

‘Aha Ho‘okolokolo ma ke Kaiāulu

Courts in the Community

Spring - 2024

Handout A - page 1 (For Teachers)

CONDUCTING A MOOT COURT PROCEDURES

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CONDUCTING A MOOT COURT

PROCEDURES

A moot court is a role-play of an appeals court or Supreme Court hearing. The court, composed of a panel of justices, is asked to rule on a lower court's decision. No witnesses are called. Nor are the basic facts in a case disputed. Arguments are prepared and presented on a legal question (e.g., the constitutionality of a law or government action). Since moot courts are not concerned with the credibility of witnesses, they are an effective strategy for focusing student attention on the underlying principles and concepts of justice.

The following procedures are a slight adaptation of appellate procedures. The changes make the moot court an appropriate educational activity for high school students.

1. Select a case that raises a constitutional issue. Adapt the case information to suit your class. When selecting a case, you may wish to consider the following factors:
 - Is the content of the case relevant to your course, to a specific school outcome?
 - Is it interesting to students?
 - Is it a topic of current interest in your community?
 - Are community resource people available to assist with the lesson?
 - Is there an underlying value conflict that is important for students to examine?

NOTE: For Courts in the Community participants, this step has already been completed for you.

2. Read, review, and clarify the facts of the case (**Handout C**). Have pairs of students ask each of the following questions:
 - What happened in this case?
 - Who are the people/organizations/companies involved?
 - How did the lower court rule on this case?
 - Who is the petitioner, the respondent?
3. Review these terms with the students (**Handout F**):
 - Petitioner/Appellant - The person/organization/company who appeals the lower court decision to a higher court.
 - Respondent/Appellee - The person/organization/company who argues that the lower court's decision was correct.
4. Ask the class to identify the issue(s) involved in the case. An issue should be posed in the form of a question. Ask the students to phrase the issue as a question by thinking about these questions:



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- Who was the actor(s)?
- What is the specific part of the Constitution/Hawai'i Revised Statutes involved?
- Who was affected by the action(s)?
- What caused the controversy?

Example: Did the Virginia Military Institute (the actor) violate the 14th Amendment's right to equal protection (part of the Bill of Rights) of women (affected by the action) by not allowing them to attend VMI (cause of the controversy)?

5. Select an odd number of students (7 or 9) to be the justices of the court (**Handout B – page 1**).
6. Divide the remaining students into two teams. One team will represent the person or group appealing the lower court decision (**Handout B – page 2**). The other team will represent the party that won in the lower court (**Handout B – page 3**). To increase student participation, several students can be selected to play the role of journalists (**Handout B – page 4**) or clerks.
7. Each team of litigants should meet to prepare arguments for its side of the case. The team should select one or two students to present the arguments to the court.

When discussing the arguments, students should consider:

- What does each side (party) want?
 - What are the arguments in favor of and against each side?
 - Which arguments are the most persuasive? Why?
 - What are the legal precedents and how do they influence this case? (A precedent is a previously decided case recognized as the authority for future cases on that issue. Using precedents allows for the development of more sophisticated arguments.)
 - What might be the consequences of each possible decision? To each side? To society?
 - Are there any alternatives besides what each side is demanding?
8. The justices should meet to discuss the issue involved and any case precedents. They should prepare at least 5 questions for each side that they need answered in order to reach a decision. The justices should select one student to serve as chief justice. The chief justice will preside over the hearing. He or she will call for each side to present its case as well as recognize other justices to ask questions.
 9. Participants should consider all of the facts that have been established at the trial. Teams may not argue the accuracy of the facts.
 10. Arguments do not need to be rooted in legal technicalities. Any argument that is persuasive from a philosophical, theoretical, conceptual, or practical standpoint can be made. Teams should rely on principles found or implied in the Hawai'i State Constitution.



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11. Seat the justices at the front of the room. The attorneys for each side should sit on opposite sides of the room facing the justices. The other team members should sit behind their respective attorneys.
12. The chief justice should ask each side to present its arguments in the following order. The justices may ask questions at any time.
 - Initial Presentation Petitioner/Appellant
 - Initial Presentation Respondent/Appellee
 - Rebuttal Petitioner/Appellant
 - Rebuttal Respondent/Appellee
13. Each side should have three to five minutes for its initial argument and two minutes for rebuttal. (This time may need to be lengthened if the justices ask a lot of questions. The teacher should decide on a time limit based on the students' verbal skills.)
14. During and/or after each presentation, the justices can and should question the attorney in an effort to clarify the arguments. Attorneys may ask for time to consult with other members of their team before answering questions. (This time is included in the total time allowed for the presentation.)
15. After all arguments have been presented, the justices should organize into a circle to deliberate on a decision. The rest of the class can sit around the outside of the circle and listen, but they cannot talk or interrupt the deliberations of the court.
16. In the circle, the justices should discuss all of the arguments and vote on a decision. Each justice should give reasons for their decision.
17. The chief justice should then tally the votes and announce the decision of the court and the most compelling arguments for that decision. A decision is reached by a majority of votes. A dissenting opinion may be given.
18. Conclude with a class discussion of the decision and the proceedings.

