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FROM THE AMERICAN PEOPLE

Legal Aid Toolkit

For Myanmar



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INTRODUCTION



Legal Aid in Myanmar is at an important stage in its development. The Government of Myanmar recently enacted a Legal Aid Law, communities and individuals are learning about the availability of legal aid, and legal aid providers are perfecting the skills needed to serve their clients. This Legal Aid Toolkit was prepared with the goal of educating and assisting Myanmar's legal aid providers during this exciting transition.

Some of the topics covered in this Toolkit are skills-based, meaning they deal with important skills that legal aid providers need to perform their job well. These topics include: case analysis, witness interviewing, alternative dispute resolution, and trial skills.

Other sections of the Toolkit relate to what it means to be a legal aid provider; and how to operate and manage a legal aid organization and legal aid cases. These management-focused sections include sample forms and policies, as well as detailed forms to be used when preparing a defense to the most common Penal Code and Arms Act offenses. Soft copies of these sample forms and policies are also provided on the CD that accompanies this Toolkit.

This Toolkit was not meant to be read the same way that a novel is read. Instead, it is recommended that the reader uses the Table of Contents to choose one topic that is important to their development as a legal aid provider; important to their organization's current situation, or of interest. The reader should then study that one section. If the selected section relates to the management of legal aid cases or a legal aid office, the reader, together with others in their office, should also go through the process of developing the systems described in the section. At some later time, the reader should then go onto another section of the Toolkit.

CASE ANALYSIS

A. WHAT IS CASE ANALYSIS?

Case analysis is a way of thinking about your case so that you can make the case as strong as possible and get the best possible result for your client.

Case analysis usually involves two activities:

1. Thinking about the information received during your case investigation and analyzing that information; and
2. Applying the relevant laws to the information you received. This involves:
 - a. Deciding what laws apply to the case
 - b. Deciding what result in the case is appropriate according to those laws

B. THE IFRAC METHOD

A common method for conducting case analysis is known as “IFRAC.” IFRAC stands for:



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Here is an example of how an IFRAC analysis in Myanmar might work. Assume that your case involves the following Facts:

- San San owns a new laptop computer. One day the computer is stolen.
- The next day, San San is walking by a coffee shop. He looks in the window and sees at a table a computer that looks exactly like his computer that was stolen. Nobody is sitting at the table.
- San San believes the computer to be his. San San walks into the coffee shop, takes the laptop and runs home.
- When San San gets home, he realizes that the computer is not his.

The Issue that you want to answer is: Did San San commit the crime of Theft when he took a laptop computer believing it was his?

To answer that question, you look at the Penal Code to see what Rule applies.

You find Section 378 (Theft), which says:

Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking is said to commit theft.

You now need to do your Analysis. One helpful way of doing that is to make a chart of the various "elements" (or "ingredients") of the crime and then to decide if each of those elements is met.

To find the "elements" of the crime, go back to the Rule and look at all the individual pieces that go into the Rule. In this case, you go back to Section 378.



CASE ANALYSIS



Looking at Section 378, you find the following elements of the crime:

In addition to helping your analysis of the case, an IFRAC analysis also shows whether additional evidence is needed to reach a final conclusion. For example, in the case of San San and the computer, his lawyer should find out:

- What did San San do after discovering the laptop was not his? If he returned it to the coffee shop it will help prove the laptop was not taken dishonestly.
- Did the owner of the computer return to the table and look for her laptop? If not, it may show that the laptop was not in the possession of another person.

Whoever, intending to take dishonestly any movable property out of the possession of any person without that person’s consent, moves that property in order to such taking is said to commit theft.

After having found the elements, your Analysis might look like this:

Element	Relevant Fact	Satisfied?
Intent to take dishonestly	San San intended to take the laptop, but he believed the laptop was his. As a result, the requirement that the taking be dishonest may not be met.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Movable property	The laptop is movable.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Possession of another person	Unclear. However, it is likely that the owner did not intend to abandon the laptop. As a result, this requirement is probably met.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Without consent	The owner of the laptop did not give her permission for San San to take the laptop.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Moves the property	San San moved the laptop to his house.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Unless the law officer can prove all elements of a crime, the defendant **must** be found **not guilty**. As a result, San San’s defense lawyer only needs to show either that the laptop was not taken dishonestly or that the laptop was not in the possession of another person for San San to be found not guilty.

CASE ANALYSIS

C. ELEMENTS (INGREDIENTS) OF A CAUSE OF ACTION OR CRIME

As you can see from the example above, the “elements” (or “ingredients”) of a cause of action or crime are those things that **must** be proven for a guilty verdict to be entered. If only one ingredient is missing, the verdict must be not guilty.

You find the elements by carefully taking apart the relevant section of a law to see all of the individual parts. “Dissecting” the section is the process of carefully taking apart a section of law.

D. DISSECTING THE ELEMENTS

Here is another example of dissecting the elements of a crime. Penal Code Section 321 (Hurt) states:

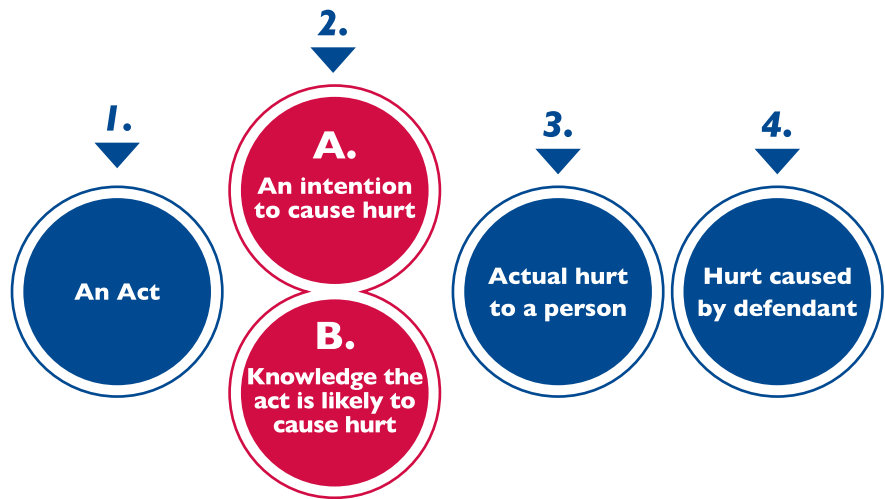
Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said to “voluntarily cause hurt.”

Dissecting the elements of that crime looks like this:

Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said to “voluntarily cause hurt.”

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This process shows you that Section 321 has four elements:



Now let's apply the dissected Section 321 to a new set of facts involving a football match.

Facts:

- Soe Soe and Naing Naing are friends, but they also fight a lot. They are playing football in the street, and the score is tied 3-3.
- Soe Soe's mother calls out the window and says that he should come inside because it is time for dinner.
- Soe Soe and Naing Naing decide they will play a few more minutes, and that whoever gets the next goal wins.
- Soe Soe gets the ball and is ready to score a goal.
- Naing Naing pushes Soe Soe to stop him from scoring.
- Soe Soe fall and breaks his arm.
- Soe Soe sues Naing Naing for "voluntarily causing hurt."

What is the Issue?

Did Naing Naing commit the crime of hurt?



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Now let's do the Analysis:

To decide if Naing Naing committed the crime of hurt, you should first ask what must be proven for someone to be guilty of the Section 321. You have already done that work.

The four elements are:

1. An act
2. a) An intention to cause hurt (or)
b) Knowledge the act is likely to cause hurt
3. Actual hurt to a person
4. Hurt caused by defendant

To decide whether all of the elements have been met, it is useful to prepare a checklist and answer the check list:

Ingredient	Yes or No?
1. An act	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. Done with: (a) Intent to cause hurt or (b) Knowledge the act is likely to cause hurt	<input type="checkbox"/> YES <input type="checkbox"/> No
3. Actual hurt to a person	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
4. Hurt caused by defendant	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

This analysis shows in order to decide whether Naing Naing committed the crime of hurt, you will need to determine whether he either intended to cause hurt or had knowledge that his act was likely to cause harm.



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You may be tempted to answer this question right away, but you should not. If you answer the question now, you will be guessing. You will be making an assumption concerning the thoughts that were in Naing Naing's mind, and the assumption will not be based on evidence.

Whenever you do an IFRAC analysis, you should use the Analysis to determine the additional evidence needed to reach your Conclusion. Here, your analysis has shown you need further evidence about Naing Naing's intent.

For example:

- Did Soe Soe and Naing Naing fight that day?
- How old is Naing Naing?
- Is Naing Naing too young to be charged as an adult?
- Is Naing Naing too young to know the likely outcome of his act?
- Is Naing Naing mentally impaired?
- How hard did Naing Naing push Soe Soe?
- What was Naing Naing's reaction after Soe Soe fell?

Now assume that the facts of the case are changed slightly:

Naing Naing did not push Soe Soe, but instead called him a bad name to distract him from scoring a goal. While Soe Soe was running, he looked back and yelled at Naing Naing. While looking back, Soe Soe tripped and broke his arm.



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Once again, it is helpful to prepare a checklist:

Ingredient	Yes or No?
1. An act	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. Done with: (a) Intent to cause hurt or (b) Knowledge the act is likely to cause hurt	<input type="checkbox"/> YES <input type="checkbox"/> NO
3. Actual hurt to a person	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
4. Hurt caused by defendant	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Here the checklist again points out additional information that you need for your analysis:

- Is calling someone a bad name an “act”?
- Did Naing Naing intend to cause harm or know that harm was likely to result from name calling?
- Did the harm result from name calling, or did it result from Soe Soe wanting to yell back at Naing Naing?
- Did Naing Naing have reason to know Soe Soe would turn around in response to being called a name?

E. SAMPLE FORMS

For organizations that often work on cases involving the same articles from the Penal Code or other laws, it useful to have standardized forms or checklists that detail the elements of those articles in order to guarantee that each element of the article is considered when analyzing every case.

When doing an IFRAC analysis, you should also consider other crimes or causes of action that may be relevant to your case. For example, in the original example where Naing Naing pushes Soe Soe, are there other crimes that Naing Naing may be charged with?

If Naing Naing is charged with additional crimes, a separate analysis must be prepared for each section, and the elements of each section must be dissected and applied to the facts. In addition, you should consider the possibility that Naing Naing may be sued for money damages. Once again, the elements of each cause of action brought against Naing Naing will need to be dissected and applied to the facts.

CASE ANALYSIS

Attached as Annex 4, and also on the CD that accompanies this book, are sample “Additional Information” forms for those Penal Code and Arms Act articles that are worked on most frequently by legal aid organizations in Myanmar. These forms are discussed in more detail in this book at Chapter 6: Legal Aid Management, Section D, “Standardized Forms”, and may be adapted for use when analyzing cases.

F. REVIEW

There are two components to case analysis:

- Analyzing the information received during the case investigation; and
- Applying the applicable laws to that information

Conducting an IFRAC analysis – considering the Issues, Facts and Rules, and then doing an Analysis so that you can reach your Conclusion – is a useful way to analyze a case. Conducting an IFRAC analysis will also help show you what additional information you need in order to reach a Conclusion, and whether there are additional crimes or causes of action that should be considered.

A key piece of conducting an IFRAC analysis is “dissecting” the elements of a cause of action or crime. It is important to remember that if only one ingredient is missing, there **cannot** be a guilty verdict.



CHAPTER 2:

INTERVIEWING WITNESSES



A. GOALS OF INTERVIEWING WITNESSES

Many lawyers and paralegals believe that the primary goal of interviewing witnesses is to gather information that helps their client. **That is not correct.**

The goal of interviewing witnesses is to gather all information relevant to your case – whether it helps or hurts your client. That is because you can only advise your client on strategy and prepare your case if you know both the information that supports your client **and** the information that hurts the client. If you do not know the damaging evidence in advance, you will have bad surprises at trial.

There are two additional goals when interviewing witnesses. One is to determine if the witness is reliable – this includes whether the witness is honest and whether the witness was actually able to observe the events he is describing. A second goal is to determine whether the witness can help find additional witnesses or information that is relevant to your client.

B. QUALITIES OF GOOD INTERVIEWERS

One of the most important qualities of a good interviewer is that she wants to learn the truth. Not just the facts that help her client, but the truth.

Another important quality is that she is able to quickly establish rapport with the person being interviewed. That means she is able to get the witness to relax, trust her, and like her.

A third important quality is that the interviewer is able to really listen to witness and evaluate their responses. This is called “Active Listening,” which is discussed in Section H of this chapter, starting on page 26.

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A fourth important quality is that the interviewer can adapt to changing facts and situations. Interviewers get many surprises as they investigate cases, and if they do not quickly adapt their thoughts and strategy to those changing facts and situations, the interviews will not go well and their cases will be hurt.

C. TIMING OF INTERVIEWS

Interviews should be conducted at the **first suitable opportunity**. Many lawyers and paralegals think that interviews should be conducted immediately after an event takes place. This belief is understandable, because witnesses forget important information as time passes and it may be harder to locate witnesses.

However, unless there is a reason to immediately conduct the interview, you should prepare before you start conducting interviews. Otherwise you may miss important information.

D. THE INVESTIGATION PLAN

The groundwork for successful interviews begins with the Investigation Plan. Developing an Investigation Plan will make sure that you do not miss anything during your investigation and that you do not waste time or resources investigating unnecessary topics.

The Investigation Plan should include:

- Possible sources of information, both witnesses and other evidence
- The order in which the components of the investigation should be conducted, including the order of interviews
- The goals for each interview
- An outline of topics to be covered during interviews



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- The location of interviews
- The manner of recording interviews, and
- A timeline and budget for the investigation

Before writing the Investigation Plan, you should outline:

- The “elements” (or “ingredients”) needed to prove the relevant crimes or claims (see the discussion on page 6).
- The facts you already know and the evidence that supports those facts
- The facts you are unsure of or still need to know, or for which you need to gather more supporting evidence.

I. ORDER OF INTERVIEWS

When deciding the order in which interviews should be conducted, you will need to decide whether the interviews should be conducted “top-down” or “bottom-up.” Here is an example to explain what that means:

You are investigating a dispute between two neighbors, each of whom claims the right to farm a piece of land. There are many witnesses and documents relevant to the dispute. The list of witnesses includes:



The Investigation Plan should serve as a roadmap that guides your investigation. However, the Investigation Plan needs to be flexible and will need to change as your investigation proceeds. When you learn unexpected facts or about new witnesses, or as old witnesses disappear, the Investigation Plan must be adapted to these changed circumstances.

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The relevant documents include:



Your client should be your first interview, so you can learn everything that he or she knows. But then you have two options. One is to start your interviews at “the bottom” with the neighbors who may (or may not) have relevant information, and then work your way “up” to the village head, and then finish with the opposing party. The other option is to start your interviews at “the top” with the opposing party, then work your way “down” to the village head and the neighbors.

The “theory of the case” is a short explanation of the case that justifies the result you are seeking. The best theory is the one that requires the fewest factual disputes to be resolved in your favor and is as simple as possible. As you conduct your investigation, your theory of the case will need to adapt to the evidence that is discovered.

The most common approach is the “bottom-up” approach, where you gather all possible facts from the less important witnesses (the neighbors) before you approach the most important witness (the opposing party). This approach helps you form your “theory of the case” before you approach the witnesses who will be hostile to you and your case. It also allows you to prepare evidence you can use to “cross-examine” (or confront) the hostile witnesses.

However, there may be situations where you will want to use a “top-down” approach, starting with the most important witnesses. For example, you might be concerned that the opposing party will disappear or falsify evidence if he learns about your investigation. But this is a risky approach because you may not know enough about the case to ask key witnesses important questions. Or, you may not have enough information to know when a key witness is not telling the truth. However, despite the disadvantages to using a “top-down” approach, there may be times when it is the best approach to use.

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2. LOCATION OF INTERVIEWS

When preparing your Investigation Plan, consider where different interviews should take place. For example, if the witness does not live near you, you must decide whether you will travel to the witness or ask the witness to come to you. Also, you should consider whether you want the interview to be held in a formal setting (such as your office) or an informal setting (such as the witness' home or a teahouse).

If you think the witness will be friendly to your case, or at least not hostile to it, you will usually want the witness to be as relaxed as possible. As a result, you may want these interviews to be held in an informal setting. If you think the witness will be hostile, you will usually want the interview to be in a more formal setting, such as your office. These topics are discussed further in Section F, "The Interview Setting" starting on page 24.



3. RECORDING THE INTERVIEW

You will want to make a record of the interviews. Possibilities include:



handwritten notes



Notes taken on a computer



An audio recording



A video recording



A formal witness statement

There are advantages and disadvantages to each of these methods.

In some ways, an **audio recording** on your phone is the easiest and also the least distracting for the witness. In addition, if the phone works properly, every word is recorded and there is no confusion as to what was said. Also, it allows the interviewer to concentrate on the witness' testimony

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and establish rapport with the witness. However, if you only record the interview you must listen to the interview a second time to make notes, and that can take even longer than the interview. Also, there is always the possibility that the phone will malfunction or that you will not be able to hear what is said.

Handwritten notes or notes on a **computer** save you the time of re-listening to the interview. They also allow you to check your notes during the interview to ask follow-up questions. However, the note taking process causes you to look away from the witness and you may miss some information. It also reminds the witness that what they say is being recorded, and may make witnesses hesitant to disclose information. An additional problem with computers is that they create a physical barrier between you and the witness, and may make it more difficult to establish rapport. Note taking is discussed further in Section J, "Note Taking", starting on page 28.

Video recordings have the advantages and disadvantages of an audio recording. In addition, they have the added advantage of showing what the witness looked like while telling his/her story. However, the presence of a video recorder may make witnesses extremely cautious about what they say.

There is usually no reason to limit yourself to one method of recording an interview. For example, you might take notes during an interview and also record the interview on your phone so that you can clarify your notes if there is any confusion. Then, when the interview is over, you can ask the witness to sign a witness statement.

If the witness is important and gives you good information, you may want to have the witness sign a **formal statement** that details the information they gave. Even if the document cannot later be introduced in court, the witness statement may help to guarantee that the witness does not later change his/her story.

4. RECOMMENDATIONS REGARDING INVESTIGATION PLANS

When preparing your Investigation Plan, it is important that you do not write out the specific questions that you will ask. If you write out detailed questions, it will:

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INTERVIEWING WITNESSES

- Prevent you from listening to the witness' answers
- Prevent you from asking good follow-up questions based on the witness' answers
- Prevent you from establishing rapport with the witnesses, since you will be reading from your "script."

Instead of a "script," you should have a "guideline" that lists the **topics** to be covered during the interview and any specific **physical evidence** you want to request from the witness.



E. FIVE PHASES OF AN INTERVIEW

Most interviews will have five phases, each with its own purpose:



PHASE #1: INTRODUCTION

The introduction phase is simple; it is similar to introductions you already do every day. However, during the introduction phase of an interview, the interviewer will typically briefly explain why they want to speak with the witness. The interviewer may also disclose the party that they represent.

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If you are interviewing a witness that you know will be hostile to your case, you may not want to disclose why you want to talk to the witness or the party that you represent. But this should only be done in exceptional circumstances because it may make it impossible to establish a cooperative relationship with the witness and the interview may be very confrontational.

PHASE #2: ESTABLISHING RAPPORT

Establishing a cooperative relationship with the witness starts the moment you meet the witness (or even before, such as when you arrange the interview); it is not really the second phase of the interview. In addition, establishing rapport is not something you do once at the beginning of the interview and then it is finished. The process of establishing rapport must begin with your first contact with the witness, must continue throughout the interview, and must continue even after the interview is finished.

You should establish a cooperative relationship (“rapport”) with the witness whenever possible. This is because a witness will not give complete and truthful information if they do not trust the interviewer or are frightened,

The methods that an interviewer will use to establish rapport will vary depending on the interviewer’s personality and the response of the witness. However, there are certain techniques that are usually helpful in establishing rapport. These include:

- Treating witness with respect
- Not arguing with witnesses
- Asking the witnesses about themselves
- Offering the witnesses food or water
- Using appropriate:
 - Words
 - Tone of voice
 - Gestures
 - Facial expressions
 - Body language
 - Clothes/jewelry

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You will notice that the list above uses the word "appropriate." This book cannot tell you what is appropriate for each interview. However, we suggest that you try to imagine what the witness will think of your behavior. For example:

If you are interviewing a rice farmer in a rural area and you dress like someone from Yangon with fancy jewelry and a fancy phone, the witness may distrust you and not tell you everything that he knows.

If you use complicated words that the witness does not understand, or use an aggressive tone of voice or aggressive behavior, you are unlikely to get much information from the witness.

If the witness is educated, you will not get good information if you interact with the witness the same way you would with an uneducated witness.

Whether the witness is educated or uneducated, they are unlikely to be cooperative if you are impatient or behave as if you are more important than the witness.

PHASE #3: QUESTIONING THE WITNESS

There are different techniques for questioning witnesses, and each of those techniques will be used in most interviews. This very important topic will be discussed Section K, "Question Techniques" starting on page 29.

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Summarizing is a very important part of the interview, and should be done several times during the interview – not just at the end of the interview! In fact, you may want to make a very quick summary every time the witness makes an important point.

Sometimes the witness does not show that they are willing to share additional information until the interviewer is leaving the meeting location! You must use active listening to recognize when the witness indicates a willingness to share more information, and you must take the time to gather that information.

PHASE #4: SUMMARIZING

Summarizing is the practice of reviewing with the witness the testimony they provided to make sure you correctly understood what the witness said and did not miss any information.

There are several reasons you should periodically summarize the witness' testimony throughout the interview. These include:

- It shows the witness that you are listening, and that you think what they are saying is important. This will encourage the witness to give more information.
- It allows both the witness and interviewer to correct any mistakes or misunderstandings before the end of the interview. If these mistakes are not corrected early in the interview, the remainder of the interview may be based on an incorrect understanding of the witness' testimony.

It is useful to do one final summary of the most important information provided by the witness at the end of the interview. If there are two interviewers, the second interviewer usually does the final summary from the information in his or her notes. The second interviewer may also ask additional questions as part of the summarizing process.

PHASE #5: CLOSING

The closing of an interview is a surprisingly important part of the interview. This is because witnesses sometimes volunteer their most important information just as the interview is ending. It is important that you do not rush through the closing, and that you listen carefully for signals that the witness may be willing to share additional information that they did not share earlier in the interview.

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In addition, a properly done closing will encourage the witness to contact you if they remember additional information and also allow you to contact the witness if you think of additional questions.

You should end the interview in a respectful way, and not treat the witness as if you no longer need them. You should:

- **Thank** the witness for their cooperation, or express understanding at their lack of cooperation.
- **Reassure** the witness about their concerns, particularly if they are concerned there will be negative consequences because of talking with you.
- **Ask if there is anything else** you should know. Often, important new information results from this open-ended question at the end of the interview.
- Make sure the witness knows **how to contact you**.
- Confirm that you know **how to contact the witness**.
- Ask if the witness **knows of others** you should interview.

F. THE INTERVIEW SETTING

The setting of the interview will set the tone for the interview – whether it is friendly or confrontational. It can also impact the success of the interview.

Some aspects of the interview setting that will impact the tone of the interview include:

- **Comfort:**
 - Does the interview take place in a relaxed or formal setting?
- **Noise:**
 - Are there distractions or interruptions?
 - Noise, movement and interruptions, including telephone calls, will disrupt the interview.

The closing should be considered part of the process of establishing rapport!



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- **Privacy:**

- Can others overhear what is being said? Witnesses may not tell the truth if they think someone can hear. Also, if one witness overhears another witness' testimony, the subsequent witness may change his or her testimony to match the first witness' testimony.
- Is the interview setting so private that the witness is nervous or feels at risk (this is a particular concern if the witness is a woman or child)?

- **Seating arrangement:**

- Is the interviewer in a "power position," in a bigger chair and behind a desk?
- Is there a table between the interviewer and witness that creates a feeling of distance and separation?
- Are the interviewer and witness seated as equals with no large objects separating them?

- **Offer of food/drinks:**

- Does the interviewer offer food or drinks, which creates a relaxed and friendly tone for the meeting?

G. APPROACHES TO THE INTERVIEW

An interviewer's approach to the interview will depend on several factors, including the importance of the witness and whether the interview takes place early or late in the investigation process.

If the witness is a party or a very important witness, the interview will probably be long and detailed so that you are certain that you collect all of the witness's information. In addition, you will probably want to challenge the witness's recollection and claims. This is because you do not want to get a bad surprise when an important witness is cross-examined by the opposing lawyer at trial.



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If a witness is interviewed early in the investigation process, you will probably need to question the witness on many varied topics, some of which will turn out to be irrelevant. That is because, until you have conducted some of your investigation and developed your “theory of the case,” you will not know what information is relevant. Interviews that take place later in the investigation are sometimes much shorter – you may only need to confirm or refute a few facts that you already learned from other witnesses.

H. ACTIVE LISTENING

Regardless of who you are interviewing, it is very important that you use “active listening” when conducting the interview.

Active listening is much more than concentrating on what the witness says. You must:

- Be actively engaged in the interview.
- Hear both the words that the witness says and also what is being communicated through the choice of words, tone of voice, body language, and what is not said.
- Think about the information received, respond appropriately to the witness, and adjust the interview accordingly.
- Constantly test the accuracy of your own assumptions about the witness and the case.

There are a number of techniques that will help you to be a good active listener. These include:

- Forcing yourself to actively concentrate on what the witnesses is saying, instead of letting your thoughts race ahead to your next questions or drift away to other topics.
- Subtly letting the witness know that what they are saying is important. You can do this by minimizing your own talking, and reacting positively to what the witness says through head nods and statements like “yes,” “I see” and “go on.”

Because your “theory of the case” may change as your investigation proceeds, you may discover that you failed to ask early witnesses questions that are important to your revised theory of the case. As a result, it may be necessary to conduct a second interview of some witnesses. This is one of the reasons it is important to end all interviews with good rapport, so that the witness will be agreeable if you ask to talk a second time.

We all make assumptions about the witnesses we interview. These assumptions may be based on what we have been told about them, what they wear, their gender, religion, profession, wealth or other factors. These assumptions may be completely wrong. You need to test those assumptions when you interview the witness.

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- Summarizing what the witness communicates so that the witness knows you are paying attention to what they are saying.

Active listening also requires that the interviewer notice and properly interpret the witness's non-verbal communication, including their body language and speech pattern.

To be an effective active listener, the interviewer must keep an open mind and avoid making assumptions or judgments about what the witness is saying. Otherwise, you may miss what the witness is actually saying – that is because you think you know what the witness will say before she speaks.

I. NUMBER AND ROLES OF INTERVIEWERS

Whenever possible, an interview should be conducted by two interviewers who work together.

When there are multiple interviewers, the roles of the lead interviewer are to ask questions and to observe the witness' body language and non-verbal communication. The roles of the second interviewer are to take notes, review the interview outline to be sure that no questions are missed and ask follow-up questions, and periodically summarize the interview to be sure that the notes are correct.

There will be more certainty as to what the witness said. There are several reasons for this. One is that the interviewers will typically divide the tasks to be performed during the interview, which allows each interviewer to better focus on what the witness is saying. Also, if there is any uncertainty as to what the witness said, the two interviewers can compare their recollections.

It is less likely the witness will later try to change their testimony or claim that the interviewers' recollection is not correct since two people witnessed what was said.

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There are many advantages to having two interviewers. For example:

J. NOTE TAKING

The most common method of recording an interview is note taking.

If note taking is being used, the notes should be made during the interview whenever possible. Then, immediately after the interview you should review your notes to clarify them and add any details that were not written down. You should also record your general impressions of the witness – for example, whether they seemed honest and cooperative, and whether they might be useful as a witness at trial. When it is not possible to take notes during the interview or you believe that taking notes will make the witness less cooperative, notes should be made as soon after the interview as possible, while you still have a good recollection of the testimony.

Your notes should be:

- **Objective:** Record both the testimony that helps your case and the testimony that hurts the case.
- **Complete:** You may not have a theory of the case at the time you interview a witness. Or, your theory of the case may change after you interviewed a witness. In either situation, information that did not seem relevant during the interview may later turn out to be extremely important to your case. As a result, you should record not only the testimony that you think is relevant at the time of the interview, but also testimony that could turn out to be relevant later on.
- **Concise:** It is not necessary to record every word that the witness says. If information is clearly not relevant, you should not include it in your notes.
- **Clear:** You may need to re-read your notes months or years in the future. Or, another lawyer may need to refer to your notes in the future. As a result, your notes should be as clear as possible.

If you are not sure whether testimony is worth including in your notes, it is best to include it. When in doubt, write it down!

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If possible, capture the actual words that the witness used – it will aid your recollection of the interview and may be useful at trial. For example, it is far more useful if your notes say “witness said ‘Mr. X would not hurt a fly’” than “witness said Mr. X is not violent.” If you are quoting a witness, your notes should indicate that the statement is a quote.

If the witness gives very important testimony, consider preparing a witness statement and having the witness sign the statement. Even if the court does not allow the statement to be introduced as evidence, the statement may prevent the witness from changing his testimony or be useful for cross-examination if the witness changes his testimony at trial.

Your notes should include the date, time and location of the interview, who was present at the interview, who prepared the notes, and whether the notes were prepared during or after the interview.

K. QUESTIONING TECHNIQUES

After learning about the witness’ background, you should start your interview with a series of Narrative Questions. Then get details about what the witness told you using Direct Examination questions. Finally, you may want to ask difficult questions using Cross-Examination.

Interviewers use four different techniques when questioning witnesses. Each technique has a different purpose, and each is typically used at a different stage of the interview. The four different interview techniques are known as Background Questions, Narrative Questions, Direct Examination, and Cross-Examination.

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I. BACKGROUND QUESTIONS

Most interviews start with background questions, with the interviewer gathering general information about the witness. This might include the correct spelling of the witness' name, where the witness lives, the witness' profession, and his age.

By starting the interview with background questions, the interviewer gains some general information about the witness. It also allows the witness to get comfortable answering the interviewer's questions.

2. NARRATIVE QUESTIONS

The first questions about the substance of the case are typically "narrative" questions. Narrative questions are open-ended, and they ask the witness to give long, general, narrative answers on a topic. Examples of narrative questions are: "What happened on the night your neighbor was murdered" and "Tell me about the dispute between Mr. X and Ms. Y." The questions do not ask for specific details, they ask for a long, generalized description.

Narrative questions are used to get a quick overview of what happened and an idea of what the witness knows. It can be compared to flying in a plane at 30,000 feet – you are not able to see individual trees or people, but you can see whether you are over an ocean, mountains, a city or farmland. You will use the general information that you learn through narrative questions later to ask detailed specific questions.



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3. DIRECT EXAMINATION

Direct examination is typically used after all of the narrative questions have been asked. Direct questions ask specific questions that seek specific information, in order to fill in details about the event.

Direct examination usually uses questions that ask:



Examples of direct examination questions include:



During direct examination it may also be appropriate to ask questions that seek a "yes" or "no" answer. For example, you may have information from the witness' narrative answers to ask a question such as: "Did you drive to Bago to see your brother?"

When conducting direct examination, your goal is not to confuse or trick the witness. As a result, it is best to ask questions in a systematic order. For example, you may want to ask questions about an event in chronological

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order. Or, you may want to organize your questions by topic and ask all your questions about one topic before going onto the next topic.

To make sure that you get accurate answers, ask simple questions that require only one answer. Do not ask “compound” questions that ask more than one question at the same time. For example, do not ask “When you left the restaurant, did you go home or did you go back to the office?” Instead, ask “When you left the restaurant, where did you go?” Or ask “When you left the restaurant, did you go home?” If the answer is no, you can then ask further questions to find out the details.

Also, be sure to use simple language that the witness will understand. If the witness is confused, you will not get good evidence.

Cross-examination can be confrontational, but it should be conducted without abuse or coercion.

4. CROSS-EXAMINATION

Cross-examination is used to determine if there are problems with the witness' memory, or if the witness is biased in favor of or against one party to a dispute. It is most typically used with uncooperative witnesses or witnesses opposed to your case, but it can also be used to “test” your client or witnesses to see how they will perform at trial when they are cross-examined by the other side.

Cross-examination techniques include:

- **Pointing out conflicts in the witness' testimony:**

For example, the first time you ask the witness where he went after the shooting he tells you he went straight home, but later in the interview he says he went to visit his girlfriend. You should ask him about the conflict, and you may want to indicate that you think he is not telling the truth.

- **Using “leading” questions:**

Leading questions are questions that suggest an answer to the witness. An example is: “After the shooting, you went to visit your girlfriend, correct?”

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You must be especially careful when cross-examining your client or witnesses that are friendly to your case. It is often important to cross-examine these individuals to “test” their story and to see how they will handle themselves at trial. However, you need to be careful not to create distance between yourself and these important individuals. As a result, before you start the cross-examination you may want to warn them that you are going to cross-examine them and explain why you are going to do it.

- **Silence:**

Not saying anything after a witness gives you an answer that you do not believe or that you think is incomplete can be very effective. The silence will probably be quite uncomfortable for the witness, and they may fill the silence by giving you more information or a more truthful answer.

- **Asking questions in a random order:**

When conducting direct examination, you want to ask questions in a logical, orderly manner. But with cross-examination you may want to try the opposite and see if the witness changes her story when questions are asked in an unpredictable order. If the witness is telling the truth, it should not be difficult for the witness to give the same answers to random questions that she gave when she answered questions that were asked in a logical order. However, if the witness is not telling the truth but is instead telling a story that she memorized, asking questions in a random order may confuse the witness and cause her to give different answers than she gave during direct examination.

- **Repeating questions in a different manner:**

This technique is somewhat similar to asking questions in a random order. It involves asking multiple questions that ask for the same information, perhaps at different times during the cross-examination, but phrasing the question differently each time to see whether the witness changes his testimony. For example, the first time you might ask: “Did you go to your girlfriend’s after the shooting?” Later in the cross-examination you might ask: “After the shooting you went home, right?”

Cross-examination mistakes

Many lawyers make similar mistakes when doing cross-examination. These include:

- **Starting cross-examination questions too early in the interview.**

Nobody enjoys being cross-examined. Witnesses may become uncooperative during or after cross-examination. For this reason, you do not want to begin your cross-examination of a witness until after you have gotten all the information you can get through narrative questions and direct examination.

