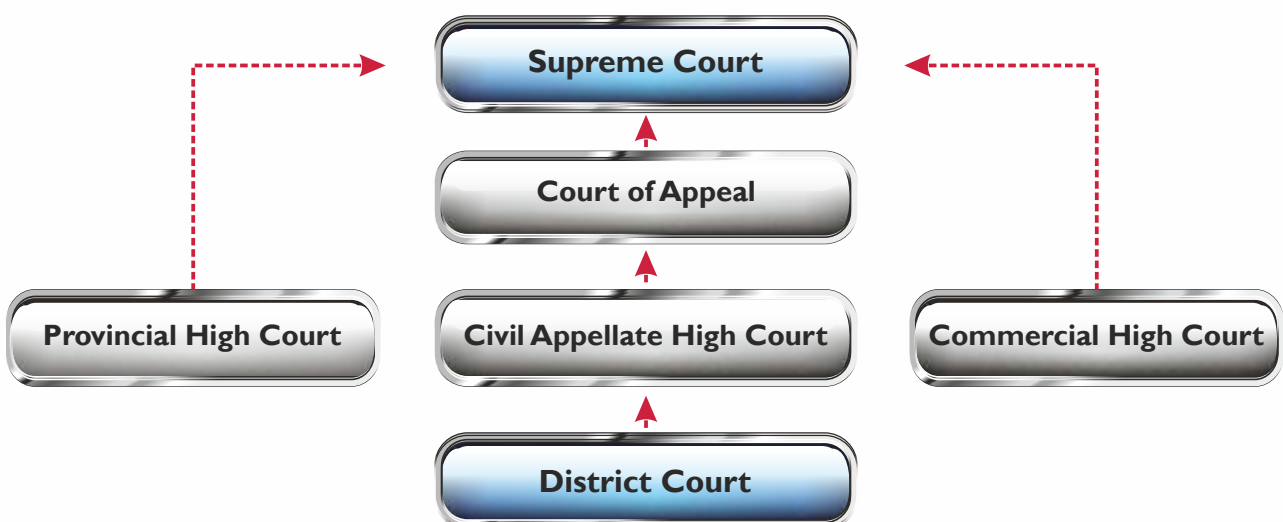
In terms of Section 76 of the Civil Procedure Code, if the defendant intends to dispute the averment¹ in the plaint as to the jurisdiction of the court, they must do so by a separate and distinct plea, expressly traversing such averments.

An objection to jurisdiction must be taken at the earliest opportunity.² Jurisdiction could have two aspects, i.e., the forum before which the case needs to be filed and the geographical location in which the case should be filed (local limits of jurisdiction).

As far as the original civil litigation is concerned, the forum would be a District Court or the Commercial High Court. Appellate jurisdiction in respect of civil matters will be exercised by the Civil Appellate High Court or the Supreme Court.

Therefore, a fair understanding of the hierarchy of civil courts in Sri Lanka is important.

THE STRUCTURE AND HIERARCHY OF CIVIL COURTS IN SRI LANKA



¹ An 'Averment' is a formal statement made by a party in their pleadings which may contain facts or circumstance sought to be proved or substantiated.

² *Jalaldeh vs. Rajaratnam* [1986] 2 Sri LR 201

District Court

The first instance trial court that has the power to hear and determine civil disputes is the District Court. The procedure is set out in the Civil Procedure Code. Judicature Act No. 2 of 1978, as amended, established District Courts and Family Courts as first instance civil courts.

Whilst Sections 19 to 22 of the Judicature Act deal with the jurisdiction of a District Court, Sections 24 and 25 spell out the jurisdiction of a Family Court.

However, the said jurisdiction of a Family Court is also presently exercised by the District Court.

Provisions contained in the Evidence Ordinance are applicable in respect of recording evidence before a District/Family Court.

In terms of Section 5A of High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006, the High Court established by Article 154P of the Constitution for a province shall have the appellate and revisionary jurisdiction in respect of judgments, decrees, and orders delivered by any District Court or Family Court within such province.

Commercial High Court

High Court of the Provinces (Special Provisions) Act No. 10 of 1996 vested first instance civil jurisdiction in respect of matters listed in the First Schedule of the said Act on the High Courts established under Article 154P of the Constitution.

Presently, the said jurisdiction is exercised only by the High Court of the Western Province situated in Colombo. Accordingly, all cases where the cause of action has arisen out of commercial transactions inter alia including banking, the export or import of merchandise, services, insurance, mercantile agency, debt, damage, or demand which exceeds rupees twenty million³ [except the actions under Debt Recovery (Special Provisions) Act No. 2 of 1990], actions under the Companies Act No. 7 of 2007, and all actions under the Intellectual Property Act No. 36 of 2003 are required to be filed before the Commercial High Court.

An appeal lies directly to the Supreme Court from the Commercial High Court. At present, only the High Court of the Western Province has been empowered to exercise civil jurisdiction and there are four divisions of the Commercial High Court sitting in Colombo.

Civil Appellate High Court

A party who is aggrieved by a judgment or an order delivered by a District Court could invoke an appellate or revisionary jurisdiction of Civil Appellate High Court established under the provisions of Article 154P of the Constitution read together with High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

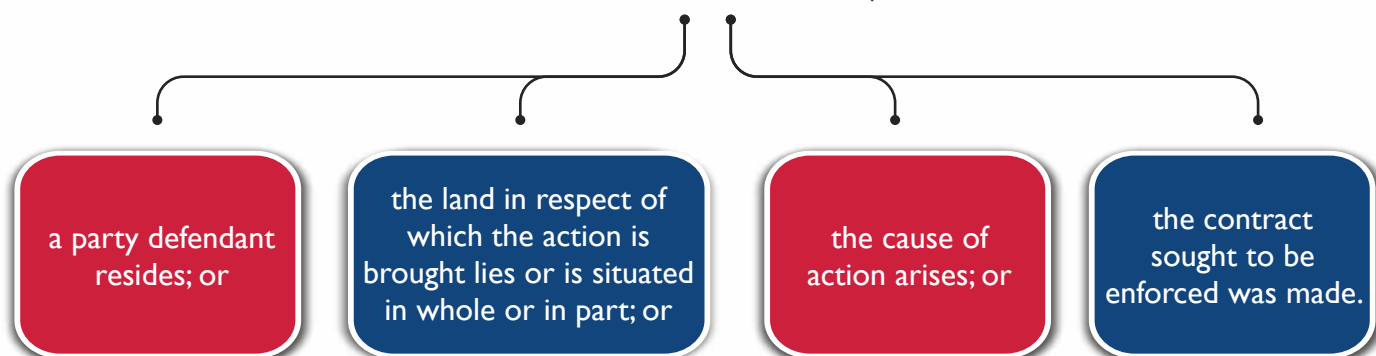
Supreme Court

Once the judgment is delivered by the Civil Appellate High Court, a party who is not satisfied with the judgment has the option of appealing to the Supreme Court.

How to determine the jurisdiction of your case

Section 9 of the Civil Procedure Code provides thus:

Subject to the pecuniary or other limitations prescribed by any law, action shall be instituted in the court within the local limits of whose jurisdiction



³Gazette (Extraordinary), High Court of the Provinces (Special Provisions) Act No. 10 of 1996 (No. 21/12/33, 2019)













In order to ascertain the local limits of jurisdiction of each court, it is necessary to refer to Judicature Act No. 2 of 1978 and gazette notifications issued by the Minister of Justice from time to time to demarcate judicial zones, divisions, and districts.

In addition, it is necessary to consider whether an arbitration clause is included in the contract document in terms of Section 5 of the Arbitration Act No. 11 of 1995.

If a party to an arbitration agreement institutes legal proceedings in a court against another party to such agreement in respect of a matter agreed to be submitted for arbitration under such agreement, the court shall have no jurisdiction to hear and determine such matter if the other party objects to the court exercising jurisdiction in respect of such matter.

TYPES OF CASES

Every District Court follows a filing and numbering system in line with the standard practices of case management. There are certain common abbreviations used by courts to identify different types of cases. It is always advisable to be familiar with the case identification codes in advance if you are appearing in a court in which you have not appeared before. Some of the common codes are as follows:

 MR/DMR	Money Recovery
 DR/DDR	Debt Recovery
 L/DLM	Land
 SPL/X	Special
 P/DPA	Partition
 D/DDV	Divorce
 MS	Money Summary (Summary Procedure on Liquid Claims)
 ARB	Arbitration
 IP	Intellectual Property
 CO	Company
 TAX	Tax
 HP/DHP	Hire Purchase

FUNDAMENTAL RIGHTS AND WRIT JURISDICTION

FUNDAMENTAL RIGHTS JURISDICTION

Fundamental rights and writ applications do not fall strictly within civil procedure (or criminal procedure for that matter) but is a vitally important aspect of Sri Lanka's adversarial litigation.

It gives an aggrieved litigant the space to vindicate or redress a Constitutionally recognized 'fundamental right' that is purportedly violated.

In terms of Article 17 read together with Article 126 of the Constitution of the Republic, the sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental right or language right declared and recognized by Chapter III or Chapter IV is vested with the Supreme Court of the Republic.

Fundamental rights recognized under the Constitution of the Republic are set out in Articles 10 to 14. Restrictions on fundamental rights are allowed in limited circumstances, which are set out in Articles 15 and 16. These circumstances include the preservation of public security.

Restrictions, however, must be in proportion to the needs of public security and Constitutionally entrenched limitations on fundamental rights.⁴

The procedure in relation to fundamental rights applications is found in Article 126 of the Constitution read together with the Supreme Court Rules 1990.⁵ The process will include the following steps:

Supporting the application:

Once the fundamental rights application is filed in, the Supreme Court registry, you will be seeking a date to 'support' the matter initially.

Leave to proceed:

The case will then appear in the 'leave to proceed' list in the day's Supreme Court case list. On this day, you are expected to support the application to proceed, and if the Supreme Court decides that you have a prima facie case, it will grant leave to proceed.

⁴ Channa Pieris and Others vs Attorney General [1994] 1 SLR 1

⁵ Supreme Court Rules 1990, Part IV Rule 44

Objections:

The respondents can thereafter file objections and the petitioner may file counter objections.

Written submissions:

Thereafter, written-submissions may be filed and finally the matter will be determined following oral arguments.

Petition and Affidavit

Support for leave to proceed

If leave to proceed
granted

If leave to proceed
refused

Notices to the
Respondents

Matter ends

Statement of
objections/counter
affidavit
within 14 days from
such notice

Counter affidavit by
the Petitioner within
14 days replying to
the allegations of
fact contained in any
Respondent's
affidavit

Written
submissions

Hearing

Judgment

HUMAN RIGHTS COMMISSION

Where there is an alleged violation of a fundamental right, it is advisable to lodge a complaint with the Human Rights Commission of Sri Lanka at the earliest. This is because, a fundamental rights application is to be lodged in the Supreme Court within one month from such infringement, and if a complaint has been lodged to the Human Rights Commission and the inquiry is pending, you may file the fundamental right application even after the one-month period.⁶

It is important that you obtain written instructions and all the related documents (i.e. any available medical reports, gazettes, circulars, photographs, voice/video recordings, complaint to the Human Rights Commission) from the Client at the initial consultation and identify all necessary parties in order to name them as party Respondents.

WRIT APPLICATIONS

In terms of Article 140 of the Constitution, the Court of Appeal shall have full power and authority to inspect and examine the records of any Court of first instance or tribunal or other institution and grant, issue according to law orders "in the nature of writs" - of certiorari, prohibition, procedendo, mandamus, and quo warranto.

Certiorari and Prohibition

Certiorari and prohibition are two separate and distinct prerogative writs. But the rules applicable to them are broadly similar so that they can conveniently be described together.

As remedies, the difference between them is that whereas certiorari is available to get rid of a past exercise of power, prohibition always acts as a remedy for the future by preventing an officer or authority from proceeding to exercise a power which it does not have in a given situation.

As regards the availability of the two remedies, the difference is that whereas certiorari is available in two distinct types of situations, namely, invalid exercise of power and valid exercise of power containing error of law on the face of the record, prohibition is available only on the ground that there is going to be an invalid exercise of power.⁷

⁶ Human Rights Commission of Sri Lanka Act No. 21 of 1996, 13

⁷ Sunil F.A. Coorey, Principles of Administrative Law in Sri Lanka (3rd edn, Author 2012) 772

Procedendo

Although statute law has provided for orders in the nature of writs of procedendo, there are in our law no reported cases in which procedendo was in fact sought. The theory is that the writ is available to compel an officer or authority to exercise power in the exercise of which they or it has a duty to act judicially. Thus, a court of law wrongly declining to act on the incorrect basis that it has no jurisdiction in respect of a given action, can be compelled by procedendo to proceed to try such action and deliver judgment.

Thus, procedendo would lie in much the same circumstances as mandamus except that the former is available to compel the exercise of power acting judicially only. However, as procedendo has not been in use in this country, no special mention will hereafter be made of procedendo.⁸

Mandamus

Instances where, although we have called upon some officer or authority to exercise power vested in them or it by law, there has been an express or implied refusal to exercise such power, and such failure to exercise power prejudices us. In such cases the remedy is to seek an order in the nature of a writ of mandamus to compel such officer or authority to validly exercise that power.⁹

Quo warranto

It is to be observed that quo warranto is a remedy available to call upon a person to show by what authority they claim to hold such office. Therefore the basic purpose of the writ is to determine whether the holder of a public office is legally entitled to that office. If a person is disqualified by law to hold statutory office the writ is available to oust them.¹⁰

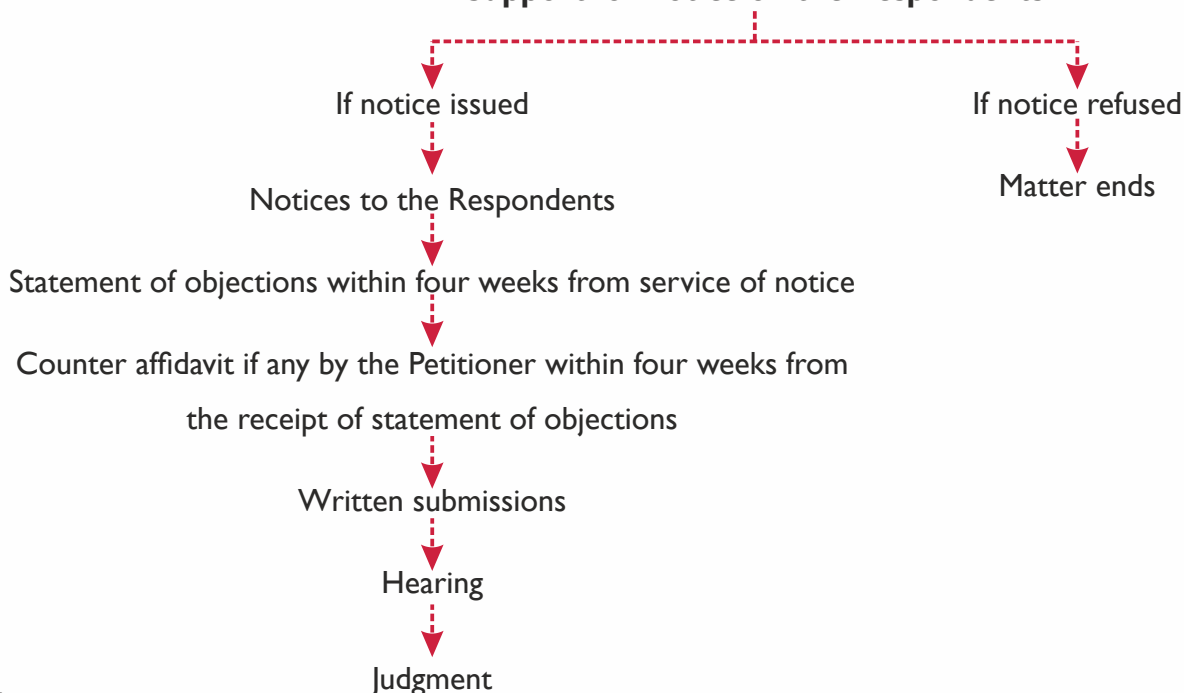
In terms of Article 141 of the Constitution, the Court of Appeal is empowered to issue orders in the nature of writ of habeas corpus in order to examine the legality of any person who has been detained in public or private custody.

The Court of Appeal has the power to direct the Magistrate Court of the area of the alleged detention, to 'inquire into and report' on the alleged illegal detention, whereupon the Court of Appeal will decide on whether a writ of habeas corpus can be granted or issued.

In terms of Article 154 P (4) of the Constitution introduced by the 13th Amendment to the Constitution, Provincial High Courts have limited powers to exercise writ jurisdiction. A writ application is to be filed by way of petition and affidavit; notice, motion, and proxy will have to be filed accordingly.¹¹

Petition and Affidavit

Support for notice on the Respondents



⁸ Ibid 834

⁹ Ibid 835

¹⁰ Dilan Perera vs. Rajitha Senaratne [2000] 2 Sri LR 79

¹¹ The Court of Appeal (Appellate Procedure) Rules 1990

COURT PROCESSES AND PRACTICES



Handling a Client, Consultation, and Building Up a Good Client-Lawyer Relationship

"The client" is the most important factor in the administration of justice process. A client expects their lawyer to safeguard their rights and interests. A client needs to feel comfortable to discuss a personal matter with the lawyer and the lawyer should be able to provide the necessary confidence to the client to disclose all the information in order to formulate a successful case or a defence.

Therefore, it is important to build a good client-lawyer relation as it is vital for both parties. It is important to share a few tips to build a good client-lawyer relationship.

Respect

It is important to treat a client with respect irrespective of the professional fee you are going to charge. It is imperative to understand that your clients are on an emotional roller coaster, and you are there to help them, not make them feel worse.

The word "respect" in this context includes many aspects. As the legal advisor you are expected to respect their:



Privacy - never divulge the personal information (subject to professional ethics).



Time - always be punctual, answer/reply telephone calls or messages, and be available when the client needs you.



As a person - always address your client with respect referring to "Mr." or "Ms." in written as well as oral communications. Be friendly and courteous. If you are not certain as to how you should address your client, you could ask the client.



Personal space - do not try to interfere with your client's personal life and adopt a role beyond your professional boundaries.



Needs - always try to accommodate your client's expectations and requirements. If you are unable to agree with the requests made by your client, always explain with reasons.



Background and the educational level - always keep in your mind that your client may not understand legal principles and terminology as you do. Hence always try to explain matters in simple terms.



Gender - it is important to understand that difficulties may vary based on gender, the approach, ideas, or needs. Therefore, it is essential that you consider such matters (see further discussion in Chapter 6 - Gender and Social Inclusion).



Other social aspects - such as religion, nationality, special needs, cultural background, and past experiences need to be considered when dealing with clients.

Consultation

Always avoid providing legal advice on the phone without ascertaining the details of the entirety of the case/dispute.

If the client wishes to discuss the matter in detail, request the client to meet you for a consultation.

You are required to arrange a suitable place to conduct the consultation.

If you wish to charge a professional fee for the consultation, it is advisable to inform the client in advance and collect the fee at the consultation.

Always give a good hearing to your client - listen closely to what they say. If you are talking with someone on the phone, do not respond to your emails at the same time. If the person is with you in the office, look them in the eye and watch for body language. Your client should feel that you want to listen to them.

Take down appropriate notes during the consultation.

Engage in effective listening - summarize what your client said after listening to them and confirm whether you have understood correctly. If not, ask the client to explain once again.

At the end of the consultation, explain the options open to your client along with the pros and cons of each option.

If you expect the client to accomplish several tasks before you initiate the next step, it is advisable to prepare a to-do list for the client and place a copy of the list in your file.

When prospective clients come to you, they are often in emotional and financial distress, and you may feel uncomfortable discussing your fees with them. It is necessary to get over that difficulty and mention your fees up front to your client. Otherwise, your client will face a highly embarrassing situation if you quote your fees after performing your professional duties and are not in a position to meet it.

If your client instructs you to proceed with the matter, it is always advisable to obtain written instructions from the client. You may request the client to prepare a note including the details of the dispute in point form and get their signature.

How to Solve a Problem

As a junior lawyer, it is normal to face difficulties while performing professional duties. You need to accept the fact that there is always something new to learn. When you engage in a new case, do not rush to conclusions, and assume that you are well versed with the relevant substantive and procedural law involved.

Instead, do your own research and find out the relevant statutes and rules of civil procedure. Always avoid going into court with an inaccurate assumption about the legal position of the case.

If you faced a difficulty for which you could not find a solution on your own, it is always best to seek the advice of a senior lawyer.

Once you are satisfied that you are sufficiently competent to explain the issue to a senior lawyer without taking much of their time, you may approach a senior lawyer and find out whether the senior lawyer is in a position to help you.

On the Court Day - "Before - During - After" the Case

“**Apart from writing, there is addressing the Court. Speaking needs even more practice: and even more experience. I was no good at first. I was too shy; also, too nervous.**”¹²

Lord Denning

To any junior lawyer in their early days of appearing in court, speaking before a learned Judge could be a dreadful experience. As a law student and junior lawyer you may have gone through courses in trial advocacy, participated in Moot Court competitions, and even conducted mock trials.

Yet, representing a client on your own in a court room where you are surrounded by much more experienced Attorneys (some of whom were admitted to the Bar the year you were born), could be a thrilling but terrifying challenge. Therefore, prior preparation is extremely important.

Before the Court Day

- Know your facts - read your brief thoroughly. Be ready to answer any question posed by the Judge. Sometimes Judges may direct you to briefly explain the case. If you must lead the evidence of a witness or cross examine a witness, prepare fully with short notes and a clear strategy.
- Know your law - make sure you are familiar with the statutory provisions, legal principles, and case law relevant to your case.
- Know your Judge - if possible, make prior inquiries and find out the practices of the court. Each Judge/Court has its own practices for the smooth functioning of its proceedings.
- Arrange your brief with easy reference tags and have copies of the relevant statutes and case law.
- Make sure you keep your short notes with your brief in a numbered order for quick and easy reference.
- Ensure that you take your Lawyers' Diary with you.

During the Trial

- Be on time - it is important that you reach the correct courthouse on time. Before entering the Court room check the list of cases fixed for that day displayed outside the Court room to make sure your case is listed.
- In the District Court, the general practice is to read out the last journal entry after calling the case number in open court by the Court Mudaliar (Court Clerk/Court Interpreter). Wait until the Court Clerk finishes reading and then mark your appearance.

Marking your Appearance

If you appear representing a party-

“*Jagath Perera, Attorney-at-Law appears on the instructions of Ms. Nimali Wickramasinghe, Attorney-at-Law for the Plaintiff*”

[Jagath Perera - Counsel and Nimali Wickramasinghe - Instructing AAL]

If you are the junior counsel and a senior counsel is leading you in the case -

“*Mr. Gamini De Silva, Attorney-at-Law appears with Mr. Jagath Perera, Attorney-at-Law on the instructions of Ms. Nimali Wickramasinghe, Attorney-at-Law for the Plaintiff*”

[Gamini De Silva - Senior Counsel, Jagath Perera - Junior Counsel and Nimali Wickramasinghe - Instructing AAL]

If you are the junior counsel of a President Counsel in the case -

“*Mr. Saman Ellawala, President's Counsel appears with Mr. Jagath Perera, Attorney-at-Law on the instructions of Ms. Nimali Wickramasinghe, Attorney-at-Law for the Plaintiff*”

[Saman Ellawala - President's Counsel, Jagath Perera - Junior Counsel and Nimali Wickramasinghe - Instructing AAL]

¹² Alfred Thompson Denning, The Discipline of Law (Butterworths 1979)

After marking your appearance, you have to make your application.

How to Address the Court

Always stand when addressing the Bench and make every endeavor to address the Court from the Bar table. You should always avoid any sign of disrespect towards the Court such as having your hands in your pocket or pointing the finger at the learned Judge.

The Bench is addressed as “Your Honor” in the District Court and Commercial High Court.

A Supreme Court Judge is addressed as “Your Lordship/ My Lord or Your Ladyship/ My Lady.”

It is a part and parcel of good advocacy and legal professionalism to act with extreme respect and courtesy towards the Court and the other members of the legal profession.

If the Senior Counsel is not well:

“Your Honor, Mr. Saman Ellawala, President's Counsel appears for the Plaintiff. Mr. Ellawala, President's Counsel is indisposed. Therefore, I respectfully move that the matter may be re-fixed for trial (support/argument etc.)”

If the Senior Counsel is having a personal difficulty:

“Your Honor, Mr. Saman Ellawala, President's Counsel appears for the Plaintiff. Mr. Ellawala, President's Counsel is having a personal difficulty to be present before Your Honor's Court today. Therefore, I respectfully move that the matter may be re-fixed for trial (support/argument etc.)”

If you wish to keep the case down:

“Your Honor, Mr. Saman Ellawala, President's Counsel appears for the Plaintiff. May this matter be taken up a little later”

After the Trial

When you want to suggest the next date of the trial (e.g., as January 10, 2023):

“Your Honor, may I respectfully suggest the 10th of January 2023, if it suits Your Honor's Court and my learned friend?”

If the opposing party moves for an adjournment or further time to comply with an order of the Court and, if you want the next date to be a final date for the next step:

“Your Honor, may it be a final date”

Once the matter is re-fixed, make sure that you note down the next date in your diary clearly and accurately.

It is always advisable to inform the client about the day's proceedings and the next date after the conclusion of the case.

Ensure that the professional fees are duly collected and acknowledged.

Advise the Instructing Attorney-at-Law to obtain a certified copy of the proceedings (if available) before the next date.

Oral and Written Applications Before the Court

Oral Applications:

Due to the large volume of work before courts, the learned Judges are under intense pressure to hear each and every case within a limited judicial time period.

It is essential that lawyers understand that in such situations brevity and precision are highly appreciated attributes in any practitioner.

Therefore, as a junior lawyer it is very useful if you plan out your application in advance and be ready to address court without causing unnecessary delay. It is advisable to have your appearance and points written down on a paper for easy reference.

As a Counsel appearing on behalf of a litigant, it is your duty to assist the court in coming to the appropriate conclusions.

“ Let me assume that you would like to enter for practice at the Bar and are prepared to brave all difficulties.

Have you the right qualities? For advocacy, obviously, the prime need is the ability to communicate by speech.

