JUDGMENT

Judgment

13.1 (1) The court gives judgment in a proceeding by:

(a) setting out the relevant evidence; and

[13.1.1] How and what evidence to be set out There is no rule that requires every item of evidence to be set out, only that evidence upon which the case turns so that the parties can follow the process of reasoning and see that conflicts in the evidence have been understood: *Soulemezis v Dudley* (1987) 10 NSWLR 247 at 259; *Thatcher v Bryant* [1998] EWCA Civ 948; *Maynard v Dabinett* [1999] NSWCA 295 at [1], [16]; *Bailey v Warren* [2006] EWCA Civ 51 at [90]. Provided that references to evidence are clear, it is said to be unnecessary to detail, or even summarise, the evidence in question: *English v Emery Reimbold & Strick* [2002] EWCA Civ 605 at [21]; [2002] 1 WLR 2409 at 2417; [2002] 3 All ER 385 at 394. The obligation in Vanuatu may be very much less stringent than elsewhere, as indicated by *Commissioner of Police v Garae* [2009] VUCA 9; CAC 34 of 2008 where the Court of Appeal upheld findings of liability in which very little of the evidence upon which the court determined liability was set out.

(b) stating its findings of the facts as found; and

[13.1.2] How and what findings to state There is no rule that requires a finding to be made on every factual matter, only those essential to the outcome: *Robertson v Luganville Municipal Council* [2001] VUCA 14; CAC 9 of 2001; *Soulemezis v Dudley* (1987) 10 NSWLR 247 at 271, 280; *English v Emery Reimbold & Strick* [2002] EWCA Civ 605 at [21]; [2002] 1 WLR 2409 at 2417-8 [2002] 3 All ER 385 at 394; *Merer v Fisher* [2003] EWCA Civ 747 at [21].

[13.1.3] Factual inferences Factual Inferences derived from circumstantial evidence should be clearly stated and the evidence on which they are based clearly set out: *Metropolitan Properties v Lannon* [1969] 1 QB 577 at 599; [1968] 3 WLR 694 at 707; cf *Commissioner of Police v Garae* [2009] VUCA 9; CAC 34 of 2008.

(c) stating its findings of law and the application of these to the facts; and

[13.1.4] How and what findings to state There is no requirement to reach findings of law on every issue; only upon those necessary to the final conclusion: *Eagil Trust v Piggott-Brown* [1985] 3 All ER 119 at 122; *English v Emery Reimbold & Strick* [2002] EWCA Civ 605 at [19]; [2002] 1 WLR 2409 at 2417; [2002] 3 All ER 385 at 393; *Fletcher Construction v Lines MacFarlane & Marshall (No 2)* (2002) 6 VR 1 at 44; [2002] VSCA 189 at [164]. The court may decide the case in a particular way which does not require the determination of a particular submission. In such cases, the submission is not required to be mentioned or may be mentioned only in passing: *Fletcher Construction v Lines MacFarlane & Marshall (No 2)* (2002) 6 VR 1 at 43; [2002] VSCA 189 at [157]. *Digi-Tech v Brand* [2004] NSWCA 58 at [286] – [290]; *Telecom Vanuatu v Minister for Infrastructure* [2007] VUCA 8; CAC 32 of 2006.

(d) giving the reasons for those decisions; and

[13.1.5] Purpose The duty to give reasons is a function of due process, and therefore, of justice: *Picchi v Public Prosecutor* [1996] VUCA 9; CrimAC 4 of 1996; *Flannery v Halifax* [2000] 1 WLR 377 at 381; [2000] 1 All ER 373 at 377; *Public Prosecutor v Atis Willie* [2004] VUCA 4; CrimAC 2 of 2004; *Melsul v Bule* [2005] VUCA 8; CAC 3 of 2004. Parties must be able to know exactly why they have won or lost: *VBTC v Malere* [2008] VUCA 2; CAC 3 of 2008.

