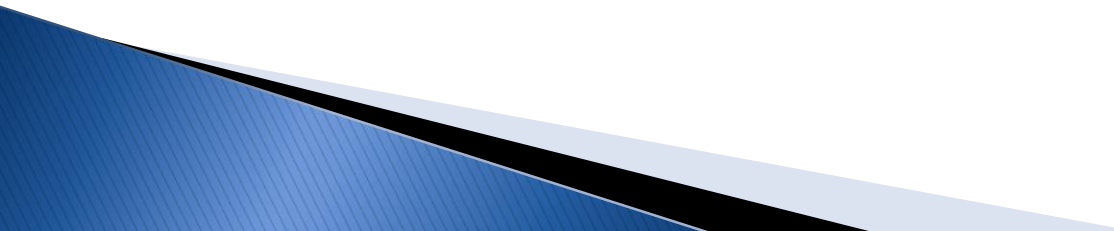


# JUDGMENT/ORDER WRITING

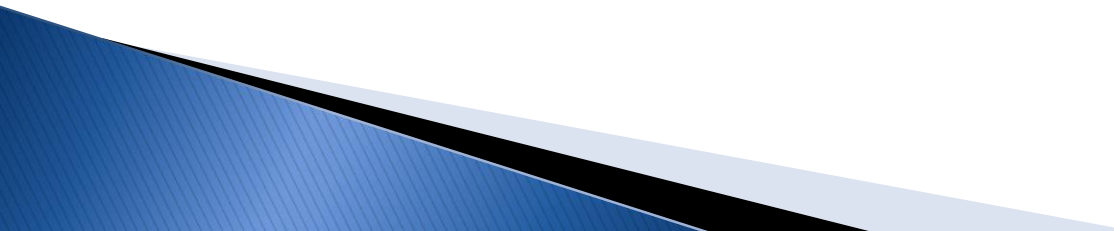
# DEFINITIONS

- ▶ The Official And Authentic Decision Of An Authority To Adjudicate Upon The Respective Rights And Claims Of The Parties To An Action Or Issue Therein Litigated And Submitted For Its Determination
- ▶ Any Decision Given By An Authority To Adjudicate On A Question Or Questions Or Issue Between The Parties To A Proceeding Properly Before The Judicial/ Quasi Judicial Authority.

# NOTES

- ▶ The Judgment/Order Must Communicate A Decision Of An An Authority To Adjudicate .
  - ▶ The Decision Must Be Accompanied With Reasons.
  - ▶ The Decision Must Resolve The Issues/Questions In Controversy.
  - ▶ The Decision Must Be Final On The Dispute Before The Authority To Adjudicate .
- 

# PURPOSE OF JUDGMENT

- ▶ To determine the guilt or innocence of an accused person.
  - ▶ To settle matters in controversy.
  - ▶ To communicate reasons to the parties for the decision.( public and appellate Court)
  - ▶ To provide accountability by Adjudicating Officers.
  - ▶ To promote checks and balances under the rule of Law.
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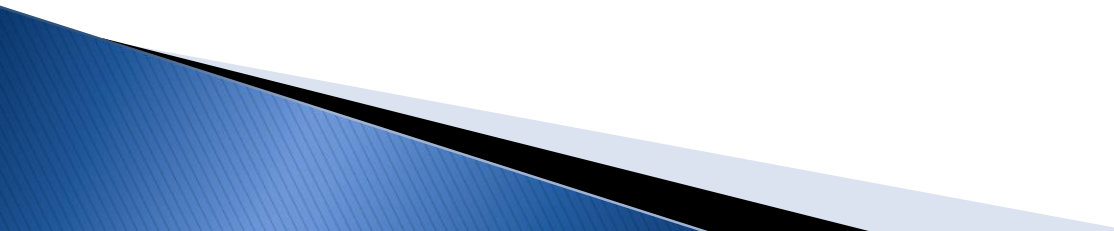
# STRUCTURE OF JUDGMENTS/ORDERS

Judgments/ Orders Are Constructed Like Other Physical Structures On Paper.

They Have A Foundation, The Superstructure, The Head And Other Accessories.

