



Court Reporting Service  
Training Unit

Certificate in Court Reporting Course  
August to November 2022

**Legal Terminology**

# LEGAL TERMINOLOGY

## Part 1

1. **a fortiori** - (Latin— much more; with stronger reason; The term is used when drawing a conclusion that is even more obvious or convincing than the one just drawn).  
*Sentence: That is the case even when charges against the person are being contemplated; a fortiori, there is no excuse for gratuitously embarrassing someone who is suspected of no wrongdoing.*
2. **a priori** - (Latin for “from the former”, is traditionally contrasted with *a posteriori*) – from the cause to the effect. The term usually describes lines of reasoning or arguments that proceed from the general to the particular, or from causes to effects. Whereas a *posteriori* knowledge is knowledge based solely on experience or personal observation, a *a priori* knowledge is knowledge that comes from the power of reasoning based on self-evident truths. *So, for example, "Every mother has had a child" is an a priori statement, since it shows simple logical reasoning and isn't a statement of fact about a specific case (such as "This woman is the mother of five children") that the speaker knew about from experience.*
3. **ab initio** – from the beginning; This adverb was adopted at the beginning of the 17th century directly from Latin, where it translates as "from the beginning." (**Initio** is a form of the noun **initium**, meaning "beginning," which gave rise to such English words as **initial**, **initiate**, and **initiative**.) **Ab initio** most frequently appears in legal contexts, but it is not surprising to find it used outside of the courtroom. The phrase is also used as an adjective meaning "starting from or based on first principles" (as in "predicted from *ab initio* calculations").  
*Sentence: An invalid or cancelled contract is not legally binding ab initio.*
4. **abuse of process** – abuse of legal procedure; a frivolous or vexation action; is a cause of action in tort arising from one party making misusing or perversion of regularly issued court **process** (civil or criminal) not justified by the underlying legal action.  
*Sentence: The defendants brought separate civil proceedings to permanently stay the criminal proceedings on the grounds that those proceedings were an abuse of process of the Court.*
5. **accrual** – a form of accounting that applies income and expenditure to the period/s to which it applies.  
*Sentence: Before closing off an accounting period it is essential that provision is made for accruals.*
6. **accumulative sentence** – a sentence of imprisonment which is to commence at the end of another sentence already imposed  
*Sentence: In these circumstances, it is inappropriate to make the sentences accumulative as I am of the opinion that the imposition of accumulative sentence as incommensurate with the gravity of the whole of his proven criminal conduct or with his due deserts.*
7. **acquittal** – discharge from prosecution upon a verdict of not guilty; a judgment or verdict that a person is not guilty of the crime with which they have been charged.  
*Sentence: The trial resulted in an acquittal.*
8. **ad hoc** – for this purpose; when necessary or needed; created or done for a particular purpose as necessary.  
*Sentence: 1. The discussions were on an ad hoc basis. 2. The group was constituted ad hoc.*
9. **ad idem** – is a Latin word of “meeting of the minds.” If two parties to a contract understand the terms and conditions of a contract in the same manner, then it is said that the parties are “**ad idem**” on the terms and conditions. Such meeting of minds is essential to a valid contract; of the same mind; agreed

*Sentence: The magistrate appears to have drawn the inference that the parties were not ad idem from the circumstance that Kare Konia did not intend to perform the arrangement.*

10. **affidavit** – a written statement in the name of a person, called the deponent, by whom it is voluntarily signed and sworn to or affirmed; An affidavit is a written sworn statement of fact voluntarily made by an affiant or deponent under an oath or affirmation administered by a person authorized to do so by law.  
*Sentence: Because John was unable to testify at the trial, he gave an affidavit to an officer of the court.*
11. **affirm** – to be allowed to give evidence without taking the oath - when a person does not take an oath on the Bible or any other religious authority but makes an affirmation to tell the truth.  
*Sentence: John Jones was affirmed to give his evidence to the Court*
12. **affray** – unlawful fighting; an instance of group fighting in a public place that disturbs the peace.  
*Sentence: Lowe was charged with causing an affray.*
13. **allocutus** – the demand of the court to a convicted prisoner to say what sentence the judge should pass on him; is a formal statement made to the court by the defendant who has been found guilty prior to being sentenced. It is part of the criminal procedure in some jurisdictions using common law.  
*Sentence: The prisoner in his allocutus asked the court to be lenient on him and asked that he be placed on probation.*
14. **amicus curiae** (plural: amici curiae) – literally, a friend of the court; is someone who is not a party to a case and may or may not have been solicited by a party and who assists a court by offering information, expertise, or insight that has a bearing on the issues in the case; and is typically presented in the form of a brief. The decision on whether to consider an amicus curiae brief lies within the discretion of the court.  
*Sentence: Mary James played the role of an amicus curiae to assist the court as one of the parties to the proceedings was unrepresented*
15. **annuity** – a yearly payment of a certain sum of money; An annuity is a series of payments made at equal intervals. Examples of annuities are regular deposits to a savings account, monthly home mortgage payments, monthly insurance payments and pension payments. Annuities can be classified by the frequency of payment dates.  
*Sentence: Mrs. Molie felt extremely frightened about her financial future as her lawyer explained that with the thirty years up, she would no longer receive her annuity payment from her late husband's company.*
16. **audi alteram partem** – hear the other side; (or audiatur et altera pars) is a Latin phrase meaning "listen to the other side", or "let the other side be heard as well". It is the principle that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them.  
*Sentence: In accordance with the audi alteram partem principle, and as a general rule, justice and fairness demand that the court should not make an order against any person unless the affected person has received proper notice of the legal relief sought.*
17. **autrefois acquit** – formerly acquitted; previously acquitted; an accused cannot be tried for a crime because the record shows he has already been subjected to trial for the same conduct and was acquitted. ... If the accused maintains that the previous trial resulted in conviction, he or she pleads "autrefois convict."  
*Sentence: A plea of autrefois acquit is one in which the defendant claims to have*

## Part 2

18. **bill of costs** – As we know, legal proceedings are very expensive because there are the costs of bringing witnesses to the court and often this involves air fares and accommodation and in some cases, such as expert witnesses, even having to pay them a substantial fee to give their evidence, and then the fees charged by the lawyers appearing in the courtroom who have an army of helpers back in the office preparing documents, photocopying them and delivering them and so on. Therefore, once the case has finished the lawyers then give their clients an invoice based on a bill of costs. This is a document that itemises down to the finest detail every cost that they have incurred in preparing and presenting the case. Now, if the Judge has awarded the costs of the case to the winning party, then it means that the losing party has to pay not only all their costs, but also the costs of the winning party. If they disagree with the bill of costs given by the winning party, they go before the Registrar and have the costs “taxed” by the Registrar; that is, he checks the bill and assesses whether the costs are reasonable or justifiable and if they are not he can make a ruling to reduce them. If the winning party disagrees with the Registrar’s decision they can appeal to the National Court judge to decide the final bill of costs.

