



Defended criminal practice exercises

Case 1: Drunk and disorderly – Mr Catalina

You are to prepare a decision based on these facts. You will present your decision tomorrow as if you were the judge.

Mr Catalina has pleaded not guilty to the following charge:

“Mr Catalina on the 16th of May 2016 you were drunk and acted in a disorderly manner in a public place namely Queen Street, Auckland”.

Mr Catalina represented himself.

Evidence for the prosecution

Constable Tabui said:

“I was on duty and patrolling Queen Street at about 8.00pm on the evening of the 16th of May. I heard yelling. I stopped my patrol car and got out and walked towards a man on the footpath. He was arguing very loudly with another man. He was shouting and swearing. I identify that man as the defendant Mr Catalina. I took him to one side and spoke to him. He continued to yell and swear at the other man. When I told him to stop yelling and swearing he carried on. I thought he was drunk, he smelt of alcohol and was stumbling around. I arrested him and charged him with being drunk and disorderly”.

In cross examination Mr Catalina said to the Constable that he was not very drunk. The Constable disagreed. Mr Catalina said to the Constable that Mr Catalina was just talking with his friend and if they were loud that is just the way they talked. The Constable said they were very loud.

Mr Catalina said he did not wish to give evidence and had no witnesses to call to give evidence.



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Case 2: Firearm possession – Mr Chang

You are to prepare a decision based on these facts. You will present your decision tomorrow as if you were the judge.

Mr Chang is charged that on 1 August 2017 he procured possession of a firearm contrary to section 4(1) of the Arms Act 1975 in that he purchased a firearm without a valid permit. Please note s 4(4) of the Act.

Mr Chang pleads not guilty.

Evidence for the prosecution

Constable Batu gave evidence.

On 1 August 2017 Constable Butu was on patrol in the village of Nukulata. He had a particular interest in Mr Chang's shop. He had heard there had been trouble at the shop with some local young men stealing goods from the shop. There had been angry confrontations and the constable had heard Mr Chang had been assaulted by these young men although no complaint had been made.

Constable Butu went into Mr Chang's shop but all was quiet and no one seems to be in the shop. The Constable went through the shop into the back room. There he found Mr Chang with a rifle and some ammunition. Mr Chang was cleaning the rifle. The following discussion occurred:

Constable: "What's that rifle for?"

Mr Chang: "For my protection the police won't protect me from these thieves so I must."

Constable: "Where do you get the rifle from?"

Mr Chang: "I bought it from a friend."

Constable: "What's his name?"

Mr Chang: "My friend has now left the country."

Constable: "Did you have a permit to buy that rifle?"

Mr Chang: "I'm sure I have one somewhere."

Constable: "Please show it to me."

Mr Chang: "I don't have it on me but if you give me a couple of days I will find it and I will drop it off at the police station."

Constable: "Alright bring it into the station in the next few days."

After three days Mr Chang came to the police station and told the Constable that he is sure he has a permit but can't immediately find it. He says he is not very good with paperwork.

Defence

Mr Chang did not give evidence. He says that the court should rely upon his statement to the Constable that he has a permit. He says in any event the police haven't proved he did not have a license.



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Case 3: Wilful damage – Mr Mana

You are to prepare a decision based on these facts. You will present your decision tomorrow as if you were the judge.

Mr Mana is charged that on 12 December 2017 he wilfully damaged a glass window at the shop, of AJ Choi.

Evidence for the prosecution

Constable Wanak said:

“On the 12th of December 2017 at about 11.30 pm I was patrolling the downtown area of Apia. I heard a number of men shouting and then I heard the sound of breaking glass. I ran toward the sounds and about 100 metres away I came to the shop of AJ Choi.

A large display window was broken with glass on the pavement and inside the shop. Across the road were four young men laughing and yelling.