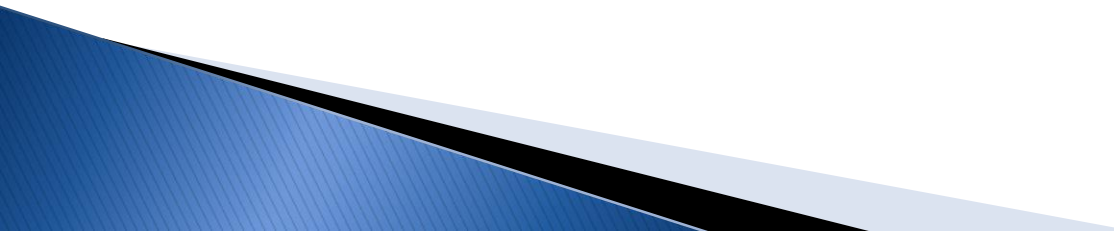
But Unlike Physical Structures That Don't Talk, Judgments/Orders Have Life; They Communicate.

# STRUCTURE

- **HEADING** : Title, Institution, Parties, Case number, Authority
  - **INTRODUCTION** : Facts, issues/ingredients
  - **BODY/SUPERSTRUCTURE**: Analysis/Evaluation of evidence, application of the law, resolution of issues/elements, ratio decidendi
  - **CONCLUSION**: Decision
- 

# CONTENTS

Must be written

- ▶ Language of the Court/Institution
  - ▶ English/official language
  - ▶ Points for determination
  - ▶ Decision thereon
  - ▶ Reason for the decision
  - ▶ Dated
  - ▶ Signed.
- 

# FINDINGS OF FACT

- ▶ State relevant facts without detail.
- ▶ State only facts and history that affects the analysis and decision
- ▶ Sift the grain from the chuff
- ▶ Be accurate, precise and impartial
- ▶ Consult the record to avoid errors
- ▶ Facts be written in chronological order but if complicated, then use a thematic approach.
- ▶ Point out discrepancies, if any, and make findings of fact
- ▶ Consider the credibility of witnesses ie body language, audibility if applicable.



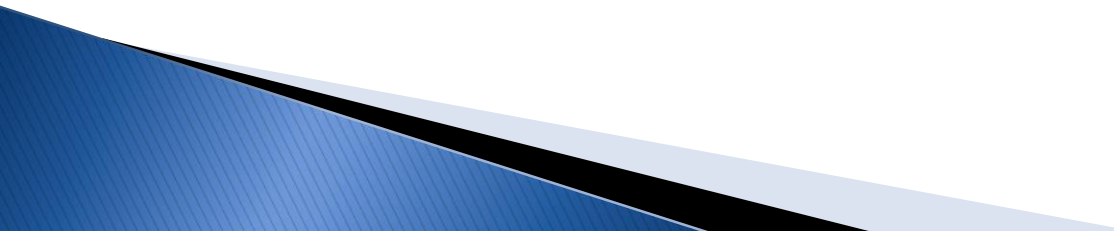
# CASE LAW

Quote any case law raised during the enquiry/adjudicating process.

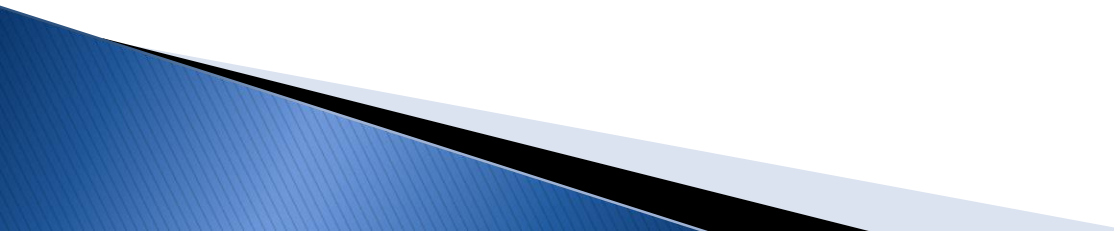
# IDENTIFICATION OF ISSUES, QUESTIONS AND INGREDIENTS

- ▶ ISSUES
- ▶ Proposition of law or fact made by one party but opposed by the other.
- ▶ Each issue must be stated distinctly.
- ▶ Issues are of fact or law
- ▶ Issues of law may dispose of the case and may be tried first.
- ▶ even after taking evidence, additional issues may framed