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- **Using too much cross-examination**

If you have done a good job with your narrative questions and direct examination, cross-examination will usually only be a small part of your questioning of a witness.

5. USE OF THE DIFFERENT QUESTION TYPES

Open-ended narrative questions are the first questions you should use when asking about the case. You will usually want to ask all of your narrative questions before you fill-in details using direct questions. In fact, after an opening narrative question (for example, “What happened on the night of the murder?”), you will probably want to ask additional narrative questions, such as “What happened next?” or “Can you remember anything else?” until the witness indicates they do not have more information. But even after the witness says they do not know more, you may want to continue asking narrative questions (for example, “Please describe the shooter” or “Tell me about the gun”) before moving onto direct questions. When you cannot think of more narrative questions, or it becomes clear that more narrative questions will not be effective, **use direct questions to dig deeper** into what the witness told you in their narrative answers. Finally, if appropriate, **use cross-examination questions** to test the witness’ story and to challenge information that is not helpful.

When asking narrative questions, you will use few words but the witness should give long answers. Depending on the witness and the case, it may be that most of the words spoken by the witness are in response to open-ended narrative questions. When asking direct questions, the exchange between the witness and interviewer will be back-and-forth, more like a conversation. However, because the interviewer is trying to get information from the witness, the answers will often be longer than the questions. But with cross-examination, where the interviewer is challenging the witness, the interviewer will often talk more than the witness. Below is a graphic that approximates the relationship between the three question types, the comparative amount of talking that the interviewer and witness are likely to do during the use of each question type, and the percentage of the interview that should be used with each question type.

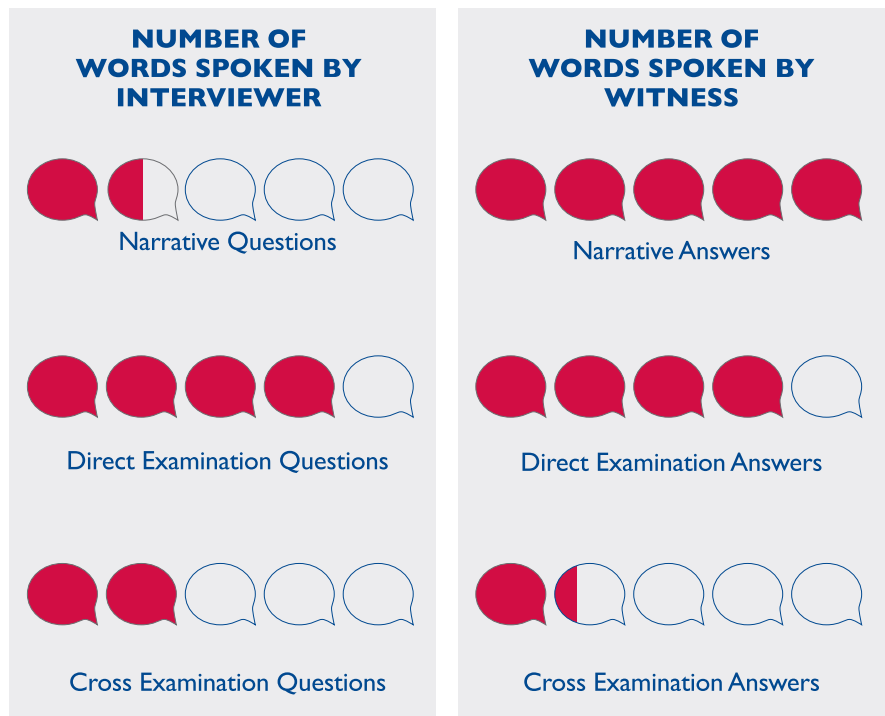
As you become a more experienced interviewer, you may want to modify your practice of asking all possible narrative questions before asking your first direct examination question. Instead, you can try alternating between narrative and direct questions. With this approach, you first ask a narrative question and allow the witness to give a long answer to the question.

Then you ask direct questions about the information given in response to the narrative question.

Next, you ask another narrative question, followed by direct questions concerning the response to the second narrative question.

You then repeat this process until you are done asking narrative and direct questions. There is, however, a risk to this approach! Often lawyers forget to go back to asking narrative questions after they ask their first direct examination question. If you fail to ask all possible narrative questions, you will miss important information.

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L. SPECIAL CONCERNS RELATED TO VULNERABLE WITNESSES

You must take special care when interviewing children and crime victims. This is also true if the witness is the victim of a gender-based crime or a sexual assault.

Where the witness is a child, a victim of a gender-based crime, or a victim of sexual assault, it may be inappropriate for a man to be in the room, particularly if the perpetrator was a man. In these circumstances, having a man in the room may make the witness fearful and uncooperative.

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If the witness is vulnerable for any reason – including age, having been a victim, or reduced mental capacity – it may be appropriate to ignore the general rule that others should not be in the room during the interview. In particular, it may be appropriate to allow a family member or friend in the room if the family member or friend will not be a witness in the case. However, keep in mind that some witnesses may be less comfortable talking about events they consider shameful in front of family members or friends.

If no family member or friend is present during the interview of a vulnerable person, you must consider whether the interview setting has so much privacy that the witness will feel uncomfortable. This is particularly true if the interviewer is a man and the witness is a victim of gender-based violence or sexual assault.

You will also need to adjust your questioning techniques where the witness is a victim and be sensitive to what happened. For example, if the witness recently experienced a traumatic event, you may want to keep your questioning fairly short and delay conducting cross-examination until a later date.

M. WITNESS CREDIBILITY

Through your use of narrative questions, direct examination and cross-examination, the interviewer must evaluate the credibility of a witness.

Several factors may affect witness credibility. These include:

- **Prejudice:**

Does the witness have preexisting opinions about certain types of people? These could be prejudices related to race, religion or gender, or they could be related to where someone grew up, their education level, their physical appearance, their profession, or many other factors. The witness might not even be aware of her/his prejudice, but the prejudice may still influence their testimony.



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- **Bias:**

Bias is similar to prejudice, but it may not be based on something as clear as race or religion. The witness may simply favor one side, the same way that a sports fan in Myanmar might favor FC Barcelona over Real Madrid CF.

- **Interest in the case:**

A witness may have a financial or personal interest in the case. For example, it could be that the witness' property will be worth more money if one party is successful. Or it could be that the witness' property will flood more often if one party wins the dispute and constructs a large building. Or, the witness might be a friend, relative, or enemy of one of the parties. Any of these factors could influence a witness' testimony.

- **Ability to perceive:**

There may have been limitations on a witness' ability to observe what happened. For example, the witness may have poor eyesight or been too far from an incident to see clearly. Or the witness may not have been able to fully understand what was happening because of age, mental abilities, drugs or alcohol.

- **Faulty memory:**

Scientific studies show that even if witnesses strongly believe that they are correctly recalling what took place, they may be wrong (see the Section N, "False Memories" starting on page 38). In fact, witnesses who are certain they are correct are no more likely to be correct than witnesses who are unsure if they are correctly recalling the events. This is true even for "professional" witnesses trained to observe, such as police. As a result, you should always try to find additional witnesses or other evidence that supports or refutes a witness' testimony, particularly if there is only one witness in a case.

- **Untruthfulness:**

It is, of course, always possible that the witness is simply lying to you. This could be because of bias or an interest in the case, or it could be simply because the witness does not want to get involved in the case. Some of the most common lies by witnesses are "I do not recall," "I did not see what happened," or "I do not know."

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Remember that witnesses do not usually admit to factors showing they are not credible. For example, a witness may not admit that they were not wearing their eyeglasses when the events took place. You will need to ask about factors that could hurt a witness' credibility, including potential bias and lack of ability to perceive. You must try to uncover issues relating to the witness' credibility through your questioning and active listening.

N. FALSE MEMORIES

We would all like to believe that our memories are like video cameras that capture every moment, and that we can later recall events perfectly. However, that is not the case – our memories often deceive us.

Our memories often are not perfect even immediately after an event, and they often change over time. These changes to our memories can happen when the memories mix with what we hear about the event from others and form into a revised memory of what took place. Our minds can also convince us that we experienced events that we actually only heard about. These are called “false memories,” and we believe these memories are real. Sometimes these false memories make us believe that events happened the way we wish they happened (for example, that we pulled the victim of an accident out of a burning car when we only watched someone else do it). Whatever the reason, these false memories convince us that the way we “remember” an event is how it actually happened. The same can happen to witnesses.

It is important to know that the interviewer can modify a witness' memory of an event by the way questions are asked. If you suggest that the event happened a certain way, the witness may convince themselves that is how it happened. And if you use certain language, such as asking what happened when one car “smashed” into another car instead of asking what happened when the two cars “hit,” it may change the witness' recollection of what took place.

Despite all the potential problems with witness credibility, remember that most witnesses try to tell the truth. You should not overreact if a witness tells you something that conflicts with something else he told you or something that a different witness told you. Inconsistencies are to be expected, particularly when events took place long ago – *they do not mean that the substance of what you are being told is not true!* In fact, if the testimony of witnesses matches too closely, it may mean that the witnesses planned the story they would tell and are lying.

False or distorted memories are a special challenge for interviewers. That is because the witness believes they are telling the truth. Do not treat every witness as if everything they tell you is wrong. But also do not automatically believe everything you are told by a witness who is trying to be truthful. Always try to find evidence that confirms a witness' recollection!

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Unfortunately, it is often impossible to know if what someone is telling you is the truth or an inaccurate or false memory. As a result, you should always try to find additional witnesses or evidence that supports or refutes a witness' testimony.

O. COMMON INTERVIEW ERRORS

Many interviewers make similar errors. These include:

- **Allowing expectations** about what the witness is going to say **and assumptions** about the case **to influence the interview**. You must remember to actively listen to the witness so that you really hear what they are saying.
- Interviewers sometimes **jump to conclusions** about the case. If this happens, they will not hear evidence that contradicts those baseless conclusions.
- A related mistake is **rushing through questions**, perhaps because you think you know what the witness is going to say. This causes mistakes and causes you to miss important information or subtle clues.
- Another common error is **talking too much**. You do not gain information when you are the one talking. You should let the witness do most of the talking.
- Conducting the interview where **someone else can hear**. If someone else can hear the interview, the interviewer may not tell the truth or the second witness may change his/her testimony.
- Placing too much importance on **minor inconsistencies**. Witnesses sometimes make mistakes or have inconsistencies in their stories, but it does not mean that they are lying.
- Interviewers sometimes **fail to verify information**, thinking the witness could not be lying. No matter who the witness is, you must consider the possibility that the testimony is not the truth.
- Interviewers often **forget to ask follow-up questions**. The information witnesses provide is often an opinion or hearsay. The opinion or hearsay may not be correct and cannot be used as evidence, so you must get evidence that confirms or refutes the opinion or hearsay.



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- Interviewers sometimes have prejudices and biases, whether they know it or not. These prejudices or biases may cause an interviewer to **believe or disbelieve a witness because of who they are**. It is important to remember that criminals will sometimes tell the truth, and religious leaders may sometimes lie.
- Interviewers sometimes **get angry** at a witness because they believe the witness is not telling everything they know or is lying. This is rarely effective and is more likely to hurt your case.
- Interviewers often **ask complicated or confusing questions**. An example of this is when the interviewer asks multiple questions as part of the same question. Keep questions simple if you want to get clear answers.



P. REVIEW

Witness interviews should be conducted at the first suitable opportunity. However, unless there is a good reason, only conduct interviews after you are able to prepare for the interviews.

The best way to prepare for interviews is to develop an Investigation Plan, it will serve as a guide to make sure you do not miss important information. However, do not write detailed questions, they will interfere with the interview.

Establish rapport with the witness when conducting interviews. Recognize the impact that the interview setting will have on the interview.

Have two interviewers in the room if possible, and make notes either during the interview or immediately afterwards. You may also want to record the interview on your telephone or some other way.

INTERVIEWING WITNESSES

Listen “actively” when conducting an interview. Think about what the witness says and ask appropriate follow-up questions. Periodically summarize the witness’ key points to be sure that you understood the witness correctly and so that the witness knows what they are saying is important.

There are three types of interview techniques: Narrative Questions, Direct Examination, and Cross-Examination. The techniques should be used in that order. Be sure that you ask all Narrative and Direct questions before starting Cross-Examination.

Take special care when questioning victims of crime or children, and recognize that the interview may be a difficult or scary experience for them. Be especially careful when choosing the setting for these interviews.

Do not allow your assumptions about the case or the witness to cause you to miss important information.

Remember that information received from a witness may not be correct, even if the witness is trying to be helpful and believes the information is correct. Whenever possible, verify the witness’ testimony.

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CHAPTER 3:

ALTERNATIVE DISPUTE RESOLUTION



Alternative Dispute Resolution (“ADR”) is when the parties to a dispute try to resolve the dispute outside of the courts. If successful, ADR usually has numerous advantages over going to court. It is typically faster and cheaper than taking a case to court, more creative solutions are possible, the parties have control over both the process and the outcome instead of a judge, and it may preserve the parties’ relationships.

The two most common types of ADR are negotiation and mediation. This chapter will discuss the differences between negotiation and mediation, and provide techniques that can be used with each approach.

A. NEGOTIATION

Negotiation is the most common ADR process, and it is a part of everyday life. We negotiate with friends, co-workers, family members, shop owners, and others. Examples include when you go to the market and bargain over prices, or when you try to get friends to agree on a restaurant for dinner.

Negotiation has many advantages to taking a dispute to court. It is inexpensive and informal; the solution is developed by the parties, not imposed by a third party; it may preserve the parties’ ongoing relationship; and it is private. There are, however, also potential disadvantages to negotiation. For example, one party may use the negotiation process to delay a solution and prevent the other side from bringing a lawsuit. Also, if the parties negotiate a settlement, there is no government mechanism to guarantee that the parties fulfill their obligations. Also, negotiation is very difficult if one party is much more powerful than the other.

Although there are a few potential disadvantages to negotiation, it should almost always be the first method used in an effort to resolve a dispute.

ALTERNATIVE DISPUTE RESOLUTION

I. TWO APPROACHES TO NEGOTIATION

There are two approaches to negotiation. One is called “position-based” negotiation. Position-based negotiation assumes that there is a fixed amount of resources to be distributed between the parties, and if one party gains then the other party loses. This is the traditional approach to negotiations, where the parties state their positions early, engage in hard bargaining, and each party is concerned only with its needs. This is called a “win-lose” approach because everything one party gains means something less for the other party. But this approach has a weakness: it assumes that a dispute is only about money or assets.

In almost all cases, it is worthwhile to try an interest-based approach to negotiation first. This is because the parties may have common interests that they do not realize.

The other approach is called “interest-based” negotiation, and it takes a different approach. Interest-based negotiations assume that there may be interests other than money or assets involved, and that there may be ways that both parties can benefit from the negotiation. This is called a “win-win” approach, and the parties try to find solutions that offer advantages to both parties.

To understand the difference between the two approaches, assume there is an employer and an employee, and the employee wants more money. With position-based negotiation, any money that one party gains the other party loses. With interest-based negotiation, the parties try to find a way that both can benefit. For example, the employer may be happy to pay an employee more money if the employee changes the hours that she works.

**Example of Win-Win:
The Land Sale**
Two people want to buy the same piece of land. They know that if they bid against each other, the price will go up. After talking they realize that one wants to grow rice on the flat part of the land, and the other wants to plant fruit trees on the hills. They agree to buy the land together and split the cost. That is an example of an interest-based negotiation.

In order to find out if the parties have common interests, they need to take a different approach to their negotiations. In position-based negotiations, the parties say what they want without saying why they want it. In interest-based negotiations, each party explains its interests or needs.

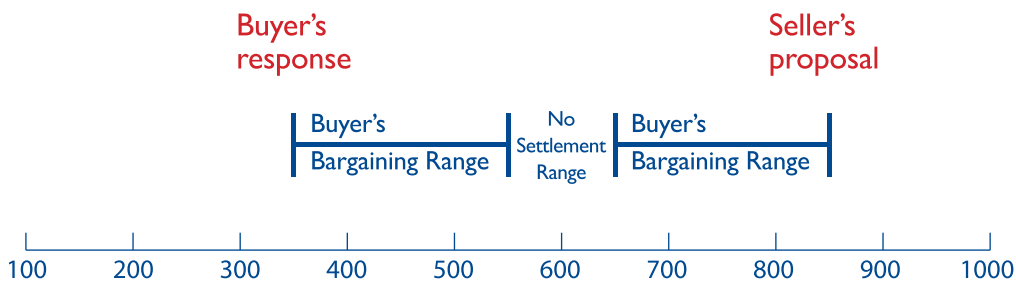
Of course, interest-based negotiations will not always be successful. Some negotiations are only about money. In those cases, position-based negotiation may be more appropriate.

ALTERNATIVE DISPUTE RESOLUTION

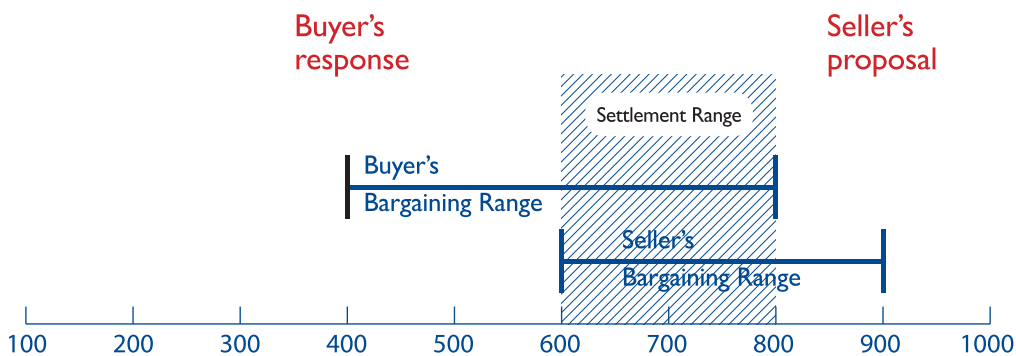
2. PRINCIPLES OF POSITION-BASED NEGOTIATION

Parties who use position-based negotiation will only reach a settlement if the parties' prices are within what is called the "Bargaining Zone."

For example, assume that Khin wants to sell her television and that Ban wants to buy a television. Ban hopes to buy a television for \$350, but is willing to pay \$550. Khin is willing to sell her television for \$650, but hopes to sell it for \$850. The buyer's and seller's bargaining zone do not overlap, so they will not reach an agreement regardless of how well they negotiate.



But if Ban's maximum buying price is \$800 and Khin's minimum selling price is \$600, the parties' bargaining zones overlap and there will probably be an agreement somewhere between \$600 and \$800.



ALTERNATIVE DISPUTE RESOLUTION

For an agreement in a position-based price negotiation, three conditions must occur:

- The price must be within a range that both buyer and seller consider acceptable
- The seller must believe the buyer will not increase her offer
- The buyer must be willing to walk away without an agreement

Position-based negotiation works best where the only issue is money. But there are many disadvantages to position-based negotiation:

- It assumes there is no possibility for both parties to benefit and discourages the search for creative win-win solutions
- It encourages settlements that “split-the-difference” even if the result is not logical
- Parties lock themselves into positions because they want to “save face”
- It creates an adversarial relationship between the parties and damages the parties’ relationship

3. PRINCIPLES OF INTEREST-BASED NEGOTIATIONS

The general principle of interest-based negotiations is that the parties can achieve better results if they look for creative ways to find the best solution for everyone.

Interest-based negotiation is superior to position-based negotiation in several ways:

- The parties work together to meet each other’s interests, instead of exchanging demands and offers
- The process helps produce fair and justifiable results
- The process allows the parties to maintain and possibly strengthen their relationship



ALTERNATIVE DISPUTE RESOLUTION

There are four general rules for interest-based negotiation:

- a) Separate the people from the problem
- b) Focus on interests, not positions
- c) Invent options for mutual gain
- d) Insist on using objective criteria

Each of these will be discussed separately.

a. Separate the problem from the people

During negotiations, parties can become angry, hostile, offended or frustrated. This can make it impossible to reach agreement. But you can get past this problem if you separate the people from the problem.

To separate the problem from the people:

- Do not focus on who was right or wrong, make the negotiation about reaching an agreement
- Do not make personal attacks against the other party
- Do not cause the other party to “lose face”

b. Focus on interests, not positions

See the example to the right. The differences between the positions and interests in that example are shown in this chart:

	Positions	Interests
Kyi Kyi	Window should be fully open	Wants fresh air, feels that room is stuffy
Tin Tin	Window should be fully closed	Feels sick and is worried that the wind may make illness worse

Example of Win-Win:

The Open Window

Kyi Kyi and Tin Tin are both at the library. Kyi Kyi wants the window open and Tin Tin wants the window closed. They argue about where to leave the window — halfway open or open just a little, but they cannot agree.

The librarian walks in and asks about their disagreement. She asks Kyi Kyi why she wants the window open and she replies “I want some fresh air.” She then asks Tin Tin why she wants it closed and she replies, “I am sick and want to avoid the wind.”

The librarian thinks for a minute and easily resolves the problem – she opens another window farther away. She has brought in fresh air for Kyi Kyi but without the wind to bother Tin Tin.

ALTERNATIVE DISPUTE RESOLUTION



In a position-based negotiation, the parties would have likely resolved the matter by leaving the window partly open. This would have left Tin Tin feeling sick and Kyi Kyi feeling uncomfortable. With interest-based negotiations, the librarian was able to find a solution that satisfied both of them. When interest-based negotiations are possible, the results are usually more satisfying than position-based negotiations.

When engaged in an interest-based negotiation, remember that most people have more than one interest. For example, the manager of a large company has:

- The interests of his company's finances
- The interests of his personal career
- The interests of his employees, and
- The interests of his family

The better the parties understand each other's interests, the more likely it is that they will find an effective solution.

Interest-based negotiations are most successful when the parties can find shared interests. For example, assume that a clothing manufacturer finds a defect in a delivery of fabric from his long-time, regular supplier. He has two interests: 1) to get the money for the defective fabric returned, and 2) to maintain the relationship with the supplier, who has done a good job for years. The supplier also has two interests: 1) to keep the money for the fabric, and 2) to maintain the relationship with his customer, who has given him business for years. The fact that both parties share an interest – maintaining the relationship – makes this dispute especially appropriate for an interest-based negotiation.

ALTERNATIVE DISPUTE RESOLUTION

c. Invent options for mutual gain

If parties are going to successfully settle a dispute, they need to invent options that allow both parties to benefit. To do this, each party needs to try to see the dispute from the other party's standpoint.

There are four different techniques for inventing options that allow both parties to benefit:

1) Separate the process of inventing possible solutions from the process of judging the options

This process is often referred to as "brainstorming." Parties suggest solutions to the dispute without concern as to whether they are realistic or the other party will agree, and neither party evaluates the options during this process. The goal is to have parties think creatively and develop many possible solutions.

2) Separate out the parts of the dispute

Disputes are often made of up several smaller disputes within a larger dispute. In such cases, try to resolve each part of the dispute separately instead of looking for a single answer to the entire dispute.

3) Look for ways that both sides can gain

Do not assume that a gain for one party is a loss for the other party. Look for ways that the parties' different interests make mutual gain possible. An example of this is the land hypothetical, where one party wanted to use the land to grow rice and the other party wanted to plant fruit trees.

4) Try to make the other side's decision easy

Try to propose a solution that could be to the other side's advantage.

Here is an example:

The High-Priced Football Player:

A football player and his team have a dispute as to how much the player should be paid. Last year the player was paid 15 million kyats and scored 25 goals. He wants to be paid 20 million kyats this year.

Example of Finding Mutual Gain: Party A wants to sell his motorcycle for a high price, but he does not need the money immediately. Party B needs a motorcycle but does not have enough money.

Solution: Party B pays a high price for the motorcycle, but divides the payment into 12 monthly installments.

ALTERNATIVE DISPUTE RESOLUTION

The player thinks he will score 35 goals this year, but the team is afraid he is old and may score only 15 goals. They agree that the player will be paid only 10 million kyats in salary, but that he will receive a 300,000 kyats bonus for each goal he scores. Whichever side is right will benefit from this arrangement.

15 goals x 300,000 kyats = 4.5 million kyats + 10 million kyats salary = 14.5 million kyats

25 goals x 300,000 kyats = 7.5 million kyats + 10 million kyats salary = \$17.5 million kyats

35 goals x 300,000 kyats = 10.5 million kyats + 10 million kyats salary = 20.5 million kyats

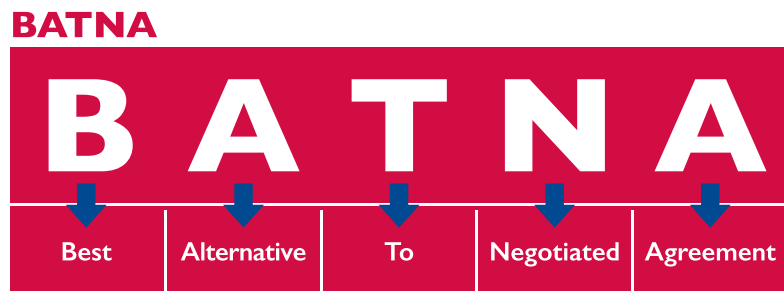
Example of Fair Procedures
In the football player example, the player’s bonus does not depend on whether he has a “good” year or a “bad” year. Instead, there is an objective standard so that there can be no question as to how much the player should be paid.

d. Insist on objective criteria

Fairness is an important part of successful negotiations. Parties may refuse to settle even if a proposal benefits them if they feel it is not fair. As a result, it is important to have objective criteria that allow each party to determine whether a proposed resolution is fair to them.

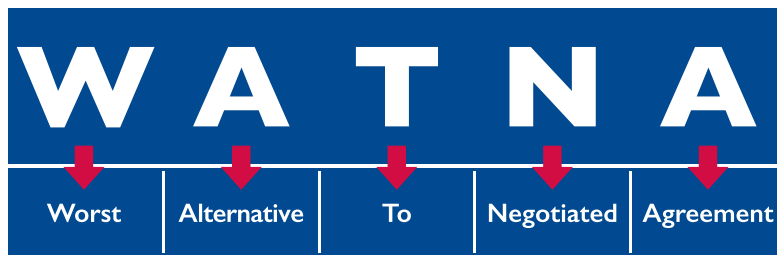
4. BATNA AND WATNA

Regardless of whether the parties use a position-based approach or interest-based approach, it is important that each party consider its “BATNA” and “WATNA.”



ALTERNATIVE DISPUTE RESOLUTION

WATNA



For example, a farmer with land along a river wants to farm his land, but the government wants to build bridge on the land. The farmer has two options: negotiate a resolution with the government or fight the government in court.

When deciding whether to negotiate, the farmer must consider his **BATNA**: What is the BEST result he can reasonably expect if the dispute goes to court? The answer is probably that the court will order the government to pay him for his land. The farmer must recognize that it is unlikely that he will be allowed to continue farming the land and that the court will tell the government it cannot build the bridge.

The farmer must also consider his **WATNA**. Often, parties forget how bad things can get if there is no agreement. In this example, the farmer's **WATNA** might include:

- Being forced off the land with no compensation
- Violence
- The cost of a lawyer
- Angry neighbors, who want the bridge to be built

When deciding whether to accept a possible negotiated resolution, the parties must consider the likelihood of getting their **BATNA** and also the likelihood of getting their **WATNA** if the case is not resolved.

ALTERNATIVE DISPUTE RESOLUTION

A party must also be sure that their **BATNA** and **WATNA** are realistic. Parties often have unrealistic expectations, thinking their claims are stronger or worth more money than they are and that the other side's claims are weaker or have less value than they do. Parties should also recognize the many advantages to resolving a case through negotiation, including a speedier resolution, no lawyer or court fees, and less mental stress. In addition, parties must recognize the possibility that a court will rule in favor of the opposing party. As a result, even if a party is convinced that it will be successful in court, it will often be in their best interest to accept a settlement that is not as favorable as they believe they would obtain in court.

B. MEDIATION

Mediation is a common ADR process that involves third-parties. In mediation, a neutral non-party called the “mediator” tries to help resolve the dispute in a way that is acceptable to both sides. The mediator does not favor one party over another party.

Mediations differ from court cases in several important ways. One difference is that the resolution is not based on strict legal standards – it is based on principles that seem fair in that case. Another difference is that, unlike a judge, the mediator has no power to impose a resolution on the parties. Instead, the mediator assists the parties to develop solutions that meet their interests.

I. DIFFERENCES BETWEEN MEDIATION AND NEGOTIATION

There are significant differences between mediation and negotiation.



ALTERNATIVE DISPUTE RESOLUTION

Negotiation	Mediation
No third-party involvement. It is a private process.	A neutral third-party presides over the process.
Can take place over many months or years. Process can start and stop.	It is usually a single event that lasts one or more days. There is a clear beginning, middle and end to the process.
Can take place face-to-face, by telephone, or by email.	Takes place face-to-face, although parties are sometimes in separate rooms.
Can proceed with either an interest-based approach or a position-based approach.	Usually uses an interest-based approach.

2. ADVANTAGES TO MEDIATION

Mediation has the same advantages over a court proceeding that a negotiation has. Mediation also has several advantages over negotiation:

- A settlement is more likely because a third-party helps the parties to move past position-based discussions and helps the parties to think creatively about possible solutions.
- It often resolves disputes faster than negotiations.
- The mediator helps to balance the power between the parties.

The main disadvantage of mediation over negotiation is that sometimes the mediator is paid, which makes it more expensive than negotiation. However, if the mediator is not paid, there are few disadvantages to mediation.

ALTERNATIVE DISPUTE RESOLUTION



Even if the parties tried negotiation and were not able to resolve the dispute, it is often worth trying mediation before taking a dispute to court. It saves time and money, and it is more likely to result in a resolution that the parties are happy with.

3. ROLE OF MEDIATOR

The mediator serves as a neutral third-party who helps the parties resolve the dispute. The mediator:

- Identifies areas of mutual interest,
- Evaluates options for a resolution, and
- Helps develop new options for settlement

The mediator also gives each party an objective assessment of their claims, and reminds them to consider their BATNA and WATNA. The mediator then tries to build consensus around options that best address the interests of parties.

But a mediator is not a judge. The mediator does not decide the outcome or whether the dispute is resolved, the parties do that.

C. REVIEW

Alternative dispute resolution usually has several advantages over going to court:

- It is faster
- It is cheaper
- More creative solutions are possible
- Parties have control over the outcome
- It may preserve the parties' relationships

ALTERNATIVE DISPUTE RESOLUTION

Negotiation is the most common ADR process, and there are very few disadvantages to it.

There are two approaches to negotiation:

- 1. Position-based:** This is the traditional approach to negotiation and takes a “win-lose” approach to negotiation
- 2. Interest-based:** This approach to negotiation is more cooperative and looks for “win-win” solutions

Parties often think a dispute is only about money, but other interests are often involved. Unless it is clear that the interest-based approach will not succeed, it should be tried in most negotiations.

In any negotiation, parties must consider their BATNA and WATNA. The parties must be realistic when developing their BATNA and WATNA, and recognize the many disadvantages of taking a dispute to court.

Mediation is a common ADR process that involves third-parties. In mediation, a neutral person who is not a party to the dispute helps the parties to resolve their disagreement.

It is almost always worth trying mediation before taking a dispute to court. Mediation saves time and money, and is more likely to result in a resolution the parties are happy with.

The role of the mediator is to help the parties identify areas of mutual interest, evaluate options for a resolution, and develop new options for settlement.

CHAPTER 4:
TRIAL SKILLS



The best ways to increase your chance of success at trial are: 1) thorough preparation of the case before the trial begins, and 2) knowing the most effective ways to present evidence and arguments at the trial. This section will cover both those topics.

A. TRIAL PREPARATION

It is extremely important that you fully prepare your case for trial before the trial begins. There are many components to that preparation, including locating and interviewing witnesses, identifying exhibits, and researching the law. This section will cover the preparations that must be done after the initial case investigation is completed but before the trial begins.

I. THEORY OF THE CASE

To be successful at trial, you must have a clear, logical and convincing “theory of the case.”

The theory of the case is your side’s version of “what really happened.” It combines the undisputed and disputed facts into a single story that supports your claims. Everything you do at trial should be consistent with your theory of the case.

A party should be able to summarize its theory of case in one or two sentences. For example, in a murder case the prosecution’s evidence may be:

- There was an argument
- After the argument, the victim was shot
- Witnesses identified the defendant as the shooter

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The prosecution will have a different theory of the case from the defense. Typically, the prosecution's theory will also include a "motive" – why the defendant committed the crime.

The defense counsel is likely to have one of three theories of the case:

1. The defendant did not shoot the victim
2. The defendant shot the victim but was acting in self-defense, or
3. The defendant shot the victim but it was an accident

How the defense counsel presents the case at trial will depend on which of the theories is her theory of the case.

Similarly, your theory of the case will decide how you present evidence at trial. As a result, you must review the evidence and decide on your theory of the case before preparing for trial. Unless new evidence gives you a reason to change your theory of the case, you should maintain that theory of the case until the conclusion of the trial.

2. TRIAL NOTEBOOK

It is extremely important that you are well organized before the trial begins. It is particularly important that the electronic and paper files for the case are well organized. This is because you will need immediate access to these materials during trial.

Before deciding to have your Trial Notebook on a laptop, make sure that the court will allow you to bring the laptop into court and that you will have access to a power outlet.

The most effective way to organize the case files is by creating a Trial Notebook. The Trial Notebook is often an actual notebook, but it can also be done on a laptop if you will be allowed to bring the laptop into court.

The Trial Notebook should include the following sections:

- Case chronology
- Evidence grid
- Outline of opening statement (if it is permitted by the judge to be made in court)
- Witness index (with contact information)

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- Witness folders
- Exhibit index
- Key court papers
- Outline of closing argument

Most of those sections do not require any explanation. However, below is some guidance on the Evidence Grid and Witness Folders.

a. The Evidence Grid

The Evidence Grid helps to focus your trial preparation by taking the elements (ingredients) of each crime or cause of action and identifying the evidence and testimony relevant to each element.