So, a sentence for this item of bill of costs could be: At the end of the trial the lawyers for each side submitted their respective bills of costs to their clients.

19. **bona fide** – in good faith, honestly, genuine, without fraud, collusion or participation in wrongdoing. In law, it means without intention to deceive.

So a sentence for this item of bona fide could be: The offer was a bona fide business opportunity: they really meant to carry it through.

20. **capital offences** – A crime, such as wilful murder or betrayal of one's country that is treated so seriously that death may be considered an appropriate punishment.

So a sentence in this term for capital offences could be: A wilful murderer or a person who secretly sells a country’s secrets to another country is deemed to have committed a capital offence.

21. **caveat** – A caveat is a warning given in a legal document to the opposing party that if they do certain things to them (such as blocking their access to their property or interfering with service providers supplying goods and services to their business) then they will be held responsible to pay the full amount of any damages that this person suffers because of their actions.

So, a sentence for this item of caveat could be: The contract between the two parties contained a caveat by the supplier warning the retailer that if they caused delay to the delivery of the frozen meat so that it went rotten, they would be liable to pay the full cost of the damages done.

22. **caveat emptor** – This is a reminder to all purchasers, whether they are buying a car, a house, a refrigerator or a toaster, that the responsibility to make sure the item they are buying is in good working order and has no defects or faults is on them and that they cannot buy the item and get it home and then expect to be able to take it back or get their money back. If they want to be a fool and buy something unseen or just take it without seeing if it works, then their loss is their fault.

So, a sentence for this item of caveat emptor could be: When you are going to buy anything remember the rule of caveat emptor places the responsibility to check the item is safe, fully operational and does what it is supposed to do, on you the buyer.

23. **chattels** means an item of property (belongings, property, wealth, goods, assets) including tangible goods, other than freehold land and leasehold interests.

So a sentence for this item of chattels could be: John seems to regard Mary more as a chattel than as his wife.

24. **collateral** – something pledged as security or guarantee for repayment of a loan, to be forfeited in the event of a default.

So a sentence for this item of collateral be could: Jones put his house up as collateral for the bank loan.

25. **collusion** is agreement between people to act together secretly or illegally in order to deceive or cheat someone. In many criminal cases that come before the courts, we hear of police colluding with each other by taking statements from an accused person who has been put into custody. In such instances the courts sometimes end up conducting a *voire dire* (trial within a trial) to test the evidence of the police against the accused.

So a sentence for this item of collusion could be: Police officers Tom and Henry acted in collusion with each other by making falsified statements from the accused.

26. **Commissioners for oaths** – persons entitled to administer an oath. They can be a lawyer, a magistrate, peace officer, a pastor etc. Fees apply if a person decides to be a Commissioner for Oaths, which are currently set at K1000.00 per year.

So a sentence for this item of commissioners of oaths could be: Andrew is a commissioner for oaths who is empowered to sign affidavits, statutory declarations, applications for passports etc.

27. **Company secretary** is an officer appointed by the directors of a firm as responsible for ensuring that firm's legal obligations under the corporate legislation are complied with. His or her formal duties include (1) calling meetings, (2) recording minutes of the meetings, (3) keeping statutory record books, (4) proper payment of dividend and interest payments, and (5) proper drafting and execution of agreements, contracts, and resolutions. A company secretary is not automatically an employee of the firm and, if employed with executive responsibilities, not be its director shareholder. If a firm has only two directors, one may act as its secretary; but a sole director may not.

So a sentence for this item of company secretary could be: Mr Don was appointed by the board of directors as the company secretary to deal with financial and legal issues of the company.

28. **Concurrent sentences** – When a criminal defendant is convicted of two or more crimes, a judge sentences the defendant to a certain period of time for each crime. Sentences that may all be served at the same time, with the longest period controlling, are concurrent sentences.

So a sentence for this item of concurrent sentences could be: Although many legal professionals believe that all convicted criminals should serve their sentences consecutively, others feel that mitigating circumstances should allow for concurrent sentences. In most states, it is up to the judge's sole discretion as to how the defendant's sentences should be served. In others, state law requires concurrent sentences for some offenses and consecutive sentences for others.

29. **consanguinity** - close blood relationships by descent, such as lineally, as in father and son or from a common ancestor (uncles, aunties, cousins etc)

A sentence for this item of consanguinity could be: An important aspect noted between the two groups of children was the presence of consanguinity among the parents.

30. **Constitution** - referred in PNG as the *mama* (mother) law, it is the laws of a nation or a **state** which sets out how that state will be organized by deciding the powers and authorities of government between different political units, and by stating the basic law-making and structural principles of society.

The word "constitution" comes from a Latin word meaning "an important law" and was generally declared by a Roman emperor, the highest authority in the land.

So a sentence for this item of Constitution could be: PNG, like all other democratic societies around the world has a Constitution that enables all its citizens to abide by the laws and rules of it.

- 31. Contributory negligence** - The plaintiff in a case for damages – whether a car crash or poor workmanship in building his house – sues the defendant for being negligent. The defendant will usually put in a defence or cross-claim and say that no, he is not totally and solely to blame for the car crash or the poor standard of the house, but that the plaintiff contributed to that condition by himself being negligent. For example, in the case of the car crash, he was driving over the dividing line and on the wrong side of the road when the crash occurred. In other words, there was contributory negligence on the part of the plaintiff and therefore the amount of damages should be reduced.

So, a sentence for this item of contributory negligence could be: While the plaintiff blamed the defendant for the car crash and the injuries he sustained, the defendant claimed that the plaintiff was also to blame because of his contributory negligence in driving on the wrong side of the road immediately prior to the crash.

- 32. Conviction** - formal declaration by the verdict of a judge in a court of law that someone is guilty of a criminal offence. This happens when the Court finds sufficient evidence against the accused.

So a sentence for this item of conviction could be: John had a previous conviction for a similar offence.

- 33. Custodial sentence** - a sentence of imprisonment. A Court imposes custodial sentence on a convicted prisoner according to the gravity of offence committed as well as evidence that was adduced at trial.

So, a sentence for this item of custodial sentence could be: For the crime of wilful murder, the court imposed a custodial sentence of 16 years in hard labour upon the prisoner Joe Blow.

- 34. De facto** - It may not be right in custom or in law, but the fact is (de facto) that such and such is the case.

So, a sentence for this item of de facto could be: While the de facto relationship between Mary and John is not recognised by either custom or the law, the fact of the matter is that for all intents and purposes they are a married couple.