Judges confess in private that there are counsel now practising whom they cannot understand. If you mumble or burble, give up all thought of advocacy.

Not only must you be able to speak up loud and clear, but you should be able to put a case relevantly, neatly, succinctly, and generally in a way pleasing to the tribunal before which you are appearing.

The last means that good manners are important.¹³”

Written Applications:

In terms of Section 91 of the Civil Procedure Code, every application made to the court in the course of an action, incidental thereto, and not a step in the regular procedure, shall be made by motion by the applicant in person or their counsel or registered attorney, and a memorandum in writing of such motion shall be at the same time delivered to the court.

TRADITIONS OF THE BAR

Bow when entering or leaving the Courtroom if the Court is in session. Bow when the Judge enters or leaves the Bench. Avoid any private discussions at the Bar table when the Judge enters the Court and stay silent until the Court is called into session.

Do not leave the Bar table unattended. It is an old-fashioned courtesy to wait until excused or another practitioner joins you at the Bar table once your matter has concluded. If your matter is the last matter, remain at the Bar table until the Court adjourns.

Avoid approaching a witness in the box without leave from the Court. Always seek the prior permission of the Court if you wish to approach the witness in the box. As the Counsel you may say, *Your Honour, may I approach the witness?*

Always address your opponent as "My learned Friend" or "Counsel for the Defendant/Plaintiff (party represented)." Never address an unrepresented party as "my learned friend."

Never approach the Bench. If you wish to hand over a document to the learned Judge, always hand over the document to the Court Clerk to be given to the learned Judge.

Respect senior members of the profession. While you are occupying a seat inside the Court and if a senior member walks in it is a good habit to offer your seat to them.



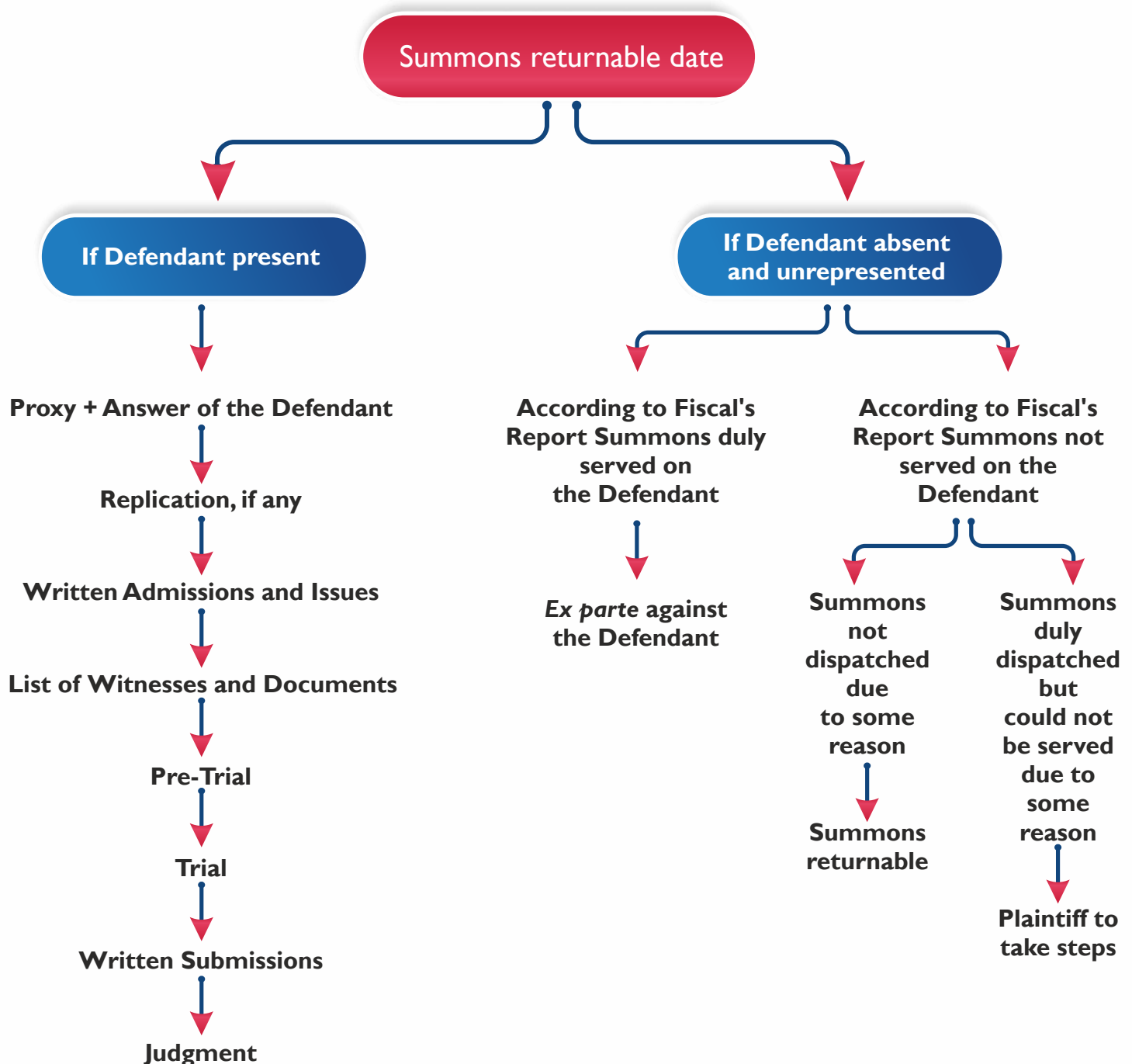
¹³ Glanville Williams Learning the Law (10th edn, Stevens & Sons Limited 1978)

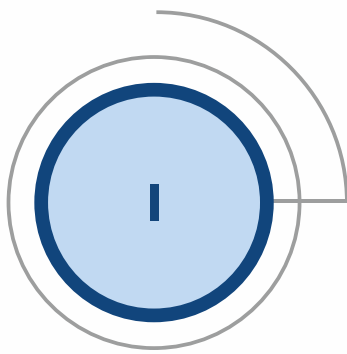
BASIC STEPS IN A CIVIL MATTER

Institution of Action:

proxy + plaint and documents + memorandum nominating legal representative + stamp duty + summons in form No. 16 in the 1st schedule + precept in form 17 of the 1st schedule + stamped envelope

Registry will issue a case number

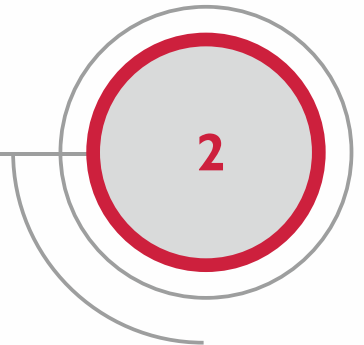




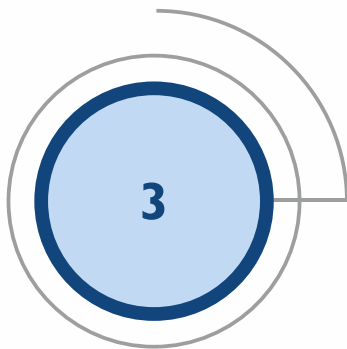
PROXY

The proxy is the authority granted by a client to an AAL to act on their behalf. Refer Chapter V of the Civil Procedure Code (CPC)

PLAINT | PETITION



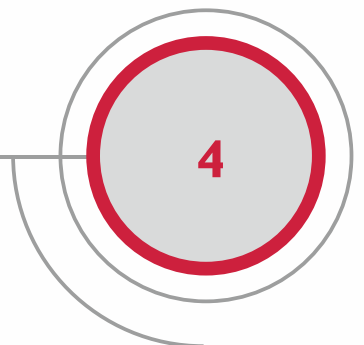
The plaintiff or in appropriate actions the petition commences the legal process. A plaintiff can be amended (S. 93 of CPC) or withdrawn (S. 406 of CPC). There can be instances where the law requires the Plaintiff to submit an Affidavit to support the contents of the plaintiff/petition. Therefore, it is important to consider the relevant legal provisions prior to the institution of the action.



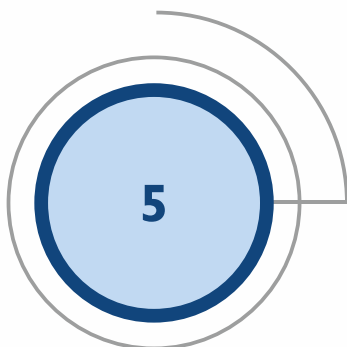
SUMMONS

Once the case is filed before the Court, summons will be issued to the Defendant. Sections 55 to 71 of the CPC are applicable. There can be instances where law requires summons to be in a special form (Form 19 in the 1st schedule to the CPC under summary procedure on liquid claims).

ANSWER



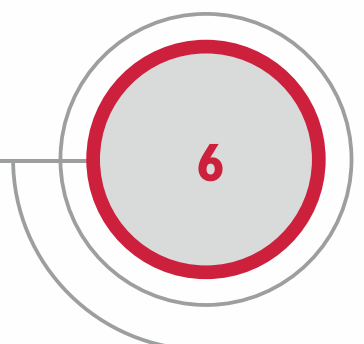
On the summons returnable date, the Defendant is required to file the proxy and the answer. Sections 72 to 78 of the CPC are applicable in this regard.



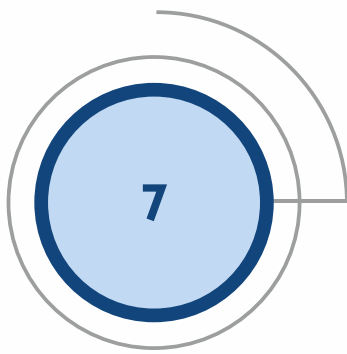
REPLICATION

If the answer of the Defendant contains a claim in reconvention, in terms of S. 79 of CPC the Plaintiff is entitled to file a replication.

PRE-TRIAL



Once all the pleadings are completed, the matter will be fixed for pre-trial. Ss. 79A, 142A to 142I of CPC are applicable. The written issues and admissions of the respective parties should be filed 14 days prior to the pre-trial date with notice to opposing party. It is advisable to file the list of witness and documents also along with the written issues and admissions despite that the list needs to be filed 15 days prior to the trial date.

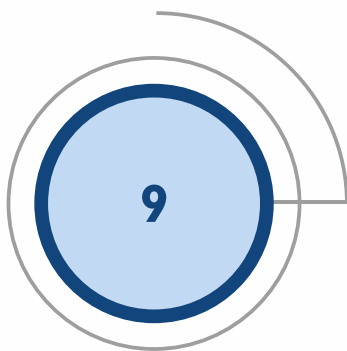
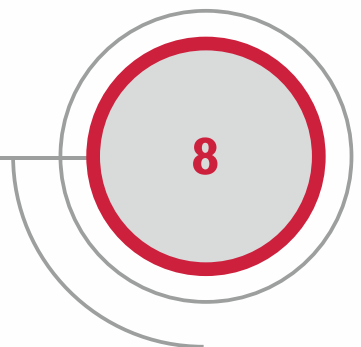


TRIAL

Once the pre-trial is over, the matter will be fixed for trial. If a party intends to invoke steps specified in Chapter XVI of the CPC (interrogations, discovery/inspection/production/impounding documents) necessary applications must be made prior to the date of the trial. Due to the default of a party, as the case may be, the matter may get fixed for ex-parte trial or may get dismissed. The relevant provisions are found under Ss.84 to 88 of the CPC.

WRITTEN SUBMISSIONS

At the conclusion of the trial as a practice of court, the learned Judge may direct the parties to tender their respective written submissions.

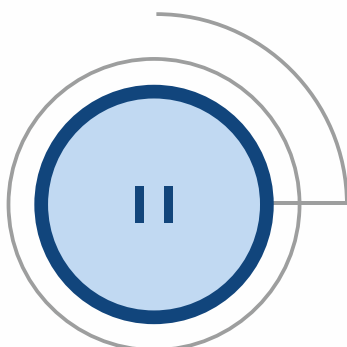
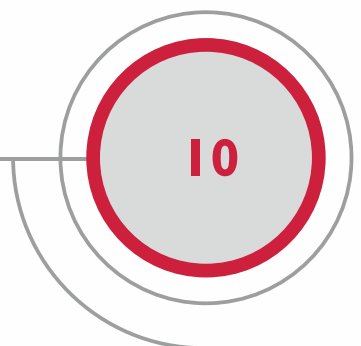


JUDGMENT AND DECREE

At the conclusion of the matter, the learned Judge will deliver the judgment answering the issues of the case with reasons.

EXECUTION OF THE DECREE

As the case may be, the party who secured a judgment in their favor may have to take steps to enforce the judgment. Relevant provisions are found in Chapter XXII of the CPC.



APPEAL

If any party to a litigation is aggrieved by any order or judgment delivered by a court, such party is entitled to prefer an appeal. The relevant procedure is found in Chapter VIII of the CPC.

DRAFTING OF PLEADINGS AND OTHER LEGAL DOCUMENTS

INTRODUCTION

As a civil law practitioner, you will be required to draft a variety of legal pleadings and other documents. Drafting of pleadings and other legal documents is an art you need to develop by practice. It is important to keep in mind that at times, the entire future life of your client or all their wealth may depend on the legal document you draft. Hence, a minor mistake could cause serious repercussions, even to the extent of your disenrollment as an Attorney-at-Law.

Mind Mapping for Legal Drafting

Therefore, it is important that you plan your drafts very carefully and clearly. Mind mapping is a useful tool you could employ prior to drafting.

In your mind, visualize the entire case or the transaction and develop a logical, effective, and well-organized structure of your draft.

FOLLOWING TIPS MAY BE USEFUL TO DEVELOP A GOOD DRAFT:

Obtain all the required information relevant to the matter at the initial consultation with the client

Planning is very important. Before drafting a legal document consider the following:

- What is the purpose of the legal document?
- Who are you writing the legal document for?
- Who is my reader?
- What is my reader's relationship to my client?
- Why am I writing this? (Is it to inform, persuade, or to accomplish some other end)

Document review is a very important skill. You need to review each and every document received from the client. If necessary, request the client to explain the documents

Always try to avoid ambiguity. Stay away from words such as, "it," "this," "that," "such," and "which," to refer broadly to an idea in a preceding sentence because it could cause confusion

Plead all the information to avoid any allegation of suppression or misrepresentation of material facts

It is always advisable to obtain written instructions from the client prior to the commencement of drafting legal documents

Aim for clarity. Avoid long sentences crammed with many factual matters and add sub-paragraphs when required. Add sub-headings if required to demonstrate the basic structure and for the easy reference of the reader

Consider the relevant legal provisions and special legal requirements (prior to institution of legal action such as demand, notices under Section 461 of Civil Procedure Code, etc.)

Identify the correct cause/s of action

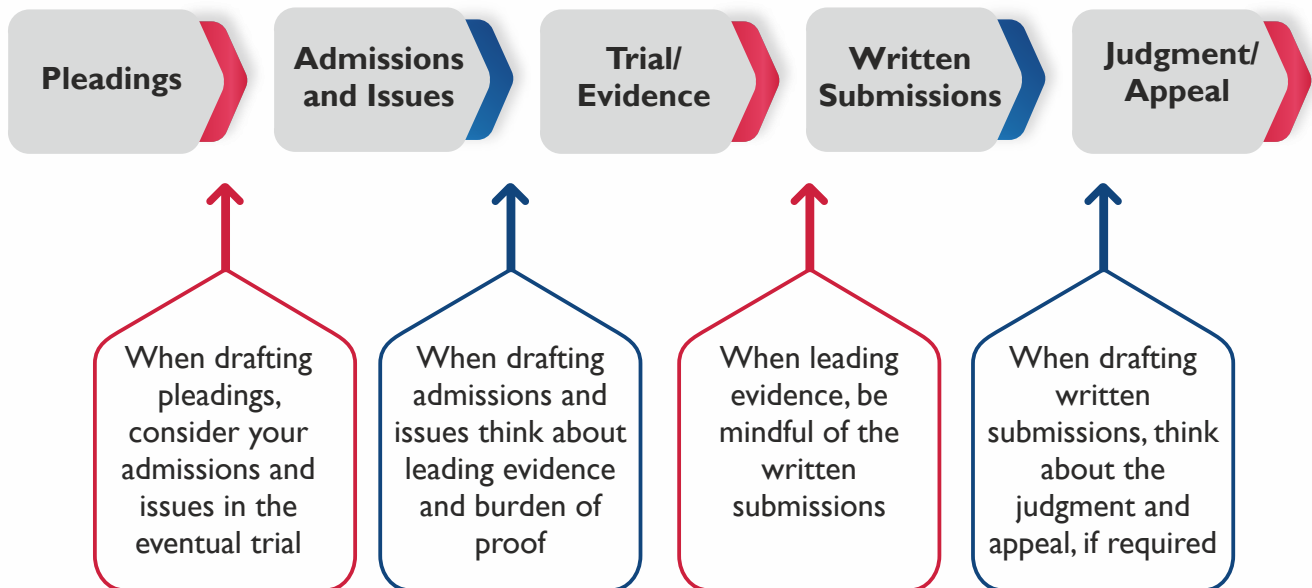
Identify the necessary parties

Drafting of Pleadings

It is necessary to understand that drafting of legal documents and pleadings, including letter of demand/notice to quit, etc. are interconnected components in the litigation process.

Once you send the letter of demand or file your pleadings, your client's case will be defined and restricted by the contents of the letter of demand or the pleadings you have filed. Hence, the entire civil litigation process will depend on the initial documents you draft and tender.

Therefore, it is necessary to consider the entire process prior to the drafting of such written documents.

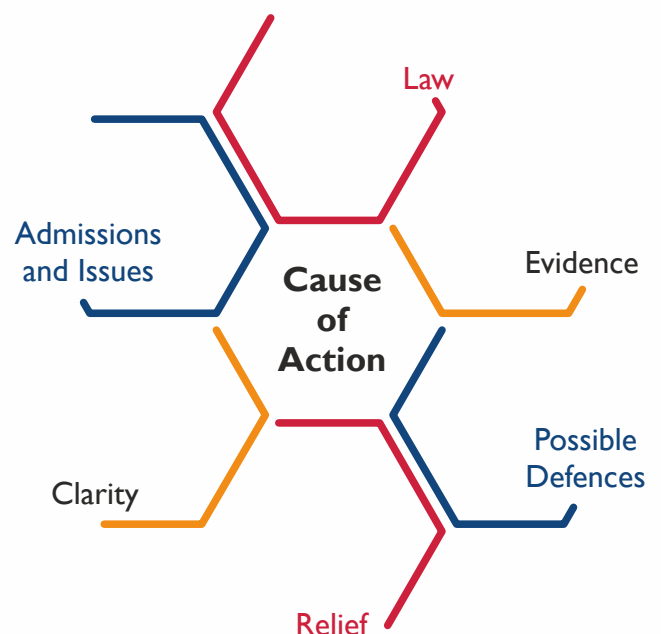


Cause of Action

In terms of Section 6 of the Civil Procedure Code, every application to a court for relief or remedy obtainable through the exercise of the court's power or authority or otherwise to invite its interference constitutes an **"action."** In civil litigation, every action is based on a **"cause of action."** Therefore, identification of the correct cause of action is fundamental to any legal drafting.

"Cause of Action" is the **"wrong"** for the prevention or redress of which an action may be brought, and includes the denial of a right, the refusal to fulfil an obligation, the neglect to perform a duty and the infliction of an affirmative injury.¹⁴ A cause of action is generally described as an entire set of facts which gives rise to an enforceable claim and as comprising every fact which traversed, the Plaintiff must prove in order to obtain judgment.

The cause of action must constitute – every fact that the Plaintiff must prove in order to obtain the judgment, as well as every fact that the Defendant must deny/cross.¹⁵



¹⁴ Civil Procedure Code [1890] as amended, s.5

¹⁵ Pless Pol v Lady de Soysa et al 1907], 9 NLR 316

Therefore, in the light of the correct Cause of Action, the following matters need to be considered in legal drafting:

Law



Relevant legal provisions and principles that have an effect on a cause of action such as Prescription Ordinance, misjoinder of causes of action, principle of res judicata, provisions contained in special Statutes (Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990, Partition Law No. 21 of 1977, Recovery of Damages for the Death of a Person Act No. 2 of 2019, Arbitration Act No. 11 of 1995, etc.

Admissions and Issues

When drafting pleadings, it is necessary to consider the possible admissions and issues in the eventual trial. Therefore, pleadings need to be drafted in a manner that admissions and issues could be framed referring to specific averments in pleadings.

Clarity



One of the most important qualities in a good draft would be clarity with regard to the pleadings and case of the party. Therefore, it is important to ensure clear, precise, and simple pleadings.

Relief

It is extremely important that all the relief are properly presented in your pleadings. It is important to be mindful of the legal position that the party who had not sought any substantive relief has no right in law to seek an interim injunction as an interim injunction cannot be a relief by itself but is only a mechanism to assist and protect final relief.¹⁶

Evidence



Unless the Plaintiff has sought interim relief, it is not necessary to plead evidence in the Plaint filed before the District Court or Commercial High Court, except the base document/s. However, in terms of Section 101 of the Evidence Ordinance, generally the burden of proof lies on the party who asserts the existence of facts. Further, it is necessary to consider whether your client is required to tender an affidavit along with the plaint/petition, etc.

Possible Defences

It is always advisable to assess the case of your client and consider possible defences that can be taken up by the opposing party. Such assessment would avoid any preliminary objections and other technical defences/objections that could delay the litigation process.

¹⁶ Mallika De Silva v Gamini De Silva [1999], 1 SLR 85

Basic Pleadings and Legal Documents Involved in Civil Law Practice (Templates Annexed)

A **Plaint**
Sections 39 to 54 of the Civil Procedure Code

B **Answer**
Sections 72 to 78 of the Civil Procedure Code

C **Replication**
Section 79 of the Civil Procedure Code

D **Affidavit**
Sections 437 and 151A of the Civil Procedure Code

E **Written Admissions and Issues**
Section 142A of the Civil Procedure Code

F **List of Witness and Documents**
Sections 121 and 175 of the Civil Procedure Code

G **Motion**
Section 91 of the Civil Procedure Code

Written Submissions

Further reading:

Civil Procedure Code, as amended

Applicability of the Evidence Ordinance in Civil Actions by Dr. Abdul Majeed

A Commentary on Civil Procedure Code and Civil Law in Sri Lanka by Dr. Abdul Majeed

Civil Procedure in Sri Lanka by Kalinga Indatissa, President's Counsel

Learning the Law by Glanville Williams

Professional Ethics and Responsibilities of Lawyers by Dr. A.R.B. Amerasinghe

Civil Procedure Code, Partition Law, Evidence Ordinance and Judicature Act by A.W. A. Salam

Case Law on Civil Procedure Code by Dr. Wijeyadasa Rajapakse

Principles of Administrative Law in Sri Lanka by Dr. Sunil F. A. Coorey, 3rd Edition

Administrative Law by H.W.R. Wade & C.F. Forsyth, 11th Edition

CRIMINAL LAW PRACTICE



INTRODUCTION

An Attorney-at-Law engaging in criminal practice, fulfils a vital role in the administration of justice in any country.

In appearing for a suspect or an accused, an Attorney is duty bound to ensure certain fundamentals. For instance, it is essential to ensure that the Constitutional rights of such person are safeguarded. Article 11 of the Constitution prohibits torture or cruel, inhumane, or degrading treatment or punishment. Article 13 of the Constitution provides safeguards against arbitrary arrests, detentions, and guarantees a 'fair trial'.¹ A criminal lawyer must always bear in mind the 'presumption of innocence' which is enshrined in Article 13(5) of the Constitution.

A lawyer practicing criminal law also has the opportunity of providing legal assistance to victims of crime and witnesses. Importantly, the AAL has a role to play in every stage of the criminal justice system commencing from the investigation stage, trial stage, and finally the appellate and/or revisionary stage of a criminal case.²

COURT PROCESSES AND PRACTICES

Lodging a Police Complaint

You may be consulted by an individual who has been subject to a criminal offence.

At a consultation, you must strive to ascertain all the facts of the matter and assess as to what criminal offences have been committed by the alleged perpetrator. Thereafter, the next step would be to proceed to lodge a formal complaint to the relevant authority. Depending on the nature of the alleged offence, such authority could be:

- ➡ **The relevant Police Station**
- ➡ **Criminal Investigations Department**
- ➡ **Colombo Fraud Investigations Bureau**
- ➡ **Commission to Investigate Allegations of Bribery or Corruption**
- ➡ **National Child Protection Authority³**

The procedure at the Criminal Investigations Department is that a written complaint of the complainant must first be submitted to the relevant counter at the Criminal Investigations Department with supporting evidence/documents, and thereafter the Criminal Investigations Department will inform the complainant to attend the Criminal Investigations Department for statements to be recorded.

Most investigative authorities, require the complainant to attend the investigative authority so that statements can be directly recorded.

¹ AG v. Segulebbe Latheef and another (2008) 1 SLLR 225

² Provisions of The Assistance to and Protection of Victims of Crime and Witnesses Act No: 4 of 2015

³ This list is not exhaustive.

Preparing to Lodge a Police Complaint

It is necessary that you prepare your client to explain to the investigator, the following matters clearly:

Background to the incident

When did the alleged incidents take place?

Where did those incidents take place?

What other witnesses and evidence are available to confirm the version of the client?

The identification of the alleged offender and his details

It is important that your client obtains the receipt which is issued by the person who records or receives the complaint or notes down the relevant reference number of the complaint, so that the matter can be followed up later.

When Police Fails to Act

Sometimes the police may refuse to record your client's complaint by stating that "no criminal offence has been revealed." Or else, after having recorded the complaint, they may not commence and proceed with an investigation. You may need to consider taking the following steps:

- Complain to the relevant Superintendent of Police, requesting that appropriate action be taken
- Complain to the office of the Inspector General of Police

- Complain to the National Police Commission
- Make a formal representation to the Hon. Attorney General and/or lodge a complaint at the Human Rights Commission of Sri Lanka
- If all of the above steps do not result in any relief, you may have to consider filing a fundamental rights application based on a violation of Article 12 of the Constitution

Private Complaints

Whether the victim has lodged a police complaint, or not, if the police do not initiate criminal proceedings, you are entitled to file a 'private complaint' in the relevant Magistrate Court against the offender.⁴

Such an application is filed with a plaint and an affidavit, and you need to satisfy the Magistrate that there is sufficient material for the Magistrate to issue process. Generally, a draft charge is also filed as part and parcel of the application. The plaint should be signed by the complainant and counter signed by the Attorney-at-Law appearing for them.