The Evidence Grid shows you the strengths and weaknesses in your case by making clear:

- Which evidence supports your case
- Which evidence may hurt your case, and
- Which elements lack evidence

Evidence grids are best organized as a chart. For each cause of action, list each element of the cause of action. Next to each element, list the evidence (witnesses and exhibits) that proves or disproves the element. Then repeat this process for every crime or cause of action in the case.



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The result will be something like this:

Section 321: Voluntarily Causing Hurt

Element	Prosecution Witness	Defense Witness	Physical Evidence
1. An act	1. Victim		
2. Done with either: a) intent to cause harm, or b) knowledge act is likely to cause harm	1. Victim: Before the act, defendant said "You are going to regret what you did." 2. Customer: Defendant laughed when he saw victim in pain.	1. Defense expert: Defendant is mentally impaired and unable to form intent or know the result of his actions.	Prosecution: 1. Defendant's criminal record showing history of assault
3. Actual hurt to a person	Victim: Testimony about injury and pain		1. Medical records 2. X-rays
4. Hurt done by client	Victim: Identification of client	Client's brother: Defendant not at scene of crime	

If the Evidence Grid indicates that your case is weak, you should consider actively pursuing a resolution of the case before the trial begins.

As your trial preparation proceeds, you should add new evidence into your grid. You may also decide to remove some claims because the evidence doesn't support those claims, or to add claims based on new evidence. By the time you start trial, the Evidence Grid should include convincing evidence on all the key points required for your case.

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b. Witness Folders

You should have a separate witness folder for each of your witnesses. The folder should include:

- A list of the goals for that witness
- An outline of the direct examination for that witness
- The exhibits to be introduced at trial through the witness
- Proof you requested witness to appear at trial

3. PREPARING WITNESSES FOR TRIAL

Even though you already interviewed your witnesses, you must prepare them to testify at trial. The courtroom will be a very unfamiliar environment for them, and you want them to be as comfortable and relaxed as possible. You also want to be certain that they will testify in a way that supports your theory of the case.

When preparing your witnesses, you should:

- Review with the witness any prior statements they made and any physical evidence that is relevant to their testimony. In particular, review with them any exhibits that you intend to introduce through them at trial.
- Practice the questions you will ask them at trial.
- Practice any questions you think the opposing lawyer may ask at trial.

You should always prepare each witness separately from other witnesses so that the testimony of one witness does not “contaminate” the other witness.

Do not write out detailed, specific questions for your direct examination. Just as when you are preparing to interview witnesses, you should prepare only an outline of the topics you want to cover during the direct examination of witnesses [see Chapter 2, Section D, "The Investigation Plan", starting on page 15]. Writing out detailed questions will prevent you from having a good rapport with the witness and from actively listening to the witness' testimony. This will prevent you from asking follow-up questions that are needed to clarify anything that is unclear from the witness' testimony.

The outline should, however, include references to any evidence that supports the witness' expected testimony. That way, if the witness forgets a portion of his testimony or tries to change his testimony, you will be able to direct the witness back to the testimony you were expecting.

Again, do not write out detailed questions – only an outline of the topics to be covered with the witness! Use your preparation session with the witness to practice asking questions based on your outline of the topics to be covered with the witness.

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In addition to preparing your witnesses to give testimony, you should prepare them for what will take place in court. You should explain:

- What to wear to court
- How to behave in the courtroom
- How the courtroom will be arranged
- What will happen in court
- That they should listen carefully to all questions, particularly those asked by the opposing lawyer, and that they should say if they do not understand a question

B. TRIAL SKILLS

In addition to thoroughly preparing your case for trial, you will also need to have the skills to present your case in court. This section discusses the different stages of a trial and gives guidance on what to do at each stage of the trial.

I. OPENING STATEMENTS

In many countries, lawyers make a presentation to court before the first witness is questioned. This presentation is called an “opening statement.”

Opening statements are an important part of the trial. It is your chance to explain to the court your theory of the case and your interpretation of disputed facts. It is also your opportunity to show the judge you are a competent, confident advocate.

Because of the importance of opening statements, lawyers should urge the judge to allow each side to make an opening statement at the beginning of the trial. It may be possible to convince the judge to allow opening statements by explaining that the opening statements will allow the judge



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to have an understanding of the case before the trial begins, and that this may be helpful because the testimony and other evidence may not be introduced in a logical or orderly manner. In addition, because there may be delays between the testimony of different witnesses, the opening statements will allow the judge to understand how the testimony from one witness relates to the expected testimony of witnesses who have not yet testified. The judge will be able to see the “big picture” and be able to fit the smaller pieces of evidence into that “picture”.

If the judge allows you to give an opening statement, you should start with a brief overview that outlines your theory of case, providing a clear summary of what the evidence will show. You should state the facts clearly and forcefully, not feeling it necessary to apologize for any facts that are not favorable to your case.

You should also “personalize” your client (that is, give information that will cause the court to see your client as a person, not just a name or number) and “depersonalize” the opposing party. This is because before the case starts, to the court your client is just a name and Penal Code section, or a section of some other law. You need to make the judge see your client as a person, and ideally someone who deserves respect and compassion.

Limit your opening statement to the facts that you will introduce at trial; save your arguments on those facts for your closing statement. Be sure not to “oversell” your case by promising evidence that may not be introduced during the trial.

Perhaps most importantly, use a style of presenting that works for you (in English we say “Be yourself”). Different lawyers will have different ways of presenting in court based on their personalities. There is no right or wrong style, but you will need to find a style that is successful for you.

In English we call a description that provides an overview of what happened “painting a picture.” It is very helpful to “paint a picture” for the court during your opening statement.

Common ways of personalizing your client are to refer to your client by name and describing your client’s background or life. The opposing party should be referred to by its role in the case, such as “the plaintiff” or “the defendant.”

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a. Approaches to Opening Statements

There are two general approaches to opening statements: Narrative and Witness Testimony.

With the Narrative approach, the lawyer presents the facts as an outsider. For example, he might say:

The evidence will show that on June 13, Moe Min Naing went to the Little City Bar at 7 p.m. He worked at the Little City Bar from 7 p.m. to midnight, six days per week. Around 8 p.m., two men came into the bar wearing masks over their faces and holding guns. All of the customers were told to put their wallets on the bar. One of the gunmen collected the wallets, while the other gunman opened the cash register and took out the money...

With the Witness Testimony approach, the lawyer tells the story through the eyes of the main witness. For example:

On June 13 at 7 p.m., Moe Min Naing started work at the Little City Bar, just as he did every night, working from 7 p.m. to midnight. At around 8 p.m. the bar was still empty, so Moe Min Naing took a seat at the far end of the bar, facing the door. He looked through the window near the sidewalk and saw two men wearing dark clothes walk past. Moe Min Naing then saw the same men walk back in the other direction. Suddenly, the two men came into the bar, only this time they were wearing masks over their faces and holding guns. One man was tall, at least 100 kgs, and wearing a red shirt. The other man...

One method is not necessarily better than the other. You should decide which method works best for the particular case and your personality.



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b. Weaknesses

Every case, no matter how strong, has weaknesses. You must decide whether to raise those weaknesses in your opening statement.

If the opposing lawyer is aware of the weaknesses and you are certain that those weaknesses will come out during the trial, it is usually best to raise the weaknesses during your opening statement. This is because it allows you to show the weaknesses in the most favorable light, instead of having only the opposing counsel's version of the weaknesses in the judge's mind. However, if you think that the weaknesses may not come out at trial, you may want to wait and see if the opposing party is able to introduce evidence of those weaknesses during the trial.



2. DIRECT EXAMINATION AT TRIAL

a. General Principles for Direct Examination

Most cases are won because of the strength of your case, not the weakness of the other side's case. As a result, the direct examination of your witnesses is extremely important.

As the lawyer, your role is a bit like that of a movie director. You have the facts of the case, and get to decide which facts to focus on and which facts should get little attention.

No matter which facts you focus on, it is important that the evidence is presented in a logical order that is easy to follow. The most common approach for introducing evidence is chronological order.

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For example, in the case of an automobile accident, the plaintiff lawyer's direct examination of his client might go in this order:

- Witness background
- Description of location
- What occurred immediately before accident
- How accident occurred
- What happened immediately after accident
- Emergency hospital treatment
- Continued medical treatment
- Pain and suffering
- Financial loss because of accident

But in some cases, or with some witnesses, it may be best to introduce the evidence in an order that is not chronological. For example, for the direct examination of an expert, you may want the expert to give his final conclusion first and then ask about the steps he went through to reach that conclusion. You will need to decide which approach is best for each particular case and each particular witness.

Even though you do not want to call unnecessary witnesses, it may be necessary to call several witnesses with similar testimony. For example, the parties may disagree as to whether the defendant was at the scene of the crime, or whether the traffic light was red when the defendant drove into the intersection. In cases like these, you will likely want to have multiple witnesses who support your theory of the case to testify about these disputed facts.

You should only call as witnesses those individuals needed to prove (or disprove) the elements of a cause of action. If you call unnecessary witnesses, it will dilute the impact of your most important witnesses.

If possible, start and finish your direct testimony with strong witnesses. This is because the court is most likely to remember the testimony of your first and last witnesses. If you have a witness who is weak but still necessary for your case, it is best to “bury” that witness somewhere in the middle of your witnesses.

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No matter whether the witness is strong or weak, be sure to keep the witness' testimony focused on the elements of the offence that you are trying to rebut or the cause of action you are attempting to prove or disprove.

b. Direct Examination Techniques

Typically, your first questions to a witness on direct examination will be about the witness' background. There are several reasons for this. One is that it tells the court who is testifying. Hopefully, it also tells the court why your witness should be believed. In addition, it allows the witness to begin his testimony with something she is confident about, which will help calm a nervous witness.

Some sample background questions:

What is your name?

How old are you?

Where do you live?

Where did you go to school?

What do you do now?

Next, it is usually best to have the witness describe the scene of the crime or event – for example, the intersection where the automobile accident took place or the bar where the robbery happened. By having the witness first “paint a picture,” it will help the court understand the witness' description of what took place. It will also mean that you do not have to interrupt the witness' description of events by asking the witness to describe the scene.

After having covered the witness' background and received a full description of the scene, you are ready to ask the witness what happened. Start with short, open-ended “narrative” questions that encourage the witness to give

Some sample questions to set the scene:

Have you ever been to the intersection of Anawrahta Road and Bo Myat Tun Street? Could you please describe the intersection?

What type of neighborhood is it? Was it busy on the morning of July 17?

What was the weather?

Where were you when you saw a man attacked?

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Narrative questions are discussed in detail in Chapter 2, Section K, "Questioning Techniques," starting on page 29.

long, descriptive answers. Use your questions to assist the witness in telling his story in an organized and logical manner. You want the witness to do almost all of the talking during this stage of the direct examination, but do not allow the witness to testify about irrelevant topics. If the witness gets away from the topics he is supposed to testify about, direct him back to the focus of his testimony.

If, at any point in a direct examination, the witness' testimony is unclear or if it seems that the witness did not understand the question, immediately ask the witness to clarify his answer. If the witness skips important details, go back and ask follow-up questions that slow down the testimony and fill-in the missing details.

When the witness gets to the most important part of his testimony – for example, what happened when the two cars hit – slow the testimony down. This is because many important events may have happened in just a few seconds, and if you allow the witness to give narrative testimony about those events many important details may be missed. As a result, breakdown those few seconds in to small pieces, asking about each piece individually, so that the events take place in “slow motion.” It is important to have the witness testify about the most important events in “slow motion” because – although you may have been thinking about the case for months and met with the witness many times – the information is new to the judge.

You will need to decide whether to have your witness talk about any weaknesses during his direct testimony or wait to see if the opposition raises the weakness on cross-examination. If the opposition knows about the weakness, you should consider volunteering the weakness so that the witness can describe it in the best possible way for your case. If the opposition raises the weakness first, it will try to force the witness to describe the weakness in the worst possible way for your case, and it may appear as if you were hiding something. If you are going to volunteer a weakness, it is almost always better to “bury” the weakness in the middle of the witness' testimony so that you can start and finish the testimony on a strong note.

When asking questions on direct examination, be sure to choose language that supports your theory of the case. For example, if you are representing the plaintiff in an automobile accident case, you may want to ask “How **fast** was the defendant driving?” and describe the defendant's car as “**crashing**” into the plaintiff's car. If you are representing the defendant, you may want to ask “How **slowly** was my client driving?” and what happened when the two cars “**hit**.”

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When preparing your direct examination questions (and also your cross-examination questions), do **not** write out the questions. Instead, write down only the topics that you want to ask about. This will allow you to interact with the witness and listen to the witness' answers, so that you are able to ask appropriate follow-up questions.

Once the witness adequately establishes all of the important points needed from her, stop asking questions! Additional answers could hurt the witness' previous answers.

One last suggestion: Witnesses often forget important information while testifying in court. This is not a reason for either you or the witness to panic! The Myanmar Evidence Code, Section 159 permits a lawyer to refresh a witness' recollection through documents, photographs, and other means. However, the procedure that must be followed to refresh a witness' recollection is quite specific. As a result, during your witness preparations you should explain to every witness the procedure you will go through if she forgets a portion of her testimony.

3. EXHIBITS

Studies have shown that people remember 15% of what they hear, but 65% of what they see. As a result, it is very important to use exhibits throughout the trial. Exhibits can be either of two types. They can be "real evidence" or they can be "demonstrative evidence."

"Real evidence" is where the item itself is evidence. For example, the murder weapon in a murder trial is "real evidence."

"Demonstrative evidence" is evidence that helps the court understand the case. Demonstrative evidence can be very helpful in explaining your client's story and persuading court.



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There are many types of demonstrative evidence, but the most common are:

- Pictures (photographs or movies)
- Diagrams (for example, a drawing of an engine)
- Models (for example, a plastic model of a human body or a cardboard model of a building)
- Charts that summarize information provided by witnesses or exhibits
- Drawings made by the witness while testifying
- Demonstrations by the witness while testifying
- Documents
- Business or medical records
- E-mails and computer printouts

In English there is a saying: “One picture is worth 1,000 words.” That is true, but it is also true for many other kinds of demonstrative evidence! Be creative when thinking about what can be used as demonstrative evidence.

4. EXPERT WITNESSES

Expert witnesses can be extremely effective in convincing a court of the merits of your claims. Experts can testify on many different topics, not only the results of laboratory tests or the cause of physical injuries. Experts can be used any time a lawyer wants to explain how and why things happened the way they did, or why things did not happen the way they were supposed to. However, a witness will only be allowed to give an opinion if you have qualified the individual as an expert pursuant to the Myanmar Evidence Act, Sections 45-51.

After establishing an expert's qualifications, the lawyer can use one of two approaches when questioning the witness.

- The chronological approach is to ask the expert to describe all of the work she did to reach an opinion, and then to ask what that opinion is.
- However, it is often more effective to use the key testimony approach with experts, first asking the expert's opinion and then asking how the expert came to reach that opinion. The advantage of the key testimony approach is that the court hears the expert's opinion early in the expert's testimony, before what may turn out to be long, complicated and boring testimony about how the opinion was reached.

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5. CROSS-EXAMINATION AT TRIAL

Every witness is unique. During direct examination, the differences between witnesses can be controlled because you have time to prepare the witness and the witness is usually friendly to your case. But it is very difficult to anticipate how a witness will behave during cross-examination. Because of this, it is difficult to provide rules that can be applied to all witnesses during cross-examination. However, there are general principles that should be followed.

First: Not every witness should be cross-examined.

Only cross-examine a witness if there is a good reason. To determine if there is a good reason to cross-examine the witness, ask five questions before starting cross-examination:

- 1) Has the witness hurt your case? If not, there may be no reason to cross-examine.
- 2) Was the witness believable? If not – either because his testimony was not believable or because other witnesses contradict him – there may be no reason to cross-examine.
- 3) Did the witness forget important testimony? If yes, you may not want to cross-examine the witness – he may remember the forgotten testimony during cross-examination.
- 4) What are your realistic expectations for cross-examination? Even in the best of circumstances, it is unlikely you will “break” the witness and get him to admit he was lying during the direct examination. If the witness is believable and you have no strong “ammunition” against the witness, you may want to skip cross-examination.
- 5) Is the case close or are you clearly losing? If the case is close, you should probably either skip cross-examination or do a “safe” cross-examination. If you are clearly losing, you need to take risks – you should almost certainly cross-examine the witness and should probably be assertive in your cross-examination.



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Always try a “supporting cross” before starting a “destructive cross.” This is because once you start a destructive cross it is very unlikely that the witness will voluntarily give you any helpful information.

Second: Keep in mind that there are two purposes to cross-examination

The first purpose of cross-examination is getting testimony that supports your theory of the case (“supporting cross”). The second purpose is getting testimony that hurts the credibility of the witness or hurts your opponent’s case (“destructive cross”).

Supporting Cross-Examination

When conducting a supporting cross, be pleasant and respectful to the witness.

You must decide whether to emphasize the helpful parts of the witness’ direct testimony or to leave that testimony the way it is. Keep in mind that by revisiting helpful portions of the testimony, you give the witness the opportunity to change what was said earlier:

Consider whether there are helpful facts that the witness must admit, such as facts contained in the witness’ prior written statements. There is usually little risk asking the witness to confirm those facts at trial, although it is possible the witness will say that the statements are not true and were only made under pressure.

It is riskier to try having the witness state what they “should” admit. For example, in an armed robbery case where the victim’s identification of the defendant is at issue, it is somewhat risky to try to get the witness to admit that when he was robbed at gunpoint, the focus of his attention was the gun. You will need to decide whether to take the risk.

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Destructive Cross-Examination

Witnesses will rarely admit that they have a motive or interest to testify in favor of one party, or that bias or prejudice is influencing their testimony. But, despite what you see in Hollywood movies, you are not likely to “destroy” the witness during cross-examination and get him to admit he lied during his direct examination. As a result, your focus should be on developing evidence that makes the witness less believable.

When trying to make a witness less believable, you must discredit the witness very slowly and in very small pieces, gradually building evidence that the witness should not be believed. Areas you may want to focus on when discrediting a witness include:

- **Motive**

Motives for the witness providing untruthful or biased testimony include love, hate, jealousy, money and revenge.

- **Interest**

The witness may have a financial interest in the case, or she may want to help a relative or friend.

- **Bias or Prejudice**

- Bias is when a witness favors one party, the way that a sports fan favors one team over another. Such bias can cause a witness to “see” an event in a way that is different from the way someone without bias sees the same event. A witness may be biased in favor of a party because of friendship, a work or family relationship, or many other reasons.
- Prejudice is when a witness is opposed to one party. There are many possible factors that could cause a witness to be prejudiced, including the nationality, ethnicity or religion of that party.
- It is important to know that witnesses often do not know they are biased or prejudiced. Even so, these hidden biases or prejudices may significantly impact what witnesses think they saw and how they testify.
- Even if witnesses know they are biased or prejudiced, they may believe that the bias or prejudice does not impact what they saw and how they testify.

Sports fans often accuse the referee of being “blind” when the referee makes a call against the fan’s team. In reality, it may be the fan’s bias that makes him blind to what really took place!

For a further discussion of these and the other factors affecting witness credibility, see Chapter 2, Section M, “Witness Credibility,” starting on page 36.

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There are many other techniques you can use during destructive cross-examination. These include:

- **Demonstrating the witness' testimony is inconsistent with their behavior**

In English there is the expression: "Actions speak louder than words." If you can show that the witness' testimony on direct examination is inconsistent with what the witness did, you will significantly undercut the impact of that testimony and perhaps get the court to completely disregard the testimony.

- **Demonstrating the witness' testimony on direct examination is inconsistent with prior statements**

You will seriously undercut the impact of a witness' testimony on direct examination if you can show that the testimony differs from what the witness said (or did not say) before the trial. The easiest way to do this is:

- First, get the witness to commit himself to the testimony on direct examination that you will undercut
- Next, get the witness to admit that he previously made a statement that differs from what he testified at trial, either because he has added to, subtracted from, or changed his testimony
- Finally, have the witness admit that his memory was better closer to the event

- **Demonstrating the witness has a bad reputation for honesty**

It may be possible to undercut a witness' testimony by showing he has been dishonest in other areas. For example, showing that a witness has been convicted of certain crimes may undercut the witness' testimony. Demonstrating that the witness has been dishonest in business or personal relationships may also undercut the witness' testimony.

If you decide to ask questions regarding a witness' reputation ensure that you have "reasonable grounds" to do so or that the questions are relevant as required by the Evidence Act.



However, often you will want to use much softer approaches when undercutting opposing witnesses. Remember that many witnesses, even if their testimony is wrong or incomplete, are trying to be honest and

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believe they are being honest. But this does not mean that their testimony is accurate! Witnesses often do not realize that their recollection is not perfect, and that their mind is adding details to fill-in holes in their recollection. They also may not realize that they forgot details or are incorrectly remembering important information. You cannot attack these witnesses directly. Instead, you must show that, even though the witness is trying to be honest and helpful, their testimony is probably wrong.

There are several ways to undercut the testimony of witnesses who are trying to be honest but whose recollection may be incorrect. These include:

- **Questioning ability to perceive events:**

A witness' ability to observe events may be limited by several factors:

- **Lighting:** It may not have been enough for the witness to clearly see what happened.
- **Distance:** The witness may have been too far from the events to see them clearly.
- **Alcohol or drugs:** Recent consumption of alcohol or drugs will impair the witness' ability to perceive.
- **Poor eyesight or other medical conditions:** Poor eyesight or medical conditions, including pain, may prevent a witness from seeing what actually happened.
- **Short duration:** Most accidents and crimes take place very quickly. The witness may not have seen the most important seconds of an event that happened quickly.
- **Distracted focus:** If a witness is focused on the wrongdoer's gun, her mobile phone, traffic, children or anything else, she may not have seen what actually happened.

- **Establishing reduced memory:**

Even if the witness was able to clearly observe events, she may not correctly recall what she saw:

- It can be months or years between when an event takes place and the witness testifies in court, and memories fade with time. Particularly if the witness did not make notes about the event shortly after the event happened, it is likely that her memory of the events is not perfect.

The Case of Detective Bo
Detective Bo was a police detective in Sweden. One night he and another witness saw a shooting during which a passenger in a car fired shots through the car's rear windshield, destroying the windshield. Shortly after the shooting, both Detective Bo and the other witness were interviewed by police investigators. They wanted to help the investigators and told them what they saw. Both witnesses stated that the car from which shots were fired was painted black. However, when the police investigated they discovered that the car was white! In this case, two witnesses who were trying to help and thought they were being honest, one of whom was trained to observe crime scenes, were wrong about an important fact.

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Sample questions showing reduced memory of a police officer:

- **You arrested my client approximately six months ago, correct?**
 - **How many arrests do you typically make in a month?**
 - **So since arresting my client, you have made approximately __ arrests?**
 - **It is impossible to remember all of the events of every arrest, correct?**
 - **That is why you write down the details of every one of those arrests in the First Information Report, correct?**
 - **And you try to write down everything important in the FIR, right?**
 - **But the FIR does not say anything about there being a second man with the defendant, does it?**
- Some crimes or significant events take place under circumstances that are very similar to those the witness frequently experiences. For example, an accident may have taken place at an intersection that the witness drives through every day. Or a crime may have taken place at a coffee shop the witness goes to several times each week. In these situations, witnesses often confuse details about the event with those from their similar experiences at the same location.
 - **Establishing weakness in ability to describe**
Even if the witness could clearly see the event and remembers it clearly, she may not be able to correctly describe to the court what happened:
 - Many witnesses are very bad at estimating speed, such as the speed a car was traveling at the time of the accident. Witnesses are also often bad at estimating time (such as how long it was between a crime and when the police arrived) and distance (such as the distance between the witness and the event).
 - Where the witness' estimate of speed, time or distance is important to the case, you may be able to undercut the witness' testimony by asking detailed questions that show errors in witness' estimates.

One approach to questioning a witness' ability to describe is by asking the witness to do a similar estimate during the trial. For example, if distance is an issue you can ask the witness to estimate a distance in the courtroom, between two buildings, or whatever is appropriate. If time is an issue, you can ask the witness to estimate a certain amount of time during the trial. However, this is a potentially risky approach – if the witness' estimate in the courtroom is accurate, it will support the testimony he gave during direct examination.

Third: Other rules for cross-examination

Here are some additional guidelines you should follow when conducting cross-examination:

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- **Know when to stop your cross-examination!**

- Asking a final question to get a strong conclusion gives the witness a chance to reverse her earlier testimony. Be satisfied with good testimony that you can use in your closing argument.

- **Keep control over the witness during cross-examination. You can do this in several ways:**

- Ask only leading questions that suggest the answer you want and that call for short answers

Some sample leading questions:

You were assaulted around 11pm, right?

All the stores were closed, correct?

There are no street lights in the middle of the block, correct?

Not many cars drive by there at that hour, right?

Through this process, the lawyer both controls the witness and establishes the basis for later arguing in her closing that it was too dark for the victim to identify his attacker.

- Force the witness to answer the question you asked, not the question he wants to answer
- Show the witness that you know the facts of the case so he does not try to give false answers
- Behave in a confident manner
- Limit your cross-examination to a few basic points – usually three or four. There is often little reason to cross-examine a witness on unimportant matters.
- As with direct examination, make your strongest points at beginning and end of the witness' testimony so that the court remembers those points.
- Know the probable answer to your question before you ask the question! Remember that a hostile witness will try to hurt your case. If you do not know the answer to the question, instead stay with safe topics.
- A hostile witness will be careful with her testimony if she knows the point you are trying to make. With such witnesses it is best to vary the order

Here is an sample cross-examination and witness answers, where the lawyer stops at the proper time:

- **You were driving through intersection? (Yes)**
- **There was no traffic? (Yes)**
- **Weather was good? (Yes)**
- **You were talking with your passenger? (Yes)**
- **The first unusual thing you noticed was the sound of crash? (Yes)**
- **That's when you notice the crash had happened? (Yes)**

STOP!!!!

- **The lawyer does not try to get the witness to say that he did not see the crash.**

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For example, do not ask the witness: “You couldn’t really see what happened, could you?” Instead, slowly gather evidence that indicates the witness could not see what happened.

of the topics during cross-examination so that the witness does not know what you are trying to prove until after it is proven.

- Do not have the witness repeat her testimony from direct examination unless it supports your case.
- Ask follow-up questions based on the witness’ prior answers. This requires that you listen closely to the witness’ answers, and that you do not write out detailed questions in advance.
- Do not let the witness explain his answer.
- Do not ask “how” or “why” questions. A hostile witness will use these questions to hurt your case.
- Build your cross-examination slowly.
- Do not try to make your point with one big question. Slowly build up to the point you are trying to prove using small questions.
- Use a style that is natural to you
- Some lawyers have more success taking a soft approach during cross-examination; others have more success taking a more confrontational approach. Use whichever approach works best for you.
- Do not treat every opposing witness as if they are evil. Remember that many witnesses are trying to tell the truth, even if their testimony is incorrect.
- Do not argue with the witness, even if the witness is not telling the truth. Instead, use other evidence to show why the witness should not be believed and save your arguing for closing argument.
- Only suggest untruthfulness when it can be proved. Otherwise, it undercuts your credibility with the court.
- Do not ask more than one question at a time. Allow the witness to answer that question before going onto the next question.
- If you get a bad answer, pretend it is the answer you expected.

Special situations in cross-examination

During cross-examination you will experience different types of hostile witnesses. The two most common are: 1) witnesses who try not to answer

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your questions, and 2) witnesses who want to explain their answers or argue with you. There are special techniques for dealing with each of these types of witnesses.

With an uncooperative witness who avoids answering questions, you are unlikely to get any helpful answers. As a result, the best technique is to make it obvious that the witness is avoiding your questions. If you demonstrate that the witness is avoiding your questions, it will undercut the testimony the witness gave on direct exam.

The opposite problem is a witness who tries to explain all her answers or argues with you. With these witnesses ask short, leading questions which do not give the witness an opportunity to explain. If the witness tries to answer a question that is different from the question you asked, repeat your original question. If the witness still does not answer your question, request that the judge instruct the witness to answer your question.

Cross-Examination of Expert Witnesses

If an expert witness testifies for the opposing side, there are two ways for you to undercut her testimony. One is to undercut the expert's credentials; the other is to undercut her opinion.

Individuals who the court qualifies as expert witnesses are almost always an expert in something. But the witness may not be an expert in the specific topic about which she is testifying. For example, the witness may be testifying about the damage caused to the plaintiff's bones during an accident. Even if the witness is a surgeon, you will be able to undercut her credentials if she is not an orthopedist.

Even if the witness is an expert on the specific issue involved, there are several ways to undercut her testimony. One way is to suggest bias. For example, if the expert testified for the same lawyer before, typically works for only the plaintiff or the defense in cases, or is being paid unusually high fees, you can argue that the expert is not objective.

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Be sure to include in your closing argument the evidence and testimony that actually took place during trial. Do not rely on the evidence and testimony you expected would come in at trial.

Even if there is no basis for alleging bias, you may still be able to raise doubt about the expert's opinion. For example:

- The expert's opinion is mostly likely based on the version of the facts she was given by the opposing side. If so, you can ask the expert if her opinion would be different if the facts were what your side claims.
- You can also ask the expert if it is possible that other experts would review the same evidence and come to a different conclusion. If the expert is being honest, she will most likely agree that other experts could disagree.
- The expert may be relying on information she received from others or tests done by others. Or there may be tests or inspections that could have been done but were not done. In these cases, you should get the expert to admit that there is a possibility that others gave her incorrect information or did tests improperly. You should also have the expert admit that it would have been helpful if additional tests were performed.

6. CLOSING ARGUMENTS

Your closing argument is your chance to demonstrate to the judge why your witnesses and evidence should be believed.

Your closing argument, like your opening statement, should have a logical structure. Summarize the facts in a way that supports your theory of the case, and come to a logical conclusion based on those facts.

Charts or tables that summarize evidence introduced during the trial can be very helpful during the closing argument, particularly if the evidence did not come in an orderly or logical manner.

Start your closing by setting out the issues in the case. If you are the plaintiff or law officer, you probably want to set out as few issues as possible. If you are the defendant, you may want to set out multiple issues so you can raise doubts as to whether the plaintiff or law officer proved his case.

The focus of your closing should be arguing the strengths of your case. But be sure to explain the weaknesses in your case as well, otherwise you allow

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the opposing counsel to highlight those weakness in a way that will hurt your case more. You should, of course, strongly emphasize the weaknesses in your opponent's case.

During your closing argument use the exhibits that were introduced in the case. You may also want to create new exhibits for use during your closing if they will help to summarize the evidence or explain your theory of the case.

You may want to end your closing argument by referring to your opening statement and showing the judge that you proved what you said the evidence would show.

Be sure to end your closing argument on a critical point that is strongly in your favor. You want to end your case with a convincing reason for the court to rule in favor of your client.

7. THE ART OF PERSUASION AND FINAL TIPS

First impressions are critical when you appear in court. It is important that you start confidently, and that you speak slowly and clearly. Make sure your voice is loud, and have eye contact with the witness and with the judge.

- In general, when it comes to succeeding at trial there is no substitute for preparation! You must know **everything** about your case – you should go to the place where events happened, practice direct examination with your witnesses, and practice with exhibits and any equipment you will use at trial.
- Be sure to tell the truth! If you are caught in a small lie, the judge will not believe the other things you say, and it will be a breach of your duties to the court.
- Be yourself! Use your own personality in the courtroom; do not try to be someone you are not.



CHAPTER 5:

WHAT IT MEANS TO BE A LEGAL AID PROVIDER



A. ROLES OF LEGAL AID PROVIDERS

The primary role of legal aid providers is to provide advice or representation to individuals with limited finances, without cost or at a substantially reduced cost.

However, legal aid providers also often fulfill other important functions. These include:

- **Legal information/empowerment:**

This includes educating individuals or communities about laws and their rights, and training citizens on how to protect their rights.

- **Alternative dispute resolution:**

Helping those involved in a dispute to negotiate or mediate the dispute so that a court case is not necessary.

- **Law reform:**

Supporting changes in laws that will benefit the types of clients they serve.

B. OBLIGATIONS OF LEGAL AID PROVIDERS

Legal aid providers have the exact same obligations – including procedural, legal and ethical obligations – as legal service providers who are paid for their services. As a result, legal aid providers are obligated to:

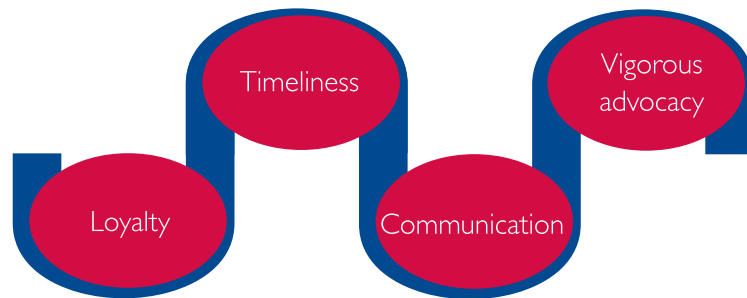
- Advise clients of their rights and obligations
- Explain the strengths and weaknesses of the client's claims
- Educate clients about the operation of the legal system, and
- Vigorously represent their client to protect the client's interests

WHAT IT MEANS TO BE A LEGAL AID PROVIDER

The duties of a legal aid provider may include:

- Investigating facts and evidence
- Locating/interviewing witnesses
- Establishing a timetable and strategy for the case
- Researching the law
- Analyzing the facts and laws
- Preparing case and court documents
- Considering alternative dispute resolution
- Representing the client in court

Legal aid providers are also obligated to perform all tasks in a professional manner. Their duties include:



Legal aid providers must also respect the interests of their client. Even though the client may be uneducated, the client knows his/her needs and what is most important to them. After being educated by the legal aid provider, the client should be the one to make the final decision on key issues, such as whether to accept a settlement or take the dispute to court.