# Questions

1. Questions relate to facts unlike issues that may involve law. Eg. Whether the witness could identify the assailant correctly or is honestly mistaken?
  2. These are questions of fact which must be resolved in the judgment/order.
  3. Focus on the questions you have framed to enable parties follow and understand why you have reached that conclusion
- 

# BURDEN OF PROOF

- ▶ Remember To State Clearly And Correctly Who Bears The Burden To Prove The Case Or Issue Stated And To What Standard.
  - ▶ In Criminal Cases, The Standard Is Beyond Reasonable Doubt.
  - ▶ In Civil Cases, It Is On The Balance Of Probabilities With Some Exceptions Where Fraud Is Pleaded.
- 

# APPLYING THE LAW TO THE FACTS

This is the crux of judgment/order writing.

- ▶ Evaluation of evidence is done at this stage. •  
Evaluate the evidence as a whole for both sides.
- ▶ This is where the ratio decidendi is stated and the case is decided finally.
- ▶ Judgment/order should refer to the principles applicable( case law and statutory law).
- ▶ Each issue or ingredient framed should be disposed of separately though two or more issues may in civil matters may overlap and may be dealt with together.

# Contd..

- The Demeanor Of Witnesses Is Assessed But This Should Be From Notes Already Recorded.
- Clear Reasons Must Be Given For The Decision And Demonstrate That Both Sides Have Had Their Propositions Considered.
- Do Not Consider One Side In Isolation Of The Other.
- Apply Only Relevant Cases And Distinguish Those You Consider Not Applicable.
- Avoid Loading Judgment With Authorities.
- Decide Only Those Issues That Dispose Of The Case. This Ensures Clarity
- Analysis At This Stage Should Be Balanced And Dispassionate.

# Contd..

- ▶ At this stage, the judgment/order should set forth the evidence on each issue sufficiently to show its nature, what it proposes to establish, and its credibility.
- ▶ Reference should be made to arguments for both sides, apply the law objectively and draw a conclusion on each issue.
- ▶ For example, in Excise cases that occur at remote areas and at night, the issue of proper identification always comes up

# Contd

- Analyze Those Factors That Where There Is An Alibi, The Prosecution Evidence Should Be Assessed Against The Defence Denial Before A Conclusion Is Made.
- It Is Not Enough To Conclude That The Evidence Places The Accused At The Scene Without Comparing That Evidence Against The Accused Evidence On The Alibi.
- Remember: Consider The Evidence As A Whole Before Deciding Case Finally



# Evaluation of evidence of identification

“The starting point is that a court ought to satisfy itself from the evidence whether the conditions under which the identification is claimed to have been made were or were not difficult and to warn itself of the possibility of mistaken identity.

- The Court should then proceed to evaluate the evidence cautiously so that it does not convict or uphold a conviction, unless it is satisfied that mistaken identity is ruled out.

# Evaluation

- ▶ In so doing the Authority must consider the evidence as a whole, namely the evidence if any, of factors favoring correct identification together with those rendering it difficult.
- ▶ It is trite law that no piece of evidence should be weighed except in relation to all the rest of evidence.

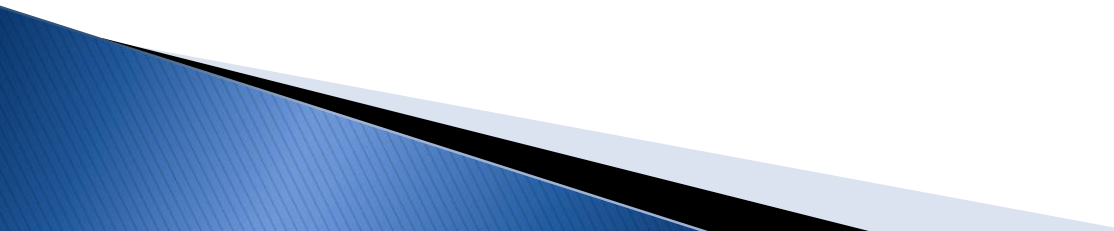
# LANGUAGE AND STYLE

- ▶ Judgments/orders have a purpose– to communicate to the parties and other stakeholders the decision of the Court/Institution in regard to the dispute. • English /official language is the language of stake holders and its proper use creates good impact.
- ▶ Judgments/orders out live their authors. They speak out of records and files and should carry the message for posterity.
- ▶ Judgments/orders should , therefore, be understandable by even those who have lost.