I went across the road and asked them if they knew what had happened. I noticed that one of the young men had glass fragments in his hair and on his clothing. The young man gave his name as Joe Mana. He is the defendant before the court. Joe said to me he didn't really know what had happened. He said he was fairly drunk. He said the window just broke when he was standing beside it. I noticed that Joe smelt of alcohol and was stumbling around and seemed very drunk.”

I arrested Joe for wilful damage of the window.

Mr Choi the owner of the shop later gave me a letter from the company that repaired the broken window showing the cost was \$1074.

Defence

Mr Mana gave evidence:

“On the evening of the 12th of December, I was in town with three friends. We had been drinking since about 5pm. At about 11pm we decided to head home. We were all fairly drunk, we were laughing and joking. We were in a happy mood. As we came near Mr Choi's shop we started pushing each other as a joke. The next thing I knew I was pushed and stumbled into the window. It broke. I didn't mean to break it.

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I was afraid I would get into trouble so I ran across the road. When the Policeman questioned me I didn't tell him everything I knew because I thought he would arrest me and I would be in trouble.”



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Case 4: Theft – Mr Marama

You are to prepare a decision based on these facts. You will present your decision tomorrow as if you were the judge.

Mr Marama has pleaded not guilty to the following charge:

“Mr Marama, you are charged that on or about the 1st of December you stole a lawnmower the property of Mr Josefa”.

Thief is defined as:

Anyone who without consent of the owner dishonestly takes away any property with intent to permanently deprive the owner of the property.

Evidence for the prosecution

The prosecution call Mr Josefa.

Mr Josefa says that he lives in the same street as Mr Marama. They know each other but not well. Mr Josefa says that he has a grass lawn around his house and every week he cuts the law. He is very proud of his lawn. On the 2nd of December he went to his shed to get his lawnmower but it was not there. He searched his property but his lawnmower was nowhere to be found.

He reported the loss to the police.

About one week later he was walking down the street and he noticed that Mr Marama had cut his lawn. This was unusual because normally Mr Marama’s lawn was very long. And so he went to Mr Marama’s house intending to ask him if he had seen his lawnmower. As he approached the house he saw his lawnmower on the side of Mr Marama’s house. Mr Josefa then left the house and reported the matter to the Police.

Defence

Mr Marama was represented by a lawyer.

The lawyer cross examined Mr Josefa. The lawyer said to Mr Josefa that Mr Marama claimed Mr Josefa’s wife had left him the lawnmower. Mr Josefa said he didn’t think his wife would do that because she hadn’t said anything to him.

Constable Davis said he spoke to Mr Marama but he refused to say anything.

Mr Marama gave evidence:

“He said that his lawn was getting very long but he didn’t have a lawnmower. One day he saw Mrs Josefa walking by. He asked her if he would borrow her lawnmower. She said yes. He went to Mr and Mrs Josefa’s house and took the lawnmower. A few days later he cut his lawn. He didn’t return the lawnmower straightaway. He just forgot but would have returned it.”

The prosecutor put to Mr Marama that he had just made up this story to cover his theft. Mr Marama denied this.

After the evidence had been given the prosecutor submitted that you (as the judge) should reject Mr Marama’s evidence as untrue. Mr Marama had not called Mrs Josefa to give evidence that she had lent the lawnmower to Mr Marama.



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Case 5: Receiving stolen property – Mr Singh

You are to prepare a decision based on these facts. You will present your decision tomorrow as if you were the judge.

Mr Mr Singh is charged under Section 148(1) Criminal Offences Act – Tonga "Any person who receives any property knowing or believing it to be stolen in any way whatsoever under circumstances which amount to a criminal offence is guilty of an offence."

Mr Singh pleads not guilty.

Evidence for the prosecution

Constable Tabula said:

"On 14 November 2017, I went to the second-hand shop of Vincent Singh. Mr Singh runs a second-hand shop in Nuku'alofa. He has a licence to do so. I looked around the shop and saw a second-hand chainsaw for sale. I asked Mr Singh if he could show me his second-hand register that he is required by law to keep. This register is meant to show all his purchases. Mr Singh went to the back of his shop and got the register. He searched through the register for some time. Eventually he said he could not find the chainsaw in his register. He said, "I must have forgotten to enter the purchase of the chainsaw in the register."