C. LEGAL AID DURING THE INVESTIGATION PHASE (CRIMINAL CASES)

Clients have the right to legal assistance during detention, interrogation and preliminary investigations.* This was confirmed by the recently enacted Legal Aid Law. But many legal aid providers mistakenly believe there is no need for them to be involved in the investigation phase of a criminal case.

In fact, the early phases of an investigation are often more critical to the outcome of the case than anything else. For example, defendants often claim that their confession was forced; this is difficult to prove because the police do not typically admit to such things. However, if the legal aid provider attends the interrogation, the beating and the false confession may be prevented and a good deal of suffering by the client will be avoided.

***Under the UN Basic Principles on the Role of Lawyers, access to a lawyer should be provided promptly after arrest and, in any case, no more than 48 hours after arrest. Under the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, governments should “ensure that police and judicial authorities do not arbitrarily restrict the right or access to Legal Aid of persons arrested, detained, suspected of or charged with a crime, in particular in police stations.”**

WHAT IT MEANS TO BE A LEGAL AID PROVIDER

The primary obstacle to legal aid providers participating in the investigation is that they are often not appointed until later in the case. Advocates should not take a passive view towards the manner in which they are appointed; if they wait to be contacted by the police, the law officer, or the court, many suspects will not be represented at critical times. Other obstacles include that even after the provider becomes aware of an investigation activity, he or she may be prevented from attending by the police or the Lawyer General's office. However, the legal aid provider should nonetheless try to gain access to these proceedings.

Another cause of an inadequate defense during the investigation phase is that defense lawyers sometimes believe that their primary job is to find flaws in the evidence collected by the police. However, an advocate has the responsibility to gather exculpatory evidence and locate witnesses that are neglected by the police and law officer.

D. CHALLENGES FOR LEGAL AID PROVIDERS

I. Working with Vulnerable Groups

Legal aid clients often have very different backgrounds from the legal aid providers, and the providers must be sure they work in a way that is appropriate for the client.

For example:

- The **language** must be appropriate for the client's education level, background, and mental abilities. Even if the client understands the words the provider uses, they will probably not be familiar with the legal system or procedures being discussed. As a result, the provider may need to educate the client about many things.

Through their investigation, legal aid providers should seek to:

- **Uncover errors in the police investigation**
- **Uncover facts omitted by the police that support the defense**
- **Discover bias, prejudice, or errors by prosecution witnesses, and**
- **Preserve evidence favorable to the defense**

When you first meet your client, explain:

- **Who you are**
- **What your role is**
- **That you are independent of the government and police**
- **That discussions are confidential**
- **The judicial system / procedures**
- **If the client is incarcerated, why he is detained and what may happen**

WHAT IT MEANS TO BE A LEGAL AID PROVIDER

Recognize that the client's situation may make him/her:

- Suspicious
- Hesitant to talk
- Hostile
- Unable to understand

If a judicial counterpart does not act appropriately even though treated in a professional and respectful manner, you will need to decide on the appropriate approach for the situation and individuals involved. For example, should you respond with:

- Respect?
- Anger?
- Filing a complaint?
- Mobilizing communities or NGO networks?
- Media campaign?
- Contacting international advocacy organizations?
- Other?

- Many legal aid clients are in extremely difficult and highly stressful situations. Their land, livelihood or job may be at risk. They may have suffered physical or sexual violence or be threatened with violence. They may be incarcerated. They may be in an emergency situation. Legal aid providers must make adjustments for the client's situation and special needs. This is especially true when working with victims of gender-based violence, children, and those with limited abilities. Providers should also determine if the client is ill, suffering from physical or mental abuse, or experiencing the effects of alcohol or drugs.
- Providers must also adjust for cultural differences between themselves and the client.

2. Working with Judicial Counterparts

The cases handled by legal aid providers typically have the government or an established business as the opposing party. As a result, judges, police, clerks, and other court personnel may be hostile to the legal aid provider's case.

Even in those situations, providers should be professional and respectful when dealing with those officials. At the same time, providers need to do everything possible to ensure the officials treat their case in an unbiased and professional manner, and that the rights of the client are respected.

As part of this effort, it may be helpful for legal aid organizations to develop supportive relationships with judicial counterparts by working on issues of mutual concern. For example, judicial officials and legal aid providers often both have an interest in getting increased resources for courts. In such situations, legal aid providers can suggest that they work with court officials to secure necessary funds from the government.

WHAT IT MEANS TO BE A LEGAL AID PROVIDER

E. REVIEW

Legal aid providers owe their clients the same obligations that legal service providers owe to paying clients. In fact, legal aid providers may have extra obligations because of their clients' disadvantaged situation.

When working with vulnerable groups, legal service providers must work in a way that is appropriate for the client and accommodates their needs. This includes: using appropriate language, explaining judicial procedures and your role, recognizing that the client may be in a very difficult circumstance, and making adjustments for the client's situation and needs.

In a criminal case, a legal aid provider must do more than find flaws in the evidence collected by the police. An advocate must gather exculpatory evidence and witnesses that are neglected by the police and law officer:

Judicial officials may be hostile to legal aid cases, which typically have the government or business interests as the opposing party. Legal service providers must decide on the appropriate way to respond if hostility by judicial officials improperly impacts the case. As part of ensuring that legal aid clients are treated properly by judicial officials, it may be helpful to develop mutually respectful professional relationships with judicial counterparts.



CHAPTER 6:

LEGAL AID MANAGEMENT



Many people in Myanmar who need legal aid do not know that free legal aid exists. However, that will soon change and legal aid providers will become overwhelmed by the demand for their services, particularly now that the Legal Aid Law has been enacted. Before that happens, legal aid providers need to establish organizational priorities and case intake policies.

A. ORGANIZATIONAL PRIORITIES AND CASE SELECTION

Currently, many legal aid providers in Myanmar handle a wide variety of cases. They are able to do this because their staff and budgets are not yet overwhelmed by demand. However, legal aid organizations and providers should establish priorities now, making decisions as to the types of cases they will handle and types of services they will provide.

I. Case Intake Policies

The case intake policy is an important tool that sets out institutional priorities, the types of cases that the organization will handle, and the services it will provide. The intake policy is used to help decide whether to accept a case, and every legal aid organization or provider should have one. It is not sufficient for an organization or provider to simply say that it will provide services to those who cannot afford a lawyer.

Many decisions must be made when developing a case intake policy. For example, the organization should decide whether it will handle a wide variety of cases or focus on only specific types of cases. Some providers, particularly large legal aid organizations, try to have a wide scope of work. Other providers focus on only one or two types of cases, such as criminal cases, land cases, gender-based violence cases, or trafficking cases.

Organizations and providers should also decide whether they will serve any impoverished person or only certain vulnerable groups. For example, some groups provide services only to women and children, or only trafficking victims, or only people from a specific geographic area or ethnic group.

LEGAL AID MANAGEMENT

Organizations and providers must also decide whether they will be “service-focused” or “impact-focused.” Service-focused providers try to help as many people as possible, even though the high number of clients means that the services they can provide to each client is limited. Others instead focus on one or two large, resource-consuming cases, investing large amounts of time and money into each case. These cases are chosen with the hope that the case will change the judicial system, impact a large number of people or land, or serve as a precedent for cases that follow. Still other organizations and providers maintain a mix of “service” and “impact” cases. The decision as to whether to be “service-focused,” “impact-focused,” or a combination of the two will greatly affect the cases that an organization accepts.

There is no right or wrong answers to these questions. However, it is a mistake for a legal aid organization or provider not to have an intake policy. Without such a policy, the organization or provider is likely to accept or refuse cases without a clear reason or strategy, or simply accept the first clients that approach them regardless of the importance of the case or the likelihood of success. Such an approach is unlikely to result in the most effective use of the provider’s efforts and resources.

Attached as **Annex I(d)** is the Means and Merits Policy: Criteria and Guidelines, which is a sample case intake policy. The “Merits Criteria” section of the policy sets out the types of cases that an organization might accept and the basis on which it will accept them. The first part of it sets out the type of criteria that would be used for “service-focused” cases. The “Public Interest Litigation” part of the policy sets out the type of criteria which an organization should consider for “impact-focused” cases.



Your organization can modify this intake policy to suit its services and priorities. If your organization is “service-focused”, it could delete references to “public interest litigation”. If your organization is “impact-focused”, it might wish to delete references to other types of cases which do not fall within the organization’s area of focus and add those that do. If your organization does a combination of “service-focused” and “impact-focused” cases, it could use the sample provided. However, if your organization does modify this sample, it is **important** to ensure that the policy as a whole **meets your organization’s needs and objectives**.

LEGAL AID MANAGEMENT

2. Case Selection Process

Even though a case meets the requirements of the organization's case intake policy, it does not mean that the case should be accepted. This is particularly true when the organization is considering accepting an "impact case" that will consume a large amount of resources. Cases that meet the requirements of the case intake policy should also go through a case selection process. Otherwise, an organization or provider will soon find itself in almost the same situation as if it did not have a case intake policy: randomly accepting cases or accepting only the first cases that come in the door.

Instead of randomly accepting cases that meet the requirements of the organization's case intake policy, a case selection process is used to decide which of those cases should actually be accepted. Typically, organizations will have a committee of staff members who serve as a case selection committee.

As part of the case selection process, the case selection committee should consider whether a case is consistent with the organization's goals, objectives, and strategy. It should also consider whether it is likely that the case will be a "success".

Particularly with "impact cases," the case selection committee should also make sure that the organization truly wants the case. The organization will be working on an impact case for many years. This will be very unpleasant if the organization does not like the client or does not feel strongly about the case.

When trying to decide whether a case will be a success, keep in mind that "success" is often different from "winning." Some impact cases are a "success" if they raise the public's awareness of a situation, even if the client officially "loses." Other cases may be a "success," even if the client "loses," because they result in institutional reforms that make it more likely that similar parties will "win" in the future.

There is no single answer to when a case should be considered a "success." However, before accepting a resource-consuming "impact case" it is essential that you consider what result would be a "success" for each case, and then consider whether "success" in the case is likely.

Taking a case is like having a child – once you have it, you really have it! You must be prepared to support and live with the case for as long as is necessary.

LEGAL AID MANAGEMENT

3. Case Selection Form

It is often difficult to decide which of many cases should be accepted, particularly when deciding between “impact cases.” Members of an organization will likely disagree as to which case should be accepted. As a result, an organized process that reviews and selects from among the different cases can be very helpful.

A useful way to focus the case selection discussions and organize the process of deciding between cases is by using a case selection form. The case selection form is used to evaluate cases according to the specific factors that are important to the organization that is considering accepting the case. Because the factors important to one organization will be different from the factors important to another organization, this means that each organization must develop its own case selection form!

The process of making a case selection form is often very useful for an organization. It helps the organization determine what is important to the members and how the organization’s resources should be allocated.

Below is the case selection form that was developed by an organization in Cambodia that wanted to select two “high-impact land cases” from the twelve cases they were considering. They used the following process to develop the case selection form:

1. The case selection committee “brainstormed” to come up with factors that might be important to consider. They did not judge or evaluate the factors. Instead, the participants simply shouted out any ideas they had.
2. Next, the committee reviewed the ideas and eliminated duplicate or unnecessary factors.
3. The committee then prioritized the factors, putting them into groups depending on how important they considered the factors.
4. Finally, the committee assigned point levels to each group, adjusting the points so that they matched their importance.

CHAPTER 6:

LEGAL AID MANAGEMENT

Points	Factors	Case 1	Case 2
Super-super high (0-100 points)	Security of organization/team		
Super-high (0-80 points)	Security of clients		
High (0-70 points)	Number of people impacted (0-18)		
	Amount of land/money at issue (0-18)		
	Possibility of large impact (0-18)		
	Involvement of authorities/ influential people (0-16)		
Medium-high (0-50 points)	Type of issues involved / importance of the issues (0-10)		
	Strength of claims (0-10)		
	Ability of organization to prepare/ position itself (0-10)		
	Likelihood of favorable result being undone by government (0-10)		
	Access to site and clients (0-10)		

This case selection form is only provided as an example! Your organization's case selection form will be different based on the factors that are important to it.

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Points	Factors	Case 1	Case 2
Medium (0-30 points)	Support from outside organization (local NGO's, international NGO's, etc.) (0-8)		
	Ability to improve relations with government (0-7)		
	Resources consumed (e.g., percent of organization that would need to be involved) (0-7)		
Medium-low (0-20 points)	Ability to build capacity of organization (0-5)		
	Quality of clients (0-5)		
	Importance of handling a case in target location (0-5)		
	Impact if we lose (both on clients and as precedent) (0-5)		
Low (0-10 points)	Effect of case on organization reputation (0-4)		
	Organization's experience with the legal issues (0-3)		
	Estimated time until resolution (0-3)		
TOTAL			
Tie-breakers	Staff interest in the case Potential conflicts of interest		

A “tie-breaker” is something that is used to decide which option should win when two or more competing options have scores that are the same or very close to each other. With this case selection form, the tie-breakers were used to help select between cases that received similar scores.

LEGAL AID MANAGEMENT

When evaluating the cases, the group was careful to work across the form (from left to right), evaluating all of the cases on a single factor before going onto the next factor. This was done to ensure that scores given to each case for a particular factor had an appropriate relationship to the score given to another case for the same factor.

At the end of the process, each case had a numerical score. However, the numerical score did not automatically decide which case is accepted – the process is not that precise! But the process did allow the committee to narrow the selection process down to four cases and to evaluate the benefits and risks of each case. The case selection committee then talked in detail about those four cases and chose two cases from that group.

4. Additional Factors to Consider

Many of the factors that an organization may want to consider when selecting its cases are set out in the case selection form above or under the “Public Interest Litigation Criteria” section of Annex 1(d). However, an organization may also want to consider:

- The ability of the case to influence other disputes
- The ability of the case to educate others or influence the judicial system
- The organization's current caseload
- The cases being handled by other legal aid organizations/providers

B. USING RESOURCES EFFICIENTLY

Even after a legal aid organization limits the cases that it will handle by establishing a case intake policy and case selection process, it is unlikely the organization will be able to represent all of the needy and deserving people who request assistance. As a result, the organization will need to make efforts to ensure its resources are used effectively.

As part of this process it was sometimes necessary to adjust the scores initially given to a case. For example, Case 1 might have initially received a score of 60 for “Security of organization/team.” Case 8 is later given the same score, but then the committee realizes the security in Case 1 is better than in Case 8. The committee might then agree to raise the score for Case 1 to a higher number.

LEGAL AID MANAGEMENT

Many time-consuming tasks involved in providing legal aid do not require the special skills that lawyers have. These tasks should be handled by someone other than a lawyer.

One of the best ways to ensure that resources are used effectively is to have paralegals and other non-lawyers in a legal aid organization assist lawyers whenever possible. Appropriate tasks should be assigned to non-lawyers – these may include performing the initial case investigation, locating witnesses, filling out forms, and requesting records. Non-lawyers can also be extremely effective at locating new clients and educating communities as to their rights and responsibilities. By assigning these and other tasks to non-lawyers, the organization’s lawyers are able to focus on tasks that require their special skills and to serve more clients.

Additional options to increase a lawyer's effectiveness include:

- **Supervised paralegal programs:**

Many legal aid functions can be performed by trained paralegals that operate outside of a legal aid organization but are supervised by a lawyer. These include educating communities about their rights and doing outreach to locate individuals in need of legal aid. These paralegals can then refer the potential clients they locate to an appropriate legal aid organization.

- **Supervised law school legal aid clinics:**

Like paralegals, law students supervised by a lawyer can perform many of the legal aid tasks that do not require a lawyer’s special skills. This approach has all of the benefits of a supervised paralegal program, as well as additional benefits. For example, by volunteering at a law school clinic, law students learn important skills that will be useful in their legal career. In addition, law students learn about the importance and benefits of legal aid, increasing the likelihood that the students will perform legal aid after becoming lawyers.

- **Call-in radio programs:**

Even if legal aid providers use paralegals and law students to educate communities and perform outreach, it will be impossible to reach all needy individuals. A very effective way of quickly reaching many people at once is a call-in radio program. During these programs, a caller asks a lawyer at the radio station a legal question. Everyone listening to the radio program hears the answer and increases their legal knowledge.

Some call-in radio programs even offer prizes to callers who correctly answer questions about what the lawyer spoke about, increasing the number of listeners and the impact of the program.

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- **Telephone / SMS consultations:**

Many of Myanmar's impoverished citizens are far from the nearest lawyer or paralegal, and it would be expensive and time-consuming for those needing help to travel to a city for legal advice. In such situations, it may be possible to provide legal advice by telephone or SMS. It is also possible to provide legal education through SMS messages, with legal aid providers sending messages with information about legal rights and obligations to anyone who requests to receive the organization's SMS messages.

C. IMPORTANCE OF DATA AND DATABASES

It is **extremely** important for legal aid providers to gather data about their cases so that they can decide where they should put their resources. Data is also the only way that providers will know whether the performance of the judicial system is improving or getting worse. As a result, legal aid providers need to track the types of cases that come into the office and also what happens in each case.

It is possible to keep track of this data using paper and a pen, but it is far more effective to keep the information in a database using Excel or a similar program. That is because a database makes it easy to update the information about a case and to instantly search through all of the organization's cases to find or organize information.

If your organization does use a database, it is strongly recommended that at least one person at each organization learns enough about using databases to keep track of the organization's cases on a database. It is also strongly recommended that the database be backed-up regularly to safeguard the data, in case the computer used for the database is lost, stolen or damaged.

Keeping track of cases will also be important under the Legal Aid Law and for reports to donors.

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D. STANDARDIZED FORMS

Even if a database is not used, standardized forms are an extremely effective tool. Similar to an Investigation Plan, standardized forms serve as a guide for the person meeting with a client to ensure that all relevant information is gathered.

In order for a database to be effective, appropriate information must be entered into the database. The best way to ensure that all of the appropriate information is gathered is through the use of standardized forms.

The three most common types of standardized forms are application forms (see Annex 1), case intake forms (see Annex 2) and case closing forms. (see Annex 3). Each legal aid organization or provider should develop its own case intake and closing forms to be sure that all appropriate information is collected and that its unique organizational procedures are followed.

Some organizations use the same generalized intake and closing forms for all cases. Although this is possible (especially if the organization handles only one type of case, such as criminal defense cases), using the same type of form for different types of cases will mean that either the form is unnecessarily long and complicated, or that it will not collect all of the information needed for different types of cases. As a result, it is recommended that different forms be prepared for different types of cases, and that each form be tailored for the specific type of case.

For organizations that often work on cases that involve the same sections from the Penal Code or other laws, it is often useful to have standardized “Additional Information” forms that focus on the elements of those sections, so that interviewers collect all information relevant to each relevant section of the law.

Additional information forms will also assist the lawyer handling a case conduct the IFRAC case analysis described in Chapter 1.

Included as Annexes to this Toolkit, and also on the CD that accompanies the Toolkit, are numerous sample standardized forms:

- **Annex 1** includes samples of an Application Form, Means and Merits Criteria, and a Means and Merits Assessment Form. These forms are

LEGAL AID MANAGEMENT

designed to be used during the first meeting with a potential client to determine whether the applicant is sufficiently poor to qualify for free legal aid from the legal aid provider. These forms also gather basic information about the applicant, his living situation, and the case. Also included are samples of an Applicant's Declaration and Authority to Obtain and Disclose Information and Important Information and Conditions of Receiving Legal Aid. These forms provide clients with relevant information about their rights and obligations in receiving legal aid. These forms were developed by the Mawlamyaing Justice Center (MJC).

- **Annex 2** contains sample Case Intake Forms, which are also intended to be used during the first meeting with a potential client. Annex 2(a) is a very thorough intake form designed for criminal defense cases, which was designed together with MJC. Annexes 2(b)-2(f) are more general case intake forms designed for use with a variety of other cases.
- **Annex 3** contains generalized Case Closing Forms for use with selected types of cases.
- **Annex 4** contains a large number of "Additional Information Forms". These Additional Information forms detail the "elements" (ingredients) for the Penal Code and other laws that arise most frequently in cases handled by legal aid organizations in Myanmar. In particular, the Additional Information forms detail the elements of offenses related to Hurt, Theft, Cheating and Rape, as well as some sections of the Arms Act. These forms are designed to make sure that the lawyer or paralegal performing the case intake process gathers all available information related to every element (ingredient) of the relevant sections and laws. The forms are also designed to guarantee that the lawyer handling the case evaluates each element of each relevant section in order to: determine the strength and weaknesses of the government's claims, identify areas for further factual investigation, and help develop a theory of the case. Annex 4 also includes an Elements Evaluation Form that can be used to evaluate the elements of these sections.

Using forms such as these will benefit legal aid organizations in multiple ways, helping to ensure that appropriate clients are accepted for representation, that all necessary information about a client and their case is gathered as soon as possible, and that the lawyer handling the case does a full and thorough analysis of the strengths and weaknesses of the case.

See Chapter I, Sections C to E for a more detailed discussion on the use of these forms.

ANNEXES



SAMPLE APPLICATION FORMS

I(a)

Annex I(a): Application

Personal Details	
Applicant's Name	
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female
Date of birth (date/month/year)	
Adult/Youth/Child	<input type="checkbox"/> Adult <input type="checkbox"/> Youth* <input type="checkbox"/> Child* * As defined in the Child Law
National Registration Card	Number: _____ <input type="checkbox"/> Citizen (pink card) <input type="checkbox"/> Associate Citizen (blue card) <input type="checkbox"/> Naturalized Citizen (green card) <input type="checkbox"/> Non-Citizen (white card) <input type="checkbox"/> No card. Specify reason: _____
Mother's name	
Father's name	
Address	_____ _____ _____
Township	
Phone number	
Other contact details/ relatives/friends where client can be found and their phone number	Other contact person name: _____ Phone: _____ Other contact details (if any): _____ _____ _____
Date/time when client can meet lawyer	

SAMPLE APPLICATION FORMS

I(a)

Statistical information	
Occupation	
Current employment	<input type="checkbox"/> No <input type="checkbox"/> Yes – Please specify: _____ <input type="checkbox"/> Full time <input type="checkbox"/> Part Time <input type="checkbox"/> Casual <input type="checkbox"/> Other – Please specify: _____
Education	Highest level of education achieved: _____
Disability	
Language(s) spoken	_____ Does client require an interpreter? <input type="checkbox"/> No <input type="checkbox"/> Yes
Religion	
How did client learn about <u>[insert legal aid organization's name]</u>	<input type="checkbox"/> judge <input type="checkbox"/> clerk <input type="checkbox"/> police <input type="checkbox"/> prosecutor <input type="checkbox"/> other public servant <input type="checkbox"/> friend/relative <input type="checkbox"/> <u>[insert legal aid organization's name]</u> lawyer or paralegal <input type="checkbox"/> brochure/poster <input type="checkbox"/> other lawyer or paralegal – Name: _____ <input type="checkbox"/> other organization – Name: _____ <input type="checkbox"/> other (describe): _____
Has the client previously sought or received legal assistance from <u>[insert legal aid organization's name]</u>?	<input type="checkbox"/> No <input type="checkbox"/> Yes – Please specify when and what assistance was sought: _____ _____ _____
Financial circumstances	
Is the client a youth or child?	<input type="checkbox"/> No → Complete this section <input type="checkbox"/> Yes → Skip this section and proceed to next section
Is immediate action required?	<input type="checkbox"/> No → Complete this section <input type="checkbox"/> Yes* → Skip this section for now and proceed to next section * This section must be completed as soon as is reasonably practicable after the immediate action has been taken

ANNEX I:

SAMPLE APPLICATION FORMS

I(a)

Household	Number of members in household	
	Number of dependents	
Does the client receive financial support or a contribution to the household income from any other person? (Supporting Person)	<input type="checkbox"/> No <input type="checkbox"/> Yes – Name: _____	
	Relationship to client of person from whom financial support is received (check all that apply):	
	<input type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Parent <input type="checkbox"/> Sibling <input type="checkbox"/> Other relative <input type="checkbox"/> Friend	
Income	Income type	Monthly income
	Wages/salary	
	Supporting persons' contributions (if more than one supporting person, combine the total contribution)	
	Other – Please specify: _____ _____	
	Total monthly income	
Assets	Asset type	Value of asset (approx.)
	House (Do not include family home, if it is of a size and value consistent with the average person)	
	Land (vacant, farming etc.)	
	Motor vehicle	
	Savings	
	Money lent to another person	
	Other – Please specify: _____ _____	
	Total value of assets (approx.)	
Expenses	Expense type	Monthly expenses (approx.)
	Rent	
	Electricity	
	Food	

SAMPLE APPLICATION FORMS

I(a)

Expenses	Clothing	
	Medical care	
	Medication	
	Education	
	Transport	
	Dependents living outside of the household	
	Other – Please specify: _____ _____	
	Total monthly expenses (approx.)	
Liabilities	Liability type	Value of liability (approx.)
	Debts	
	Loans	
	Other – Please specify: _____ _____	
	Total liabilities (approx.)	
Case information		
Type of case	<input type="checkbox"/> Criminal – Complete Criminal Case section below <input type="checkbox"/> Civil – Complete Civil Case section below <input type="checkbox"/> Family – Complete Family Case section below	
Has a lawyer or paralegal previously acted in this case?	<input type="checkbox"/> No <input type="checkbox"/> Yes – Please give details: _____ Lawyer/paralegal's name: _____ Firm/Organization: _____ Phone: _____ Address: _____	

ANNEX I:

SAMPLE APPLICATION FORMS

I(a)

How did the lawyer assist?	<input type="checkbox"/> For free <input type="checkbox"/> For reduced fee <input type="checkbox"/> For full fee <input type="checkbox"/> Other arrangement – Please specify: _____ _____ _____
Why is the lawyer no longer acting?	<input type="checkbox"/> Client could no longer afford fees <input type="checkbox"/> Client did not pay fees due <input type="checkbox"/> Conflict of interest <input type="checkbox"/> Client dissatisfied with services <input type="checkbox"/> Lawyer terminated agreement – Give reason: _____ <input type="checkbox"/> Other – Give reason: _____ _____ _____
Criminal Case	
Client classification	<input type="checkbox"/> Accused <input type="checkbox"/> Victim <input type="checkbox"/> Witness
Case status	<input type="checkbox"/> No complaint yet <input type="checkbox"/> Police investigation <input type="checkbox"/> Arrest warrant issued <input type="checkbox"/> Client arrested but no proceedings <input type="checkbox"/> Proceedings ongoing <input type="checkbox"/> Plea or conviction entered <input type="checkbox"/> Appeal filed <input type="checkbox"/> Unknown
Client incarcerated	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> N/A
Conditions of client's incarceration	<input type="checkbox"/> Bail Specify amount: _____ <input type="checkbox"/> Held without bail <input type="checkbox"/> Other (describe): _____ _____
Date of incarceration	
Name of prison	
Time in jail before seen by judge <i>(Specify in number of days)</i>	
FIR received	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> N/A
Risk of imprisonment	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> N/A
Risk of death penalty	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> N/A
Power of Lawyer	Date received:

SAMPLE APPLICATION FORMS

I(a)

Co-Defendant(s) (If no co-defendants, leave blank. If more than two, attach a File Note)

For each co-defendant, provide:

Co-Defendant 1	Name:	
	Phone number:	
	Lawyer's name (if any):	
	Lawyer's office or organization:	
Co-Defendant 2	Name:	
	Phone number:	
	Lawyer's name (if any):	
	Lawyer's office or organization:	

Victim(s) (If more than one, attach a File Note) For each victim, provide:

Victim	Name:	
	Phone number:	
	Lawyer's name (if any):	
	Lawyer's office or organization:	

Civil Case

File classification	<input type="checkbox"/> Non-Litigious <input type="checkbox"/> Litigious
Client classification	<input type="checkbox"/> Plaintiff/Claimant/Applicant <input type="checkbox"/> Appellant <input type="checkbox"/> Defendant/Respondent <input type="checkbox"/> Third Party <input type="checkbox"/> Witness <input type="checkbox"/> N/A
Case status	<input type="checkbox"/> Advice sought only <input type="checkbox"/> Claim filed <input type="checkbox"/> Defense filed <input type="checkbox"/> Proceedings ongoing <input type="checkbox"/> Trial commenced <input type="checkbox"/> Revision filed <input type="checkbox"/> Appeal filed <input type="checkbox"/> Writ filed

SAMPLE APPLICATION FORMS

I(a)

Subject matter	
Area of law	<input type="checkbox"/> Contract <input type="checkbox"/> Negligence <input type="checkbox"/> Inheritance <input type="checkbox"/> Debt <input type="checkbox"/> Workplace injury <input type="checkbox"/> Employment <input type="checkbox"/> Nuisance <input type="checkbox"/> Trust <input type="checkbox"/> Motor vehicle accident <input type="checkbox"/> Lease <input type="checkbox"/> Land <input type="checkbox"/> Other – specify: _____
Other parties	
Co-parties (If no co-parties, leave blank. If more than one, attach a File Note)	Name:
	Phone number:
	Lawyer's name (if any):
	Lawyer's office or organization:
For each co-party, provide:	
Opposing parties (If no opposing parties, leave blank. If more than one, attach a File Note)	Name:
	Phone number:
	Lawyer's name (if any):
	Lawyer's office or organization:
For each opposing party, provide:	
Family Case	
Case classification	<input type="checkbox"/> Non-Litigious <input type="checkbox"/> Litigious
Client classification	<input type="checkbox"/> Plaintiff/Claimant/Applicant <input type="checkbox"/> Appellant <input type="checkbox"/> Defendant/Respondent <input type="checkbox"/> Witness <input type="checkbox"/> N/A
Subject matter	
Area of law	<input type="checkbox"/> Separation <input type="checkbox"/> Divorce <input type="checkbox"/> Child custody <input type="checkbox"/> Child support <input type="checkbox"/> Spousal support <input type="checkbox"/> Property division <input type="checkbox"/> Other – specify: _____

SAMPLE APPLICATION FORMS

I(a)

Spouse information		
Spouse details	Name:	
	Phone number:	
	Lawyer's name (if any):	
	Lawyer's office or organization:	

MAKE COPIES OF ALL RELEVANT DOCUMENTS AND PUT IN FILE

Name of interviewer	
Date of interview	
Conflict checked?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Case accepted?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If not, why not?	
Lawyer/team assigned	
File name:	
Case referred to?	

SAMPLE APPLICATION FORMS

I (b)

Annex I (b): Applicant's Declaration and Authority to Obtain and Disclose Information

I (name) _____ of (home address) _____:

I. authorise the **[insert legal aid organisation name]** to:

- (a) request and receive personal or financial information or documentation in relation to me for the purposes of:
 - (i) assessing my eligibility for assistance; and
 - (ii) providing legal assistance to me;
- (b) use my personal information anonymously to compile statistical data for the purpose of evaluating **[insert legal aid organisation name]** services;

2. understand that this authority continues until I withdraw it in writing or the end of my case, whichever comes first;

3. undertake to notify **[insert legal aid organisation name]** within 7 days of any:

- (a) change in my financial circumstances;
- (b) change in my contact details or address;
- (c) new issue or evidence that might affect my case;

4. undertake to provide all additional information requested by **[insert legal aid organisation name]** as and when requested;

5. understand and accept:

- (a) the conditions of receiving assistance from **[insert legal aid organisation name]**, as described in the document that I have received in making this application, entitled "Important Information and Conditions of Receiving Legal Aid";
- (b) that **[insert legal aid organisation name]** reserves the right to suspend or cease providing assistance if it becomes aware that the information provided by me is false or misleading or incomplete;

6. agree to withdraw my power of lawyer from **[insert legal aid organisation name]** if **[insert legal aid organisation name]** ceases to provide assistance to me due to information provided by me being found to be false, or misleading or incomplete.

I declare that all information provided by me to **[insert legal aid organisation name]** in the Application and Intake Form is true and correct.

Signature

Date

SAMPLE APPLICATION FORMS

Annex I(c): Important Information and Conditions of Receiving Legal Aid

What [insert legal aid organisation name] does

[Briefly describe what the legal aid organization does. An example is set out below.]

[insert legal aid organisation name] provides free legal services (called 'Legal Aid') to people who cannot afford to pay for a lawyer or who are vulnerable, such as women, children and people with special needs. It provides legal assistance in both criminal and civil matters.

Eligibility for legal assistance from [insert legal aid organization name]

To receive free legal assistance, you must meet two basic requirements:

- (a) You cannot afford to pay a lawyer for assistance; and
- (b) Your case involves a legal issue within [insert legal aid organisation name]'s defined areas of law and its resources.

[insert legal aid organisation name] will determine if you meet these requirements by looking at your financial situation and by examining the merits of your case. This is called a "means and merits assessment". In order to receive free legal assistance, you must meet both of the requirements.

What [insert legal aid organization name] will do for you

[insert legal aid organisation name] will help you with your legal problem by providing legal advice, representing you in court and/or referring you to other organizations that might be able to help with other suitable or complementary services.

The staff members helping you will explain to you how your legal problem can be dealt with and will ask you what you would like to do about it, based on the advice that they provide.

What [insert legal aid organization name] will not do

[insert legal aid organisation name] will not take any steps which may involve paying or accepting bribes or being involved (directly or indirectly) in any other corrupt practices, breaking any law or rules of court, or acting unethically. [insert legal aid organisation name] has the right to cease acting for you if you instruct the staff members to take any such steps or if you (or anyone on your behalf) is involved in any corrupt or illegal practice relating to your case.

What your obligations are if you receive free legal assistance from [insert legal aid organization name]

If you receive free legal assistance from [insert legal aid organisation name], you also have obligations:

- (a) You must tell [insert legal aid organisation name] everything that it needs to know about your case. You must not give any false or misleading information about your personal circumstances or your legal problem.
- (b) You must inform [insert legal aid organisation name] of any new issues or evidence that might affect your case as soon as possible.

SAMPLE APPLICATION FORMS

I(c)

- (c) You must provide all additional information requested by **[insert legal aid organisation name]** when requested.
- (d) You must inform **[insert legal aid organisation name]** of any changes in your financial circumstances, contact details or address within 7 days.