- Annexure (H) contains a draft complaint and a corresponding draft charge-sheet for reference

As the Attorney-at-Law for the complainant, you are expected to conduct the prosecution in these cases. The procedure will be the same as other summary trials which are generally prosecuted by the police.

Legal Assistance to 'Victims of Crime' and Witnesses, in Criminal Trials

An Attorney-at-Law has the right to appear and represent the interests of a victim/aggrieved party or a witness in a criminal case.⁵

It is important to be familiar with the provisions of The Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015, which has greatly enhanced the role of Attorneys-at-Law appearing for the aggrieved party and witnesses. Frequently, you may be called upon to address the concerns of the victim or witness in the following matters:

Any special difficulty in attending court

Any illness of the victim/witness

⁴ Code of Criminal Procedure Act No. 15 of 1979, s 136 (1) (a)

⁵ Code of Criminal Procedure Act No. 15 of 1979, s 260
Judicature Act No. 27 of 1999, s 41
Bandaranaike v Jagathsen and others [1984] 2 SLR 397

If there are any threats or duress on the victim/witness

If the victim/witness is abroad, whether they can give evidence on video link⁶

At the stage of sentencing, the Attorney-at-Law appearing on behalf of the victim may also address Court on the determination of the sentence⁷

Thereafter, until the conclusion of the investigation, the investigator (usually the police) would file further reports and seek various orders from the Magistrate, to assist the investigation.⁹

Therefore, the matter would be called before the relevant Magistrate Court periodically under a case number and an officer from the relevant Police Station, which is conducting the investigation, would appear on behalf of the investigative authority.

When a suspect is produced to court for the first time, upon arrest

JURISDICTION AND CASE TYPES

The investigation stage

A criminal investigation would generally commence following a first information/complaint.⁸

When you appear in court representing a suspect who has just been arrested, and is now being produced before the Magistrate for the first time, depending on the instructions of your client, remember to inform the Magistrate of the following matters:

Whether the suspect denies the allegation against them

If the suspect has a definite defense, such as an 'alibi', you may place it on record

Whether any statements were recorded from the suspect under duress

If the suspect alleges that they were subjected to torture, you may request that the Magistrate produce them for a medical examination to a Judicial Medical Officer so that a report can be tendered to court

Whether the suspect has any injuries and/or illnesses that need medical attention

Whether the suspect was kept detained for a longer period of time than what is permitted by law

⁶ The Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015, s 31

⁷ The Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015, s 3

⁸ Code of Criminal Procedure Act No. 15 of 1979, s 109

⁹ Code of Criminal Procedure Act No. 15 of 1979, s 124

If you surrender a suspect directly to court, you may address the concerns of your client accordingly.

At this point, depending on the nature of the allegation, if the Magistrate has the jurisdiction to grant bail, you have the opportunity of making submissions to have the suspect released on bail.

If the Bail Act applies, you will have to address the matters under section 14 of the Bail Act. If any other special law applies, you will have to address those factors.

When the criminal investigation has been concluded

When the investigation is concluded, the Police and the Magistrate have the following options:

If there is no evidence against the suspect, the Magistrate can discharge the suspect.

If the offence is indictable, the matter can be referred to the Attorney General to consider indictment in the High Court.

If the offence can be tried in the Magistrate Court, the Magistrate may frame charges and proceed before the Magistrate Court itself.¹⁰ If the matter requires for a non-summary inquiry to be held, the Magistrate can proceed to do so.¹¹

If the Magistrate is unable to decide on what future steps should be taken concerning the investigation, they may refer it to the Attorney General for their advice.

¹⁰ Code of Criminal Procedure Act No. 15 of 1979, s 182

¹¹ Code of Criminal Procedure Act No. 15 of 1979, s 145

¹² Code of Criminal Procedure Act No. 15 of 1979, s 145 - 159 read together with the second schedule of Judicature Act No: 2 of 1978

¹³ Code of Criminal Procedure Act No. 15 of 1979, s 396 and s 399

¹⁴ Code of Criminal Procedure Act No. 15 of 1979, s 182 - 192

¹⁵ Code of Criminal Procedure Act No. 15 of 1979, s 191

¹⁶ Code of Criminal Procedure (Amendment) Act No. 47 of 1999

¹⁷ International Convention on Civil and Political Rights Act No: 56 of 2007 section 4(2) and section 320 of the Code of Criminal Procedure Act No: 15 of 1979

Proceedings in the Magistrate Court

Non-summary inquiries

Concerning certain serious offences such as 'murder' and 'attempted murder', the Magistrate is required to hold a 'non-summary inquiry'.¹² The purpose of this inquiry is to assess whether there is sufficient evidence to 'commit' the accused to the High Court and have the Attorney General forward an indictment against them.

Once the accused is 'committed' to the High Court by the Magistrate, the Attorney General has the discretion to either indict or discharge the accused depending on the evidence available. Even if the accused is discharged by the Magistrate, the Attorney General has the discretion to indict such accused.¹³

Summary trials

As stated above, if the offence is triable in the Magistrate Court, a summary trial can be held.¹⁴ It is the police who will generally conduct the prosecution. In limited instances, the court may permit an Attorney-at-Law to conduct the prosecution.¹⁵

When convicted

Following a summary trial if the accused is convicted, the Magistrate will not impose the punishment on the same day when the offence is one that comes within the definition of a 'crime' in terms of the Prevention of Crimes Ordinance. A fingerprint report will be called for, to ascertain whether the accused has any previous convictions, and the punishments will be imposed thereafter.

Mitigation of sentence

You should be prepared to make a comprehensive submission in mitigation of the sentence. If a suspended sentence is permissible, you need to address court on the matters set out in section 303 of the Code of Criminal Procedure Act¹⁶ (See section on mitigation of sentencing in the High Court). The principles discussed therein would be applicable.

Appealing to the High Court

When an accused is convicted of a crime in the Magistrate Court, they have a right of appeal to the High Court within 14 days of the conviction.¹⁷

Once the punishment is imposed, if your client is aggrieved by the sentence, you need to file the petition of appeal which is addressed to the High Court, in the Magistrate Court Registry, within 14 days.¹⁸

Where the appeal is based on a matter of law, the petition of appeal must bear a certificate by an Attorney-at-Law that the matter of law is a fit question for adjudication by the Court. For obtaining bail pending the determination of the appeal, you will need to make an appropriate application in the Magistrate Court, after the petition of appeal has been lodged.¹⁹

- *Annexure (I) contains a draft Petition of Appeal*

Revision applications to the High Court

If your client is aggrieved by any 'order' imposed by a Magistrate, there is a possibility of filing a revision application against such order, in the High Court.²⁰ Revisionary jurisdiction is 'discretionary'. Therefore, you will need to demonstrate 'exceptional circumstances' in order to succeed.

The revision application to the High Court will consist of a proxy, motion, petition, and affidavit. A complete certified copy of the Magistrate Court case record which contains the impugned order, needs to be annexed to the application.²¹

Against an order of acquittal, an appeal to the High Court can be preferred only with the sanction of the Attorney General.²² If the sanction of the Attorney General is not obtained; the alternative would be to file a revision application in the High Court.

There is no bar to filing a revision application in the High Court against a final order/judgment of the Magistrate Court, if one can explain the failure to appeal, provided that there is no inordinate delay and 'exceptional circumstances' can be established.

In a revision application, it would be required to aver whether the revisionary jurisdiction of the High Court has been previously invoked or not.

- *Annexure (J) contains a draft petition of a application*

If a revision application filed in the High Court against an order of the Magistrate Court is dismissed, you may file an appeal to the Court of Appeal within 14 days. If there are 'exceptional circumstances' you may be able to file a revision application in the Court of Appeal in terms of the provisions of the Constitution.

Motions in the Magistrate Court

A motion is filed in order get a case called in open court on an earlier date than the regular date that has already been given. Motions can be useful to make an application for bail or to make a special application which is urgent to your client.

Generally, in the Magistrate Court, a motion can be filed on the same morning.²³ It is useful to inquire and find out as to which day it would be possible to have the case called by way of a motion, because Magistrate Courts generally have court dates set apart of various police stations.

Sometimes, where the opposing party also needs to be heard, you may have to file the motion after giving adequate notice to the opposing party. In such instances, you may be required to submit proof along with the motion to satisfy court that the opposing party has been served with such notice.

- *Annexure (K) contains a draft motion*

Proceedings in the High Court

Service of Indictment and Bail

Before you appear on the first day where the indictment is to be served on the accused, it is best to obtain information as to the usual bail conditions that the relevant High Court Judge would order in similar cases.

Different High Court Judges have different policies concerning the bail conditions that would be ordered. Generally, it is advisable to be prepared for the following bail conditions:

¹⁸ Code of Criminal Procedure Act No. 15 of 1979, s 320

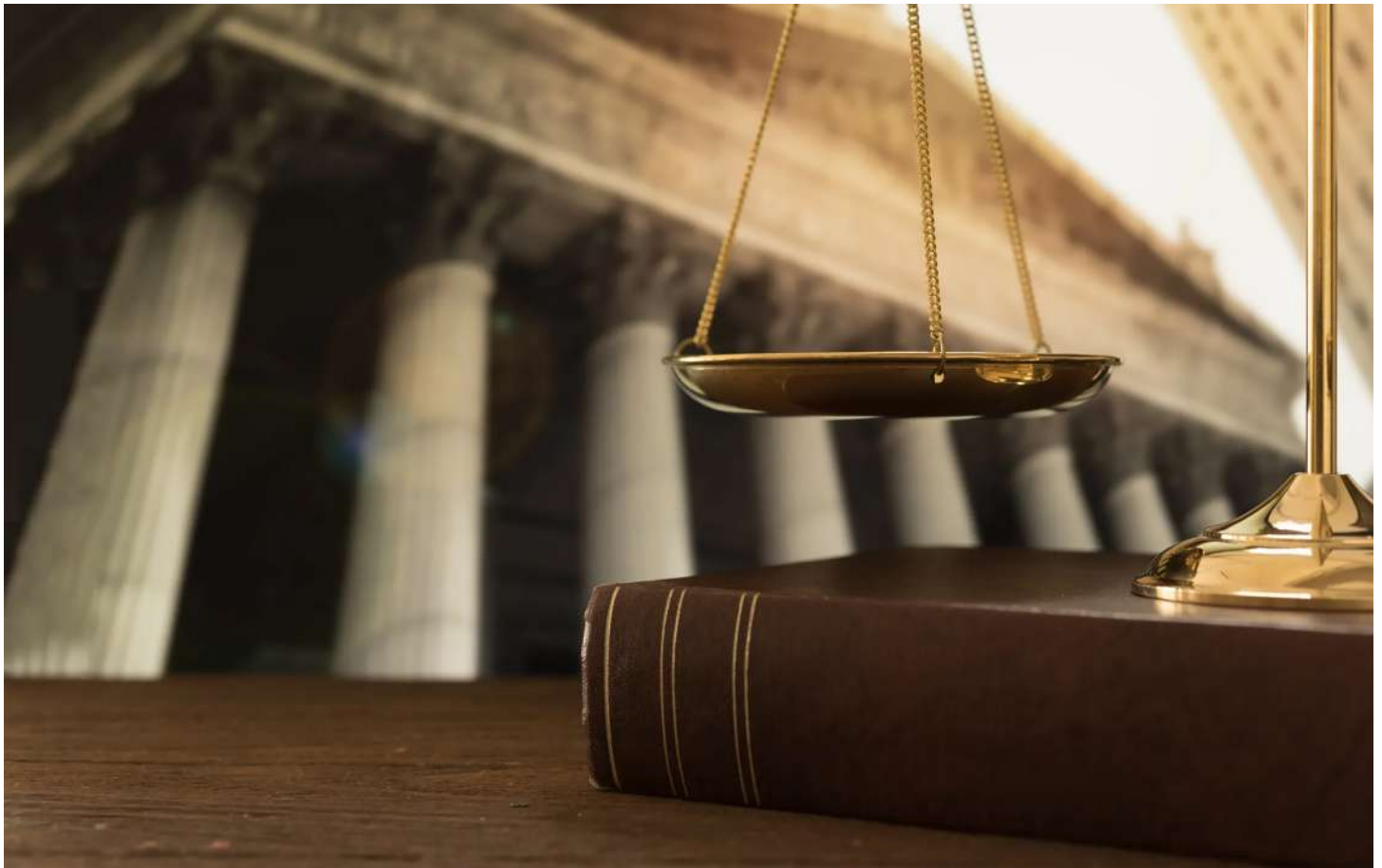
¹⁹ Section 19 of the Bail Act

²⁰ The Constitution of the Democratic Socialist Republic of Sri Lanka of 1978, Article 154 P (3) (b) of the 13th Amendment; The Constitution of the Democratic Socialist Republic of Sri Lanka of 1978, Article 138.

²¹ The Court of Appeal (Appellate Procedure) Rules 1990, Part II

²² Code of Criminal Procedure Act No. 15 of 1979, s 318

²³ Different courts may have different policies.



- Cash bail
- Several sureties who should be prepared with the Grama Sevaka certificates and their legible national identity cards to confirm their place of residence and identity
- Some High Courts may require blood relatives as sureties in which case documents in proof of the relationship will have to be ready
- Sometimes, Court may order a foreign travel ban, and may order that the passport of the accused be handed over to court custody. If there is no passport, Court may require for an affidavit to be submitted to that effect.

When the indictment is served on the accused, you may obtain it to your custody so that you can ascertain whether the indictment contains all the necessary information.

If there is any information or documents lacking, you will have to raise this at the pre-trial stage.²⁴

Pre-Trial Conference

The purpose of the pre-trial conference is to ensure that all parties are prepared to face the trial once it commences. Therefore, it is advisable that you obtain from court custody or from the prosecution, all information and documents which would be needed for you to face a 'fair trial.'

It is necessary that you are well versed with the provisions of the Code of Criminal Procedure (Amendment) Act No. of 2022 with regard to your duties during the 'pre-trial conference.'

Preparing for a High Court Trial

Have consultations with the accused and explain the nature of the charge/charges. Note down the version of the accused. Discuss the statements of the prosecution witnesses and the other documents relied upon by the prosecution (such as medico-legal reports, government analyst reports, audit reports, etc.) and ascertain the position of the accused concerning these items of evidence.

²⁴ Code of Criminal Procedure (Amendment) Act No. 2 of 2022.

Go through the statement of the accused and the statements of co-accused and ascertain the position of the accused concerning the contents therein.

Formulating a defense strategy

Considering all material available, think of what defense/ defenses would be most appropriate for your client. Your client must fully understand the defense/ defenses which you have agreed to pursue, and they must understand the various consequences of such positions. Ensure that you maintain a consistent defense position in the case. Also, at the very outset, decide on what kind of evidence the defense may furnish during the defense case.

It is important to obtain information about the antecedents of the prosecution witnesses so that they can be properly cross-examined.

If the defense hopes to tender computer evidence, it is required to comply with the procedures set out in Evidence (Special Provisions) Act No. 14 of 1995.

The possibility of a 'shortcut'

Instead of facing a trial it may be possible to conclude the case by way of a 'shortcut.' The following options may be available:

Pleading guilty to the indictment as it is, and mitigating for a lenient sentence

Carefully consider the penal provisions of the charges in the indictment and discuss the possible penalties which the Court may impose, with the accused before taking this decision. If the accused has previous convictions, we may expect the Judge to give a custodial sentence.²⁵

However, if the punishment prescribed permits a suspended sentence in terms of section 303 of the Code of Criminal Procedure Act and the accused has no previous convictions, there may be a possibility of a lenient sentence.²⁶

Before your client decides to plead guilty to the charges in the indictment as they stand, you must explain the possible penalties.

Also, be mindful that for government servants and certain other individuals, a plea of guilt and the penalties imposed (such as fines and prison sentences) may be detrimental to their employment.

The decision to plead guilty must be a well-considered one. The client must understand the aggravating circumstances which the prosecution will submit against them, and you must be prepared with all mitigatory factors on behalf of your client.

You must explain to your client that ultimately, whatever submissions in mitigations are made by you on their behalf, the discretion of determining the appropriate sentence lies with the High Court Judge.

If you are dissatisfied with the sentence of the High Court (if it is too harsh or if it is contrary to law) you may challenge it before the Court of Appeal by way of an appeal or revision.

Pleading guilty to an amended indictment which contains less serious charges

This situation may arise where you make representations to the Attorney General stating that if the charges in the indictment are amended to less serious charges, you may consider pleading guilty to such amended charges.

The Attorney General may then move to amend the indictment, and you may proceed to plead guilty to amended charges.²⁷

Pleading guilty to a 'lesser offence,' if the prosecutor (Attorney General's Department) is willing to accept a plea for a lesser offence

Make representations to the prosecutor (State Counsel) setting out the special exceptions applicable to your client and other mitigatory factors. The Attorney General's Department may take some time to consider whether they are willing to accept a 'plea'.

If your client is willing to voluntarily pay compensation to the aggrieved party, you may indicate that to the prosecuting State Counsel. If the Attorney General is willing to accept a plea, with the permission of the court you can proceed to plead guilty to the lesser offence.²⁸

²⁵ Always check the fingerprint report of the accused to check whether he/she has any previous convictions, before taking the decision to plead guilty.

²⁶ Code of Criminal Procedure (Amendment) Act No. 49 of 1999, s 303 and the determination of the Supreme Court in SC Ref: 3/2008.

²⁷ Code of Criminal Procedure Act No. 15 of 1979, s 167

²⁸ Code of Criminal Procedure Act No. 15 of 1979, s 194

It is important that you explain to your client that although you submit mitigatory grounds on their behalf for a lenient sentence, it is ultimately the decision of the High Court Judge as to what sentence may be imposed. If the sentence imposed is too harsh or illegal, the remedy would be to file an appeal or a revision to the Court of Appeal against such sentence.

Cross-Examination of Prosecution Witnesses

As stated previously, it is expected that you would have obtained all documents necessary for the preparation of the case, by the time the prosecution starts leading the evidence of its first witness.²⁹ Therefore, you should foresee what each prosecution witness will state in their evidence in court.

The strategy that you adopt to cross-examine (or to refrain from cross-examining) a prosecution witness will depend on your overall defense in the case. As a rule, it is best not to cross-examine when the evidence of a witness does not have an adverse bearing on your case. Remember to suggest the defense position, to appropriate prosecution witnesses during your cross examination.

Examples:

In a case where the evidence of a certain witness does not have an adverse impact on your defense position, you may refrain from cross-examining such witness.

In a murder case, where your defense is that of a 'sudden fight', it is imperative that you suggest this position to the relevant eyewitness (if any) and to the investigating officers who may have come across information or evidence to suggest that the incident took place during a 'sudden fight'.

It is important to remember that you are not permitted to make imputations to a witness without reasonable grounds and that you must not pose questions to a witness which are indecent, scandalous and intends to insult or annoy a witness.³⁰

Section 200(1) Applications

When the prosecution has concluded its case, if the evidence is incapable of leading to a conviction, you may make an application that the accused be acquitted without calling for a defense.³¹ It is advisable only to make an application on this basis, where you find that the evidence is clearly inadequate.

THE DEFENSE CASE

As discussed previously, you ought to have arrived at an understanding with the accused as to what kind of defense you would take in the case, even before the prosecution case has commenced. Of course, depending on the evidence which materializes during the case, you may have to re-assess your defense position.

However, it is advisable that your client understands the defense position that is being taken on their behalf. This is because, they may have to give evidence (from the witness box or make a docks statement) at the end of the trial. It is also your client who can inform you of any available defense witnesses on their behalf.



The Accused Remaining Silent

The accused has a right to remain silent.³² However, one must remember the application of the 'Ellenborough dictum'. Thus, if the prosecution has built up prima facie case against your client, it is advisable that the accused at least makes a 'dock statement' in their defense.³³



The Accused Giving Evidence from the Witness Box

This is a decision that should be taken after much consideration. The accused tends to become nervous and excited during cross-examination by the prosecution, even though they may claim to be innocent. The Court room atmosphere may be intimidating, and even a well-prepared accused may falter.

²⁹ During the pre-trial conference stage

³⁰ Sections 149 to 152 of the Evidence Ordinance

³¹ AG v Baranage [2003] 1 SLLR 340

³² The Queen v Santin Singh [1962] 65 NLR 445

³³ AG v Potta Naufer and others (Sarath Ambepitiya Case) [2007] (2) SLLR 144

The first matter to consider before this decision is taken is; what has the accused stated in their statements to the police? If their police statement reflects the defense that you are taking in the trial, it may be possible (if necessary) for the accused to give evidence from the witness box.

However, if not, they will most certainly be cross-examined by the prosecution severely on their different stances.



The Accused Making a Dock Statement

If there is a prima facie case against the accused, and their police statements are such that it would not be safe to give evidence from the witness box, a 'dock statement' becomes a good option. The dock statement must be consistent with the line of cross-examination that you maintained throughout the prosecution case.



Defense Witnesses

Whether the accused decides to remain silent, makes a dock statement or gives evidence from the witness box, they can have the evidence of witnesses led on their behalf. As these witnesses are open to cross-examination by the prosecution, the decision to lead the evidence of such witnesses, must be taken after much consideration.

Submissions in Mitigation of Sentence

You will be required to make submissions in the mitigation of the sentence in the following instances:

When your client pleads guilty, and the Court is to decide on the appropriate punishment

When a 'plea' has been accepted and the Court is to decide on the appropriate punishment

When your client has been convicted following a trial, and the Court is to proceed to impose the punishments

In all the above situations, you ought to have previously informed the client, the nature of the sentence which is applicable according to the relevant statute.

Thus, the client should have a proper understanding of the possible sentence which the Court can impose.

However, it is advisable to explain to the client, that the court has ultimate discretion on determining the punishment, notwithstanding what submission are made on behalf of the accused or against the accused.

The following key points must be addressed in your submissions for mitigation:

- If the law does not prescribe a 'minimum mandatory sentence' you must highlight this point so that Court will consider a non-custodial punishment.³⁴
- Address Court on the factors listed in section 303 of the Code of Criminal Procedure Act to convince the Court to consider a 'suspended sentence'.³⁵
- If the accused has no previous convictions, mention that specifically.
- If the accused is ready to voluntarily offer compensation to the aggrieved party, bring that to the attention of court.
- Bring to the attention of Court the humanitarian factors affecting the sentencing decision. The age of the accused, whether they are married with children and the sole breadwinner of the family, any particular illness of the accused and/or their dependents, the consequences that will follow to the family of the accused if a prison sentence is imposed on them.
- Even when a custodial prison sentence cannot be avoided, the factors listed in section 303 of the Code of Criminal Procedure Act are an importance guidance on what matters should be addressed in a submission for mitigation of a sentence.

Oral Submission and Written Submissions

Oral submission and/or written submissions, may be required at various stages in a case:

³⁴ Familiarize yourself with the Supreme Court determination in SC Ref: 3/2008 and subsequent judgments concerning minimum mandatory sentences and judicial discretion to impose suspended sentences even when the law provides for mandatory prison sentences.

³⁵ Code of Criminal Procedure (Amendment) Act No. 47 of 1999

- Taking up a preliminary objection against a charge/indictment³⁶
- Objecting to an application of the opposing party
- Objecting to leading questions or to the leading of inadmissible/prejudicial evidence by the opposing party
- Making an application in terms of section 200(1) of the Code of Criminal Procedure Act, when the prosecution case is concluded
- Final submissions, after the conclusion of the prosecution case and the defense case

As a general rule, it is best to present oral or written submissions in a brief manner. As Judges are often over-worked and pressed for time, it is best to focus on your main arguments.

Cite the law with the relevant provisions and judicial authorities and explain how it applies favorably to your argument. Whatever grievance of a client you raise, remember to back it up with the law. It is advisable that you submit to the Judge, copies of judgments that you may rely on, in support of your arguments.

Always remember that although you represent one party to the case, the Judge will have to assess the case from different angles.

Therefore, it is best for you to be fair in your submission and arguments. If not, when the opposing party addresses the Court and exposes your misrepresentations, the Judge will not be inclined to rely on your arguments.

Motions in the High Court

Motions are generally filed to get the case called in open court on an earlier date, to make some special application on behalf of your client. Generally, in High Courts the motion must be filed in the Registry at least two to three days prior to the date on which the case is to be called in open court.³⁷

It is imperative that notice is given to the opposing party (generally the State Counsel prosecuting in the relevant High Court), in order for the Judge to allow the motion to be called.

- *Annexure (L) contains a draft Motion*

Proceedings in the Court of Appeal

Appeals from the High Court to the Court of Appeal

Against a conviction and sentence imposed in the High Court, there is a right of appeal to the Court of Appeal within 14 days.³⁸ You are required to file a 'petition of appeal' which is addressed to the Court of Appeal, but which is to be filed in the High Court Registry. It is important to list your main grounds of appeal concisely in the said petition of appeal.

- *Annexure (M) contains a draft Petition of Appeal*

When the petition of appeal is filed in the High Court Registry, it will take some time for the matter to be listed before the Court of Appeal. When it is listed, a notice will be sent to the address of the Appellant by the Court of Appeal Registry, thereafter on the payment of the 'brief fees' the appeal brief may be obtained.

In the Court of Appeal, the procedure of determining criminal appeals is in terms of provisions of the Code of Criminal Procedure Act and the Court of Appeal Rules.³⁹

The appellant would file written submissions first, next the Attorney General, and finally the arguments will be conducted. On a prescribed date, the Court of Appeal would deliver the final order.

³⁶ Judicature Act No. 27 of 1999, s 39

³⁷ It is to be noted that different courts may have different policies

³⁸ Code of Criminal Procedure Act No. 15 of 1979, s 331. See also International Covenant on Civil and Political Rights Act, No. 56 of 2007, s 4(2).

³⁹ Code of Criminal Procedure Act No. 15 of 1979, s 331 - 342; The Court of Appeal (Appellate Procedure) Rules 1990.

It may be possible for an 'aggrieved party' to appeal against an order of acquittal in the High Court, to the Court of Appeal, with the leave of the Court of Appeal, in terms of section 16 of the Judicature Act, read with section 340 of the Code of Criminal Procedure Act.