If you are using an actual case, share the court's decision with the students after the student court has reached a decision. In the event the students' decision and the Court's are different, it is helpful for the students to understand the reasoning in the dissenting opinions as well as the majority. The students are not wrong, but the majority of the real Court was influenced by different compelling arguments. Ask the students to evaluate the reasoning the Court used in the majority and dissenting opinions and compare these to their reasoning. (They think just like some of the justices...). Continue to debrief the activity by discussing what the decision means for both sides and for society.



Handout B - page 1 (For Students)

A Supreme Court Hearing: JUSTICES

The Hawai'i State Supreme Court is the highest court in the state and the court of last resort. A decision by the Supreme Court is the law of the land. The Court, composed of a panel of justices, is asked to rule on a lower court's decision. There is no trial; no witnesses are called, and the basic facts in a case are not disputed.

The arguments to be presented can be based on the State Constitution, the applicable law, and previous court precedents. The arguments do not need to be rooted in legal technicalities.

In this activity you will make a decision in the case.

As a Supreme Court Justice, your job is to

1. Review the case and think of questions to ask the attorneys.
2. Select a student to serve as Chief Justice. He or she will be in charge of the hearing and call on the attorneys to present their arguments.
3. Prepare questions to ask of each side.
4. Listen carefully to the arguments.
5. Be sure to consider the impact of your decision on other situations that may arise in the future.
6. Discuss the case with the other justices and decide whether you think the decision of the lower court should be upheld or overturned. You do not have to agree. The decision will be based on the majority vote. There can be dissenting opinions.
7. Announce your decision and your reasons.



Handout B - page 2 (For Students)

A Supreme Court Hearing: PETITIONER (APPELLANT)

The Hawai'i State Supreme Court is the highest court in the state and the court of last resort. A decision by the Supreme Court is the law of the land. The Court, composed of a panel of justices, is asked to rule on a lower court's decision.

There is no trial; no witnesses are called, and the basic facts in a case are not disputed.

The arguments to be presented can be based on the State Constitution, the applicable law, and previous court precedents. The arguments do not need to be rooted in legal technicalities.

In this activity you will be preparing and presenting an argument before the court. As attorneys for the petitioner, your job is to

1. Discuss the case and develop arguments to persuade the Supreme Court to overturn the lower court decision. Be prepared to answer any questions the justices may ask you.

In preparing your arguments, you should think about the following questions:

- Why is the decision of the lower court wrong?
 - What decision do you want?
 - What are the arguments in favor of and against each side? (Anticipating the opposition can strengthen your argument.)
 - Which arguments are the most persuasive? Why?
 - What are the precedents and how do they influence this case?
 - What might be the consequences of each possible decision?
 - To the parties? To society?
 - Are there any alternatives besides what each side is demanding?
2. Select two or more students to present your arguments. Anyone in the group may answer questions from the justices.
 3. Present your arguments in the time allowed.



Handout B - page 3 (For Students)

A Supreme Court Hearing: RESPONDENT (APPELLEE)

The Hawai'i State Supreme Court is the highest court in the state and the court of last resort. A decision by the Supreme Court is the law of the land. The Court, composed of a panel of justices, is asked to rule on a lower court's decision. There is no trial; no witnesses are called, and the basic facts in a case are not disputed.

The arguments to be presented can be based on the State Constitution, the applicable law, and previous court precedent. The arguments do not need to be rooted in legal technicalities.

In this activity, you will be preparing and presenting an argument before the court.

As attorneys for the respondent, your job is to

1. Discuss the case and develop arguments to persuade the Supreme Court to uphold the lower court decision. Be prepared to answer any questions the justices may ask you.

In preparing your arguments, you should think about the following questions:

- Why is the decision of the lower court correct?
 - What decision do you want?
 - What are the arguments in favor of and against each side? (Anticipating the opposition can strengthen your argument.)
 - Which arguments are the most persuasive? Why?
 - What are the precedents and how do they influence this case?
 - What might be the consequences of each possible decision? To the parties? To society?
 - Are there any alternatives besides what each side is demanding?
2. Select two students to present your arguments. Anyone in the group may answer questions from the justices.
 3. Present your arguments in the time allowed.



Handout B - page 4 (For Students)

A Supreme Court Hearing: JOURNALIST

The Hawai'i State Supreme Court is the highest court in the state and the court of last resort. A decision by the Supreme Court is the law of the land. The Court, composed of a panel of justices, is asked to rule on a lower court's decision. There is no trial; no witnesses are called, and the basic facts in a case are not disputed.