[13.1.6] Extent of duty There is no requirement that reasons be especially long or elaborate, however a recitation of facts and/or a summary of applicable legal principles followed by an unexplained outcome will not suffice: *Melsul v Bule* [2005] VUCA 8; CAC 3 of 2004; *VBTC v Malere* [2008] VUCA 2; CAC 3 of 2008 (recitation of

calculations in pleading). Judges are expected to set out the process of reasoning in an informative, systematic and logical manner: *Watt v Thomas* [1947] AC 484 at 487; [1947] 1 All ER 582 at 586; *Knight v Clifton* [1971] Ch 700 at 721; [1971] 2 All ER 378 at 392-3; [1971] 2 WLR 564 at 580; *Sharman v Evans* (1977) 138 CLR 563 at 565, 572; 13 ALR 57 at 59, 65; *Eagil Trust v Piggott-Brown* [1985] 3 All ER 119 at 122; *Soulemezis v Dudley* (1987) 10 NSWLR 247 at 249; *Charleston v Smith* [1999] WASCA 261 at [36], [61] – [62]; *English v Emery Reimbold & Strick* [2002] EWCA Civ 605 at [16]; [2002] 1 WLR 2409 at 2417-8; [2002] 3 All ER 385 at 393; *Digi-Tech v Brand* [2004] NSWCA 58 at [286] – [290]. See generally Sir Harry Gibbs, "Judgment Writing" (1993) 67 ALJ 494. Reasons which are unintelligible are the equivalent of no reasons at all: *Save Britain's Heritage v No.1 Poultry* [1991] 1 WLR 153 at 166; [1991] 2 All ER 10 at 23. The low watermark of the duty to give reasons must surely be *Commissioner of Police v Garae* [2009] VUCA 9 at [12], [14]; CAC 34 of 2008 in which the Court of Appeal held, very charitably, that it was "clear" that the trial judge had accepted the evidence for the claimant in circumstances where that evidence was not set out, nor the reasons for preferring one set of evidence over the other.

[13.1.7] Credit assessments Findings of fact which depend upon credit assessments of witnesses can and should be reasoned: *Government Insurance Office v Evans* (1990) 21 NSWLR 564 at 577. It may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon: *English v Emery Reimbold & Strick* [2002] EWCA Civ 605 at [19]; [2002] 1 WLR 2409 at 2417-8; [2002] 3 All ER 385 at 393; *Neel v Blake* [2004] VUCA 6; CAC 33 of 2003. Interesting examples are provided by *Pio v Worwor* [2009] VUSC 25 at [5]; CC 189 of 2005 (where Clapham J referred to the "quick movements of the eyes and demeanour" of the witness) and *Solomon v Turquoise* [2008] VUSC 64 at [43]-[44]; CC 163 of 2006 & 29 of 2007.

[13.1.8] Expert evidence The judge should provide an explanation as to why the evidence of one expert is accepted and the other is rejected. It may be that the evidence of one or the other accorded more satisfactorily with facts as found or it may be that the explanation of one was more inherently credible than that of the other. It may simply be that one was better qualified, or manifestly more objective, than the other. Whatever the explanation, it should be made clear: *English v Emery Reimbold & Strick* [2002] EWCA Civ 605 at [20]; [2002] 1 WLR 2409 at 2417-8; [2002] 3 All ER 385 at 393-4.

[13.1.9] Final and interlocutory judgment The rule does not differentiate between the requirements of final judgments and interlocutory judgments. Conventionally, certain kinds of judgment are seldom accompanied by extensive reasons (eg. costs, adjournments, etc). It may be that the requirements of this rule are flexible according to the nature and importance of the interlocutory decision: *Housing Commission v Tatmar Pastoral* [1983] 3 NSWLR 378 at 386; *Eagil Trust v Piggott-Brown* [1985] 3 All ER 119 at 122; *Apps v Pilet* (1987) 11 NSWLR 350 at 352; *Colonial Mutual v Donnelly* 82 FCR 418 at 432-3; 154 ALR 417 at 430-1; *Flannery v Halifax* [2000] 1 WLR 377 at 382; [2000] 1 All ER 373 at 378; *Roy Morgan Research Centre v Commissioner of State Revenue* [2001] HCA 49 at [33]; (2001) 207 CLR 72; 75 ALJR 1342; 181 ALR 307; *LL & PL & SDP* [2005] FamCA 715 at [35].

[13.1.10] Revision of reasons Judges may revise reasons (especially those delivered ex tempore) to correct errors or matters of expression and ensure that the reasons reflect the judge's intention: *Bromley v Bromley* [1965] P 111 at 115; [1964] 3 WLR 666 at 669; [1964] 3 All ER 226 at 228. It is not possible, however, to make alterations of substance to published reasons: *Bar-Mordecai v Rotman* [2000] NSWCA 123 at [194]; *Livo v Wuan* [2005] VUCA 6; CAC 12 of 2005.

