



NZQA Assessment Support Material

Unit standard	27845				
Title	Explain litigation and dispute resolution processes				
Level	2	Credits	4	Version	2

Note

The following guidelines are supplied to enable assessors to carry out valid and consistent assessment using this internal assessment resource.

Assessors must manage authenticity for any assessment from a public source, because students may have access to the assessment schedule or student exemplar material. Use of this assessment resource without modification may mean that students' work is not authentic. The assessor will need to change figures, measurements or data sources or set a different context or topic.

While this ASM lends itself to written assessments, there are other activities and approaches that could be taken.

See Generic Resources and Guidelines at <https://www.nzqa.govt.nz/providers-partners/assessment-and-moderation/assessment-of-standards/generic-resources/>

Assessor guidelines

Context/setting

In this activity, students will explain litigation and dispute resolution processes for two court processes under current New Zealand law: civil processes and criminal (indictable) processes.

As part of their teaching programmes, it is expected that assessors will work through the key elements of New Zealand criminal law and civil law litigation.

The criminal processes task only assesses indictable processes, but, again, assessors will probably also wish to cover summary procedures as part of their teaching.

It is suggested that assessors may wish to choose an actual case (or more than one) under each of the systems chosen, and follow the course of each, examining important features in depth along the way.

Key elements of the criminal jurisdiction that could be examined are: pre-trial procedures; roles of various personnel (judge, jury, prosecution and defence); jury system; trial; outcomes (guilty/not guilty); sentencing; underlying principles; strengths and weaknesses. Underlying principles would include: burden and standard of proof; Adversarial system.

Key elements of the civil jurisdiction that should be examined are: pre-hearing procedures; roles of various personnel (judge, plaintiff, defendant); hearing; outcomes (liable/not liable); remedies available to successful plaintiff; underlying principles; strengths and weaknesses. Underlying principles would include: burden and standard of proof, judicial precedent.

Where possible, students should have the opportunity to view actual court proceedings, both criminal and civil.

Note: *The Standard allows a choice of two processes from the same or from two different legal systems, and the legal systems chosen may be national, international, historical, or traditional. It is recognised that the distinction between litigation and dispute resolution processes may vary depending on the legal systems chosen.*

The processes chosen might, for example, include pre-European Māori dispute resolution procedures, youth justice processes, criminal procedures in an inquisitorial system country. However, assessors should ensure that the two processes chosen are of a sufficient degree of complexity.

The two processes must also be sufficiently different to ensure that students cannot simply repeat the same or very similar descriptions and arguments. Overlapping should be avoided. Therefore, in the “New Zealand Civil and Criminal Court processes” assessment activity, although both processes use the adversarial system, it is covered as a principle of the criminal process only. However, “Burden and Standard of Proof” is covered as a principle of both the criminal and civil processes, because it is different in each.

A W A R D O F G R A D E S

- For award with **Achieved**, litigation and dispute resolution processes are explained, with supporting detail, in terms of the key element(s) of selected legal system(s). Supporting detail includes – participants, methods, outcomes and underlying principles, identifying strengths and weaknesses.
- For award with **Merit**, the explanation of the litigation and dispute resolution processes is developed by including relevant supporting detail including:
 - describing a strength and weakness for each process;
 - examples from actual or hypothetical events from New Zealand or overseas, past or present.
- For award with **Excellence**, the explanation of the litigation and dispute resolution processes is fully developed by:
 - discussing a strength and weakness for each process;
 - including relevant supporting detail such as formal reports, specific cases, and statistics.



CONDITIONS OF ASSESSMENT

Assessors will set the conditions of assessment as appropriate.

Assessment activity

This assessment activity has two tasks.

Task One involves explaining key features of New Zealand criminal law indictable processes in terms of participants, methods, outcomes, underlying principles, and one strength and one weakness.

Task Two involves explaining key features/elements of New Zealand civil litigation processes in terms of participants, methods, outcomes, underlying principles, and one strength and one weakness.

Resource requirements

Assessors may find the following resources useful.

Suitable cases to study in class could include *R v Weatherston* (indictable criminal case) and *Hosking v Runting* (civil case: tort - breach of privacy).

See <https://www.courtsofnz.govt.nz/judgments> for reports of judicial decisions on a variety of criminal and civil cases.

<http://www.justice.govt.nz/services/access-to-justice/civics-education-1/nz-court-system>

www.legislation.govt.nz

www.justice.govt.nz/courts

Additional information

Teaching and learning guidelines that inform legal studies as it is taught in New Zealand can be found at <http://seniorsecondary.tki.org.nz/Social-sciences/Legal-studies>.