The arguments to be presented can be based on the State Constitution, the applicable law, and previous court precedent. The arguments do not need to be rooted in legal technicalities. For this activity, you will be preparing and writing news reports.

As a journalist, your job is to

Prior to the Moot Court

1. Listen to the preparation of the petitioners and respondents. Take notes on the most compelling statements or arguments. (Do not disturb their discussion as you move between the groups; you are just observing.)
2. Write the lead paragraph for the daily news in your hometown.
The first sentence could be: *Today the Hawai'i State Supreme Court will hear oral arguments in the case of... [continue by predicting how the Justices will decide]*
3. Post this paragraph on the wall or read it to the class.

After the Moot Court

1. Attend the hearing (moot court) and take notes. After the hearing, you may interview one of the attorneys.
2. Write the lead paragraph for the daily news in your hometown.
The first sentence could be: Today the Hawai'i State Supreme Court decided in the case of...
3. Post this paragraph on the wall or read it to the class.



'Aha Ho'okolokolo ma ke Kaiāulu - Courts in the Community

Handout B - page 5 (For Students)

Name: _____

Date: _____

“Courts in the Community” Moot Court Activity handout

Who is the Petitioner/Appellant in this case?	Who is the Respondent/Appellee in this case?
List 3-5 most relevant background facts.	
What is the issue in this case?	

Handout B - page 6 (For Students)

What does the Petitioner/Appellant want?	What does the Respondent/Appellee want?
What are the arguments in favor of the Petitioner/Appellant?	What are the arguments in favor of the Respondent/Appellee?
What are the arguments against the Petitioner/Appellant?	What are the arguments against the Respondent/Appellee?

Handout B - page 7 (For Students)

Which arguments are the most persuasive? Why?	
How does <u>State v. Thompson</u> influence the petitioner's/appellant's case?	How does <u>State v. Thompson</u> influence the respondent's/appellee's case?

Handout B – page 8 (For Students)
ADDITIONAL NOTE-TAKING SPACE

Handout C – page 1

No. SCWC-21-0000679, Friday, April 26, 2024, 10 a.m.

STATE OF HAWAI'I, Respondent/Plaintiff-Appellee, vs. CHARLES TUNG MING YUEN, Petitioner/Defendant-Appellant.

The above-captioned case has been set for oral argument on the merits at:

Kailua High School Gymnasium

451 Ulumanu Drive

Kailua, HI 96734

FACTS OF THE CASE:

Defendant-Appellant Charles Yuen is alleged to have rear-ended another car 50 feet outside of the O'Malley Gate of the Hickam Air Force Base. Military officers apparently came to the scene, administered a standard field sobriety test ("SFST") on Yuen, and called the Honolulu Police Department ("HPD"). HPD officers then arrived, conducted their own SFST, and then arrested Yuen for operating a vehicle under the influence of an intoxicant ("OVUII").

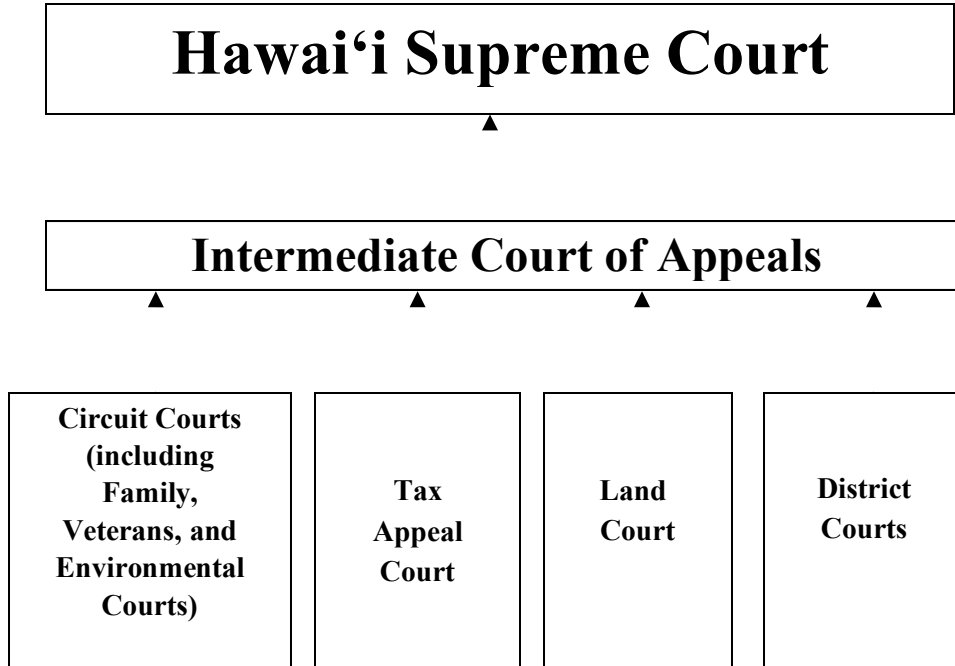
None of the military officers testified at trial, and their SFST was not introduced as evidence. HPD officers testified to observing Yuen experience signs of intoxication upon arriving at the scene. The District Court of the First Circuit found Yuen guilty of OVUII. The Intermediate Court of Appeals affirmed. On certiorari, Yuen asserts the ICA erred in holding that: (1) Yuen's trial counsel was not ineffective for not filing a motion to suppress under article I, section 7 of the Hawai'i Constitution and the Posse Comitatus Act under 18 U.S.C. § 1385 (1994), which generally prevents military officers from participating in civilian law enforcement; and (2) substantial evidence existed to support Yuen's conviction for OVUII.