I asked who he purchased the chainsaw from and how much he paid for it. He said that he could not remember the details of the man who sold him the chainsaw but he said he was a Chinese man. He thought he paid \$10 for the chainsaw.

I noted the chainsaw seems almost new and was for sale for \$175.

I said to Mr Singh I believed the chainsaw may be stolen and said I would take the chainsaw and check.

Mr Singh said no one had told him the chainsaw was stolen, he had just purchased it at a good price.

I later realised the chainsaw belonged to a Mr Tangaloa who had reported his chainsaw had been stolen.

Mr Tangaloa, a witness, said:

"I confirm the chainsaw shown to me by Constable Tabula is mine. I purchased it in early October 2017 for \$400. I know it is my chainsaw because I painted a small black

mark on the underside of the saw and it was still there when I looked at the chainsaw. The chainsaw was stolen from my shed sometime in the first week of November.”

Defence

Mr Singh elected not to give evidence. He submitted that the prosecution had not proved he knew the chainsaw was stolen when he bought it.



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Case 5: Reckless driving – Mr Taumanu

You are to prepare a decision based on these facts. You will present your decision tomorrow as if you were the judge.

Mr Taumanu is charged that on 1 October he drove a vehicle on Sunshine Road recklessly.

Any person who drives a vehicle recklessly commits an offence.

Evidence for the prosecution

Mr Vincent Ward gave evidence:

“I am a 78-year-old man. On the first of October 2017 at about 5.30 pm just as the sun was setting I was driving along Bath St. I was heading home. I was driving my 1952 Morris 1000. I have had the car for 30 years, it is my pride and joy. It doesn't go very fast but it is reliable. I don't like to drive it very fast, 30km is as fast as I go. I like to drive near the middle of the road so that I avoid the pot holes on the side of the road.

As I drove along Bath St another car came up behind me. It was very close to my car but I ignored it. I then came to the intersection of Bath St and Sunshine St. I was turning right. There was traffic I had to give way to. I like to make sure I have plenty of room before I turn right. The person in the car behind started using his horn and flashing his lights at me but I ignored him.

Eventually I turned right into Sunshine St and checked my speed at 30km. I was driving in the middle of the road.

The other car that had been behind me again began driving very close to me and tooting and flashing his lights. I ignored him. Suddenly I heard a bang and my car was shunted forward. I thought the car behind me had hit me. I quickly pulled over. I was very upset. The car that was behind me also pulled over. I got out of my car. There was a big dent in the back of my car and the rear light was broken. I said to the other driver why did you hit my car.

He said, " You were driving like an idiot. You are too old to be on the road."

I saw that his car had a broken headlight. I said to him that he had damaged my car. He said to me "Nonsense I was nowhere near your car." He then drove off. My car cost \$723 to repair.”

Defence

The defendant Mr Taumanu gave evidence:

“I was driving along Bath St when I came up behind an old car that was going very slowly. I tooted at him to pull over but he ignored me. He just kept driving slowly and in the middle of the road.

After he turned into Sunshine St he seemed to be driving even slower. I flashed my lights and tooted but he seems to get even slower. He then suddenly pulled over. I stopped also and told him he was a danger on the roads. He then claimed that I had hit his car but I don't think that's right. I then drove off.”

Cross-examination

The police cross-examined Mr Taumanu:

Police: Mr Taumanu did your car have a broken front headlight when you started your journey that night.

Mr Taumanu: No of course not.

Police: When you stopped to talk to Mr Ward your car had a broken headlight then.

Mr Taumanu: Um not too sure about that.

Police: Well didn't you have to get your headlight repaired because you told Mr Ward he would have to pay for it?

Mr Taumanu: Well yes but he caused it when he suddenly pulled over. If I did hit him it was an accident.