If you provide information that is false or misleading or incomplete, **[insert legal aid organisation name]** may stop helping you. If **[insert legal aid organisation name]** stops acting for you in these circumstances, you must withdraw your power of lawyer, if you have a court case.

Confidentiality

[insert legal aid organisation name] will keep your legal matter confidential. It will not discuss your matter with anyone or provide any information to others except in the following circumstances:

- (a) If you ask **[insert legal aid organisation name]** to provide information to someone else or authorize someone else to receive information from **[insert legal aid organisation name]**;
- (b) If **[insert legal aid organisation name]** is required by law, including a court order, to release the information.

Payment of legal fees and expenses

You do not need to pay **[insert legal aid organisation name]** anything in relation to legal fees and expenses except as set out below:

- (a) If you are involved in a court case and the court orders the other party to pay your legal fees, then the amount received from the other party for legal fees must be paid to **[insert legal aid organisation name]** as a contribution towards the cost of the legal services. If no money for legal fees is received from the other party, you will not have to pay anything for the legal services that you receive.
- (b) If **[insert legal aid organisation name]** commences a civil case for you in court, you may need to pay some costs, such as court fees. However, this will be discussed with you at the beginning of your case before the case is filed in court.

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Annex I (d): Means and Merits Policy: Criteria and Guidelines

Introduction

1. [insert legal aid organization name] provides free legal services to those who cannot afford to pay for a lawyer or who are most vulnerable, including women, children and people with special needs.
2. [insert legal aid organization name]'s objectives are to:
 - 2.1 [insert legal aid organization's objectives]

Objectives of Criteria and Guidelines

3. The objectives of these Criteria and Guidelines are to:
 - 3.1 focus the delivery of legal services to those most in need, within [insert legal aid organization name]'s financial and personnel resources and its areas of expertise;
 - 3.2 provide clear guidance for staff and a person who applies for free legal assistance (**Applicant**) on eligibility requirements.

Eligibility for Legal Assistance from [insert legal aid organization name]

4. In order to receive free legal assistance from [insert legal aid organization name], the Applicant must meet **both** the Means and Merits Criteria.

Applicants

5. An Applicant can be:
 - 5.1 a natural person;
 - 5.2 a local, not-for-profit organization; or
 - 5.3 a local micro-business (stall owner; street food seller; etc.).
6. To determine whether an Applicant meets the Means and Merits Criteria, [insert legal aid organization name] must conduct an assessment of the Applicant's circumstances and the case. Only the Criteria and Guidelines contained in this document must be used to make this determination, together with the:
 - 6.1 Application Form; and
 - 6.2 Means and Merits Assessment Form.

Means Criteria

7. Except as described in paragraph 8, in order for an Applicant to receive legal assistance from [insert legal aid organization name], the Applicant must meet the Means Criteria, which is as follows:

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- 7.1 The Applicant's Disposable Income (as defined in paragraph 14) is within the relevant threshold; **and**
- 7.2 The Applicant's Net Assets (as defined in paragraph 19) are within the relevant threshold.
- 8 **[insert legal aid organization name]** will not require the Means Criteria to be met in the following circumstances:
 - 8.1 The Applicant is a youth or child (as defined in the Child Law);
 - 8.2 The Applicant belongs to a class of Vulnerable People (as defined in paragraph 9) **and** the:
 - (a) Applicant is a victim of gender-based violence; or
 - (b) Applicant's income and assets are not in his/her possession or control;
 - 8.3 Immediate action is required and there is insufficient time to undertake a means assessment at that time (for example, a bail application). A means assessment should, however, be undertaken as soon as is reasonably practicable thereafter; or
 - 8.4 A senior member of **[insert legal aid organization name]** determines that the interests of justice require waiving the Means Criteria.
9. Classes of **Vulnerable People** are:
 - 9.1 youth or children;
 - 9.2 women;
 - 9.3 groups with special needs, including, but not limited to:
 - (a) the elderly;
 - (b) ethnic and religious minorities;
 - (c) persons with disabilities or mental illnesses;
 - (d) persons living with HIV or other serious contagious diseases, drug users;
 - (e) stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons.

Means Assessment

- 10 The purpose of the means assessment is to determine whether a person meets the Means Criteria.
- 11 The process involves assessing the financial position of:
 - 11.1 the Applicant or, if more than one Applicant, the combined financial position of all Applicants; and
 - 11.2 a person or persons from whom the Applicant or Applicants receive financial support (**Supporting Person**).

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I2 A Supporting Person is any person from whom the Applicant is receiving financial support, or who contributes to:

- I2.1 household income, in the case of a natural person (such as a spouse, child, parent, sibling, other relative or friend);
- I2.2 operational expenses, in the case of a small business (such as another business owner);
- I2.3 core operational funding, in the case of an organization (such as a donor).

I3 To assess the criteria, **[insert legal aid organization name]** will consider the Applicant's:

- I3.1 income;
- I3.2 financial support from a Supporting Person;
- I3.3 expenses (see paragraph 15);
- I3.4 assets (see paragraph 20);
- I3.5 debts;
- I3.6 number of dependents; and
- I3.7 any other relevant financial circumstances.

Income and Expenses

I4 The income and expenses part of the assessment considers the Applicant's disposable income. The **Disposable Income** is the total monthly income, less the basic monthly living expenses.

I5 Expenses can include the following expenses and allowances:

- I5.1 rent;
- I5.2 electricity;
- I5.3 food;
- I5.4 clothing;
- I5.5 medical care;
- I5.6 medication;
- I5.7 education;
- I5.8 transport;
- I5.9 staff salaries;
- I5.10 any other basic costs required for everyday living or work tasks.

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16 If the Applicant financially supports another person or number of people who are not living in the household, this will be taken into account as an expense. A Dependent is someone who usually relies on the Applicant for financial support (**Dependent**). This may include a spouse, child, parent, sibling or other relative.

17 To meet the Disposable Income threshold, Disposable Income must be within the following average income thresholds per month:

Applicant	Disposable Income Threshold (average per month)
Natural person	[insert amount] or less
Local micro-business	[insert amount] or less

18 In the case of local, not-for-profit organizations, senior members of [insert legal aid organization name] will consider the income and expenses of the organization in determining whether it would be appropriate to act in the circumstances.

Assets and Liabilities

19 In addition to the Disposable Income, the Applicant's assets will affect their eligibility for legal aid. The assessment will consider the total assets less the total liabilities (**Net Assets**).

20 Assets that will be taken into account include:

- 20.1 a house, if it is:
 - (a) the family home and it is of a size or value above the average family home;
 - (b) a house other than the family home; or
 - (c) rented out to tenants;
- 20.2 land (vacant, farming, etc.);
- 20.3 motor vehicle;
- 20.4 savings;
- 20.5 money lent to another person;
- 20.6 any other property of value.

21 The following will **not** be taken into account in any assets assessment:

- 21.1 clothing;
- 21.2 personal belongings which are reasonably necessary;

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- 21.3 household effects of the average person;
- 21.4 furniture of the average person;
- 21.5 the family home, if it is of a size and value consistent with the average person;
- 21.6 average tools of the trade or other assets required to earn an income.

22 Liabilities that will be taken into account include:

- 22.1 loans from any person;
- 22.2 debts;
- 22.3 any other significant liabilities.

23 To meet the Net Assets threshold, Net Assets must be within the following thresholds:

Applicant	Net Assets Threshold
Natural person	[insert amount] or less
Local micro-business	[insert amount] or less

24 In the case of local, not-for-profit organizations, senior members of [insert legal aid organization's name] will consider the assets and liabilities of the organization in determining whether it would be appropriate to act in the circumstances.

Merits Criteria

25 The purpose of the merits assessment is to determine whether it is reasonable for [insert legal aid organization name] to accept a case in which the Applicant meets the Means Criteria.

26 In determining if it is reasonable to accept a case, [insert legal aid organization name] will consider:

- 26.1 whether the case is an area of law in which [insert legal aid organization name] works, in accordance with the categories and criteria set out below; and
- 26.2 the benefit that the Applicant can expect to gain by receiving legal assistance from [insert legal aid organization name]; and
- 26.3 what the disadvantage or harm to the Applicant might be if the Applicant is refused legal assistance from [insert legal aid organization name]; and
- 26.4 whether the Applicant has a reasonable chance of obtaining a favorable outcome.

27 **Reasonable chance of obtaining a favorable outcome** means that based on the information provided to [insert legal aid organization name] and the available evidence, it appears that the proposed representation is more likely than not to provide an outcome for the Applicant which will be favorable.

28 In criminal cases, if there is no reasonable chance of obtaining a favorable outcome, but the accused wishes to plead guilty

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then, subject to the Merits Criteria below, **[insert legal aid organization name]** can accept the case.

29 In civil cases, if there is no reasonable chance of obtaining a favorable outcome, but a party wishes to settle the matter then, subject to the Merits Criteria below, **[insert legal aid organization name]** can accept the case.

Criminal Matters

30 Subject to its conflict of interest policy, **[insert legal aid organization name]** will act for Applicants who meet the Means Criteria and are:

- 30.1 an accused;
- 30.2 a victim; or
- 30.3 a witness.

31 **[insert legal aid organization name]** will act for an Applicant who meets the Means Criteria and is accused of a crime if:

- 31.1 there is a risk of the death penalty being imposed;
- 31.2 there is a risk of imprisonment;
- 31.3 a confession has been coerced by threat, force or torture;
- 31.4 the Applicant has a disability, disadvantage or vulnerability (such as those identified for Vulnerable People) which would prevent self-representation;
- 31.5 the case raises an issue which is a matter of public interest and **[insert legal aid organization name]** has determined, in accordance with the Public Interest Litigation Criteria set out in paragraph 40 below, that it is an appropriate case to accept; or
- 31.6 a senior member of **[insert legal aid organization name]** determines that it is in the interests of justice to accept the case.

32 **[insert legal aid organization name]** will **not** act in the following criminal matters:

- 32.1 traffic offences;
- 32.2 where **[insert legal aid organization name]** has determined that the defense does not have merit or has no chance of a favorable outcome.

Civil matters

33 **[insert legal aid organization name]** **will** act in civil matters for an Applicant who meets the Means Criteria and where:

- 33.1 there is a reasonable chance of a favorable outcome;

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- 33.2 a senior member of **[insert legal aid organization name]** determines that it is in the interests of justice to accept the case; or
- 33.3 the case raises an issue which is a matter of public interest and **[insert legal aid organization name]** has determined, in accordance with the Public Interest Litigation criteria set out in paragraph 40 below, that it is an appropriate case in which to act.
- 34 **[insert legal aid organization name]** will **not** act in the following civil matters:
- 34.1 defamation matters;
- 34.2 matters relating to the legal issues of a company or organization (e.g. company formation, the development of articles of association);
- 34.3 internal or external company or organization disputes, unless such disputes fall within the Public Interest Litigation Criteria;
- 34.4 matters about damage to any property by a motor vehicle;
- 34.5 where **[insert legal aid organization name]** has determined that the claim or defense does not have merit or has no chance of a favorable outcome;
- 34.6 where **[insert legal aid organization name]** does not have the relevant expertise.
- 35 **[insert legal aid organization name]** will only act in the areas of law specified in paragraph 34 if a senior member of **[insert legal aid organization name]** has determined that it is in the interests of justice to accept the case.
- 36 With respect to litigious civil cases, **[insert legal aid organization name]** will only act if the following **additional** conditions are met in cases that relate only to the Applicant's personal interests:
- (a) **[insert legal aid organization name]** will file proceedings on behalf of the Applicant only if the Applicant pays all court fees and other related litigation expenses; and
- (b) At any stage of the case, if the court orders that the opposing party pay the Applicant's legal fees, the amount recovered from the other party for legal fees shall be paid to **[insert legal aid organization name]** as a contribution towards the cost of the legal services. The Applicant should not enjoy a windfall from the court's order that the Applicant's legal fees be paid.
- 37 As an exception to paragraph 36, in cases that raise issues which are of public interest and **[insert legal aid organization name]** has determined, in accordance with the Public Interest Litigation Criteria set out in paragraph 40 below, that it is an appropriate case in which to commence Public Interest Litigation:
- (a) **[insert legal aid organization name]** will cover the cost of all court fees and related litigation expenses; and
- (b) At any stage of the case, if the court orders that the opposing party pay the Applicant's legal fees, court fees and/or other related litigation expenses, the amount recovered from the other party shall be paid to **[insert legal aid organization name]** as a contribution towards the cost of the legal services court fees and/or other related litigation expenses actually incurred by **[insert legal aid organization name]** in the litigation. The Applicant should not enjoy a windfall from the court's order that the Applicant's legal fees or costs be paid.

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Public Interest Litigation

38 Public interest litigation means taking or defending legal proceedings or some other type of legal action. The primary aim is to obtain a judgment or an outcome which effects legal and social change that benefits a wider group of people (**Public Interest Litigation**).

39 [insert legal aid organization name]s objectives in accepting public interest cases, whether litigated in court or not, are to:

- 39.1 ensure access to justice for a broader sector of the public;
- 39.2 raise awareness of unfair or unjust laws and practices;
- 39.3 expose government agencies acting with excessive authority or outside their authority;
- 39.4 influence law or policy on fundamental human rights by highlighting gaps between domestic legal standards and international human rights standards;
- 39.5 ensure that laws are interpreted, applied and enforced equally and correctly.

40 The matters listed below are the **Public Interest Litigation Criteria**. Before determining whether to accept a case on public interest considerations, [insert legal aid organization name] will consider whether:

- 40.1 the case could impact, expose and/or raise awareness on:
 - (a) the cause of Vulnerable People or other minority or disadvantaged groups;
 - (b) unfairness or an injustice in the law or practice; or
 - (c) issues of broad public importance;
- 40.2 the legal issue is one that has not previously been tested;
- 40.3 the determination of the issue could benefit the general public, a portion of the public, or other individuals or groups;
- 40.4 the issue involved is one of:
 - (a) human rights;
 - (b) land;
 - (c) the environment;
 - (d) constitutional rights;
 - (e) government agencies acting with excessive authority or outside their authority; or
 - (f) such importance to the general public, a portion of the public, or other individuals or groups that it warrants consideration;

SAMPLE APPLICATION FORMS

- 40.5 there are alternatives to litigation which may more effectively address, expose or raise awareness of, the legal issue;
- 40.6 **[insert legal aid organization name]** has the resources to run the case throughout the entire litigation process, including any appeals to the highest authority able to hear the case;
- 40.7 the likelihood that the legal argument proposed is likely to bring about a favorable outcome in:
- (a) the particular proceedings;
 - (b) exposing unfairness or an injustice in the law;
 - (c) impacting, exposing or raising awareness of, the legal issue;
- 40.8 the Applicant is willing and able to see the litigation process through to the end, including multiple appeals and related applications;
- 40.9 acceptance of the case is in line with **[insert legal aid organization name]**'s objectives in acting in public interest cases, as outlined in paragraph 39 above;
- 40.10 the Applicant has met the Means Criteria.

Appeals Against Refusal of Legal Assistance from **[insert legal aid organization name]**

- 41 If an Applicant was refused legal assistance from **[insert legal aid organization name]** because the Applicant did not meet the Means and Merits Criteria, the Applicant may seek reconsideration of the initial decision by making a request in writing to the **[insert title of person with authority to make decision]** of **[insert legal aid organization name]** outlining the reasons why the decision should be reviewed.
- 42 The **[insert title of person with authority to make decision]** of **[insert legal aid organization name]** will consider the reasons of the Applicant, together with the reasons for refusal, and make a determination accordingly.
- 43 Following this process, the decision of the **[insert title of person with authority to make decision]** of **[insert legal aid organization name]** will be final.

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I(e)

Annex I(e): Means and Merits Assessment

This form must be attached to the Application Form

For guidance and definitions of key terms, please refer to the *Means And Merits Policy: Criteria And Guidelines*. Relevant paragraph numbers are contained in brackets “[X]”.

Personal Details		
Applicant’s Name		
Adult/Youth/Child (As defined in the Child Law)		
<input type="checkbox"/> Adult <input type="checkbox"/> Youth → Proceed to Merits Assessment <input type="checkbox"/> Child → Proceed to Merits Assessment		
Means Assessment		
Preliminary questions		
1	Is the applicant a Vulnerable Person? [9]	<input type="checkbox"/> No → Proceed to Question #2 <input type="checkbox"/> Yes → Proceed to Question #3
2	Is immediate action on behalf of the Applicant required?	<input type="checkbox"/> No → Proceed to Question #4 in Income and Expenses <input type="checkbox"/> Yes* → Proceed to Merits Assessment, Question: <ul style="list-style-type: none"> • #12 for criminal cases; or • #16 for civil and family cases * As soon as is reasonably practicable after the immediate action has been taken, the Income and Expenses Section must be completed.
3	Does any one of these circumstances apply to the Applicant?	<input type="checkbox"/> Applicant is a victim of gender-based violence <input type="checkbox"/> Applicant’s income and assets are not in his/her possession or control <input type="checkbox"/> A senior member of [insert legal aid organization name] determines that the interests of justice require assistance from [insert legal aid organization name] regardless of means <input type="checkbox"/> No → Proceed to Question #4 in Income and Expenses <input type="checkbox"/> Yes → Proceed to Merits Assessment, Question: <ul style="list-style-type: none"> • #12 for criminal cases; or • #16 for civil and family cases
Income and Expenses		
4	Total monthly income	
5	Total monthly expenses	

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6	Disposable Income (deduct expenses from income) [14]	
7	Is the Disposable Income within the relevant threshold? [17]	<input type="checkbox"/> No → Applicant is not eligible <input type="checkbox"/> Yes → Proceed to Question #8 in Assets and Liabilities
Assets and Liabilities		
8	Total value of assets	
9	Total current liabilities	
10	Net Assets (deduct liabilities from assets) [19]	
11	Are the Net Assets within the relevant threshold? [23]	<input type="checkbox"/> No → Applicant is not eligible <input type="checkbox"/> Yes → Applicant has met Means criteria. Proceed to Merits Assessment, Question: <ul style="list-style-type: none"> • #12 for criminal cases; or • #16 for civil and family cases.
Merits Assessment – To be completed only by legal staff		
Criminal Cases		
12	Are there reasonable chances of obtaining a favorable outcome in this case? [27]	<input type="checkbox"/> No → Proceed to Question #13 <input type="checkbox"/> Yes → Proceed to Question #14
13	Does the client wish to plead guilty? [28]	<input type="checkbox"/> No → Applicant is not eligible <input type="checkbox"/> Yes → Applicant has met Merits criteria. Proceed to Question #21 in Final Assessment.
14	Does any one of these circumstances apply to the Applicant? [31] and [40]	<input type="checkbox"/> There is a risk of the death penalty being imposed <input type="checkbox"/> There is a risk of imprisonment <input type="checkbox"/> A confession has been coerced by threat, force or torture <input type="checkbox"/> The Applicant has a disability, disadvantage or vulnerability (such as those identified for Vulnerable People) which would prevent self-representation <input type="checkbox"/> The case raises an issue which is a matter of public interest and <u>[insert legal aid organization name]</u> has determined, in accordance with the Public Interest Litigation Criteria, that it is an appropriate case in which to act <input type="checkbox"/> A senior member of <u>[insert legal aid organization name]</u> determines that the interests of justice require assistance from <u>[insert legal aid organization name]</u>

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		<input type="checkbox"/> No → Applicant is not eligible <input type="checkbox"/> Yes → Applicant has met Merits criteria. Proceed to Question #21 in Final Assessment
15	If any part of the Merits Assessment involved consideration of the interests of justice or the Public Interest Litigation Criteria, make notes here on the issues considered	
Civil and Family Cases		
16	Are there reasonable chances of obtaining a favorable outcome in this case? [27]	<input type="checkbox"/> No → Proceed to Question #17 <input type="checkbox"/> Yes → Proceed to Question #18
17	Does the client wish to settle the matter? [29]	<input type="checkbox"/> No → Applicant is not eligible <input type="checkbox"/> Yes → Proceed to Question #18
18	Is the subject matter excluded under <u>[insert legal aid organization name]</u> Merits Criteria? [34]	<input type="checkbox"/> No → Applicant has met Merits criteria. Proceed to Question #21 in Final Assessment <input type="checkbox"/> Yes → Proceed to Question #19
19	Does either of these circumstances apply to the Applicant? [33] and [40]	<input type="checkbox"/> A senior member of <u>[insert legal aid organization name]</u> has determined that the interests of justice require assistance from <u>[insert legal aid organization name]</u> <input type="checkbox"/> The case raises an issue which is a matter of public interest and <u>[insert legal aid organization name]</u> has determined, in accordance with the Public Interest Litigation Criteria, that it is an appropriate case in which to act <input type="checkbox"/> No → Applicant is not eligible <input type="checkbox"/> Yes → Applicant has met Merits criteria. Proceed to Question #21 in to Final Assessment

SAMPLE APPLICATION FORMS

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20	If any part of the Merits Assessment involved consideration of the interests of justice or the Public Interest Litigation Criteria, make notes here on the issues considered	
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Final Assessment

21	Has the Applicant passed both the Means <u>and</u> Merits Assessments?	<input type="checkbox"/> No → Applicant is not eligible <input type="checkbox"/> Yes → Applicant is eligible
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Date	
Approved By	Signature
	Name and title

SAMPLE CASE INTAKE FORMS

2(a)

Annex 2(a): Criminal Defendant

Criminal Case Intake Form

Client and file information			
Client name			
File name & no.			
Client classification	<input type="checkbox"/> Accused	<input type="checkbox"/> Witness	
Court case name			
Court case number			
Jurisdiction	<input type="checkbox"/> Original	<input type="checkbox"/> Appeal	<input type="checkbox"/> Revision
Judge's name			
Prosecutor's name			
Court clerk's name			
Court	<input type="checkbox"/> Township Court	<input type="checkbox"/> District Court	
	<input type="checkbox"/> State High Court	<input type="checkbox"/> Union Supreme Court	
Location	<input type="checkbox"/> [insert township/state/district]	<input type="checkbox"/> [insert township/state/district]	
	<input type="checkbox"/> [insert township/state/district]	<input type="checkbox"/> Naypyidaw	
Date of first hearing			
Date of most recent hearing			
Next court date			
Case Information			
Charge(s) (leave blank if not applicable)			
(Specify relevant section of law setting out <u>crime(s)</u> not punishment(s)) <input type="checkbox"/> N/A			
Date charged	Charge(s) (Specify law & section)	Description of charge(s)	How does the client intend to plead?
			<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Not sure

SAMPLE CASE INTAKE FORMS

2(a)

			<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Not sure
			<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Not sure
Date of alleged crime			
Place of alleged crime			
Date of police charge			
Date of arrest			
Warrant for arrest issued?	<input type="checkbox"/> No <input type="checkbox"/> Yes		
FIR requested	<input type="checkbox"/> No <input type="checkbox"/> Yes date requested: _____ date received: _____		
Risk of imprisonment	<input type="checkbox"/> No <input type="checkbox"/> Yes – Specify maximum penalty: _____		
Risk of death penalty	<input type="checkbox"/> No <input type="checkbox"/> Yes		
Power of Lawyer	Date received: _____		
Description of alleged crime <i>(Attach File Note if insufficient space)</i>			
What does the client say about his/her involvement in the alleged crime? <i>(Attach File Note if insufficient space)</i>			
Does client have any previous convictions?	<input type="checkbox"/> No <input type="checkbox"/> Yes – Give details: _____ _____		

ANNEX 2:

SAMPLE CASE INTAKE FORMS

2(a)

Co-Defendant(s) *(If no co-defendants, leave blank. If more than one, attach a File Note)*

For each co-defendant, provide:

Co-Defendant 1:

Name	
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female
Adult/Youth/Child	<input type="checkbox"/> Adult <input type="checkbox"/> Youth <input type="checkbox"/> Child
Occupation	
Address	
Phone number	
Relationship of co-defendant to client	
Relationship of co-defendant to victim	
Lawyer's name	
Lawyer's office or organization	

Co-Defendant 2:

Name	
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female
Adult/Youth/Child	<input type="checkbox"/> Adult <input type="checkbox"/> Youth <input type="checkbox"/> Child
Occupation	
Address	
Phone number	
Relationship of co-defendant to client	
Relationship of co-defendant to victim	
Lawyer's name	
Lawyer's office or organization	

SAMPLE CASE INTAKE FORMS

2(a)

Victim(s) information *(If more than one, attach a File Note)*

For each Victim, provide:

Victim name	
Relationship of Victim to client (if client is accused or witness)	<input type="checkbox"/> Spouse <input type="checkbox"/> Other family member <input type="checkbox"/> Friend <input type="checkbox"/> Neighbor <input type="checkbox"/> Acquaintance <input type="checkbox"/> Stranger <input type="checkbox"/> N/A
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female
Adult/Youth/Child	<input type="checkbox"/> Adult <input type="checkbox"/> Youth <input type="checkbox"/> Child
Occupation	
Address	
Phone number	
Relatives/friends where victim can be found	
Lawyer's name (if any)	
Lawyer's office or organization	

Case Evidence

Witnesses for client	For each witness: 1. What is his/her relationship to client or victim? 2. Has she/he been interviewed by police? 3. Has she/he signed a witness statement? 4. Any other relevant information.
Summary of evidence from each of the witnesses for client <i>(Attach File Note)</i>	For each witness, include: 1. What did he/she see, hear or say? 2. Where was the witness at the time? 3. When did the events take place? 4. Who else was there? 5. What physical evidence does witness have? 6. Any other relevant information.
Witnesses for victim	For each witness: 1. What is his/her relationship to client or victim? 2. Has she/he been interviewed by police? 3. Has she/he signed witness statement? 4. Any other relevant information.

SAMPLE CASE INTAKE FORMS

2(a)

Summary of evidence from each of the witnesses for victim <i>(Attach File Note)</i>	Include: 1. What did he/she see, hear or say? 2. Where was the witness at the time? 3. When did the events take place? 4. Who else was there? 5. What physical evidence does witness have? 6. Any other relevant information.	
Additional potential witnesses to crime		
Additional potential witnesses to arrest		
Results of police investigation		
Medical and chemical evidence <i>(Take copy of relevant test/report)</i>	Type of medical evidence	Copy of test/report taken?
	<input type="checkbox"/> Blood test	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> N/A
	<input type="checkbox"/> Urine test	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> N/A
	<input type="checkbox"/> Genetic sample	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> N/A
	<input type="checkbox"/> Other – Give details: _____ _____	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> N/A
Confession given?	<input type="checkbox"/> No	
	<input type="checkbox"/> Yes	<input type="checkbox"/> Police confession <input type="checkbox"/> Court confession
		<input type="checkbox"/> Lawyer was not present <input type="checkbox"/> Lawyer was present
Provide date and details of the circumstances of the confession: _____ _____ _____		
Allegation of police brutality?	<input type="checkbox"/> No <input type="checkbox"/> Yes – Give details: _____ _____	
Other evidence or relevant documents		

SAMPLE CASE INTAKE FORMS

2(a)

<input type="checkbox"/> Appeal <input type="checkbox"/> Revision	
Trial judge's name	
Trial court prosecutor's name	
Trial court clerk's name	
Date of trial court order/ judgment	
Summary of trial court order <i>(Attach File Note if insufficient space)</i>	
Has the appeal or revision been filed?	<input type="checkbox"/> No <input type="checkbox"/> Yes – Date filed: _____
Other relevant details	

MAKE COPIES OF ALL RELEVANT DOCUMENTS AND PUT IN FILE

Name of interviewer	
Date of interview	
Lawyer/team assigned	
Case referred to?	

SAMPLE CASE INTAKE FORMS

2(b)

Annex 2(b): Victim of Crime

Victim of Crime Case Intake Form

Client and file information	
Client name	
File name & no.	
Client classification	<input type="checkbox"/> Victim
Accused information <i>(If more than one accused, attach a File Note)</i>	
For each accused, provide:	
Name	
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female
Adult/Youth/Child	<input type="checkbox"/> Adult <input type="checkbox"/> Youth <input type="checkbox"/> Child
Relationship of client to accused	<input type="checkbox"/> Spouse <input type="checkbox"/> Other family member <input type="checkbox"/> Friend <input type="checkbox"/> Neighbor <input type="checkbox"/> Acquaintance <input type="checkbox"/> Stranger <input type="checkbox"/> N/A
Occupation	
Address	
Phone number	
Relatives/friends where accused can be found	
Lawyer's name	
Lawyer's office or organisation	
Does accused have criminal record?	<input type="checkbox"/> No <input type="checkbox"/> Yes – Give details: _____ _____
Incarceration	
Accused incarcerated?	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Unknown
Conditions of accused's incarceration	<input type="checkbox"/> Bail Specify amount: _____ <input type="checkbox"/> Held without bail <input type="checkbox"/> Unknown <input type="checkbox"/> Other (describe): _____

SAMPLE CASE INTAKE FORMS

2(b)

Case Information		
Charge(s) (leave blank if not applicable)		
(Specify relevant section of law setting out <u>crime(s)</u> not punishment(s)) <input type="checkbox"/> N/A		
Date charged	Charge(s) (Specify law & section)	Description of charge(s)
Date of alleged crime		
Place of alleged crime		
Date of police charge		
Date of arrest		
Court case name		
Court case number		
Jurisdiction	<input type="checkbox"/> Original <input type="checkbox"/> Appeal <input type="checkbox"/> Revision	
Judge's name		
Prosecutor's name		
Court clerk's name		
Court	<input type="checkbox"/> Township Court <input type="checkbox"/> District Court <input type="checkbox"/> State High Court <input type="checkbox"/> Union Supreme Court	
Location	<input type="checkbox"/> [insert township/state/district] <input type="checkbox"/> [insert township/state/district] <input type="checkbox"/> [insert township/state/district] <input type="checkbox"/> Naypyidaw	
Next court date		
Date of first hearing		
Date of most recent hearing		

ANNEX 2:

SAMPLE CASE INTAKE FORMS

2(b)

Description of alleged crime <i>(Attach File Note if insufficient space)</i>	
Client's desired outcome	
Case Evidence	
Witnesses for client	For each witness: 1. What is his/her relationship to client or accused? 2. Has she/he been interviewed by police? 3. Has she/he signed a witness statement? 4. Any other relevant information.
Summary of evidence from each of the witnesses for client <i>(Attach File Note)</i>	For each witness, include: 1. What did he/she see, hear or say? 2. Where was the witness at the time? 3. When did the events take place? 4. Who else was there? 5. What physical evidence does witness have? 6. Any other relevant information.
Witnesses for accused	For each witness: 1. What is his/her relationship to client or accused? 2. Has she/he been interviewed by police? 3. Has she/he signed witness statement? 4. Any other relevant information.
Summary of evidence from each of the witnesses for accused <i>(Attach File Note)</i>	Include: 1. What did he/she see, hear or say? 2. Where was the witness at the time? 3. When did the events take place? 4. Who else was there? 5. What physical evidence does witness have? 6. Any other relevant information.
Additional potential witnesses to crime	
Results of police investigation	
FIR requested	<input type="checkbox"/> No <input type="checkbox"/> Yes – date requested: _____ date received: _____

SAMPLE CASE INTAKE FORMS

2(b)

	Type of medical evidence	Copy of test/report taken?
Medical evidence <i>(Take copy of relevant test/report. Leave blank if not relevant)</i>	<input type="checkbox"/> Blood test	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> N/A
	<input type="checkbox"/> Urine test	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> N/A
	<input type="checkbox"/> Genetic sample	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> N/A
	<input type="checkbox"/> Drug analysis	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> N/A
	<input type="checkbox"/> Other – Give details: _____ _____	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> N/A
Has the accused given a confession?	<input type="checkbox"/> No <input type="checkbox"/> Yes – Give details: _____	
Other evidence or relevant documents		
Has all relevant evidence been provided to the police and/or the prosecutor?	<input type="checkbox"/> No <input type="checkbox"/> Yes – Give details: _____ _____	
<input type="checkbox"/> Appeal <input type="checkbox"/> Revision		
Trial judge's name		
Trial court prosecutor's name		
Trial court clerk's name		
Date of trial court order/judgment		
Summary of trial court order <i>(Attach File Note if insufficient space)</i>		
Has the appeal or revision been filed?	<input type="checkbox"/> No <input type="checkbox"/> Yes – Date filed: _____	
Other relevant details		

ANNEX 2:

SAMPLE CASE INTAKE FORMS

2(b)

MAKE COPIES OF ALL RELEVANT DOCUMENTS AND PUT IN FILE

Name of interviewer	
Date of interview	
Lawyer/team assigned	
Case referred to?	

SAMPLE CASE INTAKE FORMS

Annex 2(c): Domestic Violence

Domestic Violence Case Supplemental Intake Form

NOTE: This form is intended to provide supplemental information for cases involving domestic violence. This form must be used with the Criminal Intake Form, the Victim of Crime Intake Form or the Family Law Intake Form. This form **must not** be used on its own.