Revision Applications against Decisions of the High Court

The procedure in filing a revision application is very different from that of an appeal.⁴⁰ The Supreme Court Rules would be strictly applicable as revisionary jurisdiction is a discretionary remedy.⁴¹ 'Exceptional circumstances' will have to be demonstrated.

If your first step is to obtain a certified copy of the entire proceedings in the High Court. This certified copy must be tendered to the Court of Appeal as part of the revision application.⁴²

If there is an urgency and there is insufficient time to obtain certified copies, you may aver the said circumstances in your pleadings and seek the permission of Court to submit such documents as soon as they are obtained. The revision application consists of a petition and affidavit. A proxy must also be tendered.

- *Annexure (N) contains a draft Petition of a Revision Application*

This revision application is to be filed directly in the Court of Appeal Registry. You initially need to 'support' this application in open court and ask that 'notice' be issued to the Respondents.

If the Court of Appeal is satisfied that there are sufficient grounds to issue 'notice' to the respondents, the Court will proceed to issue 'notice' on the respondents and fix the case to be mentioned for 'notice returnable' on which date the respondents are required to appear.

It is important that you properly file the notices in the Court of Appeal Registry, so that the notices could be served on the respondents without delay.

The respondents will usually move to file 'objections' after which the petitioner may file 'counter objections.'

If Court so requires, written submissions may also be filed by parties. Finally oral submissions will be heard on the 'inquiry date', and the matter will be fixed for order.

In a situation where you seek a 'stay order' or 'interim relief', it is necessary that you file the revision application with notice to the respondents so that by the time you 'support' the application for a 'stay order' or 'interim relief', you are doing so with notice to the respondents. You will be required to submit proof that you have sent out notices to the respondents.⁴³

If you are dissatisfied with the order of the Court of Appeal, you may file a Supreme Court Special Leave to Appeal Application before the Supreme Court, within the stipulated period of six weeks.⁴⁴

Proceedings in the Supreme Court

Filing a Supreme Court Special Leave to Appeal (SC SPL LA) Application.

This is the final remedy available in our criminal justice system.⁴⁵

Where the accused was tried and convicted by the High Court, and the appeal to the Court of Appeal has failed, along with the Court of Appeal 'appeal brief', you may file a Supreme Court Special Leave to Appeal Application, consisting of a petition, affidavit, and proxy.⁴⁶

It is also possible to file a Supreme Court Special Leave to Appeal Application where the accused was convicted by the Magistrate and the Appeal to the High Court has been held against the accused.

In this situation, the High Court 'appeal brief' will have to be filed in the Supreme Court along with petition, affidavit, and proxy.⁴⁷

- *Annexure (O) contains a draft Petition pertaining to such an application*

⁴⁰ The Constitution of the Democratic Socialist Republic of Sri Lanka of 1978, Article 138. See also SC Appeal No: 111, 113, 114/2015 decided on 27-05-2020.

⁴¹ The Court of Appeal (Appellate Procedure) Rules 1990

⁴² The Court of Appeal (Appellate Procedure) Rules 1990, Rule 3(1) (b)

⁴³ The Court of Appeal (Appellate Procedure) Rules 1990

⁴⁴ The Constitution of the Democratic Socialist Republic of Sri Lanka of 1978, Article 128.

⁴⁵ Ibid.

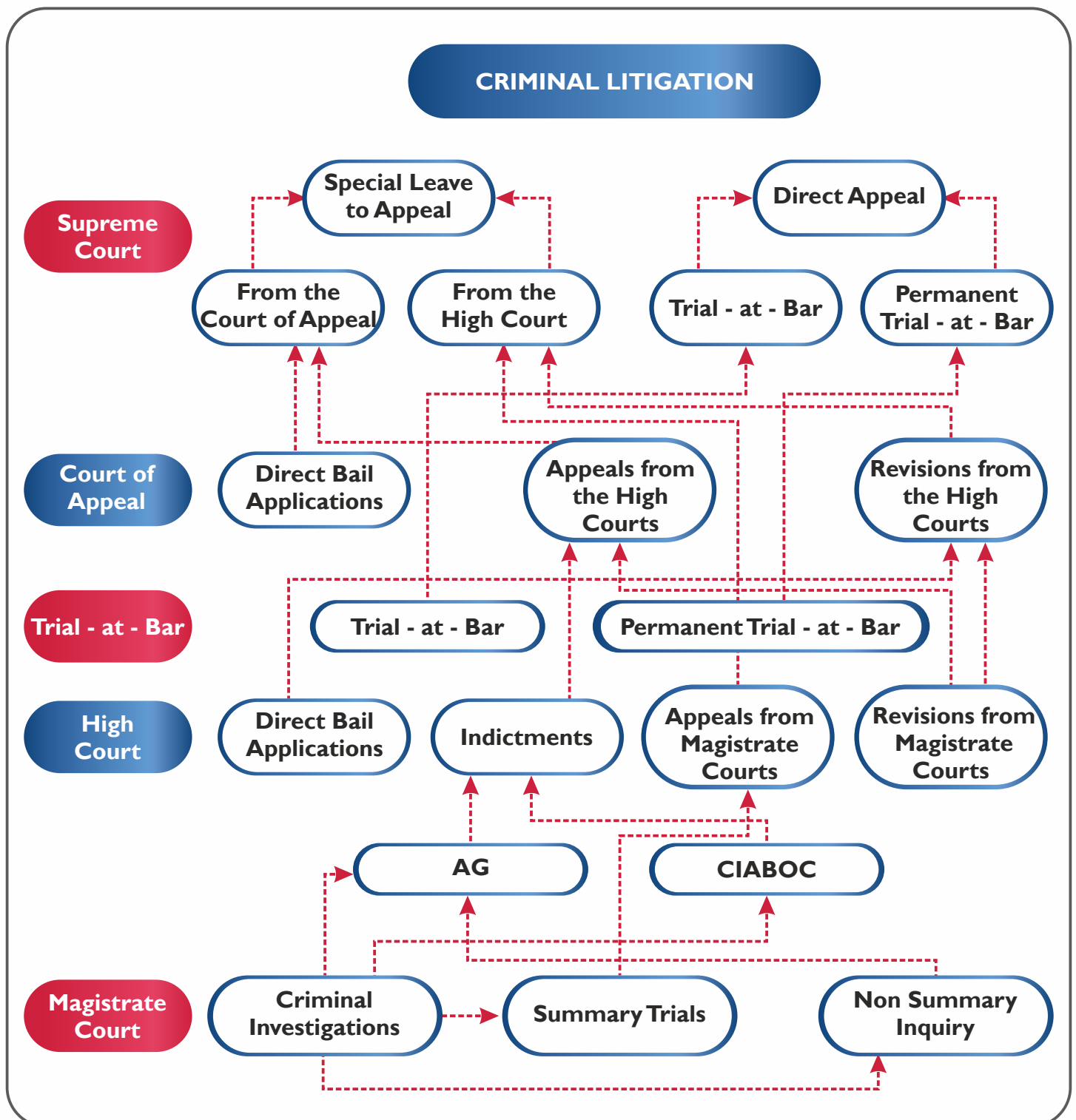
⁴⁶ Within six weeks of the Court of Appeal Order.

⁴⁷ Ibid.

You will have to file the application asking for a date to 'support' the application in open Court. It will appear in the 'granting of leave' list in the Supreme Court list for the day. On that day, you will have to make oral submissions in support of your application. It is important to note that you will be expected to convince the Supreme Court that there is a 'substantial question of law' or a 'matter fit for review' by the Supreme Court.

If not, leave will be refused, and the decision against your client will remain.

If the Supreme Court does grant leave on certain questions of law, you will be required to file written submissions in compliance with the Supreme Court rules and the matter will subsequently be decided after arguments.⁴⁸



⁴⁸ Supreme Court Rules 1990.

BAIL APPLICATIONS



Basic Principles

You may be instructed by your client to obtain 'bail' on behalf of a suspect or accused who is incarcerated. At a consultation, you need to try and ascertain the following information from the client and their family members and/or close associates:

When were they arrested/incarcerated?

Who arrested them? Which police station or authority was involved in the arrest?

To which court have they been produced, or if they had not yet been produced to Court yet, which Court are they due to be produced before?

In which Court did they appear for their case?

Any details about the alleged offence committed by the person under arrest?

Examine the copies of case record or whatever documents from the police/courts pertaining to the case, available

The course of action you will have to take to plead for bail, will depend on the above information. You will have to determine at the outset, which court would have the jurisdiction to grant bail. The first matter to determine is whether, the Bail Act No. 30 of 1997 would apply for bail or not.

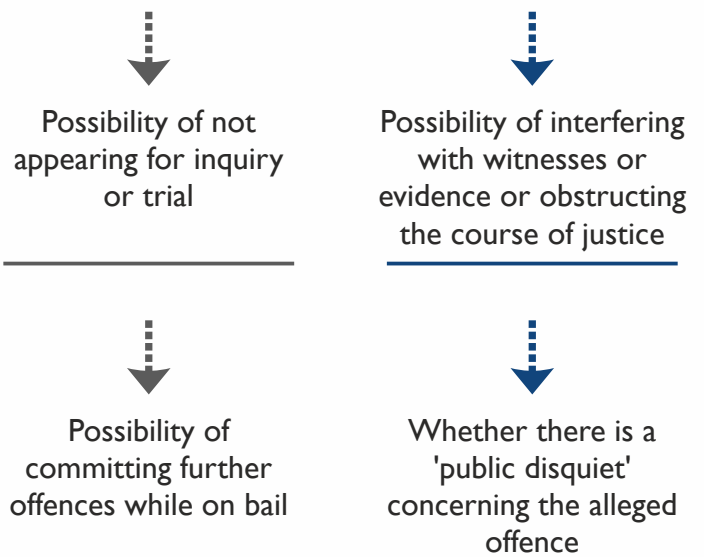
The Bail Act does not apply to offences under the Public Security Ordinance or Prevention of Terrorism Act.⁴⁹ Also, if the person was arrested concerning a criminal offence under a special statute which contains an 'express provision' which applies to bail, it is that special bail provision that would apply and not the Bail Act.⁵⁰

Example: The Penal Code does not contain any express provisions pertaining to Bail. Therefore, it is the Bail Act which would apply.

Section 83(1) of the Poisons, Opium, and Dangerous Drugs Ordinance contains a special bail provision. Therefore, the Bail Act does not apply to situations under section 83(1) of the Poisons, Opium, and Dangerous Drugs Ordinance.

Obtaining Bail under the Bail Act

Whether the offence is 'bailable' or 'non-bailable,' the criteria for determining whether it is suitable to grant bail is set out in section 14. Those considerations are as follows:



⁴⁹ Bail Act No. 30 of 1997, s 3 (1)

⁵⁰ Shiyam v OIC, PNB and another [2006] BLR 52

However, when the offence is punishable by death sentence or life imprisonment, only the High Court can grant bail.⁵¹ The period of incarceration possible is one year, but on an application by the Attorney General, this period can be extended to a maximum of two years in total.⁵²

In summary, if the Bail Act does apply, you can plead for bail before the Magistrate Court unless the offence is punishable by death sentence or life imprisonment, in which event you will have to file a bail application before the High Court.

Procedure for Obtaining Bail in the Magistrate Court

Example: The allegation of the commission of the offence of 'attempted murder' punishable under section 300 of the Penal Code.

When an individual is arrested, the general principle is that they have to be produced before a Magistrate within 24 hours. As a lawyer, you have the opportunity to appear on behalf of the person who has been arrested, and to make submission on their behalf to the learned Magistrate.

Thereafter, until the suspect is enlarged on bail, they will be produced in Court 14 days apart, where the Magistrate will extend their remand order.⁵³ You may plead that the suspect be released on bail on the relevant Court date or by way of a motion, as explained previously. You must address the factors mentioned in section 14 of the Bail Act.

Anticipatory Bail

Such an application may be filed where your client has reason to believe that they may be arrested on a maliciously motivated complaint made by an adversary.

The purpose is to obtain a bail order prior to the arrest, so that if arrested, upon fulfilling the conditions of the anticipatory bail order, they would not be placed in remand.⁵⁴

Such an application is only permissible where the offence is 'non-bailable' and where the Magistrate Court has the jurisdiction to grant bail.

The application must be accompanied by an affidavit of the applicant, and notice of the application must be served on the officer-in-charge of the Police station relating to the area of the commission of the alleged criminal offence.

- Annexure (P) contains a draft Petition relevant to such an application

Bail Pending Appeal Following a Conviction in the Magistrate Court

When the accused is tried and convicted before the Magistrate Court, the first step is to file an appeal within 14 days against such conviction and sentence, as previously explained.

Once the appeal is filed, you may make an application for bail pending appeal, to the Magistrate Court by way of a motion.⁵⁵ If this application is rejected, your remedy would be to file a revision application against this order, to the High Court, where you will be required to establish 'exceptional circumstances'.

Procedure for Obtaining Bail in the High Court

The petition can be prepared in the name of the remandee by themselves or by a person who has a substantial interest in the person who is incarcerated, and should be supported by an affidavit of the petitioner. The application should contain the relevant B Report and other reports (preferable to attach the complete certified copy of the Magistrate Court case record). Any other supporting documents may be annexed.

This application is to be filed in the High Court registry along with a motion to have the case called on a suitable date, for 'support'. On the support date, you are expected to make an oral submission summarizing your application. If the Court is satisfied, 'notice' will be issued on the respondents and the next date will be a 'notice returnable date'. At this stage you may hand over the notices in the High Court Registry so that they can be sent out by registered post by the registry. When the Attorney General appears for the respondents, a date will be given to file objections. After objections are filed, inquiry will be taken up and Court will make an order concerning the bail application.

⁵¹ Bail Act No. 30 of 1997, s 13

⁵² Bail Act No. 30 of 1997, s 17; Wickremasinghe v AG and another [2010] 1 SLR 141

⁵³ Code of Criminal Procedure Act No. 15 of 1979, s 115 - 120

⁵⁴ Bail Act No. 30 of 1997, s 21

⁵⁵ Bail Act No. 30 of 1997, s 19

Example:

When the allegation is the commission of the offence of 'murder' under section 296 of the Penal Code which is punishable by 'death'.

- Annexure (Q) contains a draft Petition of a High Court bail application under the Bail Act

If your client has already been indicted and is in remand, while the case is proceeding in the High Court, you may make an oral bail application on the date in which the case is taken up in Court, or if there is an urgency, you may have the case called by way of a motion to make a bail application in open Court.

Bail Pending Appeal Following a Conviction in the High Court

If the accused is convicted in the High Court, and an appeal has been filed to the Court of Appeal on their behalf, you may make a bail pending appeal application to the High Court itself.⁵⁶ A person who has been sentenced to death cannot obtain bail pending appeal.

The drafts applicable to direct bail applications to the High Court can be used with appropriate amendments, in this regard.⁵⁷ You will have to convince the High Court that there are 'exceptional circumstances' to release the accused on bail pending appeal.⁵⁸

Bail under Special Statutes

As discussed above, where the Bail Act does not apply, you will have to plead for bail in accordance with the relevant bail provision of the statute which applies to that offence.

Pleading for Bail before the Magistrate Court

Example: Offences against the Public Property Act Section 8(1) contains such a provision. In terms of this section, Bail can be sought in the Magistrate Court.

The general practice is that you may make an oral submission pleading for bail. You can also file written submissions with supporting documents and case law, in support of your application. The prosecution and aggrieved party also may make submissions concerning bail and the Magistrate will make an order on the same day on another date.

If bail is refused in the Magistrate Court, you have the opportunity to plead for bail, if and when there are new grounds for the Court to consider. When the Magistrate Court has refused your bail application, you may file a Revision Application against the said refusal of bail. The first step is to apply and obtain a complete certified copy of the entire case record of the Magistrate Court case. The revision application can be filed before the relevant Provincial High Court. The drafts applicable to revisions to the High Court against orders of the Magistrate Court would apply with appropriate amendments.⁵⁹

Bail Applications to be Filed Directly in the High Court

Under certain statutes, where the Bail Act does not apply, you may have to directly file a bail application to the High Court in terms of the relevant Law.

Example: Section 83(1) of the Poisons, Opium, and Dangerous Drugs Ordinance as amended by Act No: 41 of 2022.

- Annexure (R) contains a draft Petition of a bail application under section 83(1) of the Poisons, Opium, and Dangerous Drugs Ordinance as amended by Act No: 41 of 2022.

Bail Applications to Be Fled Directly in the Court of Appeal

Certain statutes provide that bail must be sought in the Court of Appeal.

Example: Section 8 of the The Assistance to and Protection of Victims of Crime and Witnesses Act No: 4 of 2015

In such instances, you will be required to file a direct bail application before the Court of Appeal.

- Annexure (S) contains a draft Petition of a direct Court of Appeal bail application

⁵⁶ Bail Act No. 30 of 1997, s 20

⁵⁷ See Annexure (J) and (K)

⁵⁸ Ramu Thamocharampillai v. AG [2004] 2 SLR 180; AG v. Ediriweera [2006] (BLR) 12

⁵⁹ See Annexure (C)

LEGAL RESEARCH METHODOLOGY AND PRACTICE

INTRODUCTION



Legal practitioners engage in legal research in the context of advancing justice for their clients. Such legal research differs from the type of research undertaken by a legal academic or student who wishes to write an essay, article, or thesis.

I. The Purpose of Legal Research

The aim of legal research as far as a practitioner is concerned boils down to ascertaining the law so it can be applied to a particular legal problem. Therefore, a practitioner approaches legal research in a practical and methodical manner with a view to deriving an answer to a particular legal question. In doing so, a practitioner will also benefit practically. For example, correctly identifying relevant legal issues can help ensure proper case management.

On occasion, the practitioner will discover that the law on a particular legal question does not provide a clear answer, either because the interpretation of the relevant statute or judgment is contested, or because there is no clear legal answer to the question. Therefore, legal research can also contribute towards the development of the law.

The Importance of Legal Research

The skill to conduct legal research is vital for practitioners regardless of their area of practice. Every case, appeal, opinion, and advisory engagement would require varying degrees of legal research. For instance, a practitioner's understanding and analysis of a case begins with the identification of the facts and determining the 'issues' (i.e., the precise legal questions raised by the facts).

A practitioner needs to act with due diligence, swiftness, and courtesy while maintaining their client's confidence and avoiding conflict of interests. Therefore, a practitioner who neglects to conduct thorough legal research may run the risk of failing in their duty to the client and to the Court. Poor research may deprive the relevant actors from gaining a better understanding of the law. Practitioners should thus commit themselves to continuously developing their research skills and knowledge of the law.

Types of Research

Legal research (including academic legal research) tends to focus on legal doctrine (and occasionally on legal theory) and does not usually include empirical research of an observational or consultative nature, i.e., primary research involving quantitative research or qualitative research.¹

Distinctions between legal research of an academic nature and non-academic legal research that a practitioner would undertake ought to be noted.

First, the central purpose of academic legal research is to contribute towards the development of legal knowledge. By contrast, the main purpose of non-academic legal research undertaken by a legal practitioner is to present an argument on behalf of their client, or to explain a legal position to their client. The end of such legal research is argumentative, analytical, and explanatory, and does not need to be a 'new' contribution to legal knowledge. Second, the methods and methodology of academic legal research differ from non-academic legal research that is undertaken by practitioners.

¹ However, legal research has evolved significantly in recent times to include 'socio-legal' and 'law in context' approaches that have strong parallels with other disciplines in the humanities.

Legal research may also be classified according to the nature of the research. This may range from descriptive research, analytical research, quantitative research, qualitative research, and conceptual research. While a practitioner does not engage in all types of legal research, there may be instances where the practitioner's work may involve more than one type of legal research.

Legal Research Methods and Methodology

Research methods refer to the techniques and tools by which one may research a subject or a topic. Research methodology refers to the overall approach that specific research techniques and tools fall under. For example, conducting focus group discussions and case studies may be the research 'methods' undertaken. The overall 'methodology' in this regard may be termed as 'qualitative' research methodology.

The knowledge of methods and methodology provides a good training to practitioners, as it helps the practitioner to develop disciplined thinking in terms of building an argument.

2. Accessing Resources and Organizing Research

The process of locating relevant legal sources is a crucial step in legal research. These include primary and secondary sources of law.

Primary sources:

These are the most important, and often 'binding' (i.e., authoritative) sources of law. Primary sources of law comprise statutes, subsidiary legislation, and caselaw. E.g. The Constitution of the Democratic Socialist Republic of Sri Lanka.

Secondary sources:

These are sources that are 'persuasive' (i.e., they are not authoritative, but have notable weight in ascertaining the law). These sources help obtain background or supporting information about the legal topic under consideration. Secondary sources include treaty law, legal treatises, law reviews, legal dictionaries, legal encyclopaedias, and preparatory work. E.g. the Hansard (the official record of parliamentary debates).

Types of Legal Sources

The most frequent research method used by a practitioner entails the interpretation and analysis of legal sources. The practitioner must know how to access and organize such sources. The key legal sources used by practitioners include (1) statutes, (2) subsidiary legislation (usually formulated by executive officials acting under a statute), (3) case law, (4) treaty law, (5) treatises (an extensive and exhaustive book on a specific subject, usually a legal topic. E.g. The Law of Evidence in Sri Lanka by G.L. Peiris (1974) is an example of a treatise), and (6) legislative preparatory work such as the Hansard.

Locating Legal Sources

While online databases usually offer access to most research material, on occasion, physical copies may be required. The following resource centres are useful for the purpose of accessing legal material:

1. National Archives of Sri Lanka
2. Colombo Law Library
3. Bar Association Law Library
4. Centre for the Study of Human Rights
5. The Nadesan Centre
6. Law and Society Trust
7. The Marga Institute

Importance of Organizing Research

A practitioner's research process should be well organized. Such organization will help with the case or legal assignment at hand and will also assist in optimizing the practitioner's knowledge over time by gradually building a 'research library' for all future cases.

Referencing system: a practitioner should keep track of the sources and develop a method for referencing them easily.

Purposive notes: a practitioner could also consider a nonlinear style of note taking such as mind-mapping, which involves color coded graphical representation of research notes.

Storing information/research: a practitioner may opt to organize and store legal research manually or digitally.

- Manual mode of organizing legal research involves maintaining copies of all research material, related analysis, and the final research output. The material will be labeled and filed according to a filing system familiar to the practitioner.
- Digital mode of organizing legal research usually involves a basic cloud storage option, such as **Google Drive**, **OneDrive**, **Dropbox**, or **SharePoint**, or the use of a document management system.

3. Interpretation and Analysis

A. Developing a Fact Pattern

A practitioner will gather the facts and documents relating to the client's issue after the initial consultation. Thereafter, setting out a clear, chronological account of all relevant facts of the case or client inquiry, i.e., developing a 'fact pattern,' is useful, as the facts generally form the descriptive part of the final legal output. This output could range from a petition, written submission, or a legal opinion.

Step 1: *Introductory stage: obtaining basic client information*

During the initial consultation, the client must be addressed in a manner that puts them at ease. It is the stage at which a practitioner introduces themselves and exchanges a few courteous remarks.

Simple questions should be used to confirm important details and client background information. Depending on the nature of the case, client information can include name, address, date of birth, period of time at current address, family relationships, educational history, employment history, criminal history, immediate medical needs, and emergency contact information. The practitioner should exercise discretion on the extent of the client information required, and not request irrelevant information, which could amount to an intrusion into the client's privacy.

Step 2: *Fact-gathering stage*

Gather more specific information about the matter the client wishes to discuss and obtain advice on.

Bear in mind that the practitioner is not responsible for discovering the facts of the case. The client must provide all the facts during consultations. Once the client provides all the relevant information, the practitioner should maintain clear correspondence where the client has confirmed the facts and authorized the practitioner's use of the facts. When there are areas of doubts in the facts, the practitioner should seek clarifications from the client.

Step 3: *Clarify instructions*

Clarify the instructions from the client. For example, a practitioner should clarify whether the client wishes to pursue legal action or is willing to settle. If the client wishes to pursue legal action, then ascertain the course of legal action the client wishes to pursue.

Depending on the issue, the client may wish to institute legal action, or if they are the responding party, to contest the other party's claim. In the event that the client wishes to institute action, there may be more than one legal remedy available.

The practitioner should initiate any preliminary legal steps that need to be taken to safeguard the best interests of the client. If the client wishes to settle, then steps should be taken to ensure that the best possible settlement is secured for the client.

At this stage of the process, the practitioner should provide an estimate of the fees that would be charged.

Stage 4: *Examine documents, persons, and scenes, and hold follow-up consultations*

Inspect and thoroughly examine all documents, exhibits, and other material made available. If possible, interview eye-witnesses to the alleged event to obtain their version of the facts and any other potential witnesses who may have information relevant to the case. If applicable, examine the scene of the alleged event.

Stage 5: *Finalizing the fact pattern*

Once all information with respect to the facts of a case have been duly received and recorded, a practitioner should prepare a written 'fact pattern' or chronology (i.e. the timeline of the event, and the key facts leading up to the event). This fact pattern will feed into a legal output such as a plaint or petition.

B. Spotting Issues of Law

When the fact pattern is finalized, a practitioner can identify the 'issue', i.e., the precise legal question(s) raised by the facts. The issue indicated by the fact pattern can reveal either an 'issue' or 'question' of law or an 'issue' or 'question' of fact. The terms issue and question are often used interchangeably.

An issue of law is an issue regarding the application or interpretation of a law or an issue on what the relevant law is.² An issue of law can relate a substantive element of a law. For example, the question of what constitutes 'public order' under article 15 of the Constitution is a substantive issue of law.

Moreover, an issue of law can be procedural. For example, the question of whether a respondent is statutorily entitled to raise the time bar objection (i.e., where the appellant has delayed in filing the appeal) before a court may be considered an issue of procedural law.

An issue of fact is an issue concerning the factual elements or the material facts of the dispute. For instance, whether or not a party accepted a gift is an issue of fact.

A practitioner may begin 'issue spotting' by asking several preliminary questions. These can be a mix of the following questions:



Who are the parties?

If applicable, what is their relationship to each other?

What were their actions?

Who was affected by their actions?

How were they affected?