QUESTIONS PRESENTED

1. Did the District Court have jurisdiction over this case and did the District Court err in failing to dismiss the case for any alleged deficiency in the charging instrument?
2. Was Yuen's trial counsel's performance ineffective and/or result in the loss of a potentially meritorious defense?
3. Was there sufficient evidence to support the District Court's finding that Yuen had driven his vehicle while intoxicated?

The Hawai‘i State Court System

JUDICIAL ORGANIZATION CHART



OVERVIEW

Several types of courts make up Hawai‘i’s judicial system. The differences among them lie in the kinds of cases each court can decide. This is called the court’s jurisdiction. For example, circuit courts have jurisdiction in criminal felony cases, and district courts have jurisdiction in traffic cases.

The state court system includes the Hawai‘i Supreme Court, the Intermediate Court of Appeals, Circuit Courts, District Courts, the Tax Appeal Court, and the Land Court. There are also special divisions within the courts, such as Family Court, a division of the Circuit Courts, and Small Claims Court, a division of the District Courts.

THE COURTS OF APPEAL: THE HAWAI‘I SUPREME COURT AND THE INTERMEDIATE COURT OF APPEALS

Cases usually do not begin at the Hawai‘i Supreme Court or at the Intermediate Court of Appeals (ICA), although some may end up there.

Handout D - page 2

The kinds of cases these appellate courts hear are different from the trial courts. They handle cases appealing the decisions of trial courts and agencies. These cases usually involve legal issues, such as questions of state or federal constitutional interpretation or questions of law regarding the validity of a state statute, county ordinance, or agency regulation. Unlike the trial courts, appellate courts do not decide the guilt of the accused.

To present a case before the appellate courts, the parties must file briefs explaining the basis of the appeal and the law that applies. Appeals may be decided just on the arguments presented in the briefs, or the Hawai'i Supreme Court or the ICA may request that the parties present oral arguments. At oral argument, the attorneys are given an opportunity to explain their position and answer the justices' or judges' questions. After oral argument, the justices or judges meet to discuss the issue(s) raised in the appeal and to arrive at a decision.

THE HAWAI'I SUPREME COURT

The Hawai'i Supreme Court is in Ali'iōlani Hale in Honolulu. It is the highest court in the state. The Hawai'i Supreme Court has jurisdiction to decide questions of law, as well as mixed questions of law and fact, brought to the Hawai'i Supreme Court on appeal from the ICA. The Hawai'i Supreme Court can affirm (or uphold) the ICA's judgment, reverse (or reach the opposite of) the ICA's judgment, or vacate (or cancel) the ICA's judgment and remand a case back to the trial court or agency for a new trial or agency hearing.

In addition to making important decisions on the law, the Hawai'i Supreme Court is responsible for licensing, regulating, and disciplining attorneys; disciplining judges; and issuing rules for all courts.

The Chief Justice is the highest legal and administrative officer in Hawai'i's judicial system and presides over the Hawai'i Supreme Court and four associate justices. The five members of the Hawai'i Supreme Court are appointed to ten-year terms by the governor, with the consent of the senate. Each member of the Hawai'i Supreme Court is selected from a list of nominees submitted to the governor by the Judicial Selection Commission.

As the highest court in the State, the Hawai'i Supreme Court's decision is final in Hawai'i. If someone disagrees with the Court's decision, he or she may appeal to the United States Supreme Court only if a question of federal law is involved.

INTERMEDIATE COURT OF APPEALS

The ICA is located in the Kapuāiwa Building. The ICA is the second highest court in the state. It reviews nearly all decisions appealed from the state trial courts or agencies. If a party disagrees with the ICA's decision, that party may ask for a review by the Hawai'i Supreme Court.

The ICA is headed by a Chief Judge and includes six associate judges. The ICA hears cases in three-judge panels. The seven members of the ICA are appointed to ten-year terms by the governor, with the consent of the senate. Each member of the ICA is selected from a list of nominees submitted to the governor by the Judicial Selection Commission.