Client and file information		
Client name		
File name & no.		
Client sub-classification	<input type="checkbox"/> Victim of domestic violence <input type="checkbox"/> Accused of domestic violence	
Information relating to abuse		
Nature of relationship	<input type="checkbox"/> By consent <input type="checkbox"/> By force <input type="checkbox"/> Family	
Relationship with abuser/victim	<input type="checkbox"/> Spouse <input type="checkbox"/> Other domestic partner <input type="checkbox"/> Friend <input type="checkbox"/> Family member – specify: _____	
If a spouse, was the marriage registered?	<input type="checkbox"/> No – give details of marriage: _____ _____	
	<input type="checkbox"/> Yes – list date of marriage and supporting documents _____ _____	
If marriage was registered, have divorce papers been filed?	<input type="checkbox"/> No <input type="checkbox"/> Yes – provide details: _____ _____ _____	
	Party filing for divorce	
	Date filed	
	Court	
	Judge's name	
Court clerk's name		

SAMPLE CASE INTAKE FORMS

2(c)

Details of domestic violence	Against spouse/domestic partner/friend/family member?	<input type="checkbox"/> No <input type="checkbox"/> Yes
	Against children?	<input type="checkbox"/> No <input type="checkbox"/> Yes
	Physical violence?	<input type="checkbox"/> No <input type="checkbox"/> Yes
	Sexual abuse?	<input type="checkbox"/> No <input type="checkbox"/> Yes
	Mental abuse?	<input type="checkbox"/> No <input type="checkbox"/> Yes
	Economic abuse?	<input type="checkbox"/> No <input type="checkbox"/> Yes
	How often?	
Other details:		
Types of abuse (Tick as many as are applicable)	<input type="checkbox"/> Slapping <input type="checkbox"/> Hitting <input type="checkbox"/> Kicking <input type="checkbox"/> Strangling <input type="checkbox"/> Pulling hair <input type="checkbox"/> Twisting arm/leg <input type="checkbox"/> Throwing things <input type="checkbox"/> Sexual violence <input type="checkbox"/> Threats <input type="checkbox"/> Insults <input type="checkbox"/> Economic <input type="checkbox"/> Accusations <input type="checkbox"/> Prohibition to contact others <input type="checkbox"/> Other – provide details: _____	
Tools of physical abuse (Tick as many as are applicable)	<input type="checkbox"/> Knife <input type="checkbox"/> Gun <input type="checkbox"/> Stick <input type="checkbox"/> Flame <input type="checkbox"/> Poison <input type="checkbox"/> Rope <input type="checkbox"/> Other – provide details: _____	
Injuries (Tick as many as are applicable)	<input type="checkbox"/> Loss of consciousness <input type="checkbox"/> Broken bones <input type="checkbox"/> Cuts <input type="checkbox"/> Swelling <input type="checkbox"/> Rash <input type="checkbox"/> Sprain <input type="checkbox"/> Mental problems <input type="checkbox"/> Miscarriage <input type="checkbox"/> Bleeding <input type="checkbox"/> Other – provide details: _____	
Was medical treatment required?	<input type="checkbox"/> No <input type="checkbox"/> Yes – provide details _____	
Are parties living together?	<input type="checkbox"/> Never have <input type="checkbox"/> Not currently – date of separation: _____ <input type="checkbox"/> Yes	

SAMPLE CASE INTAKE FORMS

2(c)

What are the factors that cause the domestic violence?	
Emergency assistance needed by client <i>(Tick as many as are applicable)</i>	<input type="checkbox"/> Shelter <input type="checkbox"/> Financial support <input type="checkbox"/> Legal aid <input type="checkbox"/> Support at reconciliation <input type="checkbox"/> Counseling <input type="checkbox"/> None
Long-term assistance needed by client <i>(Tick as many as are applicable)</i>	<input type="checkbox"/> Shelter <input type="checkbox"/> Financial support <input type="checkbox"/> Legal aid <input type="checkbox"/> Support at reconciliation <input type="checkbox"/> Counseling <input type="checkbox"/> None
Does victim or accused use drugs or alcohol?	Victim: <input type="checkbox"/> No <input type="checkbox"/> Yes – provide details: _____ _____ Accused: <input type="checkbox"/> No <input type="checkbox"/> Yes – provide details: _____ _____
Does victim or accused have criminal record?	Victim: <input type="checkbox"/> No <input type="checkbox"/> Yes – provide details: _____ _____ Accused: <input type="checkbox"/> No <input type="checkbox"/> Yes – provide details: _____ _____
Is victim or accused involved in other relationships?	Victim: <input type="checkbox"/> No <input type="checkbox"/> Yes – provide details: _____ _____ Accused: <input type="checkbox"/> No <input type="checkbox"/> Yes – provide details: _____ _____
Children in household <i>(If more than three, attach a File Note)</i>	
For each child, provide:	
Child 1 – Name	
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female
Age	
Child 2 – Name	
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female

SAMPLE CASE INTAKE FORMS

2(c)

Age	
Child 3 – Name	
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female
Age	

MAKE COPIES OF ALL RELEVANT DOCUMENTS AND PUT IN FILE

Name of interviewer	
Date of interview	
Lawyer/team assigned	
Case referred to?	

SAMPLE CASE INTAKE FORMS

2(d)

Annex 2(d): Family

Family Case Intake Form

Client and file information	
Client name	
File name & no.	
Client classification	<input type="checkbox"/> Plaintiff/Claimant/Applicant <input type="checkbox"/> Appellant <input type="checkbox"/> Defendant/Respondent <input type="checkbox"/> Witness <input type="checkbox"/> N/A
Spouse information	
Spouse name	
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female
Adult/Youth/Child	<input type="checkbox"/> Adult <input type="checkbox"/> Youth <input type="checkbox"/> Child
Occupation	
Address	
Phone number	
Relatives/friends where spouse can be found	
Lawyer's name (if any)	
Lawyer's office or organization	
Case information	
Was the marriage registered?	<input type="checkbox"/> No – give details of marriage: _____ _____
	<input type="checkbox"/> Yes – list date of marriage and supporting documents _____ _____

SAMPLE CASE INTAKE FORMS

2(d)

If marriage was registered, have divorce papers been filed?	<input type="checkbox"/> No <input type="checkbox"/> Yes – provide details:	
	Party filing for divorce	
	Date filed	
	Judge’s name	
	Clerk’s name	
Court case name		
Court case number		
Jurisdiction	<input type="checkbox"/> Original <input type="checkbox"/> Appeal <input type="checkbox"/> Revision	
Court	<input type="checkbox"/> Township Court <input type="checkbox"/> District Court <input type="checkbox"/> State High Court <input type="checkbox"/> Union Supreme Court	
Location	<input type="checkbox"/> [insert township/state/district] <input type="checkbox"/> [insert township/state/district] <input type="checkbox"/> [insert township/state/district] <input type="checkbox"/> Naypyidaw	
Next court date		
Reason for divorce		
Specific law(s) involved		
Section/case/other		
Allegations of domestic violence?	<input type="checkbox"/> No <input type="checkbox"/> Yes – Also complete the Domestic Violence Case Supplemental Intake Form	
If there are allegations of domestic violence, has a criminal case been filed?	<input type="checkbox"/> No <input type="checkbox"/> Yes – provide details:	
	Date filed	
	Court	
	Charge(s)	Description of charge(s)
	Incarcerated	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> N/A
Conditions of incarceration	<input type="checkbox"/> Bail Specify amount: _____ <input type="checkbox"/> Held without bail <input type="checkbox"/> Unknown <input type="checkbox"/> Other (describe):	

SAMPLE CASE INTAKE FORMS

2(d)

Are parties still living together?	<input type="checkbox"/> No – date of separation: _____ <input type="checkbox"/> Yes
If separated, was separation by mutual agreement?	<input type="checkbox"/> No <input type="checkbox"/> Yes Give details: _____ _____
Is either party opposed to divorce?	Client: <input type="checkbox"/> No <input type="checkbox"/> Yes Spouse: <input type="checkbox"/> No <input type="checkbox"/> Yes
Have there been efforts at reconciliation?	<input type="checkbox"/> No <input type="checkbox"/> Yes – provide details (When? Outcome?): _____ _____
Does client or spouse use drugs or alcohol?	Client: <input type="checkbox"/> No <input type="checkbox"/> Yes – provide details: _____ _____ Spouse: <input type="checkbox"/> No <input type="checkbox"/> Yes – provide details: _____ _____
Does client or spouse have criminal record?	Client: <input type="checkbox"/> No <input type="checkbox"/> Yes – provide details: _____ _____ Spouse: <input type="checkbox"/> No <input type="checkbox"/> Yes – provide details: _____ _____
Is client or spouse involved in other relationships?	Client: <input type="checkbox"/> No <input type="checkbox"/> Yes – provide details: _____ _____ Spouse: <input type="checkbox"/> No <input type="checkbox"/> Yes – provide details: _____ _____
Interim measures desired by client (if any)	
Family information	
Children (If more than three, attach a File Note) For each child, provide:	
Child 1 – Name	
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female
Age	

SAMPLE CASE INTAKE FORMS

2(d)

Child 2 – Name		
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female	
Age		
Child 3 – Name		
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female	
Age		
Client’s wishes about children (custody, visitation, etc.)		
Assets and debts		
	Type	Amount
Joint assets/debts	Home	
	Vehicle	
	Other	
	Debts	
Client’s assets/debts	Home	
	Vehicle	
	Other	
	Debts	
Spouse’s assets/debts	Home	
	Vehicle	
	Other	
	Debts	
Client’s income		
Spouse’s income		

SAMPLE CASE INTAKE FORMS

2(d)

Client's wishes about assets	
Client's wishes about child support and spousal support	
Case Evidence	
Witnesses for client	<p>For each witness:</p> <ol style="list-style-type: none"> 1. What is his/her relationship to client or spouse? 2. Has she/he been interviewed? 3. Has she/he given a witness statement? 4. Any other relevant information.
Summary of evidence from each of the witnesses for client (Attach File Note)	<p>For each witness, include:</p> <ol style="list-style-type: none"> 1. What did he/she see, hear or say? 2. Where was the witness at the time? 3. When did the events take place? 4. Who else was there? 5. What document(s) did the witness produce/write? 6. What document(s) can the witness prove or testify as authentic documents? 7. What physical evidence does witness have? 8. Are the document(s) and physical evidence that the opposing party and witnesses have "best evidence"? If not, why not? Consider whether the documents can be challenged or whether rebuttal evidence is needed. 9. Any other relevant information.
Witnesses for spouse	<p>For each witness:</p> <ol style="list-style-type: none"> 1. What is his/her relationship to client or spouse? 2. Has she/he been interviewed? 3. Has she/he given witness statement? 4. Any other relevant information.
Summary of evidence from each of the witnesses for spouse (Attach File Note)	<p>Include:</p> <ol style="list-style-type: none"> 1. What did he/she see, hear or say? 2. Where was the witness at the time? 3. When did the events take place? 4. Who else was there? 5. What document(s) did the witness produce/write? 6. What document(s) can the witness prove or testify as authentic documents? 7. What physical evidence does witness have? 8. Are the document(s) and physical evidence that the client and witnesses have "best evidence"? If not, why not? Consider whether other documents or investigation is needed. 9. Any other relevant information.
Additional potential witnesses	

SAMPLE CASE INTAKE FORMS

2(d)

Other evidence or relevant documents <i>(Consider whether the other evidence or document(s) are “best evidence”).</i>	
<input type="checkbox"/> Appeal <input type="checkbox"/> Revision	
Trial judge’s name	
Trial court clerk’s name	
Date of trial court order/ judgment	
Summary of trial court order <i>(Attach File Note if insufficient space)</i>	
Has the appeal or revision been filed?	<input type="checkbox"/> No <input type="checkbox"/> Yes – Date filed: _____
Other relevant details	

MAKE COPIES OF ALL RELEVANT DOCUMENTS AND PUT IN FILE

Name of interviewer	
Date of interview	
Lawyer/team assigned	
Case referred to?	

SAMPLE CASE INTAKE FORMS

Annex 2(e): Land

Land Case Supplemental Intake Form

NOTE: This form is intended to provide supplemental information for cases involving land issues. This form must be used with the Civil Intake Form, Criminal Intake Form or the Family Law Intake Form. This form **must not** be used on its own.

Client and file information	
Client name	
File name & no.	
Land information	
Land issue on which advice sought <i>(Tick as many as are applicable)</i>	<input type="checkbox"/> Unlawful land confiscation <input type="checkbox"/> Lawful compulsory acquisition <input type="checkbox"/> Inadequate compensation <input type="checkbox"/> Seeking to register land <input type="checkbox"/> Lease of land <input type="checkbox"/> Other – describe: _____ _____ <input type="checkbox"/> Ownership of land dispute <input type="checkbox"/> Sale of land <input type="checkbox"/> Inadequate or no documentation <input type="checkbox"/> Land classification issue <input type="checkbox"/> Lease dispute
If land has been confiscated or compulsorily acquired, by whom? <i>(Tick as many as are applicable)</i>	<input type="checkbox"/> Government <input type="checkbox"/> Powerful person <input type="checkbox"/> Other – describe: _____ _____ <input type="checkbox"/> Military <input type="checkbox"/> Company
If land has been confiscated or compulsorily acquired, for what purpose? <i>(Tick as many as are applicable)</i>	<input type="checkbox"/> Lawful public interest <input type="checkbox"/> Commercial investment <input type="checkbox"/> Special Economic Zone <input type="checkbox"/> Other – describe: _____ _____ <input type="checkbox"/> Foreign investment <input type="checkbox"/> Industrial zone <input type="checkbox"/> Unknown
Brief description of land at issue	<i>(Get photographs, map or sketch if possible)</i> _____ _____ _____
Does client have legal title or other formal rights to land?	<input type="checkbox"/> No <input type="checkbox"/> Yes – describe documentation: _____ _____
Does client have documents or witnesses that demonstrate past use of land or informal rights to land?	<input type="checkbox"/> No <input type="checkbox"/> Yes – describe: _____ _____

SAMPLE CASE INTAKE FORMS

2(e)

When did client first possess land?	
Does client currently have possession of the land?	<input type="checkbox"/> No <input type="checkbox"/> Yes If no, details as to when and why client no longer has possession of land: _____ _____
Does opposing party have legal title or other formal rights to land?	<input type="checkbox"/> No <input type="checkbox"/> Yes – describe documentation: _____ _____
Does opposing party have documents or witnesses that demonstrate past use of land or informal rights to land?	<input type="checkbox"/> No <input type="checkbox"/> Yes – describe documentation: _____ _____
When did opposing party first take possession of land?	
Does opposing party currently have possession of the land?	<input type="checkbox"/> No <input type="checkbox"/> Yes If no, details as to when and why opposing party left land: _____ _____
Supplemental Case information	
Has there been violence in connection with dispute?	<input type="checkbox"/> No <input type="checkbox"/> Yes – describe: _____ _____
Have criminal charges been filed in connection with dispute?	<input type="checkbox"/> No <input type="checkbox"/> Yes – describe: _____ _____

MAKE COPIES OF ALL RELEVANT DOCUMENTS AND PUT IN FILE

Name of interviewer	
Date of interview	
Lawyer/team assigned	
Case referred to?	

SAMPLE CASE INTAKE FORMS

2(f)

Annex 2(f): General Civil

General Civil Case Intake Form

Client and file information		
Client name		
File name & no.		
File classification	<input type="checkbox"/> Non-litigious <input type="checkbox"/> Litigious	
Client classification	<input type="checkbox"/> Plaintiff/Claimant/Applicant <input type="checkbox"/> Appellant <input type="checkbox"/> Defendant/Respondent <input type="checkbox"/> Third Party <input type="checkbox"/> Witness <input type="checkbox"/> N/A	
What institutions are currently involved or will need to be involved? <i>(Specify the type and name of as many as are relevant)</i>	Type of Institution	Name/Level:
	Court	
	Tribunal	
	Government Committee	
	Government Board	
	Government Ministry	
	Land Management Committee	
	Other	
If the case/matter is already in an institution, give details	Party filing	
	Date filed	
	Judicial Officer's/ Government Official's name	
	Clerk's name	
Case/matter name		
Case/matter number		
Jurisdiction	<input type="checkbox"/> Original <input type="checkbox"/> Appeal <input type="checkbox"/> Revision	

ANNEX 2:

SAMPLE CASE INTAKE FORMS

2(f)

Court	<input type="checkbox"/> Township Court <input type="checkbox"/> District Court <input type="checkbox"/> State High Court <input type="checkbox"/> Union Supreme Court
Location	<input type="checkbox"/> [insert township/state/district] <input type="checkbox"/> [insert township/state/district] <input type="checkbox"/> [insert township/state/district] <input type="checkbox"/> Naypyidaw
Next hearing date	
Type of attendance	<input type="checkbox"/> Mention <input type="checkbox"/> Hearing <input type="checkbox"/> Trial <input type="checkbox"/> Revision <input type="checkbox"/> Appeal
Co-party information (Leave blank if no co-party)	
Co-party name	
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female
Adult/Youth/Child	<input type="checkbox"/> Adult <input type="checkbox"/> Youth <input type="checkbox"/> Child
Occupation	
Address	
Phone number:	
Relatives/friends where co-party can be found	
Lawyer's name (if any)	
Lawyer's office or organisation	
Opposing party information (Leave blank if no opposing party)	
Opposing party name	
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female
Adult/Youth/Child	<input type="checkbox"/> Adult <input type="checkbox"/> Youth <input type="checkbox"/> Child
Is opposing party a powerful or influential individual?	<input type="checkbox"/> No <input type="checkbox"/> Yes – describe: _____
Occupation	
Address	

SAMPLE CASE INTAKE FORMS

2(f)

Phone number	
Relatives/friends where opposing party can be found	
Lawyer's name (if any)	
Lawyer's office or organisation	
Case information	
Does the case involve a land issue?	<input type="checkbox"/> No <input type="checkbox"/> Yes – Also complete the Land Case Supplemental Intake Form
Briefly describe the facts and issues involved in the case <i>(Attach File Note)</i>	<p>Consider:</p> <p>Facts:</p> <ol style="list-style-type: none"> 1. What happened? 2. Who was involved? 3. Who else was there? 4. When did it happen? 5. What was the sequence of events? 6. Where did it happen? 7. How did it happen? 8. Why did it happen? <p>Issues:</p> <ol style="list-style-type: none"> 9. What is the legal problem? 10. Why is your client seeking advice in relation to the problem? 11. What questions does the problem raise?
What outcome is the client seeking?	
Specific law(s) involved	
Section/case/other	

SAMPLE CASE INTAKE FORMS

2(f)

	Heads of damages	Description of damage	Amount (est).	
What are the expected damages in the case?	Past economic loss			
	Loss of income			
	Medical expenses			
What are the expected damages in the case?	Damage to property			
	Other			
	Current/future economic			
	Loss of income			
	Medical expenses			
	Other			
	Non-economic loss			
	Pain and suffering			
	Loss of amenities of life			
	Other			
			TOTAL	
	What other remedies are available for the client?			
	Who has the client worked with to resolve problem?	Government officials		
Lawyers				
NGOs				
Other				
N/A				
Have there been efforts to resolve the issue or achieve the client's desired outcome?	<input type="checkbox"/> No <input type="checkbox"/> Yes – Give details: When? _____ Who was involved? (name and position) _____ _____ What was the outcome? _____ _____ Why was the client not satisfied with this outcome? _____ _____			

SAMPLE CASE INTAKE FORMS

2(f)

<p>Are there challenges that will be faced in handling the case? (For example, powerful or influential people are involved, a party is far from the office, the area of law is not well known etc.)</p>	<p><input type="checkbox"/> No <input type="checkbox"/> Yes – Give details _____ _____ _____</p>
Case Evidence	
<p>Witnesses for client</p>	<p>For each witness: 1. What is his/her relationship to client or opposing party? 2. Has she/he been interviewed? 3. Has she/he given a witness statement? 4. Any other relevant information.</p>
<p>Summary of evidence from each of the witnesses for client (Attach File Note)</p>	<p>For each witness, include: 1. What did he/she see, hear or say? 2. Where was the witness at the time? 3. When did the events take place? 4. Who else was there? 5. What document(s) did the witness produce/write? 6. What document(s) can the witness prove or testify as authentic documents? 7. What physical evidence does witness have? 8. Are the document(s) and physical evidence that the client and witnesses have “best evidence”? If not, why not? Consider whether other documents or investigation is needed. 9. Any other relevant information.</p>
<p>Witnesses for opposing party (Attach File Note)</p>	<p>For each witness: 1. What is his/her relationship to client or opposing party? 2. Has she/he been interviewed? 3. Has she/he given a witness statement? 4. Any other relevant information.</p>

SAMPLE CASE INTAKE FORMS

2(f)

<p>Summary of evidence from each of the witnesses for opposing party (Attach File Note)</p>	<p>Include:</p> <ol style="list-style-type: none"> 1. What did he/she see, hear or say? 2. Where was the witness at the time? 3. When did the events take place? 4. Who else was there? 5. What document(s) did the witness produce/write? 6. What document(s) can the witness prove or testify as authentic documents? 7. What physical evidence does witness have? 8. Are the document(s) and physical evidence that the opposing party and witnesses have “best evidence”? If not, why not? Consider whether the documents can be challenged or whether rebuttal evidence is needed. 9. Any other relevant information.
<p>Additional potential witnesses</p>	
<p>Other evidence or relevant documents (Consider whether the other evidence or document(s) are “best evidence”)</p>	
<p><input type="checkbox"/> Appeal <input type="checkbox"/> Revision <input type="checkbox"/> Writ</p>	
<p>Trial judge’s name</p>	
<p>Trial court clerk’s name</p>	
<p>Date of trial court order/ judgment</p>	
<p>Summary of trial court order (Attach File Note if insufficient space)</p>	
<p>Has the appeal, revision or writ been filed?</p>	<p><input type="checkbox"/> No <input type="checkbox"/> Yes – Date filed: _____</p>

SAMPLE CASE INTAKE FORMS

Other relevant details

MAKE COPIES OF ALL RELEVANT DOCUMENTS AND PUT IN FILE

Name of interviewer	
Date of interview	
Lawyer/team assigned	
Case referred to?	

SAMPLE CASE CLOSING FORMS

3(a)

Annex 3(a): Criminal Case Closing Form

Office use only

Date closed

Client and file information

Client name

File name & no.

Client sub-classification

 Accused Victim Witness

Case information

Basis for closure

 Verdict Guilty plea
 Dismissal Instructions terminated

Verdict

 Guilty Not guilty
 Discharge Not applicable

If instructions terminated, give reason(s)

Date of judgment/sentence

Type of punishment

 Imprisonment Fine
 Death Not applicable
 Other – specify: _____

Specific punishment

Length of trial (in days)

SAMPLE CASE CLOSING FORMS

3(b)

Annex 3(b): Civil Case Closing Form

Use this form for all civil and family cases

Office use only

Date closed

Client and file information

Client name

File name & no.

Client sub-classification

- | | |
|---|--------------------------------------|
| <input type="checkbox"/> Plaintiff/Claimant/Applicant | <input type="checkbox"/> Appellant |
| <input type="checkbox"/> Defendant/Respondent | <input type="checkbox"/> Third Party |
| <input type="checkbox"/> Witness | <input type="checkbox"/> N/A |

Case information

Basis for closure

- | | |
|--|--|
| <input type="checkbox"/> Advice completed | <input type="checkbox"/> Case settled/resolved |
| <input type="checkbox"/> Judgment | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Instructions terminated | |

Outcome

- | | |
|---------------------------------------|---|
| <input type="checkbox"/> Successful | <input type="checkbox"/> Partially successful |
| <input type="checkbox"/> Unsuccessful | <input type="checkbox"/> Not applicable |

If instructions terminated, give reason(s)

Date of judgment/order

Type of judgment/order

- | | |
|---|--|
| <input type="checkbox"/> Damages | <input type="checkbox"/> Declaration |
| <input type="checkbox"/> Order for specific performance | <input type="checkbox"/> Mandatory order |
| <input type="checkbox"/> Prohibitory order | <input type="checkbox"/> Not applicable |
| <input type="checkbox"/> Other – specify: _____ | |

Specific judgment/order

Length of trial/hearing
(in days)

SAMPLE CASE CLOSING FORMS

3(c)

Annex 3(c): Criminal Case Closing Questionnaire

Client and file information				
Client name				
File name & no.				
Client sub-classification	<input type="checkbox"/> Accused	<input type="checkbox"/> Victim	<input type="checkbox"/> Witness	
Lawyer/paralegal completing this questionnaire				
Case information				
Basis for closure	<input type="checkbox"/> Verdict <input type="checkbox"/> Dismissal	<input type="checkbox"/> Guilty plea <input type="checkbox"/> Instructions terminated		
Verdict	<input type="checkbox"/> Guilty <input type="checkbox"/> Discharge	<input type="checkbox"/> Not guilty <input type="checkbox"/> Not applicable		
Is this a high profile case?	<p>A high profile case is one that involves one or more of the following: an official or official action; it has been reported in the media; it is a political case; or it involves a large number of victims.</p> <input type="checkbox"/> No <input type="checkbox"/> Yes			
Questionnaire				
No.	Statement	Yes	No	N/A
Police				
Complete questions 1 to 8 <u>only</u> if client was an ACCUSED				
1.	Client was over-detained (by police, by prison officials)			
2.	Police did not allow a confidential client interview			
3.	Police did not attend the trial when they should have			
4.	Client was improperly arrested (improper warrant or no warrant, not arrested by the police, etc.)			
5.	Police gave false testimony and/or evidence			
6.	Police did not fully investigate (pre-arrest investigation)			

ANNEX 3:

SAMPLE CASE CLOSING FORMS

3(c)

No.	Statement	Yes	No	N/A
7.	Improper interrogation or forced confession			
8.	Police were influenced by executive/bribes/powerful individuals			
Complete questions 9 to 15 only if client was a VICTIM				
9.	Police did not accept complaint			
10.	Police did not fully investigate the complaint			
11.	Police were influenced by executive/bribes/powerful individuals			
12.	Police gave false testimony and/or evidence			
13.	Police threatened the client			
14.	Police did not arrest all perpetrators			
15.	Police did not attend the trial when they should have			
Prosecutor				
16.	Prosecutor did not correctly charge and/or interpret applicable law			
17.	Prosecutor did not charge and/or prosecute all perpetrators			
18.	Prosecutor refused to accept evidence from the accused's/victim's lawyer			
19.	Evidence of external pressure/influence on prosecutor			
20.	Undue delay by prosecutor			
21.	Prosecutor committed procedural errors			
22.	Prosecutor used improper evidence			
23.	Prosecutor was not interested in prosecuting case (did obviously poor job, sent unprepared assistant, did not appear in court, etc.)			
Complete questions 24 to 26 only if client was an ACCUSED				
24.	A forced confession was used in prosecution			
25.	Accused was prosecuted without sufficient evidence			

ANNEX 3:

SAMPLE CASE CLOSING FORMS

3(c)

No.	Statement	Yes	No	N/A
26.	Prosecutor did not use evidence other than confession			
Trial Judge				
27.	Trial judge was not impartial			
28.	Trial judge committed and/or overlooked procedural errors			
29.	Trial judge ignored accused's/victim's arguments/objections/evidence			
30.	Trial judge relied on false or manufactured evidence (e.g. bribed witnesses)			
31.	Trial judge was influenced by executive/bribes/powerful individuals			
32.	Trial judge committed or allowed procedural errors			
33.	Trial judge issued an unsupported verdict			
34.	Trial judge issued an unsupported sentence			
35.	Trial judge relied upon only confession			
36.	Trial judge delayed the trial			
37.	Accused was not present for trial or parts of the trial			
38.	Trial judge was not present for trial or parts of the trial			
39.	Trial judge incorrectly interpreted the law			
Complete questions 40 to 45 <u>only</u> if client was an ACCUSED				
40.	Trial judge did not allow accused's evidence to be introduced			
41.	Trial judge allowed forced confession			
42.	Trial judge did not allow witnesses			
43.	Trial judge failed to tell accused he/she had the right to remain silent			
44.	Trial judge did not promptly assign a defence lawyer			
45.	Trial judge did not allow correct order of closing statements			

ANNEX 3:

SAMPLE CASE CLOSING FORMS

3(c)

No.	Statement	Yes	No	N/A
Complete question 46 <u>only</u> if client was a VICTIM				
46.	Trial judge awarded unreasonably little compensation			
Court Clerk				
47.	Clerk was influenced by executive/bribes/powerful individuals			
48.	Clerk inappropriately delayed placing the case on the calendar			
49.	Clerk inappropriately delayed giving the accused's/victim's lawyer case documents			
50.	Clerk did not allow lawyer to file documents (e.g. appeal, motion)			
51.	Clerk avoided contact with the accused's/victim's lawyer			
52.	Clerk failed to inform or delayed informing the accused's/victim's lawyer of changes in case's schedule			
53.	Clerk demanded a bribe			
Other				
54.	Witnesses were bribed			
55.	Expert witnesses were bribed			
56.	The lawyer and/or the client was threatened			
57.	Other parties bribed judicial officials and/or police			
Complete question 58 <u>only</u> if client was an ACCUSED				
58.	There were difficulties because of delay in appointing the accused's lawyer to represent client			
59.	Other:			

SAMPLE CASE CLOSING FORMS

3(d)

Annex 3(d): Civil Case Closing Questionnaire

Use this form for all Civil and Family Cases

Client and file information	
Client name	
File name & no.	
Client sub-classification	<input type="checkbox"/> Plaintiff/Claimant/Applicant <input type="checkbox"/> Appellant <input type="checkbox"/> Defendant/Respondent <input type="checkbox"/> Third Party <input type="checkbox"/> Witness <input type="checkbox"/> N/A
Lawyer/paralegal completing this questionnaire	
Case information	
Basis for closure	<input type="checkbox"/> Advice completed <input type="checkbox"/> Case settled/resolved <input type="checkbox"/> Judgment <input type="checkbox"/> Dismissal <input type="checkbox"/> Instructions terminated
Outcome	<input type="checkbox"/> Successful <input type="checkbox"/> Partially successful <input type="checkbox"/> Unsuccessful <input type="checkbox"/> Not applicable
Is this a high profile case?	<p>A high profile case is one that involves one or more of the following: an official or official action; it has been reported in the media; it is a political case; or it involves a large number of victims.</p> <input type="checkbox"/> No <input type="checkbox"/> Yes

Questionnaire				
No.	Statement	Yes	No	N/A
Opposing Party/Witnesses				
1.	Opposing party/witnesses gave false evidence and/or testimony			
2.	Opposing party/witnesses threatened client			
3.	Opposing party/witnesses attempted to influence judge or witnesses			

ANNEX 3:

SAMPLE CASE CLOSING FORMS

3(d)

No.	Statement	Yes	No	N/A
Opposing Counsel				
4.	Opposing counsel inappropriately intervened (gave his opinion, etc.)			
5.	Opposing counsel attempted to influence judge or witnesses			
Judge				
6.	Judge was not impartial			
7.	Judge did not allow client's evidence to be introduced			
8.	Judge ignored client's arguments/objection/evidence			
9.	Judge relied on false or manufactured evidence (e.g. bribed witnesses)			
10.	Judge was influenced by executive/bribes/powerful individuals			
11.	Judge committed and/or allowed procedural errors			
12.	Judge issued an unsupported verdict			
13.	Judge awarded unsupported damages			
14.	Judge did not allow witnesses to testify			
15.	Judge delayed the trial			
16.	Judge incorrectly interpreted the law			
Clerk				
17.	Clerk was influenced by executive/bribes/powerful individuals			
18.	Clerk inappropriately delayed placing the case on the calendar			
19.	Clerk inappropriately delayed giving the client case documents			
20.	Clerk did not allow client to file documents (i.e. appeal, motion)			
21.	Clerk avoided contact with the lawyer			

ANNEX 3:

SAMPLE CASE CLOSING FORMS

3(d)

No.	Statement	Yes	No	N/A
22.	Clerk failed to inform and/or delayed informing client/lawyer of changes in case's schedule			
23.	Clerk demanded a bribe			
Other				
24.	Witnesses were bribed			
25.	Expert witnesses were bribed			
26.	The lawyer and/or client were threatened			
27.	Other parties bribed judicial officials and/or witnesses			
28.	Other:			

ANNEX 4(a): THEFT – PENAL CODE

SAMPLE ADDITIONAL INFORMATION FORMS

4(a)

Annex 4(a): Theft- Penal Code

PENAL CODE, SECTION 356: ASSAULT OR FORCE TO COMMIT THEFT OF PROPERTY CARRIED BY A PERSON

Whoever **assaults** or uses **criminal force** to any **person** in **attempting to commit theft** of any property which that person is then **wearing or carrying** shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Key Definitions

- 1) **Force** [Section 349]: A person is said use force [against] another if he **causes motion, change of motion or cessation of motion** to that other, or if he **causes** to any substance such motion, or **change of motion, or cessation of motion as brings that substance into contact** with any part of that **other's body**, or with anything which that other is **wearing or carrying**, or with anything situated that such contact **affects that other's sense of feeling, Provided** that the person causing the motion, or change of motion, or cessation of motion in **one of the three ways** herein after described.

First -- By his **own bodily power**.

Secondly -- By **disposing any substance** in such a manner that the motion or change or cessation of motion **takes place without further act on his part**, or on the part of any other person.

Thirdly-- By **inducing any animal** to move, to change is motion, or to cease to move.

- 2) **Criminal Force** [Section 350]: Whoever **intentionally uses force** to any person, **without that person's consent, in order to commit any offense**, or **intending** by the use of such force **to cause, or knowing it to be likely** that by the use of such force he will cause **injury, fear or annoyance** to the person to whom force is used, is said to use criminal force to that other.

Illustrations – Refer to section 350 of the Penal Code for illustrations on what is considered “criminal force”.

- 3) **Assault** [Section 351]: Whoever makes **any gesture or any preparation, intending or knowing it to be likely** that such gesture or preparation will cause any person present to **apprehend** that he who makes that gesture or preparation is about to use **criminal force** to that person, is said to commit an assault.

Explanation - Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations – Refer to section 351 of the Penal Code for illustrations on what is considered “assault”.

- 4) **Theft** [Section 378]: Whoever, **intending to take dishonestly** any **moveable property** out of the **possession** of any person **without that person's consent, moves that property in order to such taking** is said to commit theft.

Explanation 1.-- A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

ANNEX 4:

SAMPLE ADDITIONAL INFORMATION FORMS

4(a)

Explanation 2.-- A moving effected by the same act which effects the severance may be a theft.

Explanation 3 .-- A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.-- A person who by any means causes an animal to move is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.-- The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Section 356: Assault or Force to Commit Theft of Property Carried by a Person

No.	Element	Evidence	Evaluation
1	Assault or criminal force of a person	Evidence demonstrating client committed: (a) assault of a person: Evidence to the contrary: or (b) criminal force of a person: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Assault or criminal force was for the purpose attempting to commit theft	Evidence demonstrating client's purpose in committing assault or force was to attempt to commit theft : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
3	Intent to take dishonestly	Evidence demonstrating client intended to take property dishonestly : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
4	Property that the person was wearing or carrying	Evidence demonstrating that the property was being worn or carried by another person : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

SAMPLE ADDITIONAL INFORMATION FORMS

4(a)

PENAL CODE, SECTION 378: THEFT

Whoever, **intending to take dishonestly** any **moveable property** out of the **possession** of any person **without that person's consent, moves that property in order to such taking** is said to commit theft.