Thereafter, a practitioner can use the following steps for issue identification:

1. Identify each area of law possibly involved
2. Identify the elements necessary for a cause of action under each law identified
3. Apply the elements of the law to the client's facts to determine the key facts
4. Identify the relevant legal issue(s)

Once the issues of law and fact are identified, the practitioner should follow a methodical approach to conduct their analysis. They begin 'by laying out the issue to be discussed, the legal rule relevant to the issue, the analysis of the pertinent facts based on that rule, and the overall conclusion'. The section below presents a widely used method of organizing legal analysis.

The IRAC System

I Issue: What is the legal question that needs to be analyzed? Why does this issue need to be analyzed? In the legal output, this first section would give the reader an understanding of what the practitioner intends to discuss and why they must discuss it.

R Rule (relevant law): What are the relevant legal principles derived from statutes and case law tied to the issue identified? Establish the governing legal rule(s) that the court will employ to resolve that issue.

A Application of relevant law to the facts: apply the rule to the facts, using the statutory provisions and cases discussed in the rule section to draw analogies or distinctions. What is the evidence that supports the client's position? Are any of the defences relevant?

C Conclusion: concisely state the outcome of the analysis based on the application of the rule(s) to the facts of the case.

C. The Authoritative Value of Sources

Once the relevant legal issues have been identified, the legal practitioner must identify all relevant legal authorities³ that can help answer the questions arising from the identified issues.

Bear in mind that the discussed legal sources will have arguments that will strengthen or weaken one's case. It is the practitioner's task to take a relevant argument and meld it into their case in a manner that is beneficial to their case.

The authoritative value of a source of law depends on the type of source. Such value also depends on whether the specific legal authority is regarded as binding or persuasive and which court was involved in its development. The location of a court within a hierarchy is especially important in this regard.

² Cornell Law School, Legal Information Institute, Wex at https://www.law.cornell.edu/wex/question_of_law.

³ See section on legal sources.

The more authoritative a source is, the more likely it would be recognized and accepted by a court. Moreover, special consideration ought to be given to the status of the court within the judicial hierarchy, and the number of judges who decided the case, when determining the authoritative strength of the judgment.

D. Interpreting Statutes

The main task of legal research is to interpret legal authorities and apply them to the given facts of the case. This step is the most important part of legal research. The legal practitioner is required to read the relevant statutes and subsidiary legislation and apply relevant provisions to the identified issues.

The 'literal approach' and the 'purposive approach' to interpretation are the most commonly used approaches to statutory interpretation. The literal approach focuses on the ordinary grammatical meaning of words in a statute. Under this approach, deviation from the ordinary meaning can take place only in exceptional and definitive circumstances.

E.g. to avoid absurdity and to resolve ambiguity. The purposive approach focuses on promoting the general legislative purpose underlying the provision. It allows one to look beyond the ordinary meaning of the words and delve into the intention of the legislature.

E. Interpreting Judgments

When using caselaw, the practitioner must be able familiar with key terms and concepts. Here are some salient ones:

Ratio decidendi: the main rationale of the judicial decision. It is the principle of law on which the court reaches its decision. The ratio of a case must be deduced from its material facts, the reasons the court gives for reaching its decision, and the decision itself. Only the ratio of a case is binding on inferior courts, by reason of the doctrine of precedent (see *stare decisis*). The task of extracting and applying the ratio of a case will fall on a judge in a subsequent case.

Obiter dicta: ancillary judicial pronouncements found in case law. They are the remarks made by a judge in passing while setting out the judgment. It is not essential to the decision in the case. It does not create binding precedent, as it does not form any part of the ratio.

Stare decisis (doctrine of precedent): Stare decisis is a traditional doctrine employed by the courts to ensure legal certainty. This rule requires respect for precedent as a matter of principle. The rule does permit exceptions, provided that the burden of argument is on anyone who proposes to make an exception.

Precedent refers to an adjudged case or decision of a court of justice, considered as providing an example or authority for an identical or similar case on a similar question of law.⁴

For the doctrine of stare decisis to apply in a legal system, two conditions are necessary:

1. A hierarchy of courts: a decision is binding on a bench of lesser authority. Thus, it is necessary for there to be a clearly graded hierarchy of authority.

2. A system of law reporting. E.g. the New Law Reports, Sri Lanka Law Reports.

F. Comparative Jurisprudence

In Sri Lanka, Indian, South African, and English cases are of persuasive authority. However, they are not considered binding authorities. Comparative jurisprudence allows a legal practitioner to study and analyze a similar law in a foreign jurisdiction. This would involve the comparison of laws, norms, and regulations of other countries. Comparative jurisprudence can have additional benefits. For example, it may reveal an area of the law that requires reform.

G. Preparing Legal Arguments and Output

The final stage of legal research involves developing the legal output. This output will contain the legal argument that the practitioner intends to present on behalf of their client. This stage would entail writing a petition or written submissions in the context of litigation or writing a legal opinion in the context of a client inquiry.

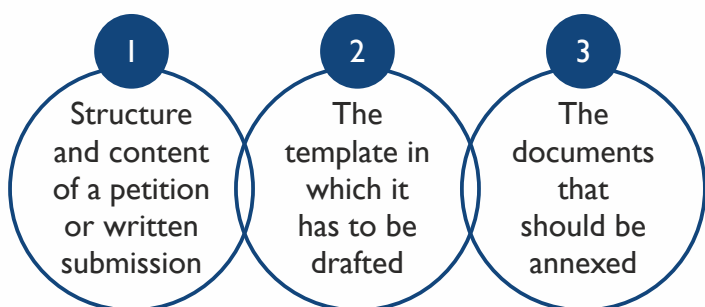
The legal authorities used in the legal output must be appropriately cited so that a reader can understand the basis for a particular argument.

⁴Black's Law Dictionary (8th Edition, 2004).

Legal practitioners must develop skills in clear, concise, and simple writing, which is accessible to a diverse set of readers. 'Legalese,' where the language used is highly technical and inaccessible, should be avoided. The clearer the writing, the more compelling the argument.

Writing a Petition or Written Submission

In Sri Lanka, the Rules of the Supreme Court drafted by the Chief Justice and three judges from time to time contain specific information, instructions, and templates pertaining to the practice and procedure of the Court. These rules contain guidelines on the following:



The Supreme Court Rules specify that a petition is filed with an affidavit in support of the averments, and should also contain the originals of the documents crucial to the application (or duly certified copies) in the form of exhibits.

Writing a Legal Opinion

A legal opinion is a letter expressing legal conclusions about a matter that a client brings to a practitioner. The recipient of a legal opinion is often a layperson.

The purposes of a legal opinion are usually to: inform the client of the legal effect of a transaction; assess the lawfulness of an action; or identify legal risks that the client should consider further and evaluate.

4. Practical Guidance

Guidance on Legal Writing

Regardless of whether a practitioner is working on a petition, written submissions, or a legal opinion, most legal writing involves the analysis of a set of facts using legal rules taken from several sources, including statutes, caselaw, and secondary sources.

This section offers four tips for legal writing.

1. Use plain English. There is an increasing trend towards the use of plain English in legal drafting. Complicated and obscure terms should generally be avoided.

2. Use an appropriate style. The practitioner forms their own personal writing style with the vocabulary used, the way they arrange words, and the length of their sentences. Style varies according to the purpose of writing, even for the same subject matter.

For instance, a practitioner may find that the style used for a law essay is different to the style used in petitions, written submissions, and legal opinions.

Typically, a practitioner should use a simple style of writing where the sentences are direct and clear. Avoid unnecessary adjectives and hyperbole.

3. Pay attention to the sentence structure. Write short sentences. Stick to one idea per sentence and when including more than one idea in a sentence, prioritize your points in the order of their importance.

4. Clearly explain the legislation, caselaw, and other materials relied on. To provide logical analysis of the legal issues related to a problem, question or an opinion, a practitioner needs to understand and refer to legislation, caselaw, and other materials that the practitioner relies on.

For example, a practitioner should be able to distil the key legal principles and findings contained within a judgment (i.e., the ratio decidendi).

Practical Tips for a Legal Practitioner

a. Client Management

When a practitioner undertakes a case, they should consider the following measures in managing their client.

“
Advise the client on maintaining records
”

“
Advise the client on what they can and cannot do
”

“
Schedule recurring consultations during the length of the case
”

“
Always keep the client informed of the progress of the case and what the future steps are
”

b. Maintaining Professional Boundaries

A practitioner must bear in mind the professional boundaries that define the appropriate interaction between an Attorney-at-Law and a client.

A legal practitioner must always ensure that they remain within their area of expertise.

If a practitioner provides 'special treatment' to a client, such as meeting at odd hours, providing a home telephone number, permitting unscheduled 'drop-in' appointments, agreeing to unusual requests, or finding themselves 'drawn in' and personally involved in their client's issues, then the practitioner may be at risk of violating professional boundaries.

To avoid such situations, the following strategies for setting boundaries at the outset may be considered.

Structure: Clear and predictable communication. Clarify relationship roles and responsibilities at the beginning.

Consistency: Make predictability a priority in how meetings are scheduled and conducted, client communication takes place, billing is handled, and tasks are assigned.

Manage Expectations: It may be necessary to anticipate and repeat for the client what legal proceedings will be like, the cost of the work, what tasks and level of involvement will be required, and what the practitioner's role will be during a legal matter.

Set Limits: Areas such as the practitioner's personal availability, their role as the legal expert, and the extent of their involvement may need to be clearly outlined.

c. Alternative Dispute Resolution Mechanisms

Prior to opting for litigation, a practitioner should evaluate the suitability and the potential of resolving the dispute at hand using alternative dispute resolution mechanisms.

In certain cases, the facts of a case will preclude the institution of an action. Based on the facts of the case, the practitioner has a duty to inform the client of the available modes of dispute resolution.

These mechanisms range from negotiation (informal or formal), conciliation, mediation, and arbitration.

If the relevant contract has an arbitration clause, a practitioner must inform the client that the matter can only be resolved through arbitration.

ALTERNATIVE DISPUTE RESOLUTION

INTRODUCTION



Systemic delays and inefficiencies in the process of dispute resolution through 'litigation' inevitably result in the deprivation of timely and effective justice for disputants.

Therefore, it is important to note that litigation is not the only method of dispute resolution.

When each and every dispute is taken to litigation without proper assessment of the dispute and an informed understanding of the most appropriate methods of resolution, negative implications ensue for the disputants as well as the system of justice, due to wasteful and inappropriate allocation of time, resources, and cost.

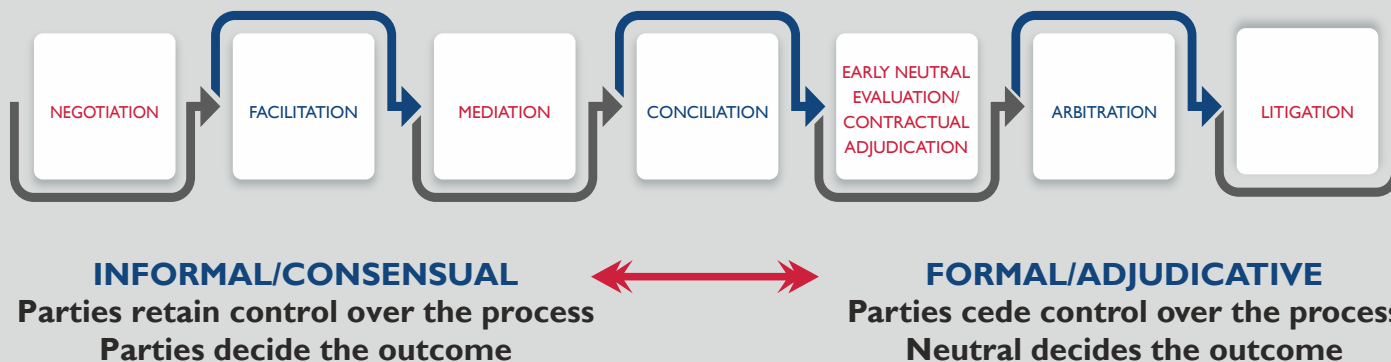
As such, lawyers have a duty to guide/advise their clients to select the most appropriate method of dispute resolution, to craft innovative solutions, and to secure effective justice for the specific dispute in question. As lawyers, it is part of our responsibility to properly assess the dispute and identify the most appropriate dispute resolution method, if we are to ensure efficiency as well as effectiveness of dispute resolution and if we genuinely want to help the disputant/client to save relationships, cost, and time.

Let us first understand the different ways in which disputes can be resolved. These range from informal to formal mechanisms of dispute resolution.

Dispute Resolution Spectrum

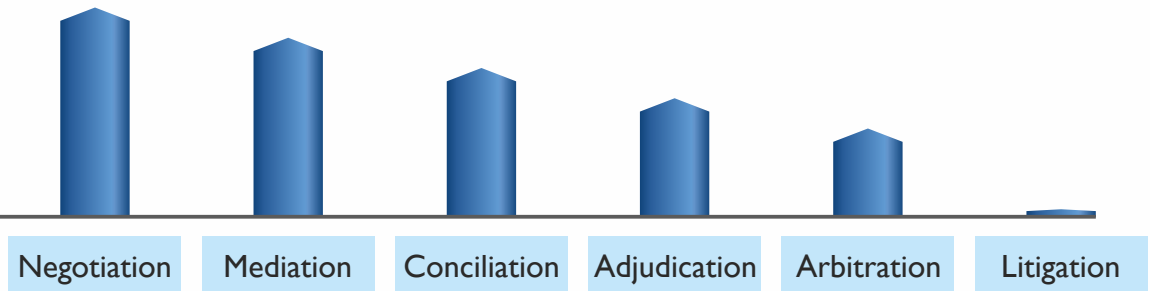
ADR SPECTRUM

The full spectrum of Alternative Dispute Resolution processes go from informal/consensual processes where the parties retain control and decide the outcome - to formal/adjudicative processes where the parties cede control and the neutral decides the outcome.

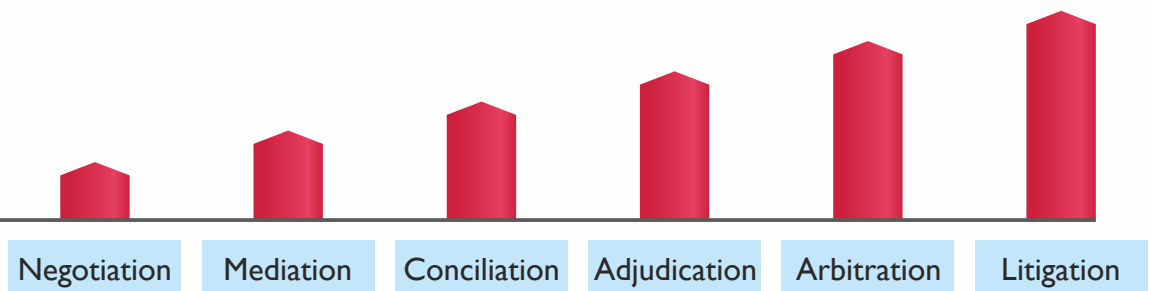


Different Types of Dispute Resolution Methods: A Comparison

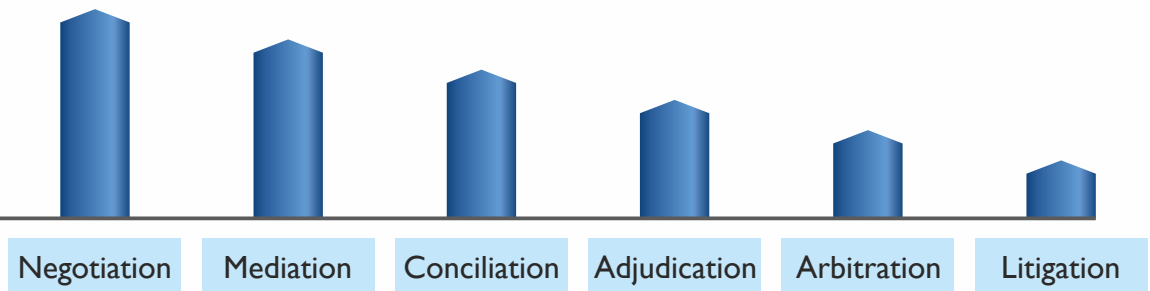
Party Autonomy over the Dispute Resolution Process and the Final Outcome



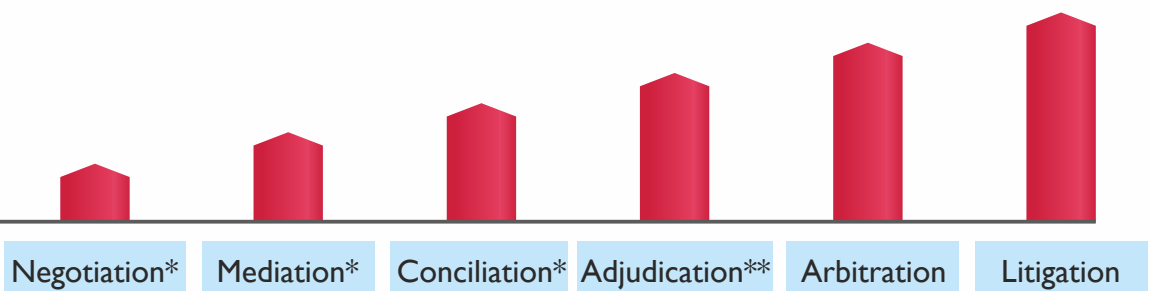
Formality



Cost and Time Effectiveness



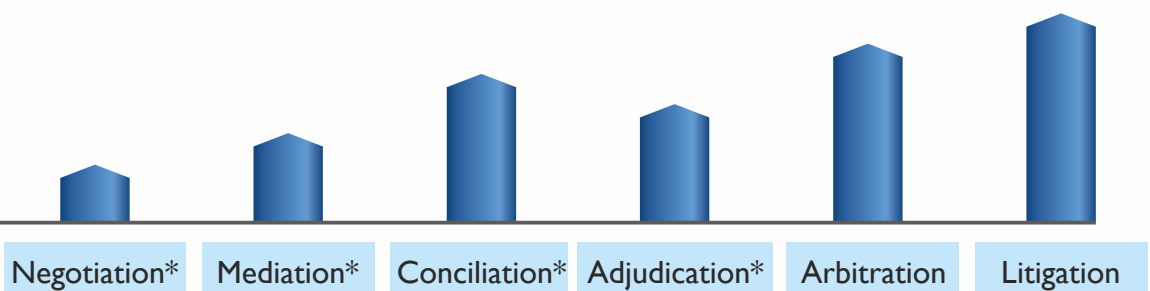
Involvement of Attorneys-at-Law



*If the parties so desire and if there is no statutory prohibition.

**Preparation of the submission to Adjudicator.

Enforceability of the Outcome



*Directly enforceable if statutes provide for direct enforcement, otherwise enforceable as contracts or under an existing agreement.

Let us now look at the legal background for these different dispute resolution methods in Sri Lanka.

Key legislation providing for different dispute resolution methods (Mediation, Conciliation, and Arbitration)

Arbitration

- » Arbitration Act No. 11 of 1995 (note that section 14 of the Act provides for other methods of settlement such as mediation and conciliation)

Community Mediation

- » Mediation Boards Act No. 72 of 1988,
- » Mediation (Special Categories of Disputes) Act No. 21 of 2003 (Disputes below Rs. 1,000,000/-)
- » Free
- » Selection of mediators is limited

Commercial Mediation

- » Commercial Mediation: Commercial Mediation Centre of Sri Lanka Act No. 44 of 2000 (Not Functioning)
- » Companies Act No. 07 of 2007 (Disputes Board - Not Functioning)
- » No financial limit
- » Not free
- » 100 percent party autonomy in selecting the mediators
- » Ad-hoc or institutional

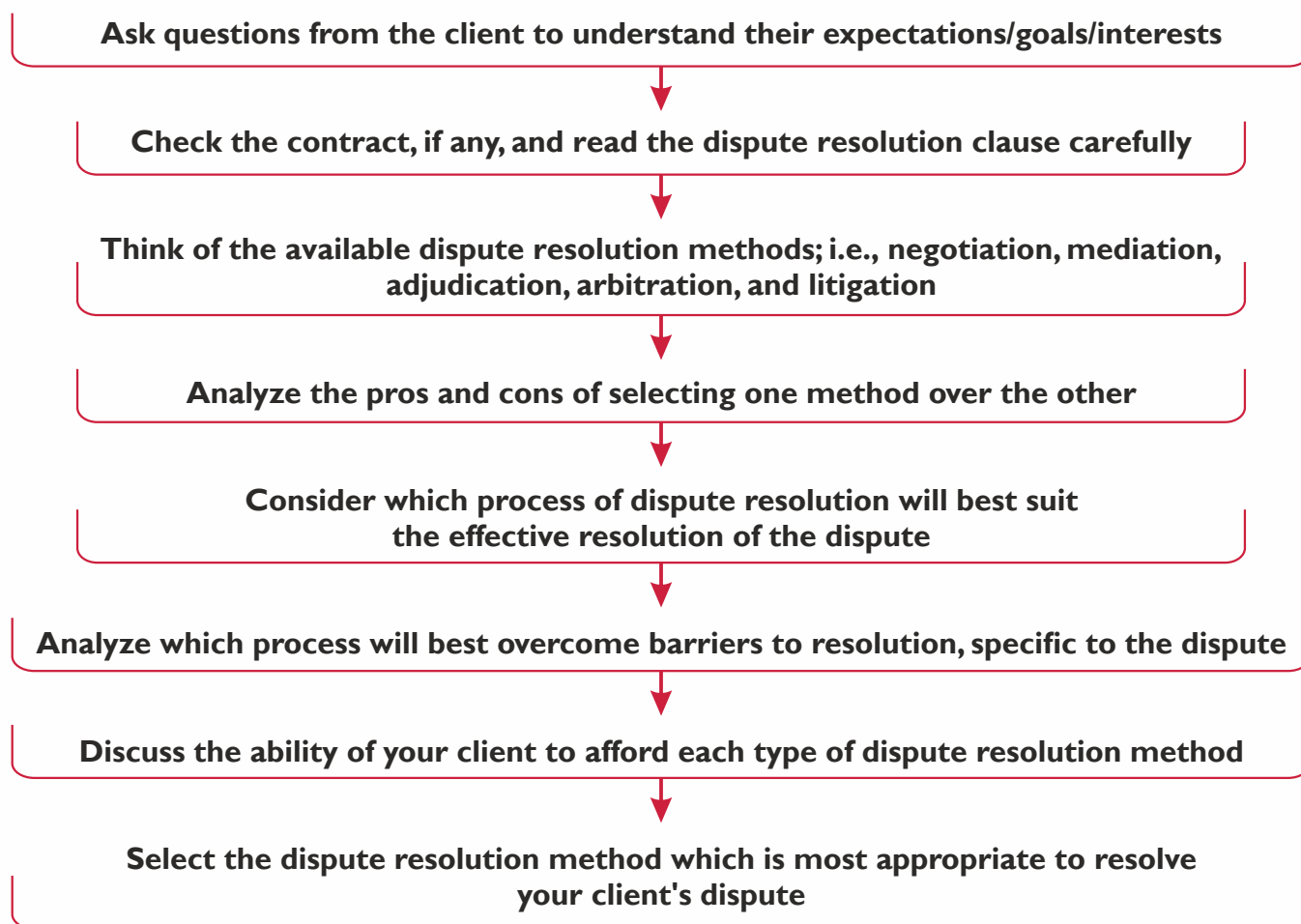
Other Legislations Providing for Arbitration, Mediation, and Conciliation

- » Industrial Disputes Act No. 43 of 1950 (Conciliation and Arbitration)
- » Human Rights Commission Act No. 21 of 1996 (Conciliation and Mediation)
- » Debt Conciliation Ordinance (Conciliation)
- » Trust Ordinance (Arbitration)



Finally, let us decide on the most appropriate dispute resolution method.

When a client brings a dispute to you and seeks your legal advice on how to resolve the dispute, you can follow the steps below:



The most important thing in this process is actively listening to your client and asking relevant questions. This will help you diagnose the dispute and the most effective method of resolution for that particular dispute.

Please remember that every dispute is different and as such, every dispute needs to be resolved through the method that matches that particular dispute. As lawyers we should not take our clients to court on every dispute but only for disputes which require the intervention of the judicial mind.

Also be mindful of the hybrid dispute resolution processes. Even when a matter is pending in court, or even in Arbitration, parties have the right to attempt to resolve the dispute amicably out of court.

This is provided for in Section 408 of the Civil Procedure Code and Section 14 of the Arbitration Act No. 11 of 1995, respectively.⁴

Therefore, if you as lawyers assess that there is scope for settlement of a dispute pending before a court or an arbitral tribunal, it is very much within your professional role to encourage and guide parties through an effective settlement process.

Amicable settlement through negotiation, mediation, or conciliation will achieve effective and efficient solutions, preserve the productivity and cohesiveness of the relationship, and reduce costs for the disputants and the State.

⁴ Court of Appeal (Mediation in Appeals) Rule 1990 provides for the mediation of appeals in Court of Appeal, by the Court of Appeal Justices. However, this rule is yet to come in to force. Nevertheless in practice, almost in every court, judges allow out of court settlements to be filed in Court, in resolution of matters that are pending before Court, including in the Court of Appeal and the Supreme Court.

INCLUSIVE JUSTICE: ASPECTS OF GENDER EQUALITY AND SOCIAL INCLUSION

INTRODUCTION



It is important, at the very beginning of one's professional life to be focused on the larger role and purpose of a law practitioner. The legal profession, whether in active practice or in academia, is organized and regulated primarily to serve the needs of justice and the rule of law. This is true across all specializations, from the notary engaged in land transactions to the lawyer engaged in fundamental rights litigation.

Chapter I of this handbook (Professional Ethics) outlines the scope of conduct that is expected of a law practitioner. A practitioner is bound by a duty to represent any member of the public, unless there is a conflict of interest, or the practitioner is aware that they are unable to do so with utmost diligence.

Also, a practitioner is duty-bound in the manner of interaction with other members of the profession – to be respectful, polite, and fair. These are vital standards for a meaningful justice system and professional integrity. It is fair to say, considering the above, that the legal profession and the justice system must essentially be *inclusive* and respectful of those within it, as well as those it serves.