Handout D – page 3

TRIAL COURTS: CIRCUIT COURT, FAMILY COURT, AND DISTRICT COURT

Trial courts in Hawai‘i include the Circuit Courts, of which the Family Court is a part, and the District Courts. These courts are located in each of the judicial circuits, which consist of the following:

- The First Circuit serves the City and County of Honolulu.
- The Second Circuit serves the County of Maui, which includes the islands of Maui, Moloka‘i, Lāna‘i, Kaho‘olawe, and Molokini.
- The Third Circuit, which is divided into the districts of Hilo and Kona, serves the County of Hawai‘i.
- There is no Fourth Circuit. (The Third and Fourth Circuits merged in 1943.)
- The Fifth Circuit serves the County of Kaua‘i, which includes the islands of Kaua‘i and Ni‘ihau.

CIRCUIT COURT

The cases that get the most publicity are usually heard in the Circuit Court. That’s because the Circuit Court hears serious criminal cases, civil cases involving large sums of money, and important issues of public policy.

The Circuit Court has general jurisdiction and is empowered to hear almost any criminal or civil case. The Circuit Court has exclusive jurisdiction in probate and guardianship cases, in criminal felony cases, and in civil cases involving over \$40,000. All jury trials are heard in the Circuit Court, including misdemeanor cases transferred from the District Courts for jury trials.

The Circuit Court is also empowered to issue necessary or appropriate writs, orders, and warrants; compel attendance of witnesses at trials; and issue injunctions to stop violation of state laws or county ordinances.

Circuit Court judges, like appellate judges, are appointed to ten-year terms and go through the same selection process.

- First Circuit Court: 777 Punchbowl St., Honolulu, HI 96813
- Second Circuit Court: 2145 Main St., Wailuku, HI 96793
- Third Circuit Court: 777 Kīlauea Ave., Hilo, HI 96720
- Fifth Circuit Court: 3970 Ka‘ana St., Līhu‘e, HI 96766

FAMILY COURT

The Family Court handles all cases involving children, such as delinquency, status offenses (like truancy and running away from home), abuse and neglect, termination of parental rights, adoption, guardianships, and detention. In serious criminal cases involving a minor defendant, the Family Court may waive its jurisdiction, and the minor may be tried as an adult. The Family Court also hears domestic relations cases including divorce, child support, paternity, and child custody. Domestic violence cases (for example, requests for restraining orders against family members, charges of abuse of family or household members, and charges of felony offenses against household members) are also heard in the Family Court. The Family Court also presides over civil psychiatric commitment cases, guardianships of adults, and adult abuse cases. Family Court proceedings are conducted in an informal atmosphere and are not

open to the public.

VETERANS COURT

Veterans Treatment Court began in 2013 and has grown tremendously. The defendants selected to participate in Veterans Treatment Court have all served in the U.S. Armed Forces and have experienced difficulties acclimating back into society. Many have mental health issues, including post-traumatic stress disorder, and the majority struggle with substance abuse as well.

The Veterans Treatment Court takes a holistic approach to help provide the resources and treatment these veterans need to get healthy, get employed, and return to being law-abiding citizens so they can enjoy the freedoms they fought to protect. The Judiciary has partnered with staff from US Vets and Salvation Army Addiction Treatment Services so the defendants can be evaluated and treated for mental health and substance abuse. In addition, the Court helps these defendants find housing and get job training. The defendants are also paired with volunteer veteran mentors, who understand the difficulties these men and women are facing and help support them through the process of recovery.

ENVIRONMENTAL COURT

Hawai'i is only the second state in America to have a statewide environmental court. In 1990, Vermont founded the nation's first statewide environmental court. No other statewide environmental courts were formed in the U.S. until Hawai'i's passage of Act 218, (2014).

Hawai'i's Environmental Courts have broad jurisdiction, covering water, forests, streams, beaches, air, and mountains, along with terrestrial and marine life. The goal of the Hawai'i Environmental Courts is to ensure the fair, consistent, and effective resolution of cases involving the environment.

Key contributors to the implementation of the Environmental Courts across the state include the police, prosecuting attorneys, public defenders, the private defense bar, corporation counsels, the State Attorney General, the Department of Land and Natural Resources Division of Conservation and Resources Enforcement, court administrators, chief judges, as well as district and circuit court judges assigned to the Environmental Courts.

LAND COURT

The Land Court has exclusive jurisdiction over the registration of title to real property (land) as well as disputes over real property. Although the Land Court judge is located in the First Circuit Court, he or she hears land court cases from all circuits.

TAX APPEAL COURT

The Tax Appeal Court has exclusive jurisdiction to hear tax appeals from assessments and/or from the Boards of Review concerning income tax, general excise tax, franchise tax, and real property tax. Although the Tax Appeal Court judge is located in the First Circuit Court, he or she hears tax appeal cases from all circuits.