[13.1.11] Formatting considerations Judgments should be produced in a format which enables the determination to be clearly understood and analysed, with the reasons set out in manageable paragraphs and subparagraphs, with cross-headings where appropriate: *Jasim v Secretary of State for the Home Department* [2006] EWCA Civ 342 at [4]. Numbered paragraphs, first used widely by Tuohy J seem to be increasingly used and ought to be promoted to facilitate ease of reference.

(e) making orders as a consequence of those decisions.

(2) The judgment must set out the entitlement of a party to payment of money or to any other form of final relief.

[13.1.12] Reasons for remedies The obligations elsewhere in this rule (to set out evidence and give reasons, etc) apply as much in relation to the remedies as to liability: *Commissioner of Police v Garae* [2009] VUCA 9 at [21], [22], [25]; CAC 34 of 2008.

[13.1.13] Specification of time for compliance If any part of the judgment requires an act to be done, the judgment should state the time within which it is to be done: *Gilbert v Endean* (1878) 9 Ch D 259 at 266.

(3) The court may give judgment and make an order at any stage of a proceeding.

[13.1.14] Pre-determination Nothing in this rule should be read as permitting the trial judge to pre-determination of any question before hearing relevant evidence: *Palaud v Commissioner of Police* [2009] VUCA 10; CAC 6 of 2009.

(4) A copy of the judgment must be given to the parties and made available to the public.

Time of giving judgment

13.2 (1) In the Supreme Court, a judge may:

(a) give judgment as soon as the trial ends; or

(b) give his or her decision, and give judgment at a later time; or

[13.2.1] Duty to give judgment promptly after decision There has been said to be a common law duty to give judgment very soon after a decision has been pronounced: *Palmer v Clarke* (1989) 19 NSWLR 158 at 173.

[13.2.2] Moment from which judgment effective The decision is effective from the moment it is pronounced: *Holtby v Hodgson* (1889) 24 QBD 103 at 107.

[13.2.3] Inherent jurisdiction to revoke Until an order has been perfected, the court retains control over its judgment and its decision, and can permit argument to be reopened. Accordingly, it may modify or even reverse a decision to which it has already come, and which it has communicated to the litigants. This will be exceptional: *Bastow v Bagley* [1961] 3 All ER 1101 at 1103; [1961] 1 WLR 1494 at 1497; *Dietz v Lennig* [1969] 1 AC 170 at 184; [1967] 2 All ER 282 at 286; [1967] 3 WLR 165 at 172; *Re Barrell Enterprises* [1972] 3 All ER 631 at 636; [1973] 1 WLR 19 at 24; *Compagnie Noga v Abacha* [2001] EWHC (QB) B1 at [14]-[17] (survival of jurisdiction under overriding objective), [41]-[42]. A court cannot usually review its own decision outside the appeal process: *Livo v Wuan* [2005] VUCA 6; CAC 12 of 2005; *Berry v Soalo* [2007] VUSC 10; CC 71 of 2000. For an exception in which r.1.7 was invoked to reopen a perfected costs order made on the basis of only pro-forma submissions see *William v William* [2005] VUCA 25; CAC 21 of 2005.

[13.2.4] Revision of reasons between judgment and decision Although possible, it is not good practice to enlarge (or vary) reasons between judgment and decision to a large extent: *Swanson v Public Prosecutor* [1998] VUCA 9; CrimAC 6 & 11 of 1997 (60 page oral judgment followed by 174 page written judgment).

(c) give his or her decision and judgment at a later time.

(2) The judgment must be in writing or be written down as soon as practicable.

[13.2.5] Duty to give judgment promptly Long delays in delivering judgment can cause concern and suspicion amongst litigants who lose, while those who win may feel they have been deprived of justice for too long. Long delays should not occur without compelling reasons and, if there are such, it would be prudent for a judge to refer to them briefly: *Rolled Steel v British Steel* [1986] Ch 246 at 310; [1985] 2 WLR 908 at 960; [1985] 3 All ER 52 at 96 (8 months); *Goose v Wilson Sandford* [1998] EWCA Civ 245 at [112] – [113] (20 months); *Cobham v Frett* [2002] UKPC 49 at [34]; [2001] 1 WLR 1775 at 1783 (12 months). Authority in England and Australia would consider 10

months an excessive period of reservation, even for the most complex trials or appeals: *Aon Risk Services v ANU* [2009] HCA 27 at [152]. In that case a delay of 10 months on an application for an amendment of the claim was described as "alien to every axiom of modern litigation." It was also explained that such delays were particularly inappropriate in commercial litigation and that the whole purpose of case management is undermined if judgments, particularly interlocutory judgments, are not prompt. See also *Rexam Australia v Optimum Metallising* [2002] NSWSC 916 at [29].As to possible constitutional implications of judicial delay, see *Boodhoo v AG of Trinidad and Tobago* [2004] UKPC 17 at [12], [14]; [2004] 1 WLR 1689.