This chapter aims to guide the practitioner to recognize certain detrimental factors that lead to the exclusion of certain persons, and thereby potentially impact the effective attainment of justice. It will focus on why the justice system needs to be inclusive of persons who fall within its purview. These persons include -

- Those who practice within the system
- Those who access the system

Central to the concept of inclusion is to recognize categories of persons who are easily subjected to exclusion. Very often, it is not easy to identify factors that contribute to exclusion, and this requires deliberate thought and discussion among law practitioners and justice sector actors.

Social Inclusion and Social Groups

In understanding how certain persons and groups are subject to exclusion, it is important to take note of some key concepts and themes and their relevance to a discussion on social inclusion:



Social Group

Individuals who can relate to each other based on a common identity, and thereby represent themselves as a distinct group.

The common identity may be one molded by the common experiences and outlook of the individuals who identify as a group. Examples of social groups include those who identify with each other based on disability, race, language, gender, age, and religion. It is important to note that even within a social group, there may be sub-groups or individuals whose experiences and identities differ from the larger generic group. For instance, 'women' in certain contexts may arguably constitute a distinct social group in view of their mutual disadvantage and vulnerability.



Social Inclusion

Inclusion happens when individuals with a common identity (a social group) can operate within society, a profession, or within the justice system, on terms and conditions that are appropriate or necessary for them.

Inclusion is often a 'process' by which persons disadvantaged by their identity are integrated into the larger community or profession. This may require several initiatives, including those that aim to make available opportunities that have been thus far denied; or to improve the capacity of different groups such that they have the competence and confidence to function with dignity.

For example, when courthouse infrastructure is assessed and restructured for its accessibility by persons with physical disability and its useability by persons with other types of disability.

Where there is inclusion, there is *diversity*; this is when persons of different experiences, orientation, and identity are given the space to function within a common system or community without disadvantage and with equal recognition. We can say that to be diverse is the opposite of being segregated, and persons can be different without the need to function in separate contexts.



Equity

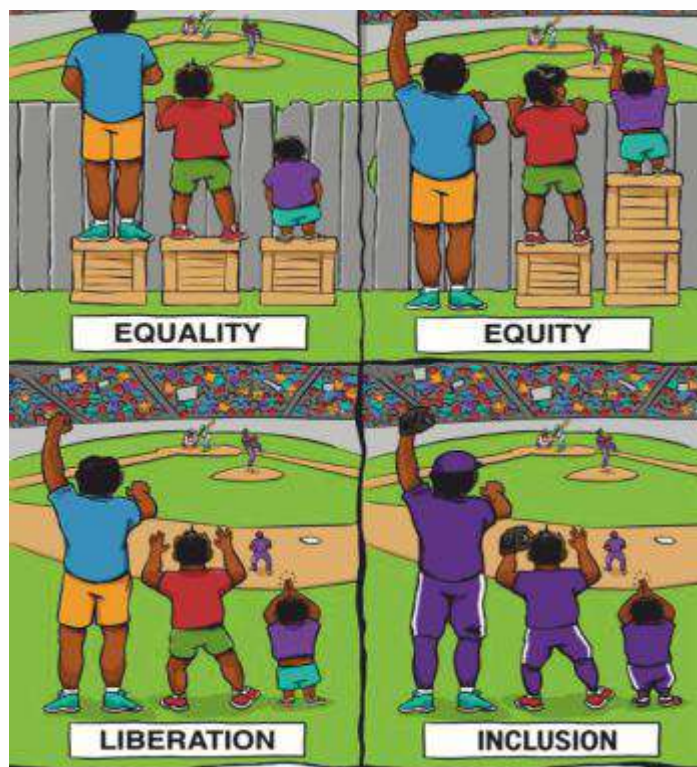
Equity is a concept which is associated closely with a discussion on 'equality' or 'equality among different social groups.' It is often the case that the equal treatment

of persons, or the granting of equal opportunities, is insufficient to ensure true equality. It is also necessary to assess if individuals and groups can make good use of those opportunities in the same manner as others. For instance, if different groups have equal access to available resources and opportunities and their effective use.

For example, a certain impoverished locality may have a court system and legal services, but vulnerable minority groups living in such locality may not have adequate information or the resources to have their grievances redressed. Or those with disability may not be able to access information (in the form of braille documentation or large print information sheets for example) and use court infrastructure in the same way as those without disability, thereby limiting their chances of accessing justice.

Therefore, the concept of 'equity' requires active measures and program that address and remove certain disadvantages and barriers that individuals and groups are subject to, which keep them from accessing opportunities and resources that may be available to them.

The concept of equity (in contrast to equality) is captured in the diagram below.¹ The diagram also illustrates that addressing disadvantages alone cannot ensure the inclusion of individuals and groups who are different from each other. It is necessary to address systemic barriers (or barriers within the system) that refuse to be inclusive of different persons within a profession or community.



The legal profession is well equipped and suitably placed to recognize issues of inequity and inequality among individuals and groups. The legal profession is closely associated with society, in translating laws for the regulation of society and human relations (among other things).

It has the knowledge and training to advocate against disadvantage and marginalization, and the attainment of true inclusion and justice for all. This is true with respect to society at large, as well as within the bounds of the justice system.

The law practitioner must ideally, be sensitive to issues that hinder inclusion and diversity within the legal profession, and to barriers and obstacles that deter individuals and groups from quality legal services and accessible justice. The advantages of promoting inclusion and diversity within the profession and justice system are numerous; the following are some of these advantages.

¹Diagram designed/updated by the Centre for Story Based Strategy - <https://www.storybasedstrategy.org/the4thbox>

A reflection of the diversity it serves:

The legal profession/justice system must reflect the diversity of the population it serves.

The lack of diversity within the profession and judiciary for instance may influence the level of public confidence in the administration of justice, especially among vulnerable communities and groups who are often under represented and subject to exclusion.

A range of quality professionals:

A commitment to diversity and inclusion will ensure the profession and justice system includes skilled persons from all groups and communities. This will also ensure a better representation of the different 'interests' and 'rights' that must essentially be vindicated by the justice system (especially in cases of public law/ public interest law).

Innovation and perspective:

As in other sectors, diversity in the justice system can promote diverse perspectives and innovation in implementing effective justice that is inclusive and relevant to all segments of society.

A reflection of democratic leadership:

Society and social institutions generally look to the leaders of the legal profession and justice system in directing its course.

Where the leadership in the justice system is diverse, it will surely influence the diversity among government and business leadership.

Gender Equality

An important topic relating to social inclusion is 'gender' or 'gender equality'. Gender may be considered a separate social group that merits separate discussion given that we, all of us, relate to some form of gender identity.

The concept of 'gender' is not easy to understand and has evolved over time to be more inclusive of persons who, at times fall outside traditional definitions of gender.

While this section will attempt to highlight why it is necessary for law practitioners and judicial actors to understand this concept, it is by no means an exhaustive discussion of gender (see further reading listed below).



A spectrum of definitions

A more informal use of the term gender is to refer to the 'biological sex' of a person, or the biological, reproductive characteristics that a person is born with. A person's gender reference in this approach is necessarily either male or female, but 'gender' is something different to one's biological sex.

The term is used to refer not just to the 'sex' of a person, but to social and cultural expectations of 'who' or 'what' a person should be. Hence, it is not merely a matter of the biological sex of the person, but about the roles and behaviors that is ascribed to them by society (see for further discussion under 'stereotype').

An evolving approach is that gender cannot be something 'binary' and must be inclusive of persons who do not necessarily view themselves as a man or a woman or reflect characteristics or personality traits that are commonly associated with a man or woman (as the case may be).

In this approach, gender may be understood and expressed in a range of ways that is 'gender fluid' (and not in reference to the gender-binary of man or woman). This approach is more inclusive of persons who are biologically neither man nor woman (example - intersex persons²), and of persons whose gender identity is different to their biological sex (among other gender identities).

What gender is 'not'

Following from the above, it is important to discuss what things that gender is often perceived as, but is not!

Not just about women:

The term gender is often regarded as referring to women. Based on discussions above, it will be apparent that gender is not just about women. It is often the case that gender studies are done in relation to women who are subject to marginalization and exclusion based on their identity as women. However, a discussion of gender is not limited to women's issues and can include issues of exclusion among men and other gender groups.

Not about sexual orientation:

Gender identity is often confused with sexual orientation. The latter is about who one is physically and emotionally attracted to in relation to one's own gender/sexuality.

For example, a man may be attracted to another man and hence his sexual orientation may be referred to as 'gay', but his gender identity as a 'male' is not impacted.

Not about women's empowerment:

Gender is often confused with women's empowerment movements. While a more progressive approach to gender may complement women's empowerment initiatives, gender should not be confused as one and the same thing.

Not something political:

The use of the word gender has come to be associated with programs and projects that are of Western origins and hence as a tool of political influence and socio-cultural transformation. It is, however, merely a concept that factors in the realities of human identities and relations.

It is important for judicial actors and law practitioners to be sensitive to the issues and challenges confronting persons of different gender identities.

This may require a deliberate and active effort to learn how gender, can lead to exclusion from fully participating in professional life and from accessing judicial services.

It also requires the unlearning of certain ideas and norms that have been entrenched within oneself over time. It is important to understand the following concepts in this regard.

Key concepts

Stereotype

A stereotype refers to an image or idea of someone or something that is commonly held to be true, but, is an over simplification of the truth. It is a popular perception of something, which is not necessarily true or accurate.

² Intersex: a person born with a combination of male and female biological traits

Examples of stereotypical thinking may be illustrated in the statements: “boys don’t cry,” and “girls love pink.” The popular perception is that boys are less emotional and are not easily provoked to crying.

But this is not necessarily true for boys. Nevertheless, it may be the case that boys are socially 'expected' to live up to this perception, and hide their emotions and not express sadness. This is potentially detrimental to mental health.

Similarly, if a girl appreciates bolder, darker colors and reflects a more masculine taste in clothing, she may not be perceived as the ideal girl that conforms to societal expectations of what a girl should be. While these statements are simple, they illustrate how stereotypical thinking can be harmful and can lead to exclusion from mainstream society.

It is often a complex task to go against popular, socio-cultural notions, and hence a person may be subject to disadvantage and exclusion by virtue of stereotypical thinking unless it is actively addressed.

Impact of stereotypical thinking on the attainment of justice:³

Stereotyping permeates the various stages of the legal process: the investigation, trial, and judgment phases. Accordingly, judges, magistrates, and adjudicators are not the only actors in the justice system that apply, perpetuate, and reinforce stereotypes. Prosecutors, law enforcement officials, and other actors can allow stereotypes to influence investigations, trials, and ultimately the judgment.

Prosecutors and judges should identify, challenge, and dismantle stereotypes that occur in the justice system. This not only means that judges and prosecutors must not engage in discriminatory behavior nor engage in gender stereotyping themselves, but they must also adopt gender sensitive approaches to the application of law and counter the myths and stereotypes present in laws or submitted by any of the parties.

Unconscious Bias

Unconscious, or implicit bias, refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. These biases, which encompass both favorable and unfavorable judgments, are set in motion involuntarily and without our awareness or intentional control.⁴

The key feature of this type of bias is that a person is 'unaware' that they are adversely biased against someone or something, and hence is unconsciously oriented to making negative assumptions and judgments about that someone or something. Therefore, it takes concerted 'soul-searching' and deep reflection about one's own thoughts and ideas.

Conclusion

The discussions in this section are intended to be a starting point in a continued discovery of how the justice system can be more inclusive and equitable. It aims to provide the reader with some key concepts and realities concerning the integration of vulnerable groups within the justice system (including their better integration in the legal profession). It has been compiled in recognition that the law professional plays a vital and significant role in this regard.

Further Reading:

1. Naomi Mezey, Law as Culture, 13 Yale J.L. & Human. 35.46 (2001).
2. Cordelia (2010). Delusions of Gender: How Our Minds, Society, and Neurosexism Create Difference. W.W.Norton
3. United Nations General Assembly, Report of OHCHR, Summary Report on the Recommendations of the Panel Discussion on Gender Stereotyping and on Women's Human Rights in the Context of Sustainable Development Agenda, (2014)
4. CEDAW General Recommendation No.33 on Women's Access to Justice, (2015) and related recommendations and comments of the CEDAW Committee and other treaty bodies
5. See: <https://www.americanbar.org/news/abanews/aba-news-archives/2018/09/new-study-finds-gender-and-racial-bias-endemic-in-legal-profession/>

³ Taken from USAID's Efficient and Effective Justice Activity's Participants' Manual on Gender Equality and Social Inclusion - Dr. Charles Ericksen. USAID's Efficient and Effective Justice Activity. Prepared by Gender Resources, Inc. 2022.

⁴ Ibid

Annexures

A

FORMAT OF A PLAINT

IN THE DISTRICT COURT OF COLOMBO (or as the case may be)

In the matter of an application under Section 703 of
the Civil Procedure Code (or as the case may be)

NEW COMPUTERS PRIVATE LIMITED

No. 420/1, Lake Road,
Maharagama

(names, descriptions, and addresses of all the
plaintiffs, and if they or any of them sue in any
representative capacity, state the capacity -e.g., "as
executor of C. D." or "administrator of the estate of
E. F." or if the plaintiff is a minor or person of un
sound mind appearing by his next friend or
manager. say "a minor, by C. D., of his next
friend")

PLAINTIFF

Case No.:

-VS-

Nature:

Procedure:

Value:

NIMAL SILVA

No. 25, Temple Road,
Colombo 6

(names, descriptions, and addresses of all the
defendants as above, stating the capacity, if any, as
above in which any of them are sued)

DEFENDANT

On this day of October 2022

The Plaintiff of the Plaintiff above named appearing by, his Attorney-at-Law states as follows;

1. The Plaintiff above named is a duly incorporated Company under the laws of Sri Lanka with the capacity to sue and be sued in its corporate name having its registered office and/or the principle place of business at the aforementioned address and inter alia, sales and supplies computers, electronic devices, equipment, accessories and spare parts in its usual course of business. The Plaintiff files herewith marked 'P1' and pleads as part and parcel hereof, a true copy of the Certificate of Incorporation of the Plaintiff dated 20-12-2003.

2. The Defendant above named is the drawer of the cheque, returned with the return reason “Refer to Drawer” under the circumstances morefully described hereinafter.
3. The Defendant resides and the causes of action hereinafter set forth arose within the local limits of Jurisdiction of this Court.
4. The Plaintiff pleads that the Plaintiff entered into a Dealership Agreement for sale of computers, electronic devices, equipment, accessories and spare parts with the Defendant.
5. The Plaintiff pleads that, the Plaintiff from time to time supplied inter alia , computers, electronic devices, equipment, accessories and spare parts to the Defendant on credit. The Defendant is obliged to sell the same and remit the monies due to the Plaintiff after retaining a commission.
6. The Plaintiff pleads that the Defendant from time to time, in consideration of the aforesaid supplying of computers, electronic devices, equipment, accessories and spare parts by the Plaintiff, handed over a cheque to the Plaintiff and promised to settle the outstanding amount in due course;
7. The Defendant in consideration of the aforesaid computers, electronic devices, equipment, accessories and spare parts supplied by the Plaintiff, tendered the cheque for a sum of Rs.4,000,000/- bearing No. 000056 dated 15-07-2021 drawn on Green Bank City Branch, in favour of the Plaintiff Company.
8. The Plaintiff pleads that the aforesaid cheque got dishonored with the endorsement “Refer to Drawer”.

The Plaintiff files herewith marked ‘P2’ and pleads as part and parcel hereof, the Cheque Return Notification relating to the aforesaid cheque bearing No. 000056 dated 15-07-2021.

9. The Plaintiff pleads that the Plaintiff Company duly gave Notice of Dishonor to the Defendant.
10. In the circumstances the Plaintiff Company pleads that a cause of action has arisen to sue the Defendant for the sum of Rs.4,000,000/- on the cheque bearing No. 000056 dated 15-07-2021 drawn on Green Bank, City Branch.
11. The Plaintiff Company pleads that a sum of Rs.4,000,000/- is justly due to the Plaintiff Company, on the cheque bearing No.000056 dated 15-07-2021 drawn on Green Bank City Branch.
12. The Plaintiff further pleads that on or about the the Plaintiff justly made a demand from the Defendant to make immediate payment of a sum of Rs.4,000,000/- being the sum due to the Plaintiff on the aforementioned dishonoured cheque after having given credit for moneys paid by the Defendant to the Plaintiff.

The Plaintiff files herewith marked 'P3(a)' and 'P3(b)' respectively and pleads as part and parcel hereof, a true copy of the said Letter of Demand sent by the Plaintiff to the Defendant with regards to the aforesaid dishonoured cheque and relevant registered postal article receipt thereof.

13. The Plaintiff pleads that the Defendant has up-to-date failed and/or neglected to comply or even respond to the aforesaid Letter of Demand sent by the Plaintiff.
14. The Plaintiff values this action at Rs.4,000,000/- for the purpose of stamp duty.
15. The Affidavit of the General Manager of the Plaintiff Company is filed herewith in support of the averments contained herein.

WHEREFORE the Plaintiff prays Your Honor's Court be pleased to:

- (a) Issue summons to the Defendant in accordance with the form No. 19 in the First Schedule.
- (b) Judgment in favour of the Plaintiff in a sum of Rs.4,000,000/- together with legal interest due from the date of filing of this action till payment in full;
- (c) Costs of this action and/or interest in costs; and
- (d) Such other and further relief as to Your Hounor's Court shall seem meet.

**REGISTERED ATTORNEY-AT-LAW
FOR THE PLAINTIFF**

ANSWER**IN THE DISTRICT COURT OF COLOMBO** *(or as the case may be)*

In the matter of an application under Section 703 of
the Civil Procedure Code *(or as the case may be)*

NEW COMPUTERS PRIVATE LIMITED

No. 420/1, Lake Road,
Maharagama

PLAINTIFF**Case No.:****-VS-****Nature:****Procedure:****Value:****NIMAL SILVA**

No. 25, Temple Road,
Colombo 6

DEFENDANT

On this day of December 2022

The Answer of the Defendant above named *(or defendants as the case may be)* appearing by
....., his Attorney-at-Law states as follows;

1. The Defendant denies all and singular the several averments set out in the Plaint, save except those that are hereinafter specifically admitted.
2. The Defendant admits the averments contained in paragraph 1 of the Plaint of the Plaintiff.
3. The Defendant specifically denies the averments contained in paragraphs 2 and 3 of the Plaint and puts the Plaintiff to the strict proof thereof.
4. The Defendant admits the averments contained in paragraphs 4 and 5 of the Plaint of the Plaintiff.
5. The Defendant denies the averments contained in paragraphs 6, 7, 8, 9 and 10 of the Plaint and states that the Defendant had handed over several cheques to the Plaintiff as security.
6. Answering the averments contained in paragraph 11 of the Plaint, the Defendant only admits the bare receipt of the Letter of Demand sent through the Attorney-at-Law for the Plaintiff.

7. The Defendant whilst denying the averments contained in paragraph 12, 13 and 14 of the Plaintiff states that,
 - a. The Defendant has duly paid and settled all outstanding sums due to the Plaintiff;
 - b. The Plaintiff is seeking to unjustly enrich itself by presenting a cheque handed over to Plaintiff as a security by the Defendant.
8. The Defendant states that the Plaintiff is not entitled to the sums claimed in this action.

FOR A CLAIM IN RECONVENTION

9. The Defendant re-iterates the averments contained in paragraphs 1 to 8 above.
10. The Defendant paid a sum of Rs. 3,000,000/- as an advance payment to a stock of computer accessories on or about 5th January 2022 to the Plaintiff and the Plaintiff undertook to deliver the same on or before 4th April 2022.
11. The Plaintiff has wrongfully failed and neglected to deliver the said goods or repay the Defendant the said sum of Rs.3,000,000/- though obliged to do so and thereto often demanded.
12. In the premises aforesaid, a cause of action has accrued to the Defendant to sue the Plaintiff for the recovery of the said sum of Rs.3,000,000/- together with legal interest thereon from date hereof until date of Decree and thereafter, legal interest on the aggregate sum of Decree until payment in full.

WHEREFORE, the Defendant respectfully prays Your Honor's Court be pleased to: -

- (a) Dismiss the action of the Plaintiff;
- (b) Enter judgment and Decree in favour of the Defendant in a sum of Rs.3,000,000/- together with legal interest thereon from date hereof until date of Decree and thereafter legal interest on the aggregate sum of the Decree until payment in full on the First Cause of Action;
- (c) Grant Costs; and
- (d) Grant such further and other relief as to the Court shall seem meet.

**REGISTERED ATTORNEY -AT -LAW FOR
THE DEFENDANT**



REPLICATION

IN THE DISTRICT COURT OF COLOMBO *(or as the case may be)*

In the matter of an application under Section 703 of
the Civil Procedure Code *(or as the case may be)*

NEW COMPUTERS PRIVATE LIMITED

No. 420/1, Lake Road,
Maharagama

PLAINTIFF

Case No.:

-VS-

Nature:

Procedure:

NIMAL SILVA

Value:

No. 25, Temple Road,
Colombo 6

DEFENDANT

On this day of December 2022

The Replication of the Plaintiff above named *(or defendants as the case may be)* appearing by
....., his Attorney-at-Law states as follows;

1. The Plaintiff denies all and singular the several averments set out in the Answer, save except those that are hereinafter specifically admitted.
2. The Plaintiff joins issue with the Defendant in respect of the several denials contained in the Answer.
3. The Plaintiff admits the averments contained in paragraph 2 of the Answer of the Defendant.
4. The Plaintiff specifically denies the averments contained in paragraphs 3 and 4 of the Answer and reiterates the averments contained in paragraphs 2, 3, 4 and 5 of the Plaintiff.
5. The Plaintiff denies the averments contained in paragraph 5 of the Answer, and reiterates the averments contained in paragraphs 6, 7, 8, 9 and 10 of the Plaintiff.
6. The Plaintiff denies the averments contained in paragraph 6 of the Answer, and reiterates the averments contained in paragraph 11 of the Plaintiff.

7. The Plaintiff denies the averments contained in paragraphs 7 and 8 of the Answer, and reiterates the averments contained in paragraphs 12, 13 and 14 of the Plaintiff.
8. The Plaintiff denies the averments contained in paragraphs 9, 10, 11 and 12 of the Answer, and puts the Defendant to strict proof thereof.

WHEREFORE, the Plaintiff respectfully prays for:-

- a. The Claim in Reconvention of the Defendant be rejected and/or dismissed;
- b. Judgment and Decree be entered in favour of the Plaintiff as prayed for in the prayer to the Plaintiff;
- c. Costs be granted; and
- d. Such other and further relief as to this Court may seem meet be granted.

**REGISTERED ATTORNEY - AT-LAW
FOR THE PLAINTIFF**

AFFIDAVIT
(OF A ROMAN CATHOLIC/CHRISTIAN)

I, **NIMAL SILVA** of No. 8, Temple Road, Colombo 6 being a Roman Catholic do hereby make oath and state as follows:-

1. I am the deponent and the *Defendant* above-named.
2. I swear to the matters contained herein from my personal knowledge, on advice, and from knowledge gained by perusing records, documents, files and data, which are in my possession and/or have been made available to me.
3. I state that I have paid and settled all the outstanding monies due to New Computers (Private) Limited.

Read over, and having understood
the contents hereof, sworn to and
signed by the Deponent at Colombo
on this day of December 2022

BEFORE ME,

JUSTICE OF PEACE/COMMISSIONER FOR OATHS

AFFIDAVIT
(OF A BUDDHIST, HINDU, OR MUSLIM, OR OF SOME OTHER RELIGION ACCORDING TO
WHICH OATHS ARE NOT OF BINDING FORCE)

I, **GAMINI PERERA**, of No. 4, Pannipitiya Road, Maharagama being a Buddhist do hereby solemnly, sincerely and truly affirm and declare as follows:

1. I am the Affirmant and the *Petitioner* above-named.
2. I affirm to the matters contained herein from my personal knowledge, on advice, and from knowledge gained by perusing records, documents, files and data, which are in my possession and/or have been made available to me.

Read over, and having understood
the contents hereof, affirmed to and
signed by the Affirmant at Colombo
on this day of December 2022

BEFORE ME,

JUSTICE OF PEACE/COMMISSIONER FOR OATHS

FORMAT OF WRITTEN ADMISSIONS AND ISSUES

IN THE DISTRICT COURT OF COLOMBO *(or as the case may be)*

NEW COMPUTERS PRIVATE LIMITED

No. 420/1, Lake Road,
Maharagama

PLAINTIFF

Case No.:

-VS-

Nature:

Procedure:

Value:

NIMAL SILVA

No. 25, Temple Road,
Colombo 6

DEFENDANT

I tender herewith the **proposed Admissions and Issues** of the Plaintiff above-named and respectfully move that Your Honour's Court be pleased to accept the same and direct the same be filed of record.

ADMISSIONS

1. Jurisdiction of this Court is admitted.
2. The averments contained in Paragraphs 4, 5, 6, 9, and 46 are admitted.

ISSUES

1. Did the Defendant tender the cheque for a sum of Rs.4,000,000/- bearing No. 000056 dated 15-07-2021 drawn on Green Bank City Branch, in favour of the Plaintiff Company?
2. Did the aforesaid cheque get dishonored with the endorsement "Refer to Drawer?"
3. Did the Plaintiff Company duly give Notice of Dishonor to the Defendant?
4. Is a sum of Rs.4,000,000/- is justly due to the Plaintiff Company, on the said cheque bearing No.000056 dated 15-07-2021 drawn on Green Bank City Branch?
5. Did the Plaintiff justly make a demand from the Defendant to make immediate payment of a sum of Rs.4,000,000/- being the sum due to the Plaintiff on the aforementioned dishonoured cheque?
6. Has the Defendant up-to-date failed and/or neglected to comply or even respond to the aforesaid Letter of Demand sent by the Plaintiff?
7. If the above Issues are answered in favour of the Plaintiff, is the Plaintiff entitled to the relief prayed for in the prayer to the Plaintiff?

On this day of December 2022

**REGISTERED ATTORNEY -AT-LAW
FOR THE PLAINTIFF**

LIST OF WITNESSES AND DOCUMENTS**IN THE DISTRICT COURT OF COLOMBO** (or as the case may be)**NEW COMPUTERS PRIVATE LIMITED**No. 420/1, Lake Road,
Maharagama**PLAINTIFF****Case No.:****-VS-****Nature:****Procedure:****NIMAL SILVA****Value:**No. 25, Temple Road,
Colombo 6**DEFENDANT**

I tender herewith the **List of Witnesses and Documents of the Plaintiff** above-named and move that Your Honour's Court be pleased to accept same, direct the same be filed of record and issue summons on the witnesses named herein.