DISTRICT COURT

Most of the public's personal court experiences are with the District Court. The District Court handles traffic infractions and violations, offenses classified as violations of state laws or country ordinances, misdemeanor and petty misdemeanor crimes, probable cause hearings for felony cases, landlord-tenant cases, restraining orders between people who are not related and not in a dating relationship, small claims cases, and certain civil actions involving \$40,000 or less. Jury trials in District Court are rare - cases there are usually decided by judges. District Courts and Circuit Courts share concurrent jurisdiction in civil non-jury cases involving amounts between \$10,000 and \$40,000.

District Court judges are appointed to six-year terms by the Chief Justice of the Hawai'i Supreme Court from a list of nominees compiled by the Judicial Selection Commission.

SMALL CLAIMS COURT

Small Claims Court was established to simplify the court process for citizen grievances. Complaints filed in Small Claims Court may involve recovery of \$5,000 or less, residential landlord-tenant security deposit disputes, the return of leased or rented personal property worth less than \$5,000, and the repossession or recovery of money for the unauthorized removal of shopping carts or shopping baskets.

In Small Claims Court, parties may represent themselves or hire attorneys, although attorneys are not allowed in residential landlord-tenant cases involving security deposits. The parties may attempt to mediate the dispute without going to trial. If mediation is unsuccessful, the parties proceed to trial, in which both sides present the facts in their own words or through documents submitted to the court. Parties may also bring witnesses to court. The decision of the judge is final; there is no right to appeal from a judgment of the Small Claims Court.

Oral Argument before the Intermediate Court of Appeals and the Hawai'i Supreme Court

In Hawai'i there are two appellate courts. The first is the Intermediate Court of Appeals (ICA), and the second is the Hawai'i Supreme Court. Appeals from the district courts, circuit courts, and agencies usually go to the ICA first. To appeal a district court, circuit court, or agency decision, the appellant (the party bringing the appeal) and the appellee (the party responding to the appeal) file "briefs" setting forth their legal arguments in writing, based on the facts that developed at the district court, circuit court, or agency level. The ICA may render its decision based just on those briefs, but it may also order the attorneys for the parties to present oral argument.

After the ICA renders its decision, parties seeking review of the ICA's decision can apply for a "writ of certiorari" with the Hawai'i Supreme Court. To apply for a writ of certiorari, the petitioner (the party seeking the writ of certiorari) files an "Application for Writ of Certiorari," which is a brief setting forth legal arguments as to why the ICA's decision needs further review. The respondent (the party responding to the "Application for Writ of Certiorari") may, but does not have to, file a "Response," which is a brief setting forth legal arguments as to why the ICA's decision should be allowed to stand. The petitioner may, but does not have to, file a "Reply," which argues against the points raised in the Response. The Hawai'i Supreme Court may render its decision based just on the Application (and Response and Reply, if filed), but it may also order the attorneys for the parties to present oral argument.

The ICA and Hawai'i Supreme Court may decide to order the attorneys to present oral argument because the appeal presents interesting legal issues, the judges or justices have questions about how the facts relate to the legal issues, the legal issues are of great interest to the public, or for any other reason. At an appellate oral argument, whether before the ICA or the Hawai'i Supreme Court, no new evidence is allowed to be introduced, and no new witnesses are allowed to testify, and no jury decides the case. The attorneys must argue the law as it applies to a factual record that has already been developed at the district court, circuit court, or agency level.

Oral arguments are held in the Hawai'i Supreme Court Courtroom on the second floor of Ali'iōlani Hale. The public is welcome to attend oral argument and sits in the gallery of the courtroom. The parties do not have to attend oral argument, but if they choose to, they too sit in the gallery. Often, their attorneys will tell the judges or justices that the parties are present.

Handout E - page 2

The ICA and Hawai'i Supreme Court hold oral arguments in a similar manner. The ICA hears oral arguments in three-judge panels. The three judges sit at the bench. The full Hawai'i Supreme Court hears oral arguments, meaning all five justices sit at the bench. At the far left, a bailiff sits in a booth and calls the courtroom to order, video- and audio-records the proceedings, and adjourns the court. At the far right, a law clerk sits in another booth, calls the case, and keeps track of how much time each attorney uses.

For an ICA oral argument, the attorney for the appellant sits at a table to the right. That attorney goes first and has thirty minutes to argue his or her client's case. The attorney for the appellant may "reserve" some of his or her thirty minutes for "rebuttal" argument, to be presented after the attorney for the appellee argues. The attorney for the appellee sits at a table to the left. That attorney goes second and also has thirty minutes to argue his or her client's case.

