QUEENSLAND COURTS

Procedural Fact Sheets (Civil) – Supreme and District Courts

The conduct of a civil trial

This information does not deal with every matter that may arise in a particular case. Parties should study the Uniform Civil Procedure Rules 1999 (Qld) (UCPR) and consult reliable online legal resources in preparation for trial.

The role of the court

- The court's function is to hear and decide the case, and to control the proceeding during the hearing.
- The judge must remain impartial.
- The rights of one party to present their case must be balanced against the rights of the other parties, including their right to have the case conducted properly and without undue delay; and the right of the public to have cases conducted efficiently.
- The judge cannot provide legal advice to any party; although they can provide procedural information, e.g., about the way the trial is to be conducted.

Issues

- The case will be determined by the court deciding the issues.
- The issues in the case are identified from the pleadings.
- The issues are the allegations made in the pleadings, which are either denied, or not admitted, by the other parties.
- They are usually about matters of fact, though sometimes a pleading will contain matters of law.
- The factual issues are decided on the evidence admitted during the trial.

Evidence

- If a party wishes to prove a fact relevant to an issue, the party may only do so by evidence. The party may call a witness to give evidence of the fact. Where the fact may be proved by a document, the party may tender the document as evidence of the fact. The party may also ask questions of witnesses called by other parties, with a view to getting evidence of the event.
- Evidence may be oral, that is, given by witnesses. Such evidence is generally what the witness says, on oath or affirmation, in the witness box in answer to questions. However, a witness may also give evidence by an affidavit or written statement.
- A document may be proved by evidence from a witness, e.g., X might give evidence that on a particular occasion Y signed a will, and that the document shown to X in the witness box is the will that Y signed (or a copy of it). The document may then be tendered and, if admitted as an exhibit, becomes evidence in the case as the will signed by Y.

- Evidence is not what is said by a barrister or a party from the bar table, whether in opening submissions or a closing address (see below), or at some other time.
- Evidence may be documentary, e.g., a document may be admitted into evidence as the contract agreed by the parties. It is then evidence of the fact that a contract was entered into and is also evidence of the terms of the contract.
- Where a document records an event, e.g., a diary note of a conversation, or a letter or email which speaks about some other event, the document is not automatically evidence of the happening of the event.
- Where a document has been formally disclosed pursuant to the UCPR, a party may call for it, and if it is produced, may tender it. If it is not produced, the party may tender a copy of it. Often, but not always, a document will be admitted if this process is followed.

The Trial Bundle

- Often a bundle of documents, called a trial bundle, is prepared before the start of the hearing.
- The fact that a document is in a trial bundle does not mean that it forms part of the evidence in the case. One or more of the parties must tender the document at trial and the court must admit the document into evidence. Once a document is admitted into evidence, it is marked as an exhibit and then forms part of the evidence to be considered by the judge in reaching a decision on the dispute.
- The parties may agree that all documents in the trial bundle are to be admitted into evidence. When they do, the trial judge will usually admit the bundle as an exhibit, and all the documents in the bundle then forms part of the evidence.

Opening Submissions

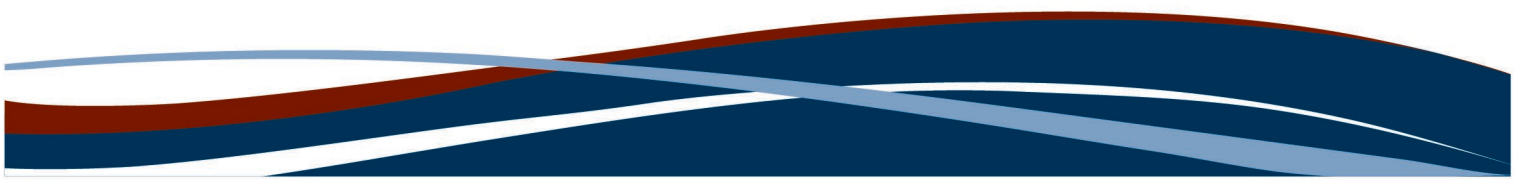
- Where a party proposes to call evidence, the party is expected to give an opening. An opening is a brief outline identifying the witnesses the party proposes to call, and the main points of the evidence of each witness.

Admissibility of Evidence

- The admission of evidence is governed by rules. One important rule is that evidence is not admissible unless it is relevant to an issue. Evidence is relevant to an issue if it tends to prove or disprove the issue.
- Another important rule is referred to as the “hearsay rule”. A witness can usually only give evidence of matters of which the witness has personal knowledge. A witness cannot give evidence of what they were told by another person to prove a fact told to them by that other person.
- The rule against opinion evidence is also an important rule of evidence. A witness must give evidence of what the witness saw or heard. The witness’ opinion of what they saw or heard will usually not be admissible. However, experts such as doctors, scientists, and engineers, can give opinion evidence.

Examination and Cross Examination

- When a party is asking questions of a witness that party has called, the party may not ordinarily ask a question which suggests a particular answer to the question.
- Questions asked of a witness are not evidence unless the witness adopts them, e.g., by answering “Yes” to the question.



- A party is entitled to ask questions of witnesses called by other parties. This is called cross-examination. In cross-examination, a party may ask the witness questions relevant to the issues in the case. The party may also ask the witness questions which are relevant only to the credit of the witness, i.e., questions relevant only to deciding whether the witness' evidence is truthful. During cross-examination, a party can also ask leading questions, that is, questions which suggest certain answers.
- Where a party intends to submit at the end of the case that the court should reach a particular conclusion about a fact, that party is ordinarily required, when cross-examining a witness who could be expected to know something about the fact, to put to the witness what the party contends to be the true position. For example, the party might ask the witness, "Isn't it true that…" or "Isn't it the fact that…" or "I put it to you that…" a particular event occurred.
- After cross-examination, the party calling the witness can re-examine the witness, e.g., this may be done where something was said during cross-examination that the party believes needs clarification.

Closing Address

- At the end of the case, each party gives a closing address in which they:
  - state the findings of fact which they say the court should make.
  - give the reasons why each finding should be made, on the evidence before the court.
  - identify the legal rules on which they rely, including, if possible, authority (prior court decisions) for those rules.
  - explain how the legal rules apply to the facts shown by the evidence.
  - submit the decision they say should be made by the court, based on the matters set out above.

Judgment

- After the hearing, the court must decide the case by determining the issues relevant to the outcome of the case on the facts established by the evidence and applying the legal rules. That decision is known as the judgment.
- The judgment may be given straight away (ex tempore), or after a period during which the judge considers the evidence and submissions before reaching a decision (curia advisari vult).
- The associate to the trial judge will notify the parties by email to advise when the judgment is ready to be delivered.
- The trial judge will deliver the judgment in court. The parties should attend the delivery. The judge may provide the parties with an opportunity to make submissions about who should pay legal costs and how much they should pay.
- The judgment will state the amount of damages (money), legal costs, and/or other relief the unsuccessful party must pay/provide to the party who succeeds in proving their case.
- The judgment will be published on the Queensland Courts' website and elsewhere.