(3) In the Magistrates Court, the magistrate must as far as practicable give judgment at the end of the trial and fix the amount of costs at the same time.

Filing or order

13.3 (1) If a judge or a magistrate writes the terms of an order on a file or on a document in a file, then until the order is filed the writing is sufficient proof that the order was made and of its date and terms.

(2) In subrule (1), "filed" means written in a separate document, signed by the judge or magistrate and sealed.

Suspension of enforcement

13.4 Filing an appeal against a judgment does not affect the enforcement of the judgment unless:

(a) the party appealing applies for a suspension; and

(b) the court grants a suspension.

[13.4.1] Relevant considerations Enforcement may be suspended pending an appeal. This is not automatic. The court will need to be satisfied that there are appropriate circumstances and that the appeal is not designed to cause delay: *Croney v Nand* [1999] 2 Qd R 342 at 348-9. Appropriate circumstances might include: Where enforcement could ruin the enforcement debtor (*Linotype-Hell Finance v Baker* [1993] 1 WLR 321 at 323; [1992] 4 All ER 887 at 888), the possibility that money paid over will not be able to be repaid if the appeal is successful (*The Annot Lyle* [1886] 11 P 114 at 116), enforcement would render the appeal nugatory (*Polini v Gray* [1879] 12 Ch D 438 at 445, 446; *Commissioner of Taxation v Myer (No1)* (1986) 160 CLR 220 at 223; 64 ALR 325 at 327; 60 ALJR 300 at 301; 86 ATC 4222 at 4224). See further r.26, *CoAR*. For suspension of enforcement of money orders see r.14.10. For suspension of enforcement of non-money orders see r.14.40.

Enforcement of foreign judgments

13.5 (1) A person who wishes to enforce a judgment of a foreign court in Vanuatu (a "foreign judgment") may file a claim in the Supreme Court under Part 2.

[13.5.1] Validity of rule The Foreign Judgments (reciprocal enforcement) Ordinance 1963 does not apply to Vanuatu: *In re the Foreign Judgments (Reciprocal Enforcement) Ordinance* [1997] VUSC 2; CC 146 of 1996. In the absence of any other (or subsequent) legislative basis for the enforcement of foreign judgments it is difficult to see how the rules could be a sufficient basis for the creation of any rights under a foreign judgment. In England, for example, s.31 of the *Civil Jurisdiction Act* 1982 provides such a basis. There does not appear to be any Vanuatu counterpart.

Accordingly, the validity of this rule should not be assumed, a point which does not seem to have been raised in subsequent cases.

[13.5.2] Limitation period The claim is in the nature of a contract action and attracts the same limitation period: *Bank of Montreal v Prescott* [2000] VUSC 53; CC 53 of 1999.

(2) The claim must set out the following:

(a) the foreign judgment is for a fixed amount; and

(b) the foreign court had jurisdiction over the person against whom the judgment was made; and

(c) the foreign judgment is final and conclusive; and

(d) the amount payable under the judgment that has not been paid; and

(e) regarding an appeal:

(i) the time for an appeal has ended and no appeal has been lodged; or

(ii) an appeal was lodged but it was unsuccessful.

(3) The claim must have with it a sworn statement that:

[13.5.3] Evidence Act 1851 Compare with the provisions of s.7 of the *Evidence Act* 1851 (UK) which applied to Vanuatu immediately prior to independence.

(a) supports the claim; and

(b) verifies the foreign judgment.

(4) The claim must also have with it a sworn statement by a lawyer practising in the foreign country that:

[13.5.4] Evidence Act 1851 Compare with the provisions of s.7 of the *Evidence Act* 1851 (UK) which applied to Vanuatu immediately prior to independence.

(a) sets out his or her qualifications to give evidence on the law of the foreign jurisdiction; and

(b) confirms the foreign judgment is valid, final and conclusive.

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