### **Part 3**

- 35. de novo** – starting from the beginning; anew  
*Sentence: I am ordering a de novo trial in this matter. The errors committed below are numerous and prejudicial, and the most appropriate course of action is to restart the proceedings from the very beginning. According to precedent, this issue is subject to review de novo.*

- 36. decree absolute** – a final and conclusive decree, which finally dissolves the marriage  
*Sentence: They will be free to **marry** again in six weeks, after the decree absolute.*

- 37. decree nisi** – every decree of dissolution of marriage is in the first instance a decree nisi which is then made absolute six weeks later; an order by a court of law stating the date on which a marriage will end unless a good reason not to grant a divorce is produced.  
*Sentence: Prince Andrew, Queen Elizabeth II's second son, formally sought the decree nisi, the preliminary stage of divorce.*

38. **deposition** – a statement on oath of a witness in a judicial proceeding  
*Sentence: Besides his own confession, no other witnesses but the plaintiffs themselves provided depositions against Barnabas.*
39. **deponent** – a person who makes an affidavit or deposition  
*Sentence: Michelle is the deponent of the affidavit which she has provided to the court registry in support of the application.*
40. **discovery of documents** – a process whereby the parties to an action disclose to each other all documents in their possession relating to matters in question in the action  
*Sentence: The parties must disclose the existence of relevant documents in their possession and made them available for inspections, subject to privilege from production. In protracted commercial litigation, discovery of documents is often a major undertaking.*
41. **duplicity** – a pleading is double or duplicitous when it contains more than one claim; the technical fault, in pleading, of uniting two or more causes of action in one count in a writ, or two or more grounds of defence in one plea, or two or more breaches in a replication, or two or more offences in the same count, of an indictment  
*Sentence: There will be no more duplicity, crookedness, and desire for name, fame, and prestige.*
42. **duress** – unlawful pressure to perform an act  
*Sentence: The judge overturned the case because the defendant's lawyer proved that his client's confession had been given under duress.*
43. **ejusdem generis** – Latin term for “of the same kind or nature”; Ejusdem generic is used to interpret loosely written statutes. Where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed. The general words shall be construed as applicable only to persons or things of the same general nature or kind as those enumerated in the list. For example, if a law refers to automobiles, trucks, tractors and motorcycles, then the term “vehicles” would not include airplanes, since the list was of land-based transportation.  
*Sentence: In the whole scheme of legislation, by the application of the doctrine of ejusdem generis the legislation is presumed to use the general words in a restricted sense.*
44. **equity** – fairness or natural justice; refers to a particular set of remedies and associated procedures involved with civil law. These equitable doctrines and procedures are distinguished from "legal" ones. A court will usually award equitable remedies when a legal remedy is insufficient or inadequate.  
*Sentence: In this way equity is an addendum to the Common Law.*
45. **ex cathedra** – from the chair; with official authority  
*Sentence: That ex cathedra statement is not based on the slightest shred of fact or evidence.*
46. **ex gratia** – as a favour; in law, an ex gratia payment is a payment made without the giver recognising any liability or legal obligation.  
*Sentence: The sum was paid ex gratia.*
47. **ex officio** – Latin meaning “from the office); by virtue of his office  
*Sentence: The head of the department serves as an ex officio member of the board.*
48. **ex parte** – an application made by one party in the absence of the other  
*Sentence: An ex parte application was made for interim injunctions and the case was adjourned to next Friday.*

49. **executor** – person named in a will whom the testator wishes to administer the estate  
*Sentence: Eric was assigned as the principal executor of his "will" for that purpose, and if there was any variance between the executors, he was to determine it.*
50. **expropriation** – compulsorily depriving a person of his property by the State; perhaps without compensation; the action by the state or an authority of taking property from its owner for public use or benefit.  
*Sentence: The decree provided for the expropriation of church land and buildings.*

#### Part 4

51. **fiduciary** – Fiduciary means that if you occupy a position of trust either in the community or in a company or an organisation and have the responsibility of looking after the interests of others – looking after their financial interests, or their care and health and well being – you must uphold the principles of the highest honesty and integrity and comply with all laws and regulations governing your position and if you do not you can and will be dealt with by law for failing in that responsibility.

So, a sentence for this item of fiduciary could be: The chairman of the board of directors of the company was slack in his performance and failed in his fiduciary duty when he allowed the sale of an important part of the business without the shareholders' approval.

52. **force majeure** – Every contract you sign should have a force majeure clause in it to protect you from being sued for enormous amounts of money that would lead to your bankruptcy, because force majeure covers events that are usually described as "acts of God" and include such things as earthquakes, cyclones, tsunamis, exceptional floods that no one can control and therefore should not be held at fault for if they cause the loss of life and property and therefore do not enable the contractor to fulfil his obligations under the terms of the contract.

So, a sentence for this item of force majeure could be: The farmer who contracted to harvest and supply 1 million tonnes of wheat by such and such a date made sure in his contract that he included a force majeure clause covering him for acts of God over which he would have no control but which would stop him being able to meet his contract obligations to supply the wheat on time.

53. **functus officio** – a Magistrate having discharged his/her duty in convicting an accused person with an offence that is before him, he cannot rescind the sentence and retry the case. He/she has finished with the case, and that is it. So once a court has passed a valid sentence after a lawful hearing, it is functus officio and cannot reopen the case. He/she is without authority; no longer seized of the litigation; functus officio

54. **Habeus corpus** – a writ issued by the Higher Courts requiring a person under arrest to be brought before a judge or court, especially for investigation of a restraint of the person's liberty, used as a protection against illegal imprisonment. A further meaning is that an accused person must be presented physically before the court with a statement demonstrating sufficient cause for arrest. Thus, no accuser may imprison someone indefinitely without bringing that person and the charges against him or her into a courtroom

So a sentence for this item of habeus corpus could be: Prisoners often seek release by filing a petition for a writ of habeas corpus.

55. **Hostile witness** – example, in a criminal trial a witness for the accused all of a sudden decides to give evidence against him. A hostile witness is known as an adverse witness or an unfavourable witness at trial whose testimony on direct examination is either openly antagonistic or appears to be contrary to the legal position of the party who called the witness.



A sentence in the item for hostile witness could be: The defence's witness suddenly became a hostile witness when he began giving evidence against the accused.

- 56. Imprimatur** - While it has a background in the authority and power of the Roman Catholic Church to approve the printing of certain religious books, today it means a person's authoritative approval. So, decisions of the Executive Council are signed by the Governor General; they carry his imprimatur by virtue of his signature and the seal of his office. He has the authority and power under the constitution to carry out that role.