Explanation 1.-- A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.-- A moving effected by the same act which effects the severance may be a theft.

Explanation 3.-- A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.-- A person who by any means causes an animal to move is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.-- The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations – Refer to section 378 of the Penal Code for illustrations on what is considered "theft".

Section 378: Theft

No.	Element	Evidence	Evaluation
1	Intent to take dishonestly	Evidence demonstrating client intended to take dishonestly : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Moveable property	Evidence demonstrating property was moveable : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
3	Moveable property was in the possession of another person	Evidence demonstrating that the property was in the possession of another person: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

ANNEX 4:

SAMPLE ADDITIONAL INFORMATION FORMS

4(a)

No.	Element	Evidence	Evaluation
4.	Without person's consent	Evidence demonstrating that the person who had possession of the property did not give consent (either expressly or implicitly) for the property to be taken out of his/her possession: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
5	Property moved	Evidence demonstrating client moved property : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
6	Property moved with intent to take it dishonestly	Evidence demonstrating that the client moved the property with the intention to take it dishonestly : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

SAMPLE ADDITIONAL INFORMATION FORMS

4(a)

PENAL CODE, SECTION 380: THEFT IN DWELLING

Whoever commits **theft** in any **building, tent or vessel**, which building, tent or vessel is used as a **human dwelling**, or used for the **custody of property**, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Key Definitions:

Theft [Section 378]: Whoever, **intending to take dishonestly** any **moveable property** out of the **possession** of any person **without that person's consent, moves that property in order to such taking** is said to commit theft.

Explanation 1.-- A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.-- A moving effected by the same act which effects the severance may be a theft.

Explanation 3.-- A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.-- A person who by any means causes an animal to move is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.-- The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations – Refer to section 378 of the Penal Code for illustrations on what is considered “theft”.

Section 380: Theft in Dwelling / House

No.	Element	Evidence	Evaluation
1	Intent to take dishonestly	Evidence demonstrating client intended to take dishonestly . Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Moveable property	Evidence demonstrating property was moveable . Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

ANNEX 4:

SAMPLE ADDITIONAL INFORMATION FORMS

4(a)

No.	Element	Evidence	Evaluation
3	Moveable property was in the possession of another person	Evidence demonstrating that the property was in the possession of another person: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
4.	Without person's consent	Evidence demonstrating that the person who had possession of the property did not give consent (either expressly or implicitly) for the property to be taken out of his/her possession: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
5	Property moved	Evidence demonstrating client moved property: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
6	Property moved with intent to take it dishonestly	Evidence demonstrating that the client moved the property with the intention to take it dishonestly : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
7	Theft committed in a building, tent or vessel used as a human dwelling or for the custody of property	Evidence demonstrating that the theft was committed in a building, tent or vessel which was being used as a human dwelling or for the custody of property : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

SAMPLE ADDITIONAL INFORMATION FORMS

4(a)

PENAL CODE, SECTION 381: THEFT BY CLERK/SERVANT

Whoever, being a **clerk or servant, or being employed** in the capacity of a clerk or servant, commits theft in respect of any **property in the possession of his master or employer** shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Key Definitions:

Theft [Section 378]: Whoever, **intending to take dishonestly** any **moveable property** out of the **possession** of any person **without that person's consent, moves that property in order to such taking** is said to commit theft.

Explanation 1.-- A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.-- A moving effected by the same act which effects the severance may be a theft.

Explanation 3.-- A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.-- A person who by any means causes an animal to move is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.-- The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations – Refer to section 378 of the Penal Code for illustrations on what is considered “theft”.

Section 381: Theft by Clerk or Servant

No.	Element	Evidence	Evaluation
1	Status as clerk or servant	Evidence demonstrating client was a clerk or servant , or employed in the capacity of a clerk or servant: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Intent to take dishonestly	Evidence demonstrating client intended to take dishonestly : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

ANNEX 4:

SAMPLE ADDITIONAL INFORMATION FORMS

4(a)

No.	Element	Evidence	Evaluation
3	Moveable property	Evidence demonstrating property was moveable : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
4.	Moveable property was in the possession of master or employer	Evidence demonstrating that the property was in possession of master or employer : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
5	Without master or employer's consent	Evidence demonstrating that the master or employer who had possession of the property did not give consent (either expressly or implicitly) for the property to be taken out of the master or employer's possession: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
6	Property moved	Evidence demonstrating client moved property: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
7	Property moved with intent to take it dishonestly	Evidence demonstrating that the client moved the property with the intention to take it dishonestly : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

SAMPLE ADDITIONAL INFORMATION FORMS

4(a)

PENAL CODE, SECTION 382: THEFT AFTER PREPARATION MADE FOR CAUSING HURT

Whoever commits **theft**, having **made preparation** for causing **death, or hurt, or restraint, or fear of death, or of hurt, or of restraint**, to any person in **order to the committing** of such theft, or in order to the effecting of his **escape after the committing** of such theft, or in order to the **retaining** of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

- (a) A commits theft of property in Z's possession: and, while committing this theft he has a loaded pistol under his garment having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offense defined in this section.
- (b) A picks Z's pocket, having posted several of his companions near him in order that they may restrain Z if Z should perceive what is passing and should resist or should attempt to apprehend A. A has committed the offense defined in this section.

Key Definitions:

- 1) **Hurt** [Section 319]: Causing **bodily pain, disease or infirmity** to any person.
- 2) **Restraint** [Section 339]: Whoever **voluntarily obstructs** any person, so as to **prevent** that person from proceeding in any direction in which that person has a **right to proceed**, is said wrongfully to restrain that person.

Exception – The obstruction of a private way over land or water, which a person in good faith believes himself to have a lawful right to obstruct, is **not an offense** within the meaning of this section.

Illustration

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

- 3) **Theft** [Section 378]: Whoever, **intending to take dishonestly** any **moveable property** out of the **possession** of any person **without that person's consent, moves that property in order to such taking** is said to commit theft.

Explanation 1.— A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.— A moving effected by the same act which effects the severance may be a theft.

Explanation 3.— A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.— A person who by any means causes an animal to move is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.— The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations – Refer to section 378 of the Penal Code for illustrations on what is considered "theft".

SAMPLE ADDITIONAL INFORMATION FORMS

Section 382: Theft after Preparation Made for Causing Hurt			
No.	Element	Evidence	Evaluation
1	Intent to take dishonestly	Evidence demonstrating client intended to take dishonestly : Evidence to the contrary	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Moveable property	Evidence demonstrating property was moveable : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
3	Moveable property was in the possession of another person	Evidence demonstrating that the property was in the possession of another person: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
4.	Without person's consent	Evidence demonstrating that the person who had possession of the property did not give consent (either expressly or implicitly) for the property to be taken out of his/her possession: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
5	Property moved	Evidence demonstrating client moved property: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
6	Property moved with intent to take it dishonestly	Evidence demonstrating that the client moved the property with the intention to take it dishonestly : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

ANNEX4:

SAMPLE ADDITIONAL INFORMATION FORMS

4(a)

No.	Element	Evidence	Evaluation
7	Preparation for causing death, hurt, etc.	<p>Evidence demonstrating client prepared to cause:</p> <p>(a) death; or (b) hurt; or (c) restraint; or (d) fear of death; or (e) fear of hurt; or (f) fear of restraint</p> <p>to any person:</p> <p>Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
8	Preparation for the purpose of committing theft	<p>8a) Evidence that preparation to cause death, etc. was for the purpose of committing the theft:</p> <p>Evidence to the contrary:</p> <p>or</p> <p>8b) Evidence that preparation to cause death, etc. was for the purpose of effecting an escape after committing the theft:</p> <p>Evidence to the contrary:</p> <p>or</p> <p>8c) Evidence that preparation to cause death, etc. was for the purpose of retaining property taken by the theft:</p> <p>Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

ANNEX 4(b): HURT – PENAL CODE

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

ANNEX 4(b): Hurt – Penal Code

PENAL CODE, SECTION 321: VOLUNTARY HURT

Whoever does any **act** with the **intention** of thereby causing hurt to any person, or with the **knowledge** that he is likely thereby to cause hurt to any person, and does thereby **cause hurt** to any person, is said “voluntarily to cause hurt.”

Key Definitions

Hurt [Section 319]: Causing bodily pain, disease or infirmity to any person.

Section 321: Voluntarily Causing Hurt

No.	Element	Evidence	Evaluation
1	An act	Evidence demonstrating client did an act : Evidence to the contrary	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Act done with intent or knowledge	2a) Evidence demonstrating act was done with intent to cause bodily pain, disease or infirmity to a person Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
		or 2b) Evidence demonstrating act was done with knowledge that bodily pain, disease or infirmity to a person is likely to result Evidence to the contrary:	

SAMPLE ADDITIONAL INFORMATION FORMS

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No.	Element	Evidence	Evaluation
3	Actual hurt to a person	Evidence demonstrating victim experienced bodily pain, disease or infirmity: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
4	Hurt caused by client	Evidence demonstrating bodily pain, disease or infirmity was caused by client's act: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

→ Go to DEFENSES TO HURT CLAIMS

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

PENAL CODE, SECTION 322: GRIEVOUS HURT

Whoever **voluntarily causes hurt**, if the hurt which he **intends** to cause or **knows** himself to be likely to cause is **grievous hurt**, and if the hurt which he **causes** is **grievous hurt**, is said "voluntarily to cause grievous hurt."

Explanation -- A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or know himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if intending or knowing himself to be likely to cause grievous hurt of one kind he actually causes grievous hurt of another kind.

Illustrations

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives a blow which does not permanently disfigure Z's face, but which causes Z to suffer serve bodily pain for the space of twenty days, A has voluntarily caused grievous hurt.

Key Definitions

- 1) Hurt [Section 319]: Causing bodily pain, disease or infirmity to any person.
- 2) Grievous Hurt [Section 320]: The following kinds of hurt only are designated as "grievous":

First -- Emasculation.

Secondly -- Permanent privation of the sight of either eye.

Thirdly -- Permanent privation of the hearing of either ear.

Fourthly -- Privation of any member or joint.

Fifthly -- Destruction or permanent impairing of the powers of any member or joint.

Sixthly -- Permanent disfiguration of the head or face.

Seventhly -- Fracture or dislocation of a bone or tooth.

Eighthly -- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe l bodily pain, or unable to follow his ordinary pursuits

Section 322: Voluntarily Causing Grievous Hurt

No.	Element	Evidence	Evaluation
1	An act causing hurt	Evidence demonstrating client did an act causing bodily pain, disease or infirmity to a person: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

No.	Element	Evidence	Evaluation
2	Act done with intent or knowledge	<p>2a) Evidence demonstrating act was done with intent to cause hurt to a person:</p> <p>Evidence to the contrary:</p> <p>or</p> <p>2b) Evidence demonstrating act was done with knowledge that hurt to a person is likely to result</p> <p>Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
3	Grievous hurt	<p>Evidence demonstrating one of the following types of bodily pain, disease or infirmity took place:</p> <ol style="list-style-type: none"> 1) Emasculation 2) Permanent loss of sight in either eye 3) Permanent loss of hearing of either ear 4) Loss of any member or joint 5) Destruction or permanent impairment of the powers of any member or joint 6) Permanent disfiguration of the head or face 7) Fracture or dislocation of a bone or tooth 8) Any hurt which endangers life or which causes the sufferer to be in severe bodily pain for twenty days, or unable to follow his ordinary pursuits: <p>Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
4	Grievous hurt caused by client	<p>Evidence demonstrating grievous hurt caused by client's act:</p> <p>Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

→ Go to DEFENSES TO HURT CLAIMS

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

PENAL CODE, SECTION 324: HURT BY DANGEROUS WEAPONS

Whoever, **except in the case provided for by section 334, voluntarily causes hurt** by means of **any instrument for shooting, stabbing or cutting**, or any instrument which, used as a weapon of offense, is **likely to cause death**, or by means of **fire or any heated substance**, or shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, which may extend to one thousand rupees, or with both.

Key Definitions

- 1) **Hurt** [Section 319]: Causing bodily pain, disease or infirmity to any person.
- 2) **Voluntarily causing hurt** [Section 321]: An **act** done with the intention of thereby causing hurt to any person, or with the **knowledge** that he is likely thereby to cause hurt to any person.

Section 324: Voluntarily Causing Hurt by Dangerous Weapons

No.	Element	Evidence	Evaluation
1	An act	Evidence demonstrating client did an act : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Act done with intent or knowledge	2a) Evidence demonstrating act was done with intent to cause bodily pain, disease or infirmity to a person: Evidence to the contrary: or 2b) Evidence demonstrating act was done with knowledge that bodily pain, disease or infirmity to a person is likely to result: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
3	Actual hurt	Evidence demonstrating victim experienced bodily pain, disease or infirmity : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

No.	Element	Evidence	Evaluation
4	Hurt caused by dangerous weapon	Evidence demonstrating hurt caused by: a) instrument for shooting, stabbing or cutting, or b) any instrument which, used as a weapon of offense, is likely to cause death, or c) by means of fire or any heated substance: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
5	Act not covered by Penal Code 334?	See “Defenses to Hurt” Form to consider this and additional defenses	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

→ Go to DEFENSES TO HURT CLAIMS

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

PENAL CODE, SECTION 326: GRIEVOUS HURT BY DANGEROUS WEAPON

Whoever, **except in the case provided for by section 335, voluntarily causes grievous hurt** by means of any **instrument for shooting, stabbing or cutting**, or any instrument which, used as a weapon of offense, is **likely to cause death**, or by means of **fire or any heated substance**, by means of any **poison** or any **corrosive substance**, or by means of any **explosive substance**, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or receive into the blood, or by **an animal**, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Key Definitions

- 1) **Hurt** [Section 319]: Causing bodily pain, disease or infirmity to any person.
- 2) **Grievous Hurt** [Section 320]: The following kinds of hurt only are designated as "grievous":
 - First -- Emasculation.
 - Secondly -- Permanent privation of the sight of either eye.
 - Thirdly -- Permanent privation of the hearing of either ear.
 - Fourthly -- Privation of any member or joint.
 - Fifthly -- Destruction or permanent impairing of the powers of any member or joint.
 - Sixthly -- Permanent disfiguration of the head or face.
 - Seventhly -- Fracture or dislocation of a bone or tooth.
 - Eighthly -- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.
- 3) **Voluntarily causing grievous hurt** [Section 322]: An **act** with the **intention** of thereby causing grievous hurt to any person, or with the **knowledge** that he is likely thereby to cause grievous hurt to any person and which actually causes grievous hurt.

Explanation -- A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or know himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if intending or knowing himself to be likely to cause grievous hurt of one kind he actually causes grievous hurt of another kind.

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

Section 326: Grievous Hurt by Dangerous Weapon

No.	Element	Evidence	Evaluation
1	An act causing hurt	Evidence demonstrating client did an act causing bodily pain, disease or infirmity to a person: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Act done with intent or knowledge	2a) Evidence demonstrating act was done with intent to cause hurt to a person Evidence to the contrary: or 2b) Evidence demonstrating act was done with knowledge that hurt to a person is likely to result: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
3	Grievous hurt	Evidence demonstrating one of the following types of bodily pain, disease or infirmity took place: 1) Emasculation 2) Permanent loss of sight in either eye 3) Permanent loss of hearing of either ear 4) Loss of any member or joint 5) Destruction or permanent impairment of the powers of any member or joint 6) Permanent disfiguration of the head or face 7) Fracture or dislocation of a bone or tooth 8) Any hurt which endangers life or which causes the sufferer to be in severe bodily pain for twenty days , or unable to follow his ordinary pursuits: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

No.	Element	Evidence	Evaluation
4	Grievous hurt caused by client	Evidence demonstrating grievous hurt caused by client's act : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
5	Grievous hurt caused by dangerous weapon	Evidence demonstrating grievous hurt caused by: a) instrument for shooting, stabbing or cutting, or b) any instrument which, used as a weapon of offense, is likely to cause death, or c) by means of fire or any heated substance: Evidence to the contrary	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
6	Act not covered by Penal Code 335?	See “Defenses to Hurt” Form to consider this and additional defenses	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

→ Go to DEFENSES TO HURT CLAIMS

SAMPLE ADDITIONAL INFORMATION FORMS

PENAL CODE, SECTION 327: VOLUNTARY HURT TO EXTORT PROPERTY

Whoever **voluntarily causes hurt** for the purpose of **extorting** from the **sufferer, or from any person interested in the sufferer**, any **property or valuable security**, or of **constraining** the sufferer or any person interested in such sufferer to do anything which is **illegal** or which may **facilitate** the commission of an **offense**, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Key Definitions

- 1) **Hurt** [Section 319]: Causing bodily pain, disease or infirmity to any person.
- 2) **Voluntarily causing hurt** [Section 321]: An **act** done with the **intention** of thereby causing hurt to any person, or with the **knowledge** that he is likely thereby to cause hurt to any person.

Section 327: Voluntarily Causing Hurt to Extort Property

No.	Element	Evidence	Evaluation
1	An act	Evidence demonstrating client did an act : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Act done with intent or knowledge	2a) Evidence demonstrating act was done with intent to cause bodily pain, disease or infirmity to a person: Evidence to the contrary: or 2b) Evidence demonstrating act was done with knowledge that bodily pain, disease or infirmity to a person is likely to result: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
3	Actual hurt	Evidence demonstrating victim experienced bodily pain, disease or infirmity : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

No.	Element	Evidence	Evaluation
4	Hurt caused by client	Evidence demonstrating bodily pain, disease or infirmity was caused by client's act : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
5	Hurt done to extort property	Evidence demonstrating hurt done for the purpose of extorting from the sufferer; or from any person interested in the sufferer; any property or valuable security, or of forcing the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offense : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

→ Go to DEFENSES TO HURT CLAIMS

SAMPLE ADDITIONAL INFORMATION FORMS

PENAL CODE, SECTION 328: HURT BY POISON

Whoever **administers to or causes to be taken** by any **person** any **poison or any stupefying, intoxicating or unwholesome drug, or other thing** with **intent to cause hurt** to such person, or with **intent to commit or to facilitate the commission of an offense** or **knowing it to be likely** that he will thereby **cause hurt**, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Key Definitions

1) **Hurt** [Section 319]: Causing bodily pain, disease or infirmity to any person

Section 328: Hurt by Poison			
No.	Element	Evidence	Evaluation
1	Administering or causing a substance to be taken	Evidence demonstrating that client administered or caused to be taken a substance. Evidence to the contrary.	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	The substance was poison or a similar type substance	Evidence demonstrating that the substance was a poison or a stupefying, intoxicating or unwholesome drug, or other thing . Evidence to the contrary.	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
3	Poisoning done to cause hurt or facilitate offense	3a) Evidence that client did poisoning with intent to cause bodily pain, disease or infirmity to that person : Evidence to the contrary: or 3b) Evidence that client did poisoning with intent to commit or to facilitate the commission of an offense : Evidence to the contrary: or	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

No.	Element	Evidence	Evaluation
		3c) Evidence that client did poisoning knowing it likely that he would thereby cause bodily pain, disease or infirmity: Evidence to the contrary:	

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

→ Go to DEFENSES TO HURT CLAIMS

SAMPLE ADDITIONAL INFORMATION FORMS

PENAL CODE, SECTION 329: VOLUNTARILY CAUSING GRIEVOUS HURT TO EXTORT PROPERTY

Whoever **voluntarily causes grievous hurt** for the purpose of **extorting** from the **sufferer, or from any person interested in the sufferer** any **property or valuable security**, or of **constraining the sufferer or any person interested in such sufferer** to do anything that is **illegal or which may facilitate the commission of an offense**, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Key Definitions

- 1) **Hurt** [Section 319]: Causing bodily pain, disease or infirmity to any person.
- 2) **Grievous Hurt** [Section 320]: The following kinds of hurt only are designated as "grievous":
 - First -- Emasculation.
 - Secondly -- Permanent privation of the sight of either eye.
 - Thirdly -- Permanent privation of the hearing of either ear.
 - Fourthly -- Privation of any member or joint.
 - Fifthly -- Destruction or permanent impairing of the powers of any member or joint.
 - Sixthly -- Permanent disfiguration of the head or face.
 - Seventhly -- Fracture or dislocation of a bone or tooth.
 - Eighthly -- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits
- 3) **Voluntarily causing grievous hurt** [Section 322]: An **act** with the **intention** of thereby causing grievous hurt to any person, or with the **knowledge** that he is likely thereby to cause grievous hurt to any person and which actually causes grievous hurt.

Explanation -- A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or know himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if intending or knowing himself to be likely to cause grievous hurt of one kind he actually causes grievous hurt of another kind.

Section 329: Grievous Hurt to Extort Property

No.	Element	Evidence	Evaluation
I	An act causing hurt	Evidence demonstrating client did an act causing bodily pain, disease or infirmity to a person: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

ANNEX4:

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

No.	Element	Evidence	Evaluation
2	Act done with intent or knowledge	<p>2a) Evidence demonstrating act was done with either intent to cause hurt to a person</p> <p>Evidence to the contrary:</p> <hr/> <p>or</p> <p>2b) Evidence demonstrating act was done with knowledge that bodily pain, disease or infirmity to a person is likely to result</p> <p>Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
3	Grievous hurt caused	<p>Evidence demonstrating one of the following types of bodily pain, disease or infirmity took place:</p> <ol style="list-style-type: none"> 1) Emasculation 2) Permanent loss of sight in either eye 3) Permanent loss of hearing of either ear 4) Loss of any member or joint 5) Destruction or permanent impairment of the powers of any member or joint 6) Permanent disfiguration of the head or face 7) Fracture or dislocation of a bone or tooth 8) Any hurt which endangers life or which causes the sufferer to be in severe bodily pain for twenty days, or unable to follow his ordinary pursuits: <p>Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
4	Grievous hurt caused by client	<p>Evidence demonstrating grievous hurt caused by client's act:</p> <p>Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

SAMPLE ADDITIONAL INFORMATION FORMS

No.	Element	Evidence	Evaluation
5	Grievous hurt done to extort property or facilitate an offense	Evidence demonstrating grievous hurt done for the purpose of extorting from the sufferer; or from any person interested in the sufferer; any property or valuable security , or of forcing the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offense : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

→ **Go to DEFENSES TO HURT CLAIMS**

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

PENAL CODE, SECTION 330: VOLUNTARY HURT TO EXTORT CONFESSION, ETC.

Whoever **voluntarily causes hurt** for the purpose of **extorting from the sufferer, or any person interested in the sufferer**, any **confession** or any **information** which may lead to the detection of any **offense or misconduct**, or for the purpose of **constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration** of any **property or valuable security**, or to **satisfy any claim or demand**, or to **give information which may lead to the restoration of any property or valuable security**, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also liable to fine.

Illustrations

(a) A, police-officer tortures Z in order to induce Z to confess he committed a crime. A is guilty of an offense under this section.

(b) A, police-officer tortures B to induce him to point out certain stolen property is deposited. A is guilty of an offense under section.

(c) A, a revenue officer tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offense under this section.

(d) A, a landlord, tortures a tenant in order to compel him to pay his rent. A is guilty of an offense under this section.

Key Definitions

- 1) **Hurt** [Section 319]: Causing bodily pain, disease or infirmity to any person.
- 2) **Voluntarily causing hurt** [Section 321]: An **act** done with the **intention** of thereby causing hurt to any person, or with the **knowledge** that he is likely thereby to cause hurt to any person.

Section 330: Voluntarily Causing Hurt to Extort Confession, etc.

No.	Element	Evidence	Evaluation
1	An act	Evidence demonstrating client did an act : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Act done with intent or knowledge	2a) Evidence demonstrating act was done with intent to cause bodily pain, disease or infirmity to a person Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
		or	

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4(b)

No.	Element	Evidence	Evaluation
		2b) Evidence demonstrating act was done with knowledge that bodily pain, disease or infirmity to a person is likely to result Evidence to the contrary:	
3	Actual hurt	Evidence demonstrating victim experienced bodily pain, disease or infirmity: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
4	Hurt caused by client	Evidence demonstrating hurt caused was by client's act: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
5	Hurt done to extort confession, etc	5a) Evidence demonstrating hurt done for the purpose of extorting from the sufferer, or a person interested in the sufferer; any confession or information which may lead to the detection of any offense or misconduct: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
		or	
		5b) Evidence demonstrating hurt done for the purpose of forcing the sufferer or a person interested in the sufferer to restore or to cause the restoration of property or valuable security: Evidence to the contrary:	
		or	
		5c) Evidence demonstrating hurt done to satisfy a claim or demand, or to give information which may lead to the restoration of property or valuable security: Evidence to the contrary:	

ANNEX4:

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

→ **Go to DEFENSES TO HURT CLAIMS**

SAMPLE ADDITIONAL INFORMATION FORMS

PENAL CODE, SECTION 331: VOLUNTARILY CAUSING GRIEVOUS HURT TO EXTORT CONFESSION, etc.

Whoever, **voluntarily causes grievous hurt for purpose of extorting from the sufferer, or any person interested in the sufferer, any confession or any information which may lead to the detection of an offense or misconduct** or for the purpose of **constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim of demand, or to give information which may lead to the restoration of any property or valuable security**, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Key Definitions

- 1) **Hurt** [Section 319]: Causing bodily pain, disease or infirmity to any person.
- 2) **Grievous Hurt** [Section 320]: The following kinds of hurt only are designated as “grievous”:
 - First -- Emasculation.
 - Secondly -- Permanent privation of the sight of either eye.
 - Thirdly -- Permanent privation of the hearing of either ear.
 - Fourthly -- Privation of any member or joint.
 - Fifthly -- Destruction or permanent impairing of the powers of any member or joint.
 - Sixthly -- Permanent disfiguration of the head or face.
 - Seventhly -- Fracture or dislocation of a bone or tooth.
 - Eighthly -- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits
- 3) **Voluntarily causing grievous hurt** [Section. 322]: An **act** done with the **intention** of thereby causing grievous hurt to any person, or with the **knowledge** that he is likely thereby to cause grievous hurt to any person and which actually causes grievous hurt.

Explanation -- A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or know himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if intending or knowing himself to be likely to cause grievous hurt of one kind he actually causes grievous hurt of another kind.

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

Section 33 I: Voluntarily Causing Grievous Hurt to Extort Confession, etc.

No.	Element	Evidence	Evaluation
1	An act causing hurt	Evidence demonstrating client did an act causing bodily pain, disease or infirmity to a person: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Act done with intent or knowledge	2a) Evidence demonstrating act was done with intent to cause bodily pain, disease or infirmity to a person Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
		or 2b) Evidence demonstrating act was done with knowledge that bodily pain, disease or infirmity to a person is likely to result Evidence to the contrary:	
3	Grievous hurt	Evidence demonstrating one of the following types of bodily pain, disease or infirmity took place: 1) Emasculation 2) Permanent loss of sight in either eye 3) Permanent loss of hearing of either ear 4) Loss of any member or joint 5) Destruction or permanent impairment of the powers of any member or joint 6) Permanent disfiguration of the head or face 7) Fracture or dislocation of a bone or tooth 8) Any hurt which endangers life or which causes the sufferer to be in severe bodily pain for twenty days , or unable to follow his ordinary pursuits: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
4	Grievous hurt caused by client	Evidence demonstrating grievous hurt caused by client's act : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

No.	Element	Evidence	Evaluation
5	Grievous hurt done to extort confession, etc.	<p>5a) Evidence demonstrating grievous hurt done for the purpose of extorting from the sufferer; or a person interested in the sufferer; any confession or information which may lead to the detection of any offense or misconduct:</p> <p>Evidence to the contrary:</p> <p>or</p> <p>5b) Evidence demonstrating grievous hurt done for the purpose of forcing the sufferer or a person interested in the sufferer to restore or to cause the restoration of property or valuable security:</p> <p>Evidence to the contrary:</p> <p>or</p> <p>5c) Evidence demonstrating grievous hurt done to satisfy a claim or demand, or to give information which may lead to the restoration of property or valuable security:</p> <p>Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

→ Go to DEFENSES TO HURT CLAIMS

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

PENAL CODE, SECTION 332: VOLUNTARY HURT TO DETER PUBLIC SERVANT FROM DUTY

Whoever, **voluntarily causes hurt** to any person being a **public servant in the discharge of his duty** as such public servant, or with **intent to prevent or order that person or any other public servant from discharging his duty** as such public servant, **or in consequence of anything done or attempted to be done** by that person in the **lawful discharge of his duty** as such public servants, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Key Definitions

- 1) **Hurt** [Section 319]: Causing bodily pain, disease or infirmity to any person.
- 2) **Voluntarily causing hurt** [Section 321]: An **act** done with the **intention** of thereby causing hurt to any person, or with the **knowledge** that he is likely thereby to cause hurt to any person.

Section 332: Voluntarily Causing Hurt to Deter Public Servant from Duty

No.	Element	Evidence	Evaluation
1	An act	Evidence demonstrating client did an act : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Act done with intent or knowledge	2a) Evidence demonstrating act was done with either intent to cause bodily pain, disease or infirmity to a person Evidence to the contrary: or 2b) Evidence demonstrating act was done with knowledge that bodily pain, disease or infirmity to a person is likely to result Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
3	Actual hurt	Evidence demonstrating victim experienced bodily pain, disease or infirmity : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
4	Hurt caused by client	Evidence demonstrating hurt was caused by client's act : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

No.	Element	Evidence	Evaluation
5	Victim was a public servant	Evidence demonstrating person hurt was a public servant : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
6	Hurt was to deter public servant from his duties	6a) Evidence that the public servant was actually discharging his duty as a public servant when the hurt was caused: Evidence to contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
		or	
		6b) Evidence demonstrating hurt was done with intent to prevent that person or any other public servant from discharging his duty as such public servant: Evidence to the contrary:	
		or	
		6c) Evidence demonstrating hurt was caused in consequence of anything done or attempted to be done by the public servant in the lawful discharge of his duty as a public servant: Evidence to the contrary:	

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements

→ Go to DEFENSES TO HURT CLAIMS

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

PENAL CODE, SECTION 333: VOLUNTARILY CAUSING GRIEVOUS HURT TO DETER PUBLIC SERVANT FROM HIS DUTY

Whoever **voluntarily causes grievous hurt** to any person being a **public servant in the discharge of his duty** as such public servant, or with **intent to prevent or deter that person or any other public servant from discharging his duty** as such public servant, or in **consequence of anything done or attempted to be done by that person in the lawful discharge of his duty** as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Key Definitions

- 1) **Hurt** [Section 319]: Causing bodily pain, disease or infirmity to any person.
- 2) **Grievous Hurt** [Section 320]: The following kinds of hurt only are designated as "grievous":
 - First -- Emasculation.
 - Secondly -- Permanent privation of the sight of either eye.
 - Thirdly -- Permanent privation of the hearing of either ear.
 - Fourthly -- Privation of any member or joint.
 - Fifthly -- Destruction or permanent impairing of the powers of any member or joint.
 - Sixthly -- Permanent disfiguration of the head or face.
 - Seventhly -- Fracture or dislocation of a bone or tooth.
 - Eighthly -- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits
- 3) **Voluntarily causing grievous hurt** [Section 322]: An **act** done with the **intention** of thereby causing grievous hurt to any person, or with the **knowledge** that he is likely thereby to cause grievous hurt to any person and which actually causes grievous hurt.

Explanation -- A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or know himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if intending or knowing himself to be likely to cause grievous hurt of one kind he actually causes grievous hurt of another kind.

Section 333: Voluntarily Causing Grievous Hurt To Deter Public Servant From His Duty

No.	Element	Evidence	Evaluation
1	An act causing hurt	Evidence demonstrating client did an act causing bodily pain, disease or infirmity to a person: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

No.	Element	Evidence	Evaluation
2	Act done with intent or knowledge	<p>2a) Evidence demonstrating act was done with either intent to cause bodily pain, disease or infirmity to a person:</p> <p>Evidence to the contrary:</p> <hr/> <p>or</p> <p>2b) Evidence demonstrating act was done with knowledge that bodily pain, disease or infirmity to a person is likely to result:</p> <p>Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
3	Grievous hurt	<p>Evidence demonstrating one of the following types of bodily pain, disease or infirmity took place:</p> <ol style="list-style-type: none"> 1) Emasculation 2) Permanent loss of sight in either eye 3) Permanent loss of hearing of either ear 4) Loss of any member or joint 5) Destruction or permanent impairment of the powers of any member or joint 6) Permanent disfiguration of the head or face 7) Fracture or dislocation of a bone or tooth 8) Any hurt which endangers life or which causes the sufferer to be in severe bodily pain for twenty days, or unable to follow his ordinary pursuits: <p>Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
4	Grievous hurt caused by client	<p>Evidence demonstrating grievous hurt was caused by client's act:</p> <p>Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
5	Victim was a public servant	<p>Evidence demonstrating person who suffered grievous hurt was a public servant:</p> <p>Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

ANNEX4:

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

No.	Element	Evidence	Evaluation
6	Grievous hurt was to deter public servant from his duties	<p>6a) Evidence that the public servant was actually discharging his duty as such public servant when the hurt was caused:</p> <p>Evidence to contrary:</p> <p>or</p> <p>6b) Evidence demonstrating grievous hurt was done with intent to prevent that person or any other public servant from discharging his duty as such public servant:</p> <p>Evidence to the contrary:</p> <p>or</p> <p>6c) Evidence demonstrating hurt was caused in consequence of anything done or attempted to be done by the public servant in the lawful discharge of his duty as a public servant</p> <p>Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

→ Go to DEFENSES TO HURT CLAIMS

SAMPLE ADDITIONAL INFORMATION FORMS

PENAL CODE, SECTION 337: HURT BY ENDANGERING SAFETY

Whoever **causes hurt** to any person by doing **any act so rashly or negligently** as to **endanger human life or the personal safety of others** shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Key Definitions

1) **Hurt** [Section 319]: Causing bodily pain, disease or infirmity to any person.