Assessment Schedule

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Judgements for achievement	Judgements for achievement with merit	Judgements for achievement with excellence
<p>Litigation and dispute resolution processes are explained, with supporting detail, in terms of the key element(s) of selected legal system(s).</p> <p>One litigation and one dispute resolution process from the same, or from two different, legal system(s). Legal system(s) may include – national, international, historical, traditional.</p> <p>Supporting detail includes – participants, methods, outcomes and underlying principles, identifying strengths and weaknesses.</p> <p>Key element(s) are the generally accepted components of litigation and dispute resolution processes.</p>	<p>The explanation of the litigation and dispute resolution processes is developed by including relevant supporting detail including:</p> <ul style="list-style-type: none"> • describing a strength and weakness for each process; • examples from actual or hypothetical events from New Zealand or overseas, past or present. 	<p>The explanation of the litigation and dispute resolution processes is fully developed by:</p> <ul style="list-style-type: none"> • discussing a strength and weakness for each process; • including relevant supporting detail such as formal reports, specific cases, and statistics.

Task	Evidence for achievement	Evidence for achievement with merit	Evidence for achievement with excellence
<p>One Outcome 1 PC 1.1</p>	<p>Indictable criminal court processes</p> <p>A part answer may read:</p> <p><i><u>Pre-trial procedures -</u></i> <i>First appearance in District Court. May be represented by duty solicitor if doesn't have own lawyer yet. Defendant's lawyer given written copy summary of facts. Either guilty or not guilty plea entered or else no plea entered which court treats same as Not Guilty plea. Normally application for bail. If refused bail will be held on remand in prison.</i></p> <p><i>Court officials usually decide on basis of documents whether to commit to trial in High Court.</i></p> <p><i>Once decided case will go to trial, pre-trial conference held –discussion between judge or court registrar and prosecution & defence about the case.</i></p> <p>Note - this sample answer only covers Task 1a pre-trial procedures.</p> <p>For achieved the student would also need to cover: the trial, including participants, procedures and outcome; sentencing. They would also need to cover the principles of burden and standard of proof and identify a strength and weakness of the criminal process.</p>	<p>Indictable criminal court processes</p> <p>See Task Two for sample answer for civil court processes.</p>	<p>Indictable criminal court processes</p> <p>See Task Two for sample answer for civil court processes.</p>

Two	Civil court processes	Civil court processes	Civil court processes
Outcome 1	A part answer may read:	A part answer may read:	A part answer may read:
PC 1.1	<p><i>One weakness of civil court processes: very expensive to go to court. Not only court fees involved, but even worse, costs of lawyers' fees. This can put people off taking or defending legal action even if have reasonable chance of success.</i></p>	<p><i>One weakness is the expense of civil court action. Legal aid is available for some civil actions, but there are very low income limits: single applicant may earn no more than \$22,366 per year.</i></p> <p><i>Court fees themselves are not cheap. Just filing the necessary documents will cost hundreds, if it goes to full hearing it will cost thousands. Lawyers' fees will be hundreds of dollars per hour. If you suing someone, even if you win, and are awarded costs, may not get anywhere near what you hoped. If you lose, you will probably have costs awarded against you.</i></p> <p><i>Disputes Tribunal is a cheap alternative but the maximum claim is \$20,000.</i></p> <p><i>A good example is the 1986 case where Palmerston North restaurateur Henry Harrod was forced to change the name of his restaurant due to an injunction by the owner of Harrods department store in London.</i></p> <p>Note - this sample answer only covers a weakness of the civil processes. For merit describing strengths and weaknesses and using real events as examples for both civil and criminal processes is required.</p>	<p><i>One weakness is the expense of civil court action. Going to court, or being taken to court, is a risky business, and because of costs involved is increasingly becoming the province of the rich. We have cases where a small business threatened with legal action by a wealthy opponent, e.g. a multinational company, will cave in and not fight, even if would have a reasonable chance of success.</i></p> <p><i>To a multinational company, the cost of court and legal fees is able to be absorbed, whereas to a small business, it could easily bankrupt them. Therefore, large corporations have a significant advantage. This could be considered a serious problem, because justice should be available to all, irrespective of income.</i></p> <p><i>A good example is the 1986 case where Palmerston North restaurateur Henry Harrod was forced to change the name of his restaurant, Harrod's Family Restaurant, after being threatened with a lawsuit and served with injunction by Wellington law firm on behalf of Mohammed Al Fayed, the owner of Harrods department store in London. The name change put Mr. Harrod to considerable expense, but he could not afford to take the risk of fighting the legal action, as he did not have the same</i></p>

			<p><i>financial resources available as Mr. Al Fayed.</i></p> <p>Note - this sample answer only covers a weakness of the civil processes. For merit discussing strengths and weaknesses for both civil and criminal processes is required.</p>
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Final grades will be decided using professional judgement based on a holistic examination of the evidence provided against the criteria in the unit standard.