LIST OF WITNESSES

1. Chief Executive Officer and/or his agent, New Computer Private Limited, No. 420/1, Lake Road, Maharagama.
2. Nilantha Samaratunga, Managing Director, Vision Global Private Limited, No. 5, 1st Floor, Vauxhall Street, Colombo 2
3. Managing Director and/or his agent, Vision Global Private Limited, No. 5, 1st Floor, Vauxhall Street, Colombo 2

LIST OF DOCUMENTS

1. Letter dated 13.04.2021 and its attachments sent by the Defendant to the Plaintiff.
2. Cheque return Notice in respect of the Cheque bearing No. 000056 dated 15-07-2021 drawn on Green Bank City Branch for a sum of Rs. 4,000,000/-

Notice is hereby given to the Defendant under Section 66 of the Evidence Ordinance to produce the originals of the documents mentioned above which are in the custody of the Defendant at each and every date of trial hereinafter. Please note that in the event of your failure to comply with the aforesaid, the secondary evidence in respect of the said documents will be led on behalf of the Plaintiff in terms of the provisions of Section 66 of the Evidence Ordinance.

On this day of December 2022

**REGISTERED ATTORNEY-AT-LAW
FOR THE PLAINTIFF**



FORMAT OF A MOTION

IN THE DISTRICT COURT OF COLOMBO (or as the case may be)

NEW COMPUTERS PRIVATE LIMITED

No. 420/1, Lake Road,
Maharagama

PLAINTIFF

Case No.:

-VS-

Nature:

Procedure:

Value:

NIMAL SILVA

No. 25, Temple Road,
Colombo 6

DEFENDANT

MOTION

WHEREAS Your Honour's Court directed the parties to tender their respective Written Submissions on 07th December 2022;

I tender herewith the Written Submissions on behalf of the Plaintiff above-named and respectfully move that Your Honour's Court be pleased to accept the same and direct the same be filed of Record.

A copy of this Motion together with the Written Submissions have been sent by Registered Post to the Registered Attorney-at-Law for the Defendant and the relevant Registered Postal Article receipt is attached herewith as proof thereof.

On this 07th day of December 2022

**REGISTERED ATTORNEY-AT-LAW
FOR THE PLAINTIFF**

IN THE MAGISTRATE COURT OF COLOMBO

*In the matter of an application in terms
of section 136 (1) (a) of the Code of
Criminal Procedure Act No: 15 of 1979.*

Thilak Alwis
No: 30, Baseline Road,
Colombo 08.

Complainant

**Colombo Magistrate Court
Case No:**

V.

Ajith Silva
No: 10, Baseline Road,
Colombo 08.

Accused

On this 2nd day of April 2022

TO: THE HONORABLE MAGISTRATE OF THE MAGISTRATE COURT OF COLOMBO

The complainant abovenamed appearing by his Attorney-at-Law Kamal Perera, states as follows by way of his complaint:

- 1) The complainant states that on the 2nd of January 2022, he saw a newspaper advertisement where the Accused above named, had advertised a car bearing Registration No: WP CAB 3456 to be sold at a price of Rs. 5,000,000/=.

A true copy of the said newspaper advertisement is annexed herewith marked as “ P 1 ” and is pleaded as part and parcel of this application.

- 2) The complainant states that he contacted the accused using the information given in the paper advertisement and went to meet him at the address above mentioned on 05.01.2022 in order to inspect the vehicle.
- 3) The complainant states that the Accused stated that the car had been taken by his brother to Kataragama for a pilgrimage and that an advance of Rs. 50,000/= may be paid to the

bank account of the Accused, as an initial deposit because another prospective buyer had already indicated his willingness to purchase the vehicle after inspecting it.

- 4) The complainant states that having believe the accused, he handed over a sum of Rs. 50,000/ to the Accused in cash and obtained a receipt and the accused informed the complainant to come on the following day to inspect the car.

A true copy of the said receipt issued by the accused when he obtained the sum of Rs. 50,000/= from the complainant, is annexed herewith marked as “ P 2” and is pleaded as part and parcel of this application.

- 5) The complainant states that thereafter, the accused never answered the phone, and when he went to the address above mentioned, the house was closed up and abandoned. On inquiring from the residents in the area, the complainant was informed that the said house had been closed up for several years and that no one had been living there permanently.
- 6) The complainant therefore states that the Accused has committed the offence of “cheating” which is punishable under section 403 of the Penal Code through deception by obtaining a sum of Rs. 50,000/= as a purported advance to sell a car.
- 7) The complainant states that he has not previously invoked the jurisdiction of Your Honour’s Court concerning this matter.
- 8) The complainant states that if inadvertently he has failed to submit any document which is necessary for Your Honour’s Court to determine this application, the complainant may be permitted to submit same with notice to the accused.

.....
Complainant

.....
Attorney-at-Law for the Complainant

List of Witnesses:

- 1) Thilak Alwis- No: 30, Baseline Road, Colombo 08.
- 2) Sampath Silva – No: 11, Baseline Road, Colombo 08.

List of documents and productions :

- 1) Newspaper advertisement on “ Daily Times” published on 02.01.2022
- 2) Receipt dated 05.01.2022 for Rs. 50,000/= issued by the accused to the complainant

.....
Complainant

.....
Attorney-at-Law for the Complainant

IN THE MAGISTRATE COURT OF COLOMBO

CHARGE SHEET

Case No:

Accused: Ajith Silva
No: 10, Baseline Road,
Colombo 08.

On or about the 5th of January 2022, in Colombo 08, which is within the jurisdiction of this Court, you did commit the offence of “cheating” which is punishable under section 403 of the Penal Code by obtaining a sum of Rs. 50,000/= from Thilak Alwis of No: 30, Baseline Road, Colombo 08 by deceiving him that the said sum was an advance payment for the purchase of vehicle bearing Registration No: WP CAB 3456.

On the day of 2022.

.....
Magistrate



IN THE PROVINIAL HIGH COURT OF THE WESTERN PROVINCE HOLDEN IN COLOMBO

PETITION OF APPEAL

*In the matter of an Appeal in terms of
section 320 of the Code of Criminal
Procedure Act No: 15 of 1979 read with
Article 154 P (3) (b) of the Constitution
as amended by the Thirteenth
Amendment to the Constitution*

**Colombo High Court Appeal
Case No:**

Officer-in-Charge
Police Station
Borella.

Complainant

**Colombo Magistrate Court
Case No: 4567/22/1**

V.

Ajith Silva
No: 10, Baseline Road,
Colombo 08.

Accused

And Now Between

Ajith Silva
No: 10, Baseline Road,
Colombo 08.

Accused-Appellant

V.

- 1) Officer-in-Charge
Police Station
Borella.

Complainant-Respondent

2) Hon. Attorney General
Attorney General's Department
Colombo 12

2nd Respondent

On this 2nd day of December 2022

**TO: THE HONORABLE HIGH COURT JUDGE OF THE HIGH COURT OF THE
WESTERN PROVINCE HOLDEN IN COLOMBO**

The Accused-Appellant abovenamed appearing by his Attorney –at-Law Kamal Perera, states as follows by way of his Petition of Appeal:

- 1) The charge sheet against the Accused-Appellant (hereinafter referred to as the “Appellant”) in the Magistrate Court of Colombo in Case No: 4567/22/1 contained the following charge:
On or about the 5th of January 2021, in Borella, the Accused committed an offence punishable under section 315 of the Penal Code by attacking Piyal Gunasena with a knife and causing him hurt.
- 2) The Appellant pleaded “not-guilty” to the above charge and the evidence of the following witnesses were led on behalf of the prosecution:
 - i. PW 01-Piyal Gunasena (virtual complainant)
 - ii. PW 02- Susila Gunasena (wife of the virtual complainant)
 - iii. PW 03- PC 6061 Ananda of the Borella Police Station
 - iv. The Medico-legal report of the victim was marked as “P 1” through the Mudaliyar
- 3) After the conclusion of the prosecution case, the Appellant made a dock statement and concluded the defense case.
- 4) Thereafter, written-submissions were filed on behalf of the Appellant and the case was fixed for Judgment to be delivered on the 1st of November 2022.
- 5) On the 1st of November 2022, the Learned Magistrate delivered the final judgment, convicting the Appellant of the charge. On the same day, the Learned Magistrate called for a fingerprint report for punishments to be imposed on the 15th of November 2022.
- 6) The Appellant who is aggrieved by the final judgment dated 01.11.2022 in Colombo Magistrate Court Case No:4567/22/1, submits this Petition of Appeal against the said conviction based on the following grounds of appeal:

- i. The credibility of the evidence given by the virtual-complainant is unacceptable considering the serious contradictions and omissions brought to the attention of Court during the cross-examination of the witness.
- ii. The evidence of the virtual-complainant concerning his injuries, is contrary to the injuries described in the medico-legal report marked as “ P 1”.
- iii. The Learned Magistrate has failed to properly consider defense version and the reasonable doubt

WHEREFORE the Accused-Appellant prays that Your Honor’s Court be pleased to:

- a) Set aside the conviction dated 01.11.2022 in Colombo Magistrate Court Case No:4567/22/1,
- b) Grant such other and further relief as may seem meet to Your Honour’s Court.

Attorney-at-Law for the Accused-Appellant

I hereby certify that this Appeal contains matters of law which are fit for adjudication by Your Honour’s Court.

Attorney-at-Law



**IN THE PROVINCIAL HIGH COURT OF THE WESTERN
PROVINCE HOLDEN IN COLOMBO**

PETITION

*In the matter of a Revision Application
under Article 138 of the Constitution
read with Article 154 P (3) (b) of the
Constitution as amended by the
Thirteenth Amendment to the
Constitution*

**Colombo High Court Revision
Application Case No:**

Officer-in-Charge
Police Station
Borella.

Complainant

**Colombo Magistrate Court
Case No: 1234/22/1**

V.

Ajith Silva
No: 10, Baseline Road,
Colombo 08.

Accused

And Now Between

Raj Kumar
No: 20, Baseline Road,
Colombo 08.

Registered Owner- Petitioner

V.

- 1) Officer-in-Charge
Police Station
Borella.

Complainant-Respondent

2) Hon. Attorney General
Attorney Generals Department
Colombo 12

2nd Respondent

On this 2nd day of April 2022

**TO: THE HONORABLE HIGH COURT JUDGE OF THE HIGH COURT OF THE
WESTERN PROVINCE HOLDEN IN COLOMBO**

The Registered Owner-Petitioner (hereinafter referred to as the “Petitioner”) above-named appearing by his Attorney-at-Law Kamal Perera, states as follows by way of his Petition:

- 1) The Petitioner states that the charge sheet against the Accused in the Magistrate Court of Colombo in Case No: 1234/22/1 contained the following charge:
On or about the 5th of January 2022, in Borella, the Accused committed an offence punishable under section 47 (1) of the Excise Ordinance as amended, by transporting 825 liters of Spirit in the Van bearing Registration No: WP PA 9676 in violation of the Law.
- 2) The Petitioner states that the on the 15th of February 2022, the Accused Pleaded guilty to the said charge and was sentenced accordingly. As the Petitioner made an application to Court that he is the Registered Owner of the Van bearing Registration No: WP PA 9676 and that the said vehicle be released to him, the Learned Magistrate fixed the matter for an inquiry to be held on the 2nd of March 2022 to decide whether the said vehicle should be confiscated or released to the Petitioner.
- 3) The Petitioner states that on the 15th of February 2022, he gave evidence and stated that he had entered into a written agreement with the Accused who had taken his van on hire to use the vehicle as a school van. the Petitioner stated that he had no knowledge or involvement concerning the alleged offence committed by the Accused. The Accused also gave evidence on the same day, confirming the evidence of the Petitioner.
- 4) The Petitioner states that on the 2nd of March 2022, the Learned Magistrate delivered an order confiscating the Van bearing Registration No: WP PA 9676.
A complete certified copy of the Case Record of Colombo Magistrate Court Case No: 1234/22/1 is annexed herewith marked as “ P 1” whereas the said confiscation order dated 02.03.2022 is marked as “ P 1 (a)” and is pleaded as part and parcel of this Application.

- 5) The Petitioner states that he is aggrieved by the confiscation order dated 02.03.2022, due to the following grounds which amount to “exceptional circumstances”:
- a) The Petitioner being the registered owner of the vehicle, had no knowledge or involvement concerning the alleged offence committed by the Accused.
 - b) The agreement between the Petitioner and the Accused clearly states that the purpose of giving the vehicle on hire, was for a school service, and not for any illegal activity.
 - c) The evidence of the Petitioner is corroborated by the evidence of the Accused, who stated that the Petitioner had no knowledge or involvement in the alleged offence and that the Accused takes full responsibility for same.
- 6) The Petitioner states that he has not previously invoked the jurisdiction of Your Honour’s Court concerning this matter.
- 7) The Petitioner states that if inadvertently the Petitioner has failed to submit any document which is necessary for Your Honour’s Court to determine this application, the Petitioner may be permitted to submit same with notice to the Respondents before the hearing of this matter.

WHEREFORE the Petitioner prays that Your Honour’s Court be pleased to:

- a) Issue notice of this Application to the Respondents,
- b) Grant an order staying the execution of the confiscation order dated 02.03.2022 in Colombo Magistrate Court Case No: 1234/22/1, until the final determination of this application,
- c) Set aside the confiscation order dated 02.03.2022 in Colombo Magistrate Court Case No: 1234/22/1, grant an order releasing the said vehicle to the Petitioner,
- d) Grant such other and further relief as may seem meet to Your Honour’s Court.

Attorney-at-Law for the Petitioner

IN THE MAGISTRATE COURT OF COLOMBO**MOTION**

Officer-in-Charge
Police Station
Borella.

Complainant

V.

Ajith Silva
No: 10, Baseline Road,
Colombo 08.

Suspect

**Colombo Magistrate Court
Case No: B.7474/22/1**

On this 2nd day of December 2022

TO: THE HONORABLE MAGISTRATE OF THE MAGISTRATE COURT OF COLOMBO

Whereas, in terms of order dated 10th of October 2022 a foreign travel ban has been imposed on the suspect and whereas it has become necessary for the suspect to travel to India for medical treatment within the month December 2022, it is respectfully pleaded that this case be called in open Court on the 2nd of December 2022, in order that an application can be made to Your Honour's Court in this regard.

Previous date: 22.11.2022

Next date: 05.03.2022

Attorney-at-Law for the Suspect



**IN THE PROVINCIAL HIGH COURT OF THE WESTERN
PROVINCE HOLDEN IN COLOMBO**

MOTION

**Colombo High Court
Case No: HC 234/2020**

Democratic Socialist Republic of Sri Lanka

Complainant

V.

Ajith Silva
No: 10, Baseline Road,
Colombo 08.

Accused

On this 2nd day of December 2022

**TO: THE HONORABLE HIGH COURT JUDGE OF THE HIGH COURT OF THE
WESTERN PROVINCE HOLDEN IN COLOMBO**

Whereas, by order dated 10th of January 2022, a foreign travel ban has been imposed on the Accused, and whereas it has become necessary for the Accused to travel to India for urgent medical treatment during the month of December 2022, it is respectfully pleaded that this case be called in open Court on the 6th of December 2022 in order that an application can be made to Your Honour's Court in this regard.

True copies of documents pertaining to this application which are relied upon by the Accused, are annexed herewith marked as "X 1".

**State Counsel
(Received notice of motion)**

Attorney-at-Law for the Petitioner



**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

PETITION OF APPEAL

*In the matter of an Appeal in terms of
section 331 of the Code of Criminal
Procedure Act No: 15 of 1979*

**Court of Appeal
Case No:**

Democratic Socialist Republic of Sri Lanka

Complainant

**Colombo High Court
Case No: HC 55/20**

V.

Ajith Silva
No: 10, Baseline Road,
Colombo 08.

Accused

And Now Between

Ajith Silva
No: 10, Baseline Road,
Colombo 08.

Accused-Appellant

V.

Hon. Attorney General
Attorney Generals Department
Colombo 12

Respondent

On this 2nd day of December 2022

**TO: HIS LORDSHIP THE HONORABLE PRESIDENT OF THE COURT OF APPEAL
AND THE OTHER HONORABLE JUDGES OF THE COURT OF APPEAL OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

The Accused-Appellant abovenamed appearing by his Attorney –at-Law Kamal Perera,states as follows by way of his Petition of Appeal:

- 1) The indictment against the Accused-Appellant (hereinafter referred to as the “Appellant”) in Colombo High Court Case No: HC 55/20 contained the following charge:

On or about the 5th of January 2018, in Borella, the Accused committed the offence of murder which punishable under section 296 of the Penal Code by causing the death of Saman Fernando.

- 2) The Appellant pleaded “not-guilty” to the above chargeand the evidence of the following witnesses were led on behalf of the prosecution:
 - i. PW 01-Nalini Fernando (wife of deceased)
 - ii. PW 02- Susila Gunasena (neighbor)
 - iii. PW 03-Consultant JMO Dr Cooray
 - iv. PW 05- CI Ananda of the Borella Police Station
 - v. Mudaliyar/translator
- 3) The following documents and productions were marked in the course of the prosecution case:
 - i. P 1- Post Mortem Report of the deceased
 - ii. P 2- a blood-stained knife recovered from the scene
- 4) After the conclusion of the prosecution case, the Appellant made a dock statement and concluded the defense case.
- 5) Thereafter, written-submissions were filed on behalf of the Appellant and the case was fixed for Judgment to be delivered on the 20th of November 2022.
- 6) On the 20th of November 2022, the Learned High Court Judge delivered the judgment convicting the Appellant for committing the offence of murder and imposed the death sentence on the Appellant.
- 7) The Appellant who is aggrieved by the final judgment and sentence dated 20.11.2022 in Colombo High Court Case No: HC 55/20 submits this Petition of Appeal against the said conviction and punishment, based on the following grounds of appeal:
 - i. The alleged “dying declaration” implicating the Appellant which was led in the course of the evidence of PW 01 (wife of the deceased) ought to have been

disregarded, due to the reason that the evidence of the PW 03- Consultant JMO confirms that the deceased could not have spoken after he received the injuries to his neck.

- ii. The evidence of PW 01 and PW 02 stating that there was a previous animosity between the deceased and the appellant, is inadequate to convict the Appellant for committing the offence of murder.
- iii. The Learned High Court Judge has failed to properly consider the reasonable doubt which arises in the prosecution case itself.
- iv. The Learned High Court Judge has failed to properly consider the dock statement of the Appellant.

WHEREFORE the Accused-Appellant prays that Your Lordship's Court be pleased to:

- a) Set aside the conviction and sentence dated 20.11.2022, of the Learned High Court Judge of Colombo in High Court Case No: HC 55/20,
- b) Grant such other and further relief as may seem meet to Your Lordship's Court.

Attorney-at-Law for the Accused-Appellant

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

PETITION

*In the matter of a Revision Application
under Article 138 of the Constitution
read with Article 145 of the Constitution*

**Court of Appeal Revision
Application Case No:**

Officer-in-Charge
Police Station
Borella.

Complainant

**Colombo High Court
Bail Application No: HCBA 10/22**

V.

- 1) Ajith Silva
No: 10, Baseline Road,
Colombo 08.
- 2) Kumar Jayaratne
No: 15, Baseline Road,
Colombo 08.

**Colombo Magistrate Court
Case No: B. 2323/22/1**

Suspects

And then Between

Anula Silva
No: 10, Baseline Road,
Colombo 08.

Petitioner

V.

- 1) Officer-in-Charge
Police Station
Borella.

Complainant-Respondent

- 2) Hon. Attorney General
Attorney General's Department
Colombo 12

2nd Respondent

And now between

Anula Silva
No: 10, Baseline Road,
Colombo 08.

Petitioner- Petitioner

V.

- 1) Officer-in-Charge
Police Station
Borella.

Complainant-Respondent -Respondent

- 2) Hon. Attorney General
Attorney Generals Department
Colombo 12

2nd Respondent-Respondent

On this 7th day of April 2022

**TO: HIS LORDSHIP THE HONORABLE PRESIDENT OF THE COURT OF APPEAL
AND THE OTHER HONORABLE JUDGES OF THE COURT OF APPEAL OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

The Petitioner-Petitioner(hereinafter referred to as the “Petitioner”) abovenamed appearing by his Attorney-at-Law Kamal Perera, states as followsby way of his Petition:

- 1) The Petitioner states that she is the wife of Ajith Silva, the suspect abovenamed and that she is a mother of two children aged 02 and 05.

(A complete certified copy of Colombo High Court Bail Application Case No: HC BA 10/22 is annexed herewith marked as “ P 1” and the true copy of the Marriage Certificate of the Petitioner and the Birth Certificates of her two children are annexed herewith

marked as “ P 1 (a)”, “ P 1 (b)” and “ P 1 (c)” respectively and are pleaded as part and parcel of this application)

- 2) The Petitioner states that her husband is the sole breadwinner of the family and until his arrest and incarceration, he was supporting the family as a three-wheeler driver.
- 3) The Petitioner states that on the 4th of January 2022, her husband left home in his three-wheeler at about 7 am, for a hire but did not return in the evening as usual and his mobile phone was not functioning.
- 4) The Petitioner states that her brother (Suresh Mendis) came to her house at about 8pm and informed her that her husband had been arrested and is now placed in custody at the Borella Police Station.
- 5) The Petitioner states that she immediately went to the Borella Police Station, at about 8.30pm and saw that her husband was kept in a cell but she was not permitted to speak with her husband.
- 6) The Petitioner states that a Police Officer informed her that her husband had been arrested while carrying a packet of heroin in his trouser pocket and that he will be produced before Court on the following day.
- 7) The Petitioner states that on the 6th of January 2022, her husband was produced to the Colombo Magistrate Court No: 01 under Case No: B. 2323/22/1 and was further remanded. Another individual who was referred to as the 2nd suspect, was also produced before Court and remanded along with the Petitioner’s husband.
- 8) The Petitioner states that according to the B Report dated 06.01.2022, filed by the Complainant-Respondent, it was the 2nd suspect (Kumar Jayaratne) who was the passenger of the three-wheeler, who had allegedly been in possession of 05 grams of heroin. The husband of the Petitioner, named as the 1st suspect had only been the driver of the three-wheeler.
(The certified copy of the B report dated 06.01.2022 is annexed herewith marked as “P 1 (d)” and is pleaded as part and parcel of this application)
- 9) The Petitioner states that her husband was merely going on a three-wheeler hire and had no knowledge of the contents of the pockets of the passenger of the three-wheeler, at the time he was arrested on 05.01.2022.

- 10) The Petitioner states that her husband suffered a heart attack on the 8th of July 2021, and that he is continuously taking medication for his heart disease and that the incarceration of her husband may cause a danger to the life of her husband.

(A true copy of the Diagnostic Card issued by the National Hospital of Sri Lanka, concerning the heart ailment of the Petitioner's husband is annexed herewith marked as **"P 1 (e)"** and is pleaded as part and parcel of this application)

- 11) The Petitioner states that a Bail Application was filed in the High Court of Colombo which was listed as HCBA 10/22, in order to obtain bail for her husband.

- 12) The Petitioner states that objections dated 4th of March 2022, were filed on behalf of the Hon. Attorney General.

A certified copy of the said objections is annexed herewith marked as **"P 1 (f)"** and is pleaded as part and parcel of this application.

- 13) The Petitioner states that on the 25th of March 2022, the bail inquiry was taken up and on the same day, the Learned High Court Judge delivered an order rejecting bail.

A certified copy of the said order dated 25.03.2022 is annexed herewith marked as **"P 1 (g)"** and is pleaded as part and parcel of this application.

- 14) The Petitioner being aggrieved by the order dated 25.03.2022, of the Learned High Court Judge of Colombo in Bail Application Case No: HC BA 10/22 submits this Revision Application based on the following circumstances, which in its totality may amount to "exceptional circumstances":

- a) The material reported to Court by the Complainant-Respondent does not disclose that the 1st suspect was aware that the 2nd suspect was hiding narcotics in his trouser pocket.
- b) The incarceration of the 1st suspect who is a heart patient, may cause a danger to the health of the 1st suspect.
- c) The 1st suspect is the sole breadwinner of his family, and due to his incarceration, the Petitioner and his two children are left destitute.
- d) The husband of the Petitioner has no previous criminal convictions or pending criminal cases.

- 15) The Petitioner states that the jurisdiction of Your Lordships Court has not been previously invoked in respect of this matter.

- 16) If inadvertently the Petitioner has failed to include a document which is necessary for the determination of this Bail Application, the Petitioner seeks the permission of Your Lordships Court, to tender such documents to Your Lordship's Court, with notice to the Respondents, before the hearing of this matter.

WHEREFORE the Petitioner prays that Your Lordship's Court be pleased to:

- a) Issue notice of this Bail Application to the Respondents,
- b) Set aside the order dated 25.03.2022 of the Learned High Court Judge of Colombo in Bail Application Case No: HC BA 10/22,
- c) Enlarge the husband of the Petitioner (1st suspect) on Bail, on conditions that may be acceptable to Your Lordship's Court,
- d) Grant such other and further relief as may seem meet to Your Lordship's Court.

Attorney-at-Law for the Petitioner-Petitioner



**IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

PETITION

*In the matter of an Application for Special
Leave to Appeal in terms of Section 09 of the
High Court of the Provinces (Special
Provisions) Act No: 09 of 1990 read with
Article 128 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.*

**Supreme Court Special
Leave to Appeal Application No:**

**Court of Appeal
Case No: CA 105/21**

**High Court of Colombo
Case No: HC 55/20**

Democratic Socialist Republic of Sri Lanka

Complainant

V.

Ajith Silva
No: 10, Baseline Road,
Colombo 08.

Accused

And then Between

Ajith Silva
No: 10, Baseline Road,
Colombo 08.

Accused-Appellant

V.

Hon. Attorney General
Attorney General's Department
Colombo 12

Respondent

And now between

Ajith Silva
No: 10, Baseline Road,
Colombo 08.

Accused-Appellant- Petitioner

V.