# Language and style

- ▶ Give a brief prologue to introduce the story • Avoid repeating pleadings and the law: set the scene simply and clearly.
- ▶ Avoid long, winding and boring sentences. • Write in a style you are comfortable with.
- ▶ Use clear sentence structures and organisation • Identify characters before telling what they did
- ▶ Use spot citations like exact pages
- ▶ Be formal, clear, simple and free of jargon. Use plain English. Latin may be used sparingly where necessary and inevitable. Language and

# Contd..

- ▶ Be concise. Avoid repetitions and overlaps except if it adds color to style.
  - ▶ Be gender sensitive and avoid prejudices.
  - ▶ Be respectful to the parties and other readers.
  - ▶ Use quotes sparingly and only when they add value and emphasis.
  - ▶ Where possible paraphrase the law or use short quotes
- 

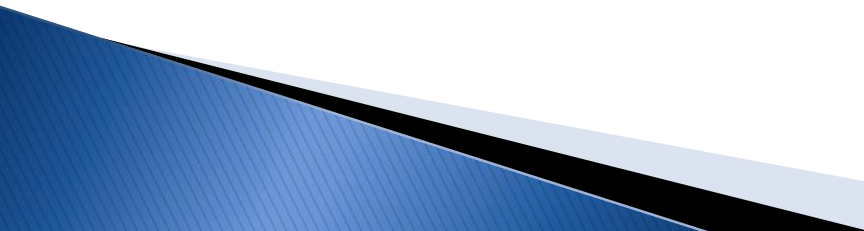
# Contd...

- ▶ Limit the use of italics for emphasis. Over use means that the reader is not alert enough to see your point without help.
- ▶ Minimise the use of Latin phrases. The parties and their counsel may not be impressed yet they are the primary target group to receive the judgment.

# Contd..

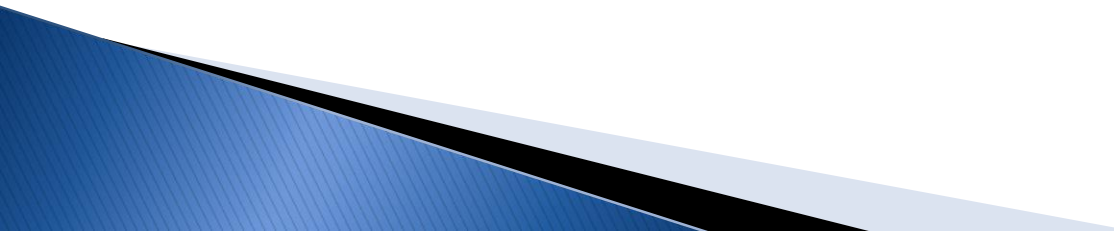
- ▶ Avoid the straight narrative style which never really poses the question to be answered until the end.
- ▶ A judgment/order is not a detective story; it should consist of posing of questions and thereafter of findings of facts relevant to the questions and the stating of the answers to those questions based on the applicable law.
- ▶ Avoid the narrative of PW1, PW2, PW3, PW4....stated this..... Don't repeat the testimonies in the judgment/order

# Contd..

- ▶ Use of paragraphs is advised to give readers a break.
  - ▶ Long paragraphs are dull to read.
  - ▶ Proper use of Grammar and punctuation shows professionalism and makes writing easier to understand.
  - ▶ Read orders by senior officers to appreciate the use of style and language in making orders more professional
  - ▶ Write orders regularly as a way of practicing and perfecting the science and art of writing understandable orders.
- 



# CONCLUSION

- ▶ An authority's goal in writing an order is to put reason onto paper.
  - ▶ The common law system of precedent depends on honest, reasoned, and well written orders.
  - ▶ Order writing is challenging.
  - ▶ But writing clearly, with an effective structure and style, lets the authority leave a lasting trail.
- 

# What Questions Do you have?

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