Section 337: Hurt by Endangering Safety			
No.	Element	Evidence	Evaluation
1	An act	Evidence demonstrating client did an act : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Act done rashly or negligently	2a) Evidence demonstrating act was done so rashly that it endangered human life or personal safety : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
		or 2b) Evidence demonstrating act was done so negligently that it endangered human life or personal safety : Evidence to the contrary:	
3	Actual hurt	Evidence demonstrating victim experienced bodily pain, disease or infirmity : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
4	Hurt caused by client	Evidence demonstrating bodily pain, disease or infirmity was caused by client's act : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

ANNEX4:

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

→ Go to DEFENSES TO HURT CLAIMS

SAMPLE ADDITIONAL INFORMATION FORMS

PENAL CODE, SECTION 338: GRIEVOUS HURT BY ENDANGERING SAFETY

Whoever **causes grievous hurt** to any person by doing **any act so rashly or negligently** as to **endanger human life or the personal safety of others** shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Key Definitions

- 1) **Hurt** [Section 319]: Causing bodily pain, disease or infirmity to any person.
- 2) **Grievous Hurt** [Section 320]: The following kinds of hurt only are designated as “grievous”:
 - First -- Emasculation.
 - Secondly -- Permanent privation of the sight of either eye.
 - Thirdly -- Permanent privation of the hearing of either ear.
 - Fourthly -- Privation of any member or joint.
 - Fifthly -- Destruction or permanent impairing of the powers of any member or joint.
 - Sixthly -- Permanent disfiguration of the head or face.
 - Seventhly -- Fracture or dislocation of a bone or tooth.
 - Eighthly -- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits

Section 338: Grievous Hurt by Endangering Safety

No.	Element	Evidence	Evaluation
1	An act	Evidence demonstrating client did an act : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Act done rashly or negligently	2a) Evidence demonstrating act was done so rashly that it endangered human life or personal safety : Evidence to the contrary: or	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

No.	Element	Evidence	Evaluation
		2b) Evidence demonstrating act was done so negligently that it endangered human life or personal safety : Evidence to the contrary:	
3	Grievous hurt	Evidence demonstrating one of the following types of bodily pain, disease or infirmity took place: 1) Emasculation 2) Permanent loss of sight in either eye 3) Permanent loss of hearing of either ear 4) Loss of any member or joint 5) Destruction or permanent impairment of the powers of any member or joint 6) Permanent disfiguration of the head or face 7) Fracture or dislocation of a bone or tooth 8) Any hurt which endangers life or which causes the sufferer to be in severe bodily pain for twenty days , or unable to follow his ordinary pursuits: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
4	Grievous hurt caused by client	Evidence demonstrating grievous hurt caused by client's act : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

NOTE:

- If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
- If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
- However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

→ Go to **DEFENSES TO HURT CLAIMS**

SAMPLE ADDITIONAL INFORMATION FORMS

PENAL CODE: DEFENSES TO HURT CLAIMS AND MITIGATION OF HURT CLAIMS

NOTE:

1. The following defenses and mitigating circumstances should be considered where:
 - (a) all elements of the alleged crime appear to have been met;
 - (b) it is unclear whether all elements of the alleged crime appear to have been met;
 - (c) there is doubt that the judge will accept your analysis that one or more of the elements of the alleged crime have not been met.
2. Consider all possible defenses to determine which would be best suited to your client's circumstances.
3. The defenses and mitigating circumstances set out below are the most common. If none of them apply to your client's case, consider other defenses contained in sections 88 to 106 of the Penal Code.

PART I: DEFENSES TO VOLUNTARY HURT CLAIMS

SECTION 87: ACT NOT INTENDED/KNOWN TO CAUSE DEATH OR GRIEVOUS HURT OR CONSENT

Nothing which is **not intended** to **cause death or grievous hurt**, and which is not known by the doer to be **likely** to **cause death or grievous hurt**, is an offense by reason of any harm which it may **cause, or be intended** by the doer to cause, to any person, **above eighteen years of age**, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be **known** by the doer to be **likely** to cause to any such person who has **consented** to take the risk of that harm.

Illustration

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which in the course of such fencing may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offense.

Section 87 – Act Not Intended/Known to Cause Death or Grievous Hurt or Consent

No.	Element	Evidence	Evaluation
No liability where either:			
1	Doer did not intend to cause death or grievous hurt and did not know act to be likely to cause death or grievous hurt and person above age 18 gave either express or implied consent to suffer the harm,	1 (a) Evidence demonstrating client did not intend to cause death or grievous bodily pain, disease or infirmity: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

		<p>and</p> <p>I (b) Evidence demonstrating client also did not know act to be likely to cause death or grievous bodily pain, disease or infirmity:</p> <p>Evidence to the contrary:</p>	
		<p>and</p> <p>I (c) Evidence person above age 18 gave express or implied consent to suffer the harm:</p> <p>Evidence to the contrary:</p>	
or			
2	Doer knew of risk of harm but person harmed consented to take that risk	<p>2(a) Evidence demonstrating client knew the risk of harm:</p> <p>Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
		<p>and</p> <p>2(b) Evidence demonstrating person consented to take the risk of harm</p> <p>Evidence to the contrary:</p>	

SECTION 94: ACT DONE BECAUSE OF THREAT

Except murder, and offenses against the State punishable with death, nothing is an offense which is done by a person who is **compelled to do it by threats**, which, at the time of doing it, reasonably cause the **apprehension** that **instant death** to that person will otherwise be the consequence **Provided** the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.-- A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offense by law.

Explanation 2.-- A person seized by a gang of dacoits and forced by threat of instant death, to do a thing which is an offense by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

Section 94 – Act Done Because of Threat

No.	Element	Evidence	Evaluation
1	Offense compelled by threat	Evidence client was compelled to do the offense by threats which reasonably caused the apprehension that his/her instant death would otherwise be the consequence: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Client did not voluntarily place himself in situation or have fear less than imminent death	Evidence client did not place himself in the situation of his own accord , or from a reasonable apprehension of harm to himself short of instant death : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
3	Offense committed was not murder or offense against the State punishable with death	Evidence offense committed was not murder or offense against the State punishable with death : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

SECTION 95: ACT CAUSING SLIGHT HARM:

Nothing is an offense by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is **so slight** that no person of **ordinary sense and temper** would complain of such harm.

Section 95 – Act Causing Slight Harm

No.	Element	Evidence	Evaluation
1	Harm caused is slight	Evidence demonstrating harm is so slight that no person of ordinary sense and temper would complain of such harm: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

SECTIONS 96 AND 97: RIGHT OF PRIVATE DEFENCE

96. Nothing is an offense, which is done in the exercise of the **right of private defense**.

97. Every person has a **right**, subject to the restrictions contained in section 99, **to defend** –

First – His **own body**, and the **body of any other person**, against any offense affecting the human body;

Secondly – The **property**, whether moveable or immovable, **of himself or of any other person, against** any act which is an offense falling under the definition of **theft, robbery, mischief or criminal trespass**, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

Section 97 - Right of Private Defense

No.	Element	Evidence	Evaluation
1	Offense is caused as a result of the client defending his/her own body or the body of any other person against any offense affecting the body.	Evidence that the client was physically defending him/herself or another person against an offense by the alleged victim affecting the body . Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
or			
2	Offense is caused as a result of the client defending property, whether moveable or immovable, of himself or of any other person, against actual or attempted theft, robbery, mischief or criminal trespass.	2(a) Evidence that the client was physically defending property belonging to him/herself or any other person. Evidence to the contrary: and 2(b) Evidence demonstrating that the property was the subject of actual or attempted theft, robbery, mischief or criminal trespass . Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

SAMPLE ADDITIONAL INFORMATION FORMS

PART 2: MITIGATION OF VOLUNTARY HURT CLAIMS

SECTION 334: VOLUNTARILY CAUSING HURT ON PROVOCATION

Whoever voluntarily causes **hurt** on **grave and sudden provocation**, if he **neither intends nor knows** himself to be **likely** to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which extends to one month, or with fine which may extend to five hundred rupees, or with both.

Explanation-- This section is subject to the same provisos as section 299(2)(A).

Section 334 – Mitigation of Voluntarily Causing Hurt on Provocation			
No.	Element	Evidence	Evaluation
1	Reduced liability where: All elements of section 321 are met	Are all elements of section 321 met?	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Grave and sudden provocation as cause	Evidence bodily pain, disease or infirmity was the result of grave and sudden provocation : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
3	Lack of intent / knowledge	Evidence client did not intend or know himself to be likely to cause bodily pain, disease or infirmity to any person other than the person who gave the provocation: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

SAMPLE ADDITIONAL INFORMATION FORMS

4(b)

SECTION 335: VOLUNTARILY CAUSING GRIEVOUS HURT ON PROVOCATION

Whoever voluntarily causes **grievous hurt** on **grave and sudden provocation**, if he **neither intends** nor **knows** himself to be **likely** to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend four years, or with fine which may extend to two thousand rupees, or with both.

Explanation—This section is subject to the same provisos as section 299(2)(A).

Section 335 – Mitigation of Voluntarily Causing Grievous Hurt on Provocation

No.	Element	Evidence	Evaluation
1	Reduced liability where: All elements of section 322 are met	Are all elements of section 322 met?	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Grave and sudden provocation as cause	Evidence bodily pain, disease or infirmity was the result of grave and sudden provocation : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
3	Lack of intent / knowledge	Evidence client did not intend or know himself to be likely to cause bodily pain, disease or infirmity to any person other than the person who gave the provocation: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

ANNEX 4(C): CHEATING – PENAL CODE

SAMPLE ADDITIONAL INFORMATION FORMS

4(c)

ANNEX 4(c): Cheating – Penal Code

PENAL CODE, SECTION 415: CHEATING

Whoever, by **deceiving** any person, **fraudulently or dishonestly induces** the person so deceived to **deliver any property** to any person, or to consent that any person shall retain any property, or **intentionally induces** the person so **deceived to do or omit to do** anything which **he would not do or omit** if he were not so deceived, and which act or omission **causes or is likely to cause damage or harm** to that person in **body, mind, reputation or property**, is said to “cheat.”

Explanation. - A dishonest concealment of facts is a deception within the meaning of this section.

Illustration

- (a) A, by *falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit* **goods for which he does not mean to pay**. A cheats.
- (b) A, by *putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article*. A cheats.
- (c) A, by *exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article*. A cheats.
- (d) A, by *tendering in payment for an article a bill on a house with which A keep no money, and by which A expects that the bill will be dishonored, intentionally deceives Z and thereby dishonestly induces Z to deliver the article, intending not to pay for it*. A cheats.
- (e) A, by *pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z and thereby dishonestly induces Z to lend money*. A cheats.
- (f) A *intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it*. A cheats.
- (g) A **intentionally deceives** Z into a belief that A means to deliver to Z a certain quantity of **indigo plant** which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; **but** if A, at the time of obtaining the money, **intends to deliver** the indigo plant, and **afterwards breaks his contract** and does not deliver it, he **does not cheat**, but is liable only to a **civil action for breach of contract**.
- (h) A **intentionally deceives** Z into a belief that A has performed A's part of a **contract** made with Z which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.
- (i) A *sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z.*

SAMPLE ADDITIONAL INFORMATION FORMS

NOTE:

Section 415 relates to offenses against **property** under Chapter XVII of the Penal Code, "Of Offenses Against Property". As is clear from the illustrations contained within section 415 and set out above, the deception must be **intentional** and it must relate to **property**, being personal property, goods, money, etc.

Accordingly, it **CANNOT** be used:

1. to allege and prosecute men for failing to marry women with whom they have lived or otherwise been with;
- or**
2. for breaches of contract, unless an **intention** to deceive, meeting all of the elements of section 415, is also able to be proven beyond a reasonable doubt. See illustration (g), above.

Section 415: Cheating

No.	Element	Evidence	Evaluation
1	Fraudulent or dishonest deceit	Evidence demonstrating that there was an intention to fraudulently or dishonestly deceive a person : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Inducement of person to act or omit to act, based on deceit	2a) Evidence demonstrating that the deception induced the person to deliver property to another person: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
		or	
		2b) Evidence demonstrating that the deception induced the person to consent that another person would retain the property : Evidence to the contrary:	
		or	
		2c) Evidence demonstrating that the deception intentionally induced the person to do or omit to do something which he/she would not do or omit if he were not so deceived: Evidence to the contrary:	

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No.	Element	Evidence	Evaluation
3	Harm	<p>Evidence demonstrating that any one of the acts or omissions in items 2(a), 2(b) or 2(c) caused or was likely to cause damage or harm to that person in body, mind, reputation or property:</p> <p>Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

SAMPLE ADDITIONAL INFORMATION FORMS

PENAL CODE, SECTION 416 - CHEATING BY PERSONATION

A person is said to “cheat by personation” if he **cheats** by **pretending to be some other person**, or **by knowingly substituting one person for another**, or **representing** that he or any other person is **a person other than he or such other person really is**.

Explanation. - The offense is committed whether the individual personated is a real or imaginary person.

Illustration

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Key Definitions

Cheating [Section 415]: Whoever, by **deceiving** any person, **fraudulently or dishonestly induces** the person so deceived to **deliver any property** to any person, or to consent that any person shall **retain any property**, or **intentionally induces** the person so **deceived to do or omit** to do anything which **he would not do or omit** if he were not so deceived, and which act or omission **causes or is likely to cause damage or harm** to that person in **body, mind, reputation or property**, is said to “cheat.”

Explanation – A dishonest concealment of facts is a deception within the meaning of this section.

Illustration

- (a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.
- (b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.
- (c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.
- (d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.
- (e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z and thereby dishonestly induces Z to lend money. A cheats.
- (f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.
- (g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

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(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z.

NOTE:

Sections 415 and 416 relate to offenses against **property**, under Chapter XVII of the Penal Code, "Of Offenses Against Property". As is clear from the illustrations contained within the definition of "cheating" in section 415 and set out above, the deception must be **intentional** and it must relate to property, being personal **property**, goods, money etc.

Accordingly, it **CANNOT** be used:

1. to allege and prosecute men for failing to marry women with whom they have lived or otherwise been with;
- or**
2. for breaches of contract, unless an **intention** to deceive, meeting all of the elements of section 415, is also able to be proven beyond a reasonable doubt. See illustration (g), above.

Section 416: Cheating by Personation

No.	Element	Evidence	Evaluation
1	Fraudulent or dishonest deceit	Evidence demonstrating that there was an intention to fraudulently or dishonestly deceive a person : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Inducement of person to act, or fail to act, based on deceit	2a) Evidence demonstrating that the deception induced the person to deliver property to another person: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
		or	
		2b) Evidence demonstrating that the deception induced the person to consent that another person would retain the property: Evidence to the contrary:	
		or	

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No.	Element	Evidence	Evaluation
		2c) Evidence demonstrating that the deception intentionally induced the person to do or omit to do something which he/she would not do or omit if he were not so deceived: Evidence to the contrary:	
3	Harm	Evidence demonstrating that any one of the acts or omissions in items 2(a), 2(b) or 2(c) caused or was likely to cause damage or harm to that person in body, mind, reputation or property : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
4	Cheating involved personation	4a) Evidence demonstrating client pretended to be some other person : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
		or	
		4b) Evidence demonstrating client knowingly substituted one person for another: Evidence to the contrary:	
		or	
		4c) Evidence demonstrating client represented that he/she or another person was a person other than he/she or the other person really was : Evidence to the contrary:	

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

SAMPLE ADDITIONAL INFORMATION FORMS

4(c)

PENAL CODE, SECTION 418 – CHEATING BY PERSON BOUND TO PROTECT

Whoever **cheats** with the **knowledge** that he is **likely thereby to cause wrongful loss** to a person whose **interest in the transaction to which the cheating relates** he was **bound** either **by law or by legal contract to protect**, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Key Definitions

Cheating [Section 415]: Whoever, by **deceiving** any person, **fraudulently or dishonestly induces** the person so deceived to **deliver any property** to any person, or to consent that any person shall **retain any property**, or **intentionally induces** the person so **deceived to do or omit to do** anything which **he would not do or omit** if he were not so deceived, and which act or omission **causes or is likely to cause damage or harm** to that person in **body, mind, reputation or property**, is said to “cheat.”

Explanation – A dishonest concealment of facts is a deception within the meaning of this section.

Illustration

- (a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.
- (b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.
- (c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.
- (d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.
- (e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z and thereby dishonestly induces Z to lend money. A cheats.
- (f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.
- (g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.
- (h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.
- (i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z.

SAMPLE ADDITIONAL INFORMATION FORMS

NOTE:

Sections 415 and 418 relate to offenses against **property**, under Chapter XVII of the Penal Code, "Of Offenses Against Property". As is clear from the illustrations contained within the definition of "cheating" in section 415 and set out above, the deception must be intentional and it must relate to **property**, being personal property, goods, money etc.

Accordingly, it **CANNOT** be used for breaches of contract, unless an **intention** to deceive, meeting all of the elements of section 415, is **also** able to be proven beyond a reasonable doubt. See illustration (g), above.

Section 418: Cheating of Person Bound to Protect			
No.	Element	Evidence	Evaluation
1	Fraudulent or dishonest deceit	Evidence demonstrating that there was an intention to fraudulently or dishonestly deceive a person : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Inducement of person to act or omit to act, based on deceit	2a) Evidence demonstrating that the deception induced the person to deliver property to another person: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
		or	
		2b) Evidence demonstrating that the deception induced the person to consent that another person would retain the property: Evidence to the contrary:	
		or	
		2c) Evidence demonstrating that the deception intentionally induced the person to do or omit to do something which he/she would not do or omit if he were not so deceived: Evidence to the contrary:	

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No.	Element	Evidence	Evaluation
3	Harm	Evidence demonstrating that any one of the acts or omissions in items 2(a), 2(b) or 2(c) caused or was likely to cause damage or harm to that person in body, mind, reputation or property : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
4	Knowledge of likely harm	Evidence demonstrating cheating was done with the knowledge that wrongful loss to the person was likely : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
5	Obligation to protect person likely to be harmed	Evidence demonstrating client was bound by law or contract to protect the interest of the person in respect of the transaction to which the cheating related : Evidence to the contrary:	

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

SAMPLE ADDITIONAL INFORMATION FORMS

PENAL CODE, SECTION 420 – CHEATING TO INDUCE DELIVERY OF PROPERTY

Whoever **cheats** and thereby **dishonestly induces** the person deceived to **deliver any property** to any person, or to **make, alter or destroy** the whole or any part of a **valuable security**, or anything which is **signed or sealed** and which is **capable of being converted** into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Key Definitions

Cheating [Section 415]: Whoever, by **deceiving** any person, **fraudulently or dishonestly induces** the person so deceived to **deliver any property** to any person, or to consent that any person shall **retain any property**, or **intentionally induces** the person so **deceived to do or omit to do** anything which **he would not do or omit** if he were not so deceived, and which act or omission **causes or is likely to cause damage or harm** to that person in **body, mind, reputation or property**, is said to “cheat.”

Explanation – A dishonest concealment of facts is a deception within the meaning of this section.

Illustration

- (a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.
- (b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.
- (c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.
- (d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.
- (e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z and thereby dishonestly induces Z to lend money. A cheats.
- (f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.
- (g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.
- (h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.
- (i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z.

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4(c)

NOTE:

Sections 415 and 420 relate to offenses against **property**, under Chapter XVII of the Penal Code, “Of Offenses Against Property”. As is clear from the illustrations contained within the definition of “cheating” in section 415 and set out above, the deception must be intentional and it must relate to **property**, being personal property, goods, money etc.

Accordingly, it **CANNOT** be used for breaches of contract, unless an **intention** to deceive, meeting all of the elements of section 415, is **also** able to be proven beyond a reasonable doubt. See illustration (g), above

Section 420: Cheating to Induce Delivery of Property			
No.	Element	Evidence	Evaluation
1	Dishonest deceit	Evidence demonstrating that there was an intention to dishonestly deceive a person : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Delivery of property based on deceit	2a) Evidence demonstrating that the dishonest deception induced the person to deliver property to another person: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
		or 2b) Evidence demonstrating that the dishonest deception induced the person to make, alter or destroy the whole or any part of a valuable security , or anything which is signed or sealed and which is capable of being converted into a valuable security: Evidence to the contrary:	
3	Harm	Evidence demonstrating that any one of the acts in items 2(a) or 2(b) caused or was likely to cause damage or harm to that person in body, mind, reputation or property : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

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4(c)

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

4(d)

ANNEX 4(D): RAPE – PENAL CODE

SAMPLE ADDITIONAL INFORMATION FORMS

ANNEX 4(d): Rape – Penal Code

PENAL CODE, SECTION 375: RAPE

A **man** is said to commit “rape” who, except in the case hereinafter excepted, has **sexual intercourse with a woman** under circumstances falling under any of the five following descriptions

First -- **Against her will.**

Secondly -- **Without her consent.**

Thirdly -- With her consent, when her consent has been obtained by putting her in **fear of death or of hurt.**

Fourthly -- With her consent, when the **man knows that he is not her husband**, and that her consent is given because **she believes that he is another man to whom she is or believes herself to be lawfully married.**

Fifthly -- With or without her consent, when she is **under sixteen years.**

Explanation -- Penetration is sufficient to constitute the sexual intercourse necessary to the offense of rape.

Exception -- Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Key Definitions

1) Man [Section 10]:The word “man” denotes a male human being of **any age.**

2) Woman [Section 10]:The word “woman” denotes a female human being of **any age.**

Section 375: Rape

No.	Element	Evidence	Evaluation
1	Accused is a man	Accused is a male of any age	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Victim is a woman	Victim is a female of any age	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
3	Sexual intercourse took place	Evidence penetration took place by client: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

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4(d)

No.	Element	Evidence	Evaluation
4	Penetration took place under one of five conditions	<p>4a) Evidence penetration by client was against woman's will:</p> <p>Evidence to the contrary:</p> <p>or</p> <p>4b) Evidence penetration by client was without woman's consent:</p> <p>Evidence to the contrary:</p> <p>or</p> <p>4c) Evidence consent to penetration by client was obtained by putting woman in fear of death or of hurt:</p> <p>Evidence to the contrary:</p> <p>or</p> <p>4d) Evidence that:</p> <p>(i) the client knew he was not the woman's husband;</p> <p>and</p> <p>(ii) consent by the woman was given because the woman believed he was another man to whom she was, or believed herself to be, lawfully married:</p> <p>Evidence to the contrary:</p> <p>or</p> <p>4e) Evidence woman is under 16 years old:</p> <p>Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

SAMPLE ADDITIONAL INFORMATION FORMS

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

→ **Go to DEFENSE TO RAPE CLAIMS**

DEFENSE TO RAPE CLAIM		
Own wife over age 15	a) Evidence penetration was with accused's own wife :	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
	Evidence to the contrary:	
	and:	
	b) Evidence accused's wife is over 15 years old :	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
	Evidence to the contrary:	

4(e)

ANNEX 4(E): ARMS ACT

SAMPLE ADDITIONAL INFORMATION FORMS

ANNEX 4(e): Arms Act

ARMS ACT, SECTION 13: ARMED WITHOUT LICENSE

No person shall go **armed with any arms except** under a license and to the extent and in the manner permitted thereby.

Any person so going armed without a license or in contravention of its provisions may be disarmed by any Magistrate, police officer or other person empowered by the President of the Union in this behalf by name or by virtue of his office.

For the purposes of this section, **“arms” includes also knives with pointed blades rigidly affixed, or capable of being rigidly affixed, to the handle, and measuring in all over five inches in length, which are intended exclusively for domestic, agricultural or industrial purposes.**

Key Definitions

Arms [Sections 4 and 13] includes:

- **clasp-knives** the blades of which are pointed and exceed three inches in length [Section 4(i)];
- **knives, with pointed blades** rigidly affixed, or capable of being rigidly affixed, to the handle, and measuring in all over five inches in length which are **not intended** exclusively for domestic, agricultural or industrial purposes; provided that it shall be presumed until the contrary is proved that knives of this description are not intended exclusively for such purposes [Section 4(ii)];
- **knives of such other kinds** as the President of the Union may, by notification, prescribe [Section 4(iii)];
- **fire arms, bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms** [Section 4(iv)];
- **knives with pointed blades** rigidly affixed, or capable of being rigidly affixed, to the handle, and measuring in all over five inches in length, which **are intended** exclusively for domestic, agricultural or industrial purposes [Section 13].

Cannon [Section 4]: includes also all howitzers, mortars, wall-pieces, mitrailleuses and other ordnance and machine-guns, all parts of the same, and all carriages, platforms and appliances for mounting, transporting and serving the same.

License [Section 4]: means a license granted under this Act, and “licensed” means holding such license.

SAMPLE ADDITIONAL INFORMATION FORMS

4(e)

Section 13: Armed Without License				
No.	Element	Evidence	Evaluation	
1	Is item an "arm"?	Evidence demonstrating weapon meets one of the definitions of " arms " in Arms Act, sections 4 or 13, being any one of the following:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.	
	a) Clasp knife	Evidence that item is a clasp knife: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.	
		If item is a clasp knife, is the blade: (i) pointed ; and (ii) in excess of three inches?	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.	
	or			
	b) Knife with a pointed blade not intended exclusively for domestic, agricultural or industrial purposes	Evidence that pointed blade was rigidly affixed, or capable of being rigidly affixed , to a handle: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.	
		If the pointed blade was rigidly affixed or capable of being rigidly affixed to a handle, is the blade in excess of five inches? Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.	
		Was the knife intended exclusively for purposes other than domestic, agricultural or industrial? Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.	
or				

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4(e)

No.	Element	Evidence	Evaluation
	c) Knife with a pointed blade that was intended exclusively for domestic, agricultural or industrial purposes	Evidence that pointed blade was rigidly affixed , or capable of being rigidly affixed, to a handle: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
		If the pointed blade was rigidly affixed or capable of being rigidly affixed to a handle, is the blade in excess of five inches? Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
		Was the knife intended exclusively for domestic, agricultural or industrial purposes? Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
or			
	d) Knife of such other kind as the President prescribed	Evidence knife prescribed by President: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
		or	
	e) Firearm, bayonet, sword, dagger, spear, etc.	Evidence item is firearm, bayonet, sword, dagger, spear, spearhead, bow and arrow, cannon and parts of arms, or machinery for manufacturing arms : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
		2	Was client 'armed' with the item?

ANNEX4:

SAMPLE ADDITIONAL INFORMATION FORMS

4(e)

No.	Element	Evidence	Evaluation
3	Did client lack a license for the arms or was he armed in contravention of the license's provisions?	<p>3a) Evidence demonstrating client did not have a license for the arm:</p> <p>Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
		<p>or</p> <p>3b) Evidence demonstrating client was armed in contravention to license's provisions:</p> <p>Evidence to the contrary:</p>	

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

SAMPLE ADDITIONAL INFORMATION FORMS

ARMS ACT, SECTION 14: UNLICENSED POSSESSION OF FIREARMS, ETC.

No person shall have in his **possession** or **under his control** any **cannon** or **fire-arms**, or **any ammunition** or **military stores**, **except** under a **license** and in the manner and to the extent permitted thereby.

Key Definitions

Cannon [Section 4]: includes also all howitzers, mortars, wall-pieces, mitrailleuses and other ordnance and machine-guns, all parts of the same, and all carriages, platforms and appliances for mounting, transporting and serving the same:

Arms [Section 4]: includes:

[...]

- (iv) **firearms**, bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms

Ammunition [Section 4]: includes also all articles specially designed for torpedo service and submarine mining, rockets, gun-cotton, dynamite, lithofracteur and other explosive or fulminating material, gun-flint, gun-wads, percussion-caps, fuses and friction-tubes, all parts of ammunition and all machinery for manufacturing ammunition, but does not include lead, sulphur or saltpetre;

Military stores [Section 4]: means any military stores to which the President of the Union may from time to time, by notification in the Gazette, specially extend such section in such part, and includes also all lead, sulphur, saltpetre, and other material to which the President of the Union may from time to time so extend such section:

License [Section 4]: means a license granted under this Act, and "licensed" means holding such license.

Section 14: Unlicensed Possession of Firearm, etc.

No.	Element	Evidence	Evaluation
1	Is the item a cannon, firearms, ammunition, or military stores?	Evidence demonstrating item is a cannon, firearms, ammunition, or military stores : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Did the client have possession of or control over the item?	Evidence demonstrating client was in possession or control over the item: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

ANNEX4:

SAMPLE ADDITIONAL INFORMATION FORMS

4(e)

No.	Element	Evidence	Evaluation
3	Did client: (a) lack a license for item; or (b) have a license but possess or control the item in contravention of the license's provisions?	<p>3a) Evidence demonstrating that client did not have a license for the item: Evidence to the contrary:</p> <hr/> <p>or</p> <p>3b) Evidence demonstrating client had a license but possessed or controlled item in contravention of the license's provisions: Evidence to the contrary:</p>	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

SAMPLE ADDITIONAL INFORMATION FORMS

ARMS ACT, SECTION 22: KNOWINGLY PURCHASING OR DELIVERING ARMS

NOTE: Section 22 contains **two separate** offences. Select the appropriate one with which your client has been charged or to which the allegations relate.

Whoever **knowingly purchases** any **arms, ammunition or military stores** from any person not **licensed or authorized under the proviso to section 5** to sell the same; **or**

delivers any arms, ammunition or military stores into the **possession** of any person without **previously ascertaining** that such person is **legally authorized** to possess the same,

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Key Definitions

Arms [Section 4] includes:

- (i) **clasp-knives** the blades of which are pointed and exceed three inches in length;
- (ii) **knives**, with pointed blades rigidly affixed, or capable of being rigidly affixed, to the handle, and measuring in all over five inches in length which are not intended exclusively for domestic, agricultural or industrial purposes: provided that it shall be presumed until the contrary is proved that knives of this description are not intended exclusively for such purposes;
- (iii) **knives** of such other kinds as the President of the Union may, by notification, prescribe; and
- (iv) **firearms, bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms**

Ammunition [Section 4]: includes also all articles specially designed for torpedo service and submarine mining, rockets, gun-cotton, dynamite, lithofracteur and other explosive or fulminating material, gun-flint, gun-wads, percussion-caps, fuses and friction-tubes, all parts of ammunition and all machinery for manufacturing ammunition, but does not include lead, sulphur or saltpetre;

Military stores [Section 4] in any section of this Act as applied to any part of the Union of Burma, means any military stores to which the President of the Union may from time to time, by notification in the Gazette, specially extend such section in such part, and includes also all lead, sulphur, saltpetre, and other material to which the President of the Union may from time to time so extend such sections;

License [Section 4]: means a license granted under this Act, and "licensed" means holding such license.

SAMPLE ADDITIONAL INFORMATION FORMS

4(e)

Section 22: Knowingly Purchasing or Delivering Arms

No.	Element	Evidence	Evaluation
Offense 1 – Knowingly Purchasing			
1	Is the item an arms, ammunition or military stores?	Evidence demonstrating item meets the definition of arms [see table on Section 4 – Definition of Arms, below], ammunition or military stores in Arms Act, section 4: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Was there a purchase?	Evidence demonstrating client purchased the item: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
3	Was the seller unlicensed or not authorized to sell the item?	Evidence seller was not licensed or authorized to sell the item: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
4	Did client know that the seller was unlicensed or not authorized under the proviso to section 5 to sell the item?	Evidence client knew the seller was not licensed or authorized under section 5 to sell the item: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
Offense 2 – Delivering Arms			
1	Is the item an arms, ammunition or military stores?	Evidence demonstrating item meets the definition of arms [see table on Section 4 – Definition of Arms, below], ammunition or military stores in Arms Act, section 4: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
2	Did the client deliver the item into the possession of a person?	Evidence client delivered the item into the possession of a person: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

ANNEX 4:

SAMPLE ADDITIONAL INFORMATION FORMS

4(e)

No.	Element	Evidence	Evaluation
3	Was the person to whom the item was delivered a person not legally authorized to receive the item?	Evidence that such person was not legally authorized to receive the item Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
4	Did the client take steps before the delivery to ascertain whether the person was legally authorized to receive the item?	Evidence that before delivery client did not ascertain that such person is legally authorized to receive the item: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

NOTE:

1. If it is unclear whether one or more of the elements listed above is met, further investigation should be done to develop evidence that shows the element is not met.
2. If one or more of the elements listed above are not met, you should prepare submissions on the basis that there is no case to answer and/or that your client should be found **not guilty**.
3. **However**, defenses and mitigating factors should always be considered even if one of the elements of a cause of action is not met because the court may not agree with your analysis of the elements.

Section 4: Definition of Arms

Element	Evidence	Evaluation
i) Clasp knife	Evidence that item is a clasp knife: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
	If item is a clasp knife, is the blade pointed and in excess of three inches?	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
or		
ii) Knife with a pointed blade	Evidence that pointed blade was rigidly affixed , or capable of being rigidly affixed, to a handle: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
	If the pointed blade was rigidly affixed or capable of being rigidly affixed to a handle, is the blade in excess of five inches?	

ANNEX4:

SAMPLE ADDITIONAL INFORMATION FORMS

4(e)

No.	Element	Evidence	Evaluation
or			
iii)	Knife of such other kind as the President prescribed	Evidence knife prescribed by President: Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.
or			
iv)	Firearm, bayonet, sword, dagger, spear, etc.	Evidence item is firearm, bayonet, sword, dagger, spear, spearhead, bow and arrow, cannon and parts of arms, or machinery for manufacturing arms : Evidence to the contrary:	<input type="checkbox"/> Met <input type="checkbox"/> Not Met <input type="checkbox"/> F.I.N.

ANNEX 4(F): ELEMENTS EVALUATION FORM

ANNEX4:

SAMPLE ADDITIONAL INFORMATION FORMS

4(f)

ANNEX 4(f): Elements Evaluation Form

NOTE:

1. If it is unclear whether one or more of the relevant elements is met, further investigation should be undertaken to find evidence that shows whether the element is met.
2. If one or more of the relevant elements are not met, the client is either not liable or should be found not guilty.
3. Defenses and mitigating factors should be considered even if one of the elements of the crime or cause of action is not met because the court may not agree with your analysis of the elements.

Client name					
File name & no.					
Alleged crime/breach/cause of action					
Law and section <i>(if applicable)</i>					
No.	Element	Evidence	Evaluation		
			Met	Not Met	F.I.N.

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