So, a sentence for this item of imprimatur could be: The orders of the court carry on their face the imprimatur of the court in the form of the Judge's signature and the seal of the court and must be obeyed.

- 57. In camera** – In chambers; in private. Typically, it is a review of evidence by a judge in chambers and not in open court.

So a sentence in terms of in camera could be: To ascertain some matters, the Judge asked counsel for both parties for in camera hearing.

- 58. In curia** – an assembly, council; or formal, open court, in which public, official, or religious issues are discussed and decided.

So a sentence for this item of in curia could be: All matters brought before the courts in PNG are heard in curia.

- 59. In loco parentis** – means "in the place of a parent", which refers to the legal responsibility of a person or organization to take on some of the functions and responsibilities of a parent.

A sentence for this item of in loco parentis could be: All persons in loco parentis have a responsibility to care for the child.

- 60. In situ** – in its original or natural situation or place, instead of being moved to another place.

So the term in situ, used as "repair in situ", means to repair a vehicle at the place where it has a breakdown

- 61. In toto** - entirely, totally, wholly, altogether. For example, a judge may reject a statement of claim in toto or just one or more specified parts of it. Similarly, a contract may not be salvageable in part(s) and thus might be found to be void in toto; completely.

So a sentence for this item of in toto could be: At the end of the three days trial and having weighed all the evidence presented before it, Justice Peter accepted the evidence of the State in toto.

- 62. interlocutory proceeding** – Something intervening between the beginning and the end of a lawsuit which decides some point or matter, but is not a final decision of the whole controversy. Interlocutory orders may be issued in a Divorce proceeding to prevent injury or irreparable harm during the pendency of the lawsuit. For example, an interlocutory order may require one spouse to pay the other spouse a designated weekly sum for support, pending a decision on Alimony and Child Support. This prevents the spouse and children from being without income during the action.

- 63. interrogatories** – When two parties decide to fight out their case in court, one of the first things they must do to start the preparation for the trial is serve on each other a document called Interrogatories which is a list of questions aimed at finding out information so they can properly prepare to meet the challenges of the case. They need information of what the other side is saying in the case and therefore they send their list of questions, the Interrogatories.

So, a sentence for this item of interrogatories could be: In order to be in the most powerful and prepared position to win their case in court, the plaintiff served on the defendant his interrogatories.

**64. leading questions** are questions that are phrased in a manner that tends to suggest the desired answer. An example of a leading question is: What do you think of the horrible effects of pollution?

**65. liable** - Court cases are about finding which party is at fault and is therefore responsible to pay the liability (the debt or penalty) - in a criminal case, to the community, by being fined or going to jail; in a civil case by having to pay the winning party the damages awarded by the Judge. If you are found to be liable for doing the wrong thing then you are liable to pay the consequences.

So, a sentence for this item of liable could be: The Judge, having found the defendant guilty of breaching the contract in failing to fulfil the specific terms, pronounced his judgement that the defendant was liable to pay for the damages done to the plaintiff and his business

**66. libel** – Defamation in print, writing, pictures, signs or broadcast through radio, television or film, an untruth about another which will do harm to that person or his/her reputation, by tending to bring the target into ridicule, hatred, scorn or contempt of others. Libel is the written or broadcast form of defamation, distinguished from slander, which is oral defamation. It is a tort (civil wrong) making the person or entity (like a newspaper, magazine or political organization) open to a lawsuit for damages by the person who can prove the statement about him/her was a lie.

So a sentence for this item of libel could be: EMTV, its agents and servants were held libel by the court for causing injury to the plaintiff by airing false information on its media network.

**67. lien** – example, a loan shark (although unlawful) holds an officer's bank card until all outstanding loans obtained have been paid off, then the card is given back to the officer. Or, an illegal foreign fishing vessel gets caught fishing off the waters of PNG and gets impounded by PNG Defence Force vessels.

So a sentence for this item of lien could be: For being caught illegally finishing in the exclusive 200 mile EEZ, the lien remains in force for the two Taiwanese fishing boats until they get cleared by PNG authorities.

## **Part 5**

**68. statute of limitation** – the statute which prescribes the periods within which proceedings to enforce a right must be taken  
*Sentence: In the latter case the court left open the question as to whether any other statute of limitations might apply to bar subsequent proceedings by the work to bring the claim to arbitration.*

**69. liquidated** – fixed or ascertained; wind up the affairs of (a business) by ascertaining liabilities and apportioning assets  
*Sentence: What this submission amounts to is really a further assertion that there was no proper basis upon which to make a claim for a liquidated demand and the Registrar in entering judgment as for a liquidated demand did so in circumstances which did not permit such a claim to be mounted.*

**70. liquidated damages** – a genuine covenanted pre-estimate of damages for an anticipated breach of contract as contrasted with a penalty  
*Sentence: The defendant having failed to file a defence within time the plaintiff obtained judgment for the liquidated damages endorse on the writ.*

**71. Magna Carta** – provided protections against arbitrary arrest and imprisonment; a charter of liberties to which the English barons forced King John to give his assent in

June 1215 at Runnymede. 2: a document constituting a fundamental guarantee of rights and privileges.

*Sentence: Whether expressly stated or not the right to trial without unreasonable delay is a right that is part of the underlying law going back to Magna Carta.*

- 72. malfeasance** – the doing of an unlawful act; wrongdoing especially by a public official  
*Sentence: With respect, those remarks have considerable applications and weight in the present context where, without any specific allegations of mismanagement or malfeasance the NEC purported to approve the acting appointment of a relatively junior officer above many more senior officers to replace the appellant.*
- 73. manslaughter** – the crime of unlawful homicide where death is caused accidentally by an unlawful act  
*Sentence: The accused had an intention to do grievous bodily harm when she hit the victim but that she was provoked within the meaning of section 303 of the criminal code, which reduced the crime from murder to manslaughter.*
- 74. Mesne profits** – the profits lost to the owner of land by reason of his having been wrongfully dispossessed of his land  
*Sentence: There is little authority, but this measure is consonant with general principles and with the name of the action for wrongful occupation as one for mesne profits.*
- 75. miscarriage of justice** – a failure of justice  
*Sentence: A mistrial will be declared if the State is able to prove that in the course of his honour presiding over the matter there has been or will be a miscarriage of justice and the declaration sought is the only appropriate remedy*
- 76. mitigation** – reasons given to lessen the damage or guilt of the person so that the penalty is reduced  
*Sentence: The court concluded therefore that up until the time of the offence your record was good to suggest that you a good character, which court will take into account in mitigation of sentence.*
- 77. murder** – the crime of unlawful homicide with intention  
*Sentence: Lati's case was an instance of planned murder.*
- 78. Mutatis mutandis** – the necessary changes being made; (used when comparing two or more cases or situations) making necessary alterations while not affecting the main point at issue.  
*Sentence: Establishment of the National Judicial Staff Service. The provisions of sections 5, 6, 7 and 8 relating to the Secretary shall apply mutatis mutandis to the Registrar and the Deputy Registrar.*
- 79. natural justice** – decision makers must act fairly, in good faith and without bias and must afford each party the opportunity to adequately state his case  
*Sentence: The principles of natural justice developed under the underlying law are subject to the principles of natural justice entrenched both in our Constitution and our statutes, so says section 59(1) Constitution.*
- 80. nolle prosequi** – the prosecution, not having sufficient evidence to prove the guilt of the accused, asks the court to enter a nolle prosequi and discharge the accused. If sufficient evidence becomes available the prosecutor may present a new indictment  
*Sentence: The State filed a nolle prosequi saying that it will not proceed further against the two accused.*
- 81. Non sequitur** – it does not follow; a conclusion or statement that does not logically follow from the previous argument or statement.  
*Sentence: It is a non sequitur to imply as the Minister did, that, because a person makes reference to his or her awareness of a particular prohibition, he or she would not be (or could not be) in breach of that prohibition.*