For a Hawai'i Supreme Court oral argument, the attorney for the petitioner sits at a table to the right. That attorney goes first and has thirty minutes to argue his or her client's case. The attorney for the petitioner may "reserve" some of his or her thirty minutes for "rebuttal" argument, to be presented after the attorney for the respondent argues. The attorney for the respondent sits at a table to the left. That attorney goes second and also has thirty minutes to argue his or her client's case.

During oral argument, the judges or justices actively question the attorneys, who must be quick on their feet in answering these questions persuasively and respectfully. After both sides have presented their arguments, the judges or justices usually take the case "under advisement," meaning they do not render a decision on the spot. Rather, the judges or justices meet to discuss the case later, one judge or justice is assigned to write the decision, and the written decision usually issues months after oral argument was held.

The public can listen to ICA and Hawai'i Supreme Court oral arguments online by visiting the following link:

http://www.courts.state.hi.us/courts/oral_arguments/recordings_archive.html

Glossary

ACCUSED: Person charged with a crime; the defendant.

ACQUIT: To find not guilty.

APPEAL: Taking a case to a higher court for review.

APPELLATE COURT: A court in which appeals from trial court decisions are heard. In Hawai'i, the Hawai'i Supreme Court and Intermediate Court of Appeals.

ARRAIGNMENT: A formal proceeding in which the accused in a criminal case is called before the court and informed of the offense with which he or she is charged. The accused may then enter a plea of guilty or not guilty.

ARREST: Taking a person suspected of a crime into custody.

ATTORNEY: A graduate of a law school who is admitted to practice law before the courts of a jurisdiction. The attorney's job is to advise, represent and act for a client; lawyer, counsel.

BAIL: Money put up by the accused to allow release from jail before trial. The purpose of bail is to assure the court that the defendant will return for trial.

BAILIFF: An officer of the court who is appointed to keep order in the courtroom and to have custody of the jury.

BEYOND A REASONABLE DOUBT: The degree of proof required to convict a person of a crime.

CALENDAR: A daily register of cases to appear before the court. It is prepared by the clerk of the court and is sometimes called a **DOCKET**.

CHALLENGE FOR CAUSE: A request that a prospective juror not be allowed to sit on the jury because of specified reasons such as bias.

CHANGE OF VENUE: A request that a case begun in one place be moved to another location for trial. It is used when the defendant cannot obtain a fair trial in the place where the crime was allegedly committed.

CHARGE: The formal accusation of a crime. Generally, the charge is contained in an indictment or complaint or stated orally.

CIVIL LAW: All areas of law that do not involve criminal matters. Civil law usually deals with private rights of individuals, businesses, or groups.

Handout F - page 2

COMMON LAW: The law made by courts instead of by legislatures; case law.

CONTEMPT OF COURT: Any act involving disrespect to the court or failure to obey its rules.

CONVICTION: A finding that the defendant is guilty in a criminal case.

COURT: A place presided over by a judge where trials and other judicial hearings take place.

COURT CLERK: An individual who keeps a record of the court's activities each day and records future dates for the judge's calendar.

COURT OF RECORD: A court whose proceedings are permanently recorded.

COURT REPORTER: A court official in charge of making a permanent record of all activities occurring in the court.

CRIME: Any act that the legislature has determined to be punishable. There are three grades of crimes: felonies, misdemeanors, and petty misdemeanors.

CRIMINAL CASE: A trial involving person(s) accused by the government of violating public laws resulting in the commission of a crime.

CROSS-EXAMINATION: The questioning of a witness by the attorney for the opposing side; follows the direct examination.

DEFENDANT: The person charged in a criminal action; the accused. In a civil case, the person against whom a lawsuit is brought.

DISPOSITION: The outcome of a case.

DOUBLE JEOPARDY: A common law and constitutional protection preventing the government from prosecuting a person twice for the same charges.

DUE PROCESS OF LAW: Law in its regular course of administration through the courts of justice. The guarantee of due process requires that every person has the protection of a fair trial.

EVIDENCE: The information offered to the court or jury to prove something.

CIRCUMSTANTIAL: Evidence of an indirect nature. "I saw that man at the scene of the robbery."

DIRECT: Proof of facts by witnesses who saw the acts done or heard the words spoken. "I saw that man rob the bank with my own eyes."

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EXHIBITS: Documents or other tangible evidence.

FELONY: A serious criminal offense that carries a sentence of more than one year in jail.

GRAND JURY: A body of citizens that hears evidence against a person suspected of a crime and decides if probable cause exists to charge the suspect formally.

HUNG JURY: A jury unable to agree unanimously on whether to convict or acquit a defendant.

INCARCERATED: Jailed; imprisoned.

INDICTMENT: A document prepared by a grand jury formally charging a person with a crime.

INDIGENT: A person unable to afford an attorney.

INTER ALIA: Among other things.

JAIL: A facility where those convicted of a crime, or those awaiting trial, are incarcerated.

JUDGE: A public official appointed to hear and decide cases in a court of law.

JUDGMENT: The official decision of a court.