Hon. Attorney General
Attorney General's Department
Colombo 12

Respondent-Petitioner

On this 25th day of August 2022

**TO: HIS LORDSHIP THE CHIEF JUSTICE AND THE OTHER HONORABLE
JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA.**

The Accused-Appellant-Petitioner (hereinafter referred to as “Petitioner”) abovenamed appearing by his Attorney-at-Law Kamal Perera, states as follows by way of his Petition:

- 1) The indictment against the Petitioner in Colombo High Court Case No: HC 55/20 contained the following charge:

On or about the 5th of January 2018, in Borella, the Accused committed the offence of murder which punishable under section 296 of the Penal Code by causing the death of Saman Fernando.

- 2) The Petitioner pleaded “not-guilty” to the above charge and the evidence of the following witnesses were led on behalf of the prosecution:

- i. PW 01-Nalini Fernando (wife of deceased)
- ii. PW 02- Susila Gunasena (neighbor)
- iii. PW 03-Consultant JMO Dr Cooray
- iv. PW 05- CI Ananda of the Borella Police Station
- v. Mudaliyar/translator

- 3) The following documents and productions were marked in the course of the prosecution case:

- i. P 1- Post Mortem Report of the deceased
- ii. P 2- a blood-stained knife recovered from the scene

- 4) After the conclusion of the prosecution case, the Petitioner made a dock statement and concluded the defense case.
- 5) Thereafter, final submissions were made on behalf of the Petitioner and the case was fixed for Judgment to be delivered on the 20th of November 2021.
- 6) On the 20th of November 2021, the Learned High Court Judge delivered the judgment convicting the Petitioner for committing the offence of murder and imposed the death sentence on the Petitioner.
- 7) The Appellant who is aggrieved by the final judgment and sentence dated 20.11.2021 in Colombo High Court Case No: HC 55/20 filed an Appeal against the said conviction and punishment, based on the following grounds of appeal:
 - i. The alleged “dying declaration” implicating the Appellant which was led in the course of the evidence of PW 01 (wife of the deceased) ought to have been disregarded, due to the reason that the evidence of the PW 03- Consultant JMO confirms that the deceased could not have spoken after he received the injuries to his neck.
 - ii. The evidence of PW 01 and PW 02 stating that there was a previous animosity between the deceased and the appellant, is inadequate to convict the Appellant for committing the offence of murder.
 - iii. The Learned High Court Judge has failed to properly consider the reasonable doubt which arises in the prosecution case itself.
 - iv. The Learned High Court Judge has failed to properly consider the dock statement of the Appellant.
- 8) The Petitioner states that the said Appeal was listed in the Court of Appeal as Court of Appeal Case No: CA 105/21 and written – submissions were filed on behalf of the Petitioner as well as the Hon. Attorney General and argument was held on 26th of June 2022.
- 9) The Petitioner states that by Judgment dated 5th of August 2022, the Court of Appeal dismissed the Appeal and affirmed the conviction and death sentence imposed by the High Court.
- 10) The Petitioner states that he is aggrieved by the order of the Court of Appeal dated 5th of August 2022, in Court of Appeal Case No: CA 105/21 and the Petitioner moves Your Lordship's Court to grant Special Leave to Appeal to Your Lordship's Court on the

following among other grounds that may be urged on behalf of him at the hearing of this Application:

- a) The alleged “dying declaration” implicating the Petitioner which was led in the course of the evidence of PW 01 (wife of the deceased) ought to have been disregarded, due to the reason that the evidence of the PW 03- Consultant JMO confirms that the deceased could not have spoken after he received the injuries to his neck.
- b) The evidence of PW 01 and PW 02 stating that there was a previous animosity between the deceased and the appellant, is inadequate to convict the Appellant for committing the offence of murder.
- c) The Learned High Court Judge has failed to properly consider the reasonable doubt which arises in the prosecution case itself.
- d) The Learned High Court Judge has failed to properly consider the dock statement of the Appellant.

11) The Petitioner states that the following questions of law arise for adjudication by Your Lordships Court in this Case:

- a) Should the alleged “dying declaration” implicating the Petitioner which was led in the course of the evidence of PW 01 (wife of the deceased) be disregarded, due to the reason that the evidence of the PW 03- Consultant JMO confirms that the deceased could not have spoken after he received the injuries to his neck?
- b) Is the evidence of PW 01 and PW 02 stating that there was a previous animosity between the deceased and the appellant, adequate to convict the Appellant for committing the offence of murder?
- c) Has the Learned High Court Judge and Judges of the Court of Appeal failed to properly consider the reasonable doubt which arises in the prosecution case itself?
- d) Has the Learned High Court Judge and Judges of the Court of Appeal failed to properly consider the dock statement of the Appellant?

WHEREFORE the Accused-Appellant-Petitioner Prays that Your Lordships Court be pleased to:

- a) Grant Special Leave to Appeal to Your Lordships Court against the order dated 05.08.2022 of the Court of Appeal in Case No: CA 105/21,

- b) Set aside the order dated 05.08.2022 of the Court of Appeal in Case No: CA 105/21,
- c) Set aside the conviction and death sentence imposed by the Learned High Court Judge of Colombo in Case No: HC 55/20 dated 20.11.2021,
- d) Grant Costs and,
- e) Grant such other and further reliefs that Your Lordship's Court shall seem meet.

Attorney-at-Law for the Accused-Appellant-Petitioner

IN THE MAGISTRATE COURT OF COLOMBO

PETITION

*In the matter of an Anticipatory
Bail Application in terms of section
21 of the Bail Act No: 30 of 1997*

**Colombo Magistrate Court Anticipatory
Bail Application Case No:**

Ajith Silva
No: 10, Baseline Road,
Colombo 08.

Petitioner

V.

Officer-in-Charge
Police Station
Borella.

Respondent

On this 2nd day of December 2022

**TO: THE HONORABLE MAGISTRATE OF THE MAGISTRATE COURT OF
COLOMBO**

The Petitioner appearing by his Attorney-at-Law Kamal Perera states as follows:

- 1) The Petitioner states that he is a Director of “New Cars (Pvt) Ltd” which engages in the business of importing cars to Sri Lanka from Japan.

(True copies of documents to in proof of the above are annexed herewith marked as “P 1” and are pleaded as part and parcel of this application)

- 2) The Petitioner states that on 10.08.2022, a customer by the name of “Kumara Alwis” had visited the showroom at No: 18, Ward Place, Borella and paid an advance of Rs.1 million to the sales manager at the showroom by the name of Anthony Mark for the importation of a “Tota Viz” vehicle manufactured in 2021 in Japan, the total price being Rs. 6 million.

(A true copy of the said receipt is annexed herewith marked as “ P 2” and is pleaded as part and parcel of this application)

- 3) The Petitioner states that according to the said agreement, the said vehicle was due to arrive in Sri Lanka during the latter half of October 2022, however due to the “Fushima earthquake” which unexpectedly affected Tokyo on the 28th of August 2022, it was not possible for the vehicle to be brought to Sri Lanka as planned.
- 4) The Petitioner states that the above-mentioned customer “Kumara Alwis” came to the showroom several times during the month of October and demanded for a refund of the advance of Rs. 1 million. The Petitioner states that it was explained to “Kumara Alwis” that due to the situation in Japan, it may not be possible to import the same type of vehicle but that an older Indian manufactured vehicle of the same type can be imported and sold at the same price.
- 5) The Petitioner states that the above mentioned “Kumara Alwis” who arrived at the showroom on the 3rd of November 2022 attempted to violently assault the sales manager Anthony Mark, demanding the refund of the advance of Rs. 1 million. The Petitioner states that he intervened and tried to prevent this assault and that the said customer “Kumara Alwis” threatened the Petitioner that he will take criminal legal action and have the Petitioner arrested and remanded without bail for 01 year, using his political and police contacts.

(A Compact Disk containing the relevant CCTV footage is marked as “P 3” and a true copy of the affidavit of Anthony Mark pertaining to these events is marked as “P 4” and are annexed as part and parcel of this application.)

- 6) The Petitioner states that during the month of November 2022, several phone calls were received to the showroom where the above mentioned “Kumara Alwis” threatened that he will have the Petitioner remanded and incarcerated if the Rs. 1 million advance is not returned.
- 7) The Petitioner states that he is advised that “Kumara Alwis” is attempting to make an allegation that the Petitioner has committed the offence of “cheating” which is punishable under section 403 of the Penal Code and which offence is a “non-bailable” criminal offence.
- 8) The Petitioner states that he denies that he has committed any criminal offence and that he is ready to come to an amicable settlement with “Kumara Alwis” concerning this commercial dispute.
- 9) The Petitioner states that considering the behavior and threats made by “Kumara Alwis” his only aim is to have the Petitioner arrested and remanded and to punish and harass the Petitioner.

- 10) The Petitioner states that he is a father of two children aged 3 and 5 years and that he is the sole breadwinner of the family. The Petitioner states that if he is incarcerated, his wife and two young children will be left helpless and vulnerable.

(True copies of the marriage certificate of the Petitioner and birth certificated of the two children are annexed herewith marked as “P 5”, “P 6” and “P 7” respectively and are pleaded as part and parcel of this application)

- 11) The Petitioner states that he is an insulin dependent diabetes patient, and that if he is incarcerated, it would adversely affect his health.

(A true copy of the relevant medical certificate is annexed herewith marked as “P 8” and is pleaded as part and parcel of this application)

- 12) The Petitioner states that he undertakes to assist in any criminal investigation or judicial proceeding against him and appear before Court as and when required.

- 13) The Petitioner states when the above material is considered in its totality, suitable grounds have been established to grant Anticipatory Bail to the Petitioner.

- 14) The Petitioner states that he has not invoked the jurisdiction of this Court or any other Court concerning this matter.

- 15) The Petitioner states that if inadvertently any document necessary for the determination of this application has not been submitted, he may be permitted to submit such document with the permission of Court before the hearing of this application.

Whereas the Petitioner pleads that Your Honour’s Court be pleased to:

- a) Issue notice of this application to the Respondent,
- b) Fix this application for inquiry,
- c) Grant Anticipatory Bail to the Petitioner on conditions that may seem appropriate to Your Honour's Court,
- d) Grant such other and further relief that may seem appropriate to Your Honour's Court.

Attorney-at-Law for the Petitioner



**IN THE PROVINCIAL HIGH COURT OF THE WESTERN
PROVINCE HOLDEN IN COLOMBO**

PETITION

*In the matter of a Bail Application in
terms of section 13 of the Bail Act No:
30 of 1997.*

Colombo High Court Bail Application
Case No:

Colombo Magistrate Court
Case No: B. 2323/22/1

Officer-in-Charge
Police Station
Borella.

Complainant

V.

Ajith Silva
No: 10, Baseline Road,
Colombo 08.

Suspect

And Now Between

Kanthi Silva
No: 10, Baseline Road,
Colombo 08.

Petitioner

V.

- 1) Officer-in-Charge
Police Station
Borella.

Complainant-Respondent

2) Hon. Attorney General
Attorney Generals Department
Colombo 12

2nd Respondent

And

Ajith Silva
No: 10, Baseline Road,
Colombo 08.

Suspect
(Presently in Colombo remand Prison)

On this 2nd day of December 2022

**TO: THE HONORABLE HIGH COURT JUDGE OF THE HIGH COURT OF THE
WESTERN PROVINCE HOLDEN IN COLOMBO**

The Petitioner abovenamed appearing by his Attorney –at-Law Kamal Perera, states as follows in his Petition:

- 1) The Petitioner states that she is the wife of Ajith Silva, the suspect abovenamed and that she is a mother of two children aged 02 and 05.

(A true copy of the Marriage Certificate of the Petitioner and the Birth Certificates of her two children are annexed herewith marked as “P 1”, “P2” and “P 3” respectively and are pleaded as part and parcel of this application)

- 2) The Petitioner states that her husband is the sole breadwinner of the family and until his arrest and incarceration, he was supporting the family as a three-wheeler driver.
- 3) The Petitioner states that on the 5th of October 2022, her brother Sunil Gamini arrived at their house at about 7pm and thereafter, her brother and her husband started consuming arrack.
- 4) The Petitioner states that at about 9pm, she asked her husband and brother to come inside the house and have their dinner. While they were having dinner, an argument arose concerning a loan which the Petitioner’s brother had given the Petitioner’s husband. The argument became more aggressive, and the Petitioner’s brother threw his plate towards the Petitioner’s husband who managed to catch the plate and throw it back towards the Petitioner’s brother.

- 5) The Petitioner states that the plate struck her brother's face and her brother fell off his chair and was motionless and they immediately took him to the National Hospital and realized that the Petitioner's brother had already died.
- 6) The Petitioner states that Police officers from the Borella Police Station recorded statements from several witnesses and after a statement was recorded from her husband, at about 10pm on the same night, they arrested the Petitioner's husband without giving a reason for the arrest.
- 7) The Petitioner states that on the following day, her husband was produced to the Colombo Magistrate Court No: 01 under Case No: B. 2323/22/1 and was further remanded. The Petitioner was surprised to be informed that her husband had been arrested on an allegation of murder.
(The certified copy of the B report dated 06.10.2022 is annexed herewith marked as **"P4"** and is pleaded as part and parcel of this application)
- 8) The Petitioner states that after the post-mortem inquiry and the inquest proceedings, it was revealed that the cause of death was a 'heat attack' although the deceased had a minor injury on his face due to the impact of the plate which struck his face.
(A certified copy of the inquest proceedings and the Post-mortem report are annexed herewith marked as **"P 5"** and **"P 6"** and are pleaded as part and parcel of this application.)
- 9) The Petitioner states that the Police investigations have been concluded and that the matter has been referred to the Hon. Attorney General for advice on further legal action and that her husband remains incarcerated in the meantime.
- 10) The Petitioner states that her husband vehemently rejects the allegation of murder.
- 11) The Petitioner states that her husband suffered a heart attack on the 8th of July 2022, and that he is continuously taking medication for his heart disease and that the incarceration of her husband may cause a danger to the life of her husband.
(A true copy of the Diagnostic Card issued by the National Hospital of Sri Lanka, concerning the heart ailment of the Petitioner's husband is annexed herewith marked as **"P7"** and is pleaded as part and parcel of this application)
- 12) The Petitioner states that Your Honour's Court may consider enlarging the Petitioner's husband on bail, considering that the following circumstances:

- a) The material reported to Court through the investigation does not disclose the commission of the offence of murder, as the deceased had died due to a 'heart attack', for which the Petitioner's husband bears no criminal liability.
 - b) The incarceration of the suspect who is a heart patient, may cause a danger to his health.
 - c) The suspect is the sole breadwinner of his family, and due to his incarceration, the Petitioner and his two children are left destitute.
 - d) The husband of the Petitioner has no previous criminal convictions or pending criminal cases.
 - e) There are no grounds under section 14 of the Bail Act No: 30 of 1997 to reject bail.
- 13) The Petitioner states that the jurisdiction of Your Honour's Court has not been previously invoked in respect of this matter.
- 14) If inadvertently the Petitioner has failed to include a document which is necessary for the determination of this Bail Application, the Petitioner seeks the permission of Your Honour's Court, to tender such documents to Your Honour's Court, with notice to the Respondents, before the hearing of this matter.

WHEREFORE the Petitioner prays that Your Honour's Court be pleased to:

- a) Issue notice of this Bail Application to the Respondents,
- b) Enlarge the husband of the Petitioner on Bail, on conditions that may be acceptable to Your Honour's Court,
- c) Grant such other and further relief as may seem meet to Your Honour's Court.

Attorney-at-Law for the Petitioner

**IN THE PROVINCIAL HIGH COURT OF THE WESTERN
PROVINCE HOLDEN IN COLOMBO**

PETITION

*In the matter of a Bail Application in
terms of section 83(1) of the Poisons
Opium and Dangerous Drugs
Ordinance as amended by Act No: 41 of
2022.*

**Colombo High Court Bail Application
Case No:**

Officer-in-Charge
Police Station
Borella.

Complainant

Colombo Magistrate Court
Case No: B. 2323/22/1

V.

- 1) Ajith Silva
No: 10, Baseline Road,
Colombo 08.
- 2) Kumar Jayaratne
No: 15, Baseline Road,
Colombo 08.

Suspects

And Now Between

Kanthi Silva
No: 10, Baseline Road,
Colombo 08.

Petitioner

V.

- 1) Officer-in-Charge
Police Station
Borella.

Complainant-Respondent

- 2) Hon. Attorney General
Attorney General's Department
Colombo 12

2nd Respondent

And

Ajith Silva
No: 10, Baseline Road,
Colombo 08.

1st Suspect
(Presently in Colombo remand Prison)

On this 2nd day of December 2022

**TO: THE HONORABLE HIGH COURT JUDGE OF THE HIGH COURT OF THE
WESTERN PROVINCE HOLDEN IN COLOMBO**

The Petitioner abovenamed appearing by his Attorney-at-Law Kamal Perera, states as follows in his Petition:

- 1) The Petitioner states that she is the wife of Ajith Silva, the suspect abovenamed and that she is a mother of two children aged 02 and 05.

(A true copy of the Marriage Certificate of the Petitioner and the Birth Certificates of her two children are annexed herewith marked as “P 1”, “P2” and “P 3” respectively and are pleaded as part and parcel of this application)

- 2) The Petitioner states that her husband is the sole breadwinner of the family and until his arrest and incarceration, he was supporting the family as a three-wheeler driver.
- 3) The Petitioner states that on the 5th of October 2022, her husband left home in his three-wheeler at about 7 am, for a hire but did not return in the evening as usual and his mobile phone was not functioning.

- 4) The Petitioner states that her brother (Suresh Mendis) came to her house at about 8pm and informed her that her husband had been arrested and is now placed in custody at the Borella Police Station.
- 5) The Petitioner states that she immediately went to the Borella Police Station, at about 8.30pm and saw that her husband was kept in a cell but she was not permitted to speak with her husband.
- 6) The Petitioner states that a Police Officer informed her that her husband had been arrested while carrying a packet of heroin in his trouser pocket and that he will be produced before Court on the following day.
- 7) The Petitioner states that on the 6th of October 2022, her husband was produced to the Colombo Magistrate Court No: 01 under Case No: B. 2323/22/1 and was further remanded. Another individual who was referred to as the 2nd suspect, was also produced before Court and remanded along with the Petitioner's husband.
(A complete certified copy of the case record of Colombo Magistrate Court Case No: B. 2323/22/1, is annexed herewith marked as **"P 4"** and is pleaded as part and parcel of this application)
- 8) The Petitioner states that according to the B Report dated 06.10.2022, filed by the Complainant-Respondent, it was the 2nd suspect (Kumar Jayaratne) who was the passenger of the three-wheeler, who had allegedly been in possession of 05 grams of heroin. The husband of the Petitioner, named as the 1st suspect had only been the driver of the three-wheeler.
(The certified copy of the B report dated 06.10.2022 is annexed herewith marked as **"P 5"** and is pleaded as part and parcel of this application)
- 9) The Petitioner states that her husband was merely going on a three-wheeler hire and had no knowledge of the contents of the pockets of the passenger of the three-wheeler, at the time he was arrested on 05.10.2022.
- 10) The Petitioner states that her husband suffered a heart attack on the 8th of July 2022, and that he is continuously taking medication for his heart disease and that the incarceration of her husband may cause a danger to the life of her husband.
(A true copy of the Diagnostic Card issued by the National Hospital of Sri Lanka, concerning the heart ailment of the Petitioner's husband is annexed herewith marked as **"P 6"** and is pleaded as part and parcel of this application)

- 11) The Petitioner states that Your Honour's Court may consider enlarging the Petitioner's husband on bail, considering that the following circumstances, which in its totality may amount to 'exceptional circumstances':
- a) The material reported to Court by the Complainant-Respondent does not disclose that the 1st suspect was aware that the 2nd suspect was hiding narcotics in his trouser pocket.
 - b) The incarceration of the 1st suspect who is a heart patient, may cause a danger to the health of the 1st suspect.
 - c) The 1st suspect is the sole breadwinner of his family, and due to his incarceration, the Petitioner and his two children are left destitute.
 - d) The husband of the Petitioner has no previous criminal convictions or pending criminal cases.
- 12) The Petitioner states that the jurisdiction of Your Honour's Court has not been previously invoked in respect of this matter.
- 13) If inadvertently the Petitioner has failed to include a document which is necessary for the determination of this Bail Application, the Petitioner seeks the permission of Your Honour's Court, to tender such documents to Your Honour's Court, with notice to the Respondents, before the hearing of this matter.

WHEREFORE the Petitioner prays that Your Honour's Court be pleased to:

- a) Issue notice of this Bail Application to the Respondents,
- b) Enlarge the husband of the Petitioner (1st suspect) on Bail, on conditions that may be acceptable to Your Honour's Court,
- c) Grant such other and further relief as may seem meet to Your Honour's Court.

Attorney-at-Law for the Petitioner

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

PETITION

*In the matter of a Bail Application in
terms of section 10 (1) (a) of the
Assistance to and Protection of Victims
of Crime and Witness Act No: 04 of
2015.*

**Court of Appeal Bail Application
Case No:**

Colombo Magistrate Court
Case No: B. 8585/22/1

Officer-in-Charge
Police Station
Borella.

Complainant

V.

Ajith Silva
No: 10, Baseline Road,
Colombo 08.

Suspect

And Now Between

Kanthi Silva
No: 10, Baseline Road,
Colombo 08.

Petitioner

V.

- 1) Officer-in-Charge
Police Station
Borella.

Complainant-Respondent

2) Hon. Attorney General
Attorney General's Department
Colombo 12

2nd Respondent

And

Ajith Silva
No: 10, Baseline Road,
Colombo 08.

Suspect
(Presently in Colombo remand Prison)

On this 5th day of December 2022

**TO: HIS LORDSHIP THE PRESIDENT OF THE COURT OF APPEAL AND
THE OTHER HONORABLE JUDGES OF THE COURT OF APPEAL OF
THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

The Petitioner abovenamed appearing by his Attorney-at-Law Kamal Perera, states as follows in his Petition:

- 1) The Petitioner states that she is the wife of Ajith Silva, the suspect abovenamed and that she is a mother of two children aged 02 and 05.
(A true copy of the Marriage Certificate of the Petitioner and the Birth Certificates of her two children are annexed herewith marked as “P 1”, “P2” and “P 3” respectively and are pleaded as part and parcel of this application)
- 2) The Petitioner states that her husband is the sole breadwinner of the family and until his arrest and incarceration, he was supporting the family as a three-wheeler driver.
- 3) The Petitioner states that her husband is the Accused in Colombo Magistrate Court Case No: 4567/22/1 and the charge against him is that he had committed an offence punishable under section 314 of the Penal Code by slapping a person by the name of Ananda Kulasinghe.
(A complete certified copy of the case record of Colombo Magistrate Court Case No: 4567/22/1 is annexed herewith marked as “ P 4” and is pleaded as part and parcel of this application)

- 4) The Petitioner states that her husband vehemently denies the above allegation and that on the previous date of the trial, which was the 10th of October 2022, the Petitioner's husband gave a dock statement, and the defense case was concluded.
- 5) The Petitioner states that as the Petitioner and her husband, exited the Court premises after the trial on 10.10.2022, at about 3.30pm, the virtual-complainant in Colombo Magistrate Court Case No: 4567/22/1, walked towards them and stated as follows: "I will make sure you end up behind bars !" . The Petitioner states that her husband replied stating: "we will see about that!" and they both walked away and returned home.
- 6) The Petitioner states that on the following day (11.10.2022), her husband was informed by an officer of the Borella Police Station to meet the Officer-in-Charge and when he went there at about 2pm, he was arrested on an allegation that he had threatened the virtual-complainant of Colombo Magistrate Court Case No: 4567/22/1, on 10.10.2022 after the hearing of the trial.
- 7) The Petitioner states that her husband was kept incarcerated overnight at the Police Station and was produced on the following day (12.10.2022) before the Magistrate under Case No: B. 8585/22/1 and remanded further on the basis that he had allegedly committed an offence under section 8 (1)(a) of the Assistance to and Protection of Victims of Crime and Witness Act No: 04 of 2015 and therefore the Magistrate Court does not have the jurisdiction to consider bail.

(A complete certified copy of the case record of Colombo Magistrate Court Case No: B. 8585/22/1 is annexed herewith marked as " **P5**" and is pleaded as part and parcel of this application)

- 8) The Petitioner states that her husband vehemently denies the above allegation and that the Petitioner was present with her husband when an exchange of words took place after the Magistrate Court trial on 10.10.2022 between her husband and the virtual-complainant, and that no offence in terms of the provisions of the Assistance to and Protection of Victims of Crime and Witness Act No: 04 of 2015 was committed by her husband.
- 9) The Petitioner states that her husband suffered a heart attack on the 8th of July 2022, and that he is continuously taking medication for his heart disease and that the incarceration of her husband may cause a danger to the life of her husband.

(A true copy of the Diagnostic Card issued by the National Hospital of Sri Lanka, concerning the heart ailment of the Petitioner's husband is annexed herewith marked as " **P 6**" and is pleaded as part and parcel of this application)

- 10) The Petitioner states that Your Honour's Court may consider enlarging the Petitioner's husband on bail, considering that the following circumstances, which in its totality may amount to "exceptional circumstances":
- a) The material reported to Court by the Complainant-Respondent does not disclose that the 1st suspect was aware that the 2nd suspect was hiding narcotics in his trouser pocket.
 - b) The incarceration of the suspect who is a heart patient, may cause a danger to the health of the suspect.
 - c) The suspect is the sole breadwinner of his family, and due to his incarceration, the Petitioner and his two children are left destitute.
 - d) The husband of the Petitioner has no previous criminal convictions or pending criminal cases.
- 11) The Petitioner states that the jurisdiction of Your Lordship's Court has not been previously invoked in respect of this matter.
- 12) If inadvertently the Petitioner has failed to include a document which is necessary for the determination of this Bail Application, the Petitioner seeks the permission of Your Lordship's Court, to tender such documents to Your Lordship's Court, with notice to the Respondents, before the hearing of this matter.

WHEREFORE the Petitioner prays that Your Lordship's Court be pleased to:

- a) Issue notice of this Bail Application to the Respondents,
- b) Enlarge the husband of the Petitioner on Bail, on conditions that may be acceptable to Your Lordship's Court,
- c) Grant such other and further relief as may seem meet to Your Lordship's Court.

Attorney-at-Law for the Petitioner



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