82. **Nonfeasance** – the neglect or failure to do some act which ought to be done; failure to perform an act that is required by law.  
*Sentence: Putting aside whether the actions of one person, without more, are able to impose a duty of care upon another person, the court referred to the rule of nonfeasance.*
83. **oath** – a religious asseveration by which the party calls his God to witness that what he says is the truth  
*Sentence: Where it appears that a child is incapable of comprehending the nature of an oath, the manner in which his or her evidence shall be given is laid down by section 19 of the Oaths, Affirmations and Statutory Declarations Act.*
84. **Obiter dictum** – a saying by the way; an observation by a judge which is not binding as a precedent; a judge's expression of opinion uttered in court or in a written judgment, but not essential to the decision and therefore not legally binding as a precedent.  
*Sentence: The observations made by the Supreme Court are authoritative precedent and not obiter dictum as these are statements of law and require the lower court (National Court) to consider and follow.*

## **Part 6**

85. **Per curiam** – Court orders have to be obeyed if they are in truth orders of the court and not a fake such as where someone has deliberately, falsely signed the Judge's signature.

So, a sentence for this item of per curiam could be: All validly signed and sealed orders per curiam (by the court) have the full force of law and must be obeyed.

86. **Per se** – If someone is talking about an individual issue, or concept, or notion, or object and they are talking about what it essentially, at its naked core is, they can say this object or concept per se has these characteristics. So, for example, the question could be asked: what constitutes "guilt" per se? At its core, essential being – leaving everything else aside – what are the characteristics of "guilt"?

So, a sentence for this item of per se could be: The lawyer submitted to the Judge that taking the defence of drunkenness per se there is nothing that warrants your Honour lessening the prisoner's sentence.

87. **Perpetuity** – the state or quality of lasting forever.

A sentence for this item of perpetuity could be: Unfortunately, the natural resources of this planet will not last in perpetuity

88. **Anton Piller** – Anton Piller is an order that takes its name from a decision of the English Court of Appeal in Anton Piller K.G. v. Manufacturing Processes Ltd., [1976] Ch. 55 (C.A.). The appellant, Anton Piller, was a German manufacturer of motors and electric generators used in the computing industry.

This is a court order that allows a plaintiff to go to someone's premises and seize evidence without prior warning. However, the entry of the plaintiff must be with that person's permission. An Anton Piller order has been described as a private search warrant. This is used in extreme cases when a prospective defendant might destroy documents, especially computer files, if they knew a court case was coming. For example, when seeking an Anton Piller order, the victim must show that s/he had a business relationship with the defendant and that the defendant is likely to be in possession of documents that can help prove the fraud, such as bank account statements, letters to and from the victim, and internal memos between members of the fraud scheme.

89. **Plea bargain** – an arrangement between the prosecutor and defendant whereby the defendant pleads guilty to a lesser charge in exchange for a more lenient sentence or an agreement to drop other charges.

A sentence for this item of plea bargain could be: The accused Robert Murphy's attorney arranged with the State's counsel for a plea bargain

90. **Pleadings** – a formal statement of the cause of an action or defence. It is the beginning stage of a lawsuit in which parties formally submit their claims and defences. The plaintiff submits a complaint stating the cause of action - the issue or issues in controversy, and the defendant submits an answer stating his or her defences and denials.

What are Pleadings?

Pleadings are formal written documents that are filed with the court as part of a civil lawsuit. Pleadings become part of the case file, and which means they are a public record unless ordered sealed by the court.

The court's procedural rules tell you what needs to be included in a pleading, how it should look, where it should be filed, whether there are any filing fees, and so on. Usually, no matter the jurisdiction, a pleading must contain the name of the court, the title of the lawsuit (known as the "caption") and the docket number, if one has been assigned.

91. **Plenipotentiary** –: An extremely powerful person occupying an internationally significant position is sometimes called a plenipotentiary, but usually it is used as an adjective describing the ultimate position of power.

So, a sentence for this item of plenipotentiary could be: The President of the United States of America holds plenipotentiary power because he, with the press of a button, can release the nation's nuclear bombs with more than enough power to blow up the entire world.

92. **Power of attorney** - A written document authorizing an individual to take certain legal actions on behalf of another person. Further, a power of attorney is an instrument containing an authorization for one to act as the agent of the principal that terminates at some point in the future either by its terms or by operation of law such as death of the principal or agent. They are also called letters of attorney. The person appointed is usually called an Attorney-in-Fact. A power of attorney which doesn't provide for a successor attorney-in-fact to be appointed will terminate at the death of the attorney-in-fact. The person making the power of attorney appointment is called the principal

So, a sentence for this item of power of attorney can be:

93. **Practising certificate** – Every year it is a must that all lawyers must have a practising certificate from the Law Society in order to practise as a lawyer.

So a sentence for this item of practising certificate could be: Having obtained his practising certificate from the Law Society enables Mr Jones to appear before the Court of law and deal with his client's matter.

94. **Prerogative writs** - Lawyers often appeal the decisions of the lower courts – District or National – to a Judge of panel of Judges of the Supreme Court asking for prerogative writs of mandamus or certiorari to bring the decision of that lower court into this superior court to quash or overturn it because the Magistrate or Judge in that lower court has exceeded his jurisdiction in the hearing of the case. So, prerogative writs are the means by which certain decisions can be overturned.

So, a sentence for this item of prerogative writs could be: The lawyer appealed to the Judge of the National Court for a prerogative writ to overturn the decision of the Magistrate in the District Court.