JURISDICTION: The area and types of cases that a court has authority to hear and decide.

JURY: A group of citizens selected according to law to hear the facts in a case and render a verdict according to those facts.

JUSTICE: A public official appointed to the Hawai'i Supreme Court to hear and decide cases.

JUVENILE: One who has not yet reached legal age as prescribed by law; in Hawai'i, under the age of eighteen.

LAW CLERK: A law school graduate employed by a judge or justice to conduct legal research and writing and assist in chambers' duties.

LEADING QUESTION: A question that instructs or suggests to a witness how and what to answer by putting words in the witness's mouth to be echoed back; this type of question is generally prohibited on direct examination.

LITIGATE: To settle a dispute or seek relief in a court of law.

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MISDEMEANOR: An offense less serious than a felony that authorizes a maximum sentence of up to one year in jail.

MOTION: Request made by one party to a lawsuit that a judge take some specific action or make a decision. Motions may be made orally or more formally in writing.

OBJECTION: An expression of disapproval to the form or content of a question asked by opposing counsel. The judge will rule on the validity of the objection. An objection can also be made against tangible evidence or conduct of opposing counsel.

OVERRULE: To reject as invalid; used by a judge to indicate lack of agreement with the lawyer's motion or request.

SUSTAIN: To support or agree with; used by a judge to indicate agreement with a lawyer's motion or request.

OFFENSE: The violation of any criminal statute.

PAROLE: The release of an inmate from prison by the Hawai'i Paroling Authority prior to the expiration of a sentence of incarceration on condition of future good behavior. The parolee remains under the supervision of the Paroling Authority until the term of the parole expires. Parole is a rehabilitative program that is designed to reduce the expenses of incarceration, provided that there is good reason to believe the parolee can make a successful reentry into society.

PEREMPTORY CHALLENGE: The challenge of a prospective juror by counsel for either side in a trial made without having to give any reason. In the selection of a jury, each side has a right to a fixed number of peremptory challenges that can be used to prevent the seating of unwanted potential jurors.

PERJURY: The offense of giving false testimony under oath.

PETTY MISDEMEANOR: A crime less serious than a misdemeanor. A petty misdemeanor carries a maximum sentence of thirty days' imprisonment.

PLEA: The defendant's response to the prosecution's charges. A defendant may plead guilty, not guilty, or nolo contendere.

GUILTY: An accused person's formal admission in court of having committed the charged offense.

NOT GUILTY: An accused person's formal denial in court of having committed the charged offense.

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NOLO CONTENDERE: A plea by which the defendant does not contest or admit guilt.

PLEA BARGAINING: Negotiations between the defense and the prosecution to resolve the dispute without a full trial.

PRELIMINARY HEARING: A hearing held before a district court judge to determine whether probable cause exists to believe that a crime was committed and that the defendant committed the crime.

PRISON: A facility where those convicted, usually of felonies, are incarcerated.

PROBATION: A procedure whereby a defendant found guilty of a crime is released by the court without being sentenced to imprisonment provided by law, subject to conditions imposed by the court, which may include limited imprisonment, under the supervision of a probation officer.

PROSECUTOR: A government attorney whose duty is to prosecute persons accused of crimes.

PUBLIC DEFENDER: A member of the Office of the Public Defender who is appointed by the court to represent indigent defendants.

RECORD: All of the filed documents, tangible exhibits, and hearing and/or trial transcripts for a case.

SENTENCE: Penalty imposed on a defendant after conviction for a crime.

CONCURRENT: When the defendant, after being convicted for more than one crime, is permitted to serve all of the sentences at the same time.

CONSECUTIVE: When the defendant is required, after being convicted and sentenced for more than one crime, to serve each subsequent sentence after completion of prior sentences.

STATUTE: Any law passed by a legislative body.

SUBPOENA: A court order requiring a witness to appear and give testimony before a judge.

SUMMONS: A written order issued by a judge ordering a person to appear at a certain time and place to answer charges or questions.

TESTIMONY: Evidence presented by a witness under oath.

TRANSCRIPT: The official and verbatim record of proceedings in a trial or hearing.

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TRIAL: The formal judicial proceedings through which criminal and civil disputes are settled.

VERDICT: The formal and unanimous decision of a jury, reported to the court and accepted by it.

VIOLATION: An offense that carries no jail time but may be penalized by a fine, forfeiture, or other civil penalty. A violation is not considered a crime.

VOIR DIRE: A French phrase meaning "to speak the truth." It is the examination of prospective jurors by the judge or attorney to determine if the jurors are impartial.

WAIVE: To give up a right or claim voluntarily.

WARRANT: A written document issued by the judge authorizing a police officer to make an arrest, make a search or seizure, or carry out a judgment.

WITNESS: Person who testifies under oath to what he or she has seen, heard, or otherwise observed.