- 95. Prima facie case** – first appearance. It is a way to evaluate a case at an initial stage to see if there is any support for bringing it to trial. A party with the burden of proof presents a prima facie case when the party presents enough evidence to support a verdict in the party's favor, assuming the opposing party does not rebut or disprove it. This means that the party with the burden of proof has shown that he or she can meet that burden as to each element of his or her case. Where a party with the burden of proof cannot present a prima facie case, the opposing party may move for a verdict in the opposing party's favor because the other party cannot possibly win.

Successfully presenting a prima facie case does not mean that a party wins. The opposing party then has the opportunity to offer evidence that contradicts (rebut) the other party's prima facie case. The party with the burden of proof then has the opportunity to attack the rebuttal evidence and prove his or her case.

- 96. Privy Council** – Her Majesty's Most Honourable Privy Council, formerly known simply as the Privy Council, was a formal body of advisers to the Sovereign of the United Kingdom. Its membership mainly comprised senior politicians, who were current or former members of either the House of Commons or the House of Lords, a body of advisers appointed by a sovereign or a Governor General (now chiefly on an honorary basis and including present and former government ministers).

- **History.** The jurisdiction of the Privy Council originated at the Norman conquest with the premise that: The jurisdiction of the Privy Council originated at the Norman conquest with the premise that: "The King is the fountain of all justice throughout his Dominions, and exercises jurisdiction in his Council, which act in an advisory capacity to the Crown."

This council or court was the "Curia Regis" from which springs the British judicial system. Subjects who had grievances against the administration of justice could submit their petitions to the King who appears to have exercised supreme appellate jurisdiction.

When Parliament developed out of this council, the majority of petitions were referred to the High Court of Parliament, which became the chief appellate tribunal.

At the beginning of the fourteenth century, receivers were appointed to aid the dispensation of justice in Parliament. One group was appointed for Great Britain and Ireland, and one for the Channel Islands.

Appeals from the Channel Islands became the first regular appellate business of the King's Council, now the Judicial Committee of the Privy Council. With the growth of the British Empire, this business increased with appeals and petition from the Royal Council, and Privy Council Committees were formed.

The present constitution of the Judicial Committee of the Privy Council is based on the Judicial Committee Act 1833.

Under the Appellate Jurisdiction Act 1876, the Law Lords became the permanent judges of the court.

Today, all Privy Counsellors who hold or have held high judicial office in the United Kingdom, or have been judges of superior courts of certain Commonwealth countries, are eligible to sit if they are under 75 years of age.

So, the Privy Council is the Highest Court of Appeal in the English legal system, like the High Court is in Australia. Until relatively recent years, all Commonwealth countries such as Canada, Australia, New Zealand, etc – had the right to appeal from the courts in their countries to the Privy Council.

97. **Quantum meruit** – Where a contract has gone bad and only portion of the work agreed on in the contract has been completed and the contract is then cancelled, the person who has carried out the work can file a quantum meruit claim to get paid for the value of the portion he did perform.

So, a sentence for this item of quantum meruit, could be: The builder who failed, because of a whole range of reasons, to complete all the work he had contracted to do for the owner of the project, made a quantum meruit claim in the court to be compensated for the time, effort and materials he had put into building the portion of the project he had done.

98. **Ratio decidendi** – the legal reason or ground for a judicial decision (Latin for “the reason” or “the rationale for the decision”); refers to the legal, moral, political and social principles or grounds on which a court’s decision rests. It is the rationale for reaching the decision of a case; the legal reason or ground for a judicial decision. A decision of the court is made purely based on the materials and facts as seen by the judge, and not on unimportant facts as seen by anyone else.

99. **Recognisance** – e.g. in a criminal matter an accused granted bail will have someone pay a bond to ensure that he/she appears in court, or be of good behaviour. Is a conditional obligation undertaken by a person before a court. It is an obligation of record, entered into before a court or magistrate duly authorised, whereby the party bound acknowledges (recognizes) that they owe a personal debt to the State. For example, in a criminal matter an accused granted bail will have someone pay a bond to ensure that he/she appears in court, or be of good behaviour. So the person paying the bond becomes a guarantor; they in effect give a guarantee or an undertaking to the court that the accused will meet all requirements of the bail conditions until they return to court again.

100. **Res ipsa loquitur** – It is often said in court that the document speaks for itself; it does not need interpretation by the lawyers. Its meaning is plain on its face. We say this about our transcript and this is why we do not embellish it with our own side comments; but leave it as a verbatim transcript that will speak for itself as to what happened in those proceedings.

So, a sentence for this item of res ipsa loquitur could be: It is a major policy of the CRS that the verbatim transcript we produce is res ipsa loquitur; it speaks for itself.

## **Part 7**

101. **Revocation** – the official cancellation of a decree, decision, or promise.

So a sentence for this item of revocation could be: For those who break the law, revocation of their liquor licence may result.

102. **Sequestration** - In a number of commercial company cases in Judge Hartshorn’s court we hear this word sequestration because he is often asked to order sequestration of the property now under administration. In other words, the owner because of his financial troubles has lost control or has been deprived by the Judge’s order of control over his company for a time, until it becomes a viable business again or is liquidated and wound up. An administrator has been appointed by the court and is now in control.

So, a question for this item of sequestration, could be: The director of the company pleaded with the Judge not to grant the order of his creditors for sequestration of his property.

103. **Sine die** – without delay; indefinitely, or without any set date for the next hearing.

A sentence for the item of sine die could be: At 5pm the court adjourned sine die all its proceedings for the day.

- 104. Slip rule** - refers to a rule permitting the correction of any accidental slip or omission in judgments or orders. Correction can be made only of typographical errors or matters that were genuine slips or mistakes. Such errors can be corrected at any time by the court on application without an appeal.

So a sentence in this item for slip rule could be: Having been granted their application for slip rule by the 3 man Supreme Court bench, counsel then sought preparation of transcript by lodging their transcript request form.

- 105. Stare decisis** - The way the courts in PNG and in all Common Law countries operate is that the decisions of the highest court are binding upon the Judges of the lower courts. Their decisions become precedents which must be followed in all subsequent cases, whether the Judge in that lower court agrees with that decision and precedent or not.

So, a question for this item of stare decisis could be: At the very heart of our legal system in PNG is the doctrine of stare decisis.

- 106. Statement of agreed and disputed facts** – A statement of facts, agreed to by the parties to a lawsuit (at trial or on appeal) and submitted to the court in writing.

- 107. Statement of claim** is a document filed before a court of law saying why a person is bringing a legal action against someone and what they want from them.

So a sentence for this item of statement of claim could be: According to the statement claim filed, the two former directors acted fraudulently

- 108. Stay of proceedings** is a ruling by the court in civil and criminal procedure, halting further legal process in a trial or other legal proceeding. The court can subsequently lift the stay and resume proceedings based on events taking place after the stay is ordered.

So a sentence for this item could be: The court ruled to stay the proceedings until all formal documentation were properly filed.

- 109. Sub judice** – If a matter is already before the court then people outside the court – the press, politicians, talk-back hosts or whoever – cannot publicly comment on that matter because it could either interfere with the evidence that witnesses may give, influence the outcome of the trial or could abort the trial. To make such comments whether verbally or in print is what is called sub judice.

So, a question for this item of sub judice could be: The comments by the reporter on the evening TV news about the evidence given that day in the court was sub judice and resulted in him being charged with contempt of court.

- 110. Subpoena** is a written legal document (writ) that orders or commands a person to appear in court as a witness. If you receive a subpoena, it does not mean you have done anything wrong; it just means you may have information that is needed by the court.

So a sentence in this item for subpoena could be: Mary James was issued a subpoena by the court to appear and give evidence in the matter of The State v John Brown.

- 111. Subrogation** - In certain cases in court the group of people who lodged a claim for certain benefits or assets may be found not to have the appropriate entitlement to those benefits and the Court can order the subrogation or substitution of another group of people to take the place of the first and be responsible for the costs involved in pursuing the claim but may then also be entitled to any benefits that result.



So, a question for this item of subrogation could be: The court found under the insurance policy that the original claimant was not entitled to continue with the claim, and subrogated a closely related person to take their place.

- 112. Sui generis** means unique, in a class by itself or of its own kind; for example the European Union, UNICEF.

So a sentence in this item for sui generis could be: Since the legal case is sui generis, the lawyer cannot find any similar cases from which to draw reference.

- 113. Summons** - is an official order to appear in a court of law.

A sentence in this item could be: The Judge issued a summons for Mary Jane to appear before him.

- 114. Surety** - in law it means money that you give as a guarantee that you will do what you are legally required to do (such as to appear in court); or someone who agrees to be legally responsible if another person fails to pay a debt or to perform a duty

So a sentence for this item of surety could be: Andrew agreed to provide the surety on the bond Harry was required to post when he was appointed the executor of their father's estate

- 115. Suspended sentence** - As an alternative to imprisonment, a judge can suspend a prison or jail sentence. This is typically used in cases involving less serious crimes or for first-time offenders. First, a judge can either suspend a sentence before the sentence is imposed, or before it is executed.

So a sentence for this item of suspended sentence could be: John Marshall was very fortunate in getting away with a suspended sentence of three years.

- 116. Taxation of costs** - In proceedings before the Registrar, costs are at the discretion of the Registrar, who has the power to award costs as he may consider reasonable to any party and direct how and by which parties they are to be paid. The successful party in contested proceedings is usually entitled to an award of costs. Where an opposition or rectification is pursued to a hearing, it is open to the parties to submit arguments on costs, and this should always be done if it is claimed that costs should not follow the event. Even if costs are not mentioned at the hearing, the written decision normally concludes with a statement that the successful party is entitled to an award of costs and states the basis of calculation of the amount awarded.

- 117. Tenor** - The tenor of a document is the essential message or meaning or import of the document.

So, a question on this item of tenor could be: the Judge ruled that the tenor of the document did not permit the interpretation that the plaintiff's lawyer placed on it and rejected his submission.

## **Part 8**

### **118. Tenure**

- a. The act or length of time that something is held or the achieved status of having one's employment position becomes permanent.

*During Mrs Wartovo's tenure as deputy principal academic at Marianville Secondary School, most grade 12 students got selected to universities and colleges.*

- b. The conditions under which land or buildings are held or occupied. Tenancy, occupancy, holding, occupation, residence; possession, title, ownership, proprietorship.

*The plaintiffs have a right to a fair rent and security of tenure.*

- c. Holding of an office.

*Mr Brian's tenure of the governorship would be threatened.*

**119. Testate**

A person who has died leaving a valid will; having made a legally valid will before death. If a person did not have a valid will, he or she died intestate. "Testate" means with a valid will, and "intestate" means without a valid will.

*Angela's son is the beneficiary of her estate and other properties as she died testate.*

**120. Testator**

Someone who dies leaving a valid will. A will is a legal document containing instructions for disposition of one's money and property after one's death.

*Angela was the testator of the will she made.*

**121. Time Immemorial**

Time immemorial is a time in the past that was so long ago that people have no knowledge or memory of it. It is a phrase meaning time extending beyond the reach of memory, record or tradition, indefinitely ancient, "ancient beyond memory or record". In English law and its derivatives, time immemorial means the same as time out of mind, "a time before legal history and beyond legal memory".

*From time immemorial, the importance of a healthy and balanced diet has been promoted widely.*

**122. Torrens Title**

Is a system of land registration invented by Robert Torrens, in which a register of land holdings maintained by the state guarantees an indefeasible title to those included in the register. Land ownership is transferred through registration of title instead of using deeds. (Indefeasible title is often used in land titles to describe ownership. It is a right or title in property that cannot be made void, defeated or cancelled by any past event, error or omission in the title.)

**123. Tort**

A wrongful act or an infringement of a right (other than under contract) leading to legal liability. An injury resulting in a claim for damages. In common law jurisdictions, is a civil wrong that unfairly causes someone else to suffer loss or harm resulting in legal liability for the person who commits the tortious act, called a tortfeasor. Cases that come before the courts are because of a wrong (tort) that have been committed by someone to another person. There are several intentional torts that fall into this category, like assault, battery, conversion, fraud, false imprisonment, trespassing and invasion of privacy.

*Negligence is a tort.*

**124. Tortfeasor**

A wrongdoer; an individual or entity who commits a tort (wrongful act) either intentionally or through negligence that injures another and for which the law provides a legal right to seek relief, a defendant in a civil tort action. A tortfeasor who is found guilty may be required to pay actual damages. For example, if a driver negligently runs someone over with a car, the driver may be required to pay medical bills. He also may be required to pay lost wages, car repair bills, or any other costs necessary to restore the victim to the state he would have been in, before the accident.

*The National Court, in the matter of Michael Philips against East West Transport, ordered the tortfeasor to pay the plaintiff damages with costs forthwith.*

### **125. Tortious**

Constituting a tort; wrongful. The person who sustains injury or suffers pecuniary (financial or economic) damage as the result of tortious conduct is known as the plaintiff, and the person who is responsible for inflicting the injury and incurs liability for the damage is known as the defendant or tortfeasor.

*The tortious act of bumping the girl with the vehicle resulting in her being disabled was a tort that required compensation for the damages caused to her.*

### **126. Ultra vires**

Beyond one's legal power or authority; outside the powers of a government body or agency. Legally, governments are given powers by a constitution. An action outside those powers is ultra vires, and may be held to be illegal by a court. In corporate law, may also mean an action not permitted by the articles of the company. For example, a Corporate law; A contract may not be entered into unless approved by the board. If a company director enters into a contract without the board's approval, the contract is considered void, because the director's action is ultra vires.

*Jurisdictional errors render the decision ultra vires.*

### **127. Vest**

To confer or to give someone the legal right to power, authority, property, etc. The term vest is significant in the law, because it means that a person has an absolute right to some present or future interest in something of value.

1. *The courts are vested with powers to deal with all matters brought before them.*
2. *Executive power is vested in the president.*
3. *He alone is vested with the authority to steer the country's economy.*

### **128. Vexatious litigant**

An individual who persistently brings a legal action, regardless of its merits, solely to harass or subdue an opponent. It may take the form of a primary frivolous (thoughtless) lawsuit or may be the repetitive, burdensome, and unwarranted filing of meritless motions in a matter which is otherwise a meritorious (commendable) cause of action. In other words, an action or the bringer of an action that is brought without sufficient grounds for winning, purely to cause annoyance to the defendant. Litigant is a person who is involved in a lawsuit.

*These previous petitions shall be considered by the court to determine that a person is a vexatious litigant.*

### **129. Vicarious liability**

A form of strict, secondary liability that arises under the common law doctrine of agency – respondent superior – the responsibility of the superior for the acts of their subordinate, or, in a broader sense, the responsibility of any third party that had the "right, ability or duty to control" the activities of a violator. It is liability for the tort (civil wrong) of another even though the person being held responsible may not have done anything wrong. This is often the case with employers who are held vicariously liable for the damages caused by their employees, provided that the tort occurs during the course of the employment.

Other examples of vicarious liability that can be found in common law jurisdictions are a partner for the actions of another partner in a partnership, a principal for the acts of his agent, and the liability of an employer for the contract-related torts of his independent contractor.

For example: A truck full of policemen goes to Gaire and the policemen burn and destroy 23 houses of the innocent villagers there. The owners of the 23 houses then file a case against the Royal PNG Constabulary and The State for the actions of the policemen.

### 130. Void

In law, void means of no legal effect. An action, document or transaction which is void is of no legal effect whatsoever: an absolute nullity – the law treats it as if it had never existed or happened.

1. *The case brought before the court by the plaintiff was void, of no effect.*
2. *The election had been declared void.*
3. *Their actions rendered the contract null and void.*

### 131. Voidable

In contracts, voidable is a term typically used with respect to a contract that is valid and binding unless avoided or declared void by a party to the contract who is legitimately exercising a power to avoid the contractual obligations. Circumstances or features that make a contract voidable include (1) non-disclosure of one or more material facts, (2) misrepresentation, (3) mutual mistake, (4) lack of free will of a contracting party, or presence of one contracting party's undue influence over the other, and (5) a material breach of the terms of the terms of the contract.

*The property manager was sure to win the case against his crook tenants as the terms were clear and it was not a voidable contract.*

### 132. Warrant

A warrant is a written authority used in executing process to civil and criminal cases. It is an order (writ) of a court which directs a law enforcement officer (usually a sheriff) to arrest and bring a person before the judge, such as a person who is charged with a crime, convicted of a crime but failed to appear for sentencing, owes a fine, or is in contempt of court.

*A bench warrant was issued by the court for the arrest of a dangerous prison escapee.*

### 133. Without prejudice

Without detriment to any existing right or claim. Refers to the privilege that attaches to written or verbal statements made by a party to a dispute in a genuine attempt to settle that dispute. This means that the statements will generally not be admissible in Court as evidence against the person who made the statement.

It is used in the course of negotiations to settle a lawsuit. It indicates that a particular conversation or letter cannot be tendered as evidence in court. It can be considered a form of privilege.

**Without prejudice** is a useful way of protecting your position in a dispute. Say you are a landlord and have a dispute with your tenant about a broken fridge freezer. You are pretty sure that they damaged it during a party, they are positive that it was already broken when they took the flat over. It was brand new and to get a replacement is going to cost you K600.

You are very busy right now and don't really want the hassle of dealing with a court claim. You would be prepared to accept just K300 just to get rid of the problem so you can move on.

However if the matter cannot be settled and you DO have to go to court, you would want to claim the whole K600. If you offer to accept K300 now, will this prejudice your claim? Will the Judge say "Well if they were prepared to accept K300 for it back in August, their claim for K600 must be grossly inflated and should be disallowed? The answer is that if the offer is made 'without prejudice' he will not (or should not) ever see it, because without prejudice offers are confidential, and information about them should not be given to the Judge (or arbitrator if this is an arbitration) during the hearing.

The only time the Judge gets to hear about the offer is after Judgment is made. If the Judge, quite independently, comes to the conclusion that the landlord's case is not the

best, but that he should at least be entitled to K300, the landlord can say 'Well I made an offer to settle for that back in August, but the other side rejected it'.

Then the Judge may decide to make a costs order, ordering the tenant to pay more in legal costs than he would normally, on the basis that the tenant has been wasting his time as the case could have been settled earlier. The courts are so busy now, and so underfunded, that wasting the Judge's time is almost a capital offence.

#### Using without prejudice in legal cases

The example above is only a small fictitious case to illustrate the point. In big litigation cases run by solicitors, there are always negotiations to settle (and in fact most cases are settled before trial). The solicitors will generally have two completely separate sets of correspondence, the 'open' correspondence and the 'without prejudice' correspondence.

So for example the solicitors might write quite an aggressive letter setting out all that is wrong about the other side's case, and then in the same envelope include a 'without prejudice' letter offering to settle the claim for K5,000!

If the attempts to settle fail, and the claim comes to trial, the open correspondence is generally put in a bundle for the Judge to see. It is very important when doing this that none of the 'without prejudice' correspondence is included by mistake, as if it is and the Judge sees it, in some cases there may have to be a re-trial, which could be very expensive.

So that is without prejudice.

#### Three important points

There are three important things you need to know about without prejudice. To be able to use it, and prevent your discussions being used against you if your case comes to trial:

- a. There must be a genuine dispute underway
- b. Your discussion/letter must be a genuine attempt to resolve it, and
- c. You must keep your without prejudice negotiations private or you may lose your right to confidentiality.
- d.

Also note that correspondence can be judged to be without prejudice even if it does not say it is, but it is best to write 'without prejudice' on the letter anyway so there can be no mistake. And if you have 'without prejudice' discussions, make sure you keep a careful note of everything that was said.