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2023 Mock CLE Evidence Exclusionary Hearing Event

Zaltanu Public Prosecutions v Eltra Parker

Case Packet

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1.0 Introduction to BABSEACLE Annual Asia Virtual Mock CLE Evidence Exclusionary Hearing Event Packet

The following 2023 Asia Virtual Mock CLE Evidence Exclusionary Hearing Event Packet is to be used in preparation for, and to participate in, the Asia Virtual Mock CLE Evidence Exclusionary Hearing Event which will be held virtually during 25-26 March and 1 April, 2023.

The Asia Virtual Mock CLE Evidence Exclusionary Hearing Event is a practical learning experience in which students simulate the practices occurring in a court in a hypothetical jurisdiction. As such, the structure used for the Asia Virtual Mock CLE Evidence Exclusionary Hearing Event will not strictly adhere to a specific country's local procedure, but rather a set of regional and global combined procedures which demonstrate strong Rule of Law, Fair Trial, Access to Justice and Legal Ethic practices.

The annual event involves a mix of Bachelor of Law students who participate from throughout the Asia region, all gathering, learning and working together. Many others also participate, including various members from the Justice Sector.

Even if a person is not planning to attend the event, the Asia Virtual Mock CLE Evidence Exclusionary Hearing Event Packet is also a very useful training resource. We therefore encourage persons to review this packet and use it in ways that will help them become stronger, legal and access to justice advocates.

2.0 What is an Evidence Exclusionary Motion and an Evidence Exclusionary Hearing?

2.1 What is a “Legal Motion”?

In most legal systems, if a party wants to raise an issue in Court, they must formally initiate the issue in some way. This is usually done in writing but can also be done orally by a Lawyer in Court. The term “Legal Motion” is often used to describe this legal procedure.

2.2 What is a “Motion to Exclude Evidence”?

In many justice systems, some parts of a case do not always focus on whether a person is guilty or not guilty of a crime, or liable in a civil matter. Rather, in many instances in criminal trials, Prosecutors and/or Defence Lawyers (or in civil trials, Plaintiff or Defence Lawyers) file motions to exclude evidence from being used during the trial. This type of motion is called a Motion to Exclude Evidence. There can be many legal reasons why some types of evidence should not be allowed to be used during a trial, including, but not limited to, the evidence is not relevant or the evidence violates the Rules of Evidence of the jurisdiction of the case. Other common reasons why evidence is excluded is that the evidence may have been obtained illegally, or after it was obtained, was not maintained following proper procedures.

An Evidence Exclusionary Hearing is not the trial itself. It is a hearing where a Court is asked to make a decision on some legal or factual issue, sometimes before a case goes to trial, or during the trial itself. At an Evidence Exclusionary Hearing, a Court will hear arguments from the Prosecutor or Defence Lawyers (in criminal cases) or the Plaintiff and Defence Lawyers (in civil cases) as to why evidence should, or should not, be allowed to be used at trial. Often during an Evidence Exclusionary Hearing, the Prosecutors or Lawyers call witnesses and provide the Court with other types of evidence in order to try to convince the Court that certain evidence should, or should not, be allowed to be used during the trial. If a Lawyer or Prosecutor wants the Court to exclude certain types of evidence, they usually file what is called a Motion to Exclude Evidence. The ability to file a motion, and have the Court decide whether some evidence can be used at trial, is a core part of ensuring a fair trial.

It is important to understand that the decisions made in an Evidence Exclusionary Hearing is not to decide the ultimate decision of a case (guilty or not guilty/liable or not liable). The only purpose of the Evidence Exclusionary Hearing is to decide whether the evidence that is the subject of the Motion to Exclude can be introduced, or should be excluded, from trial.

2.3 Motion to Exclude Evidence During a Trial

In many legal systems, a Motion to Exclude Evidence can be made at any stage of the trial. This could be anytime before the trial begins or even at the beginning of the trial itself. It could also be before, during, or after a witness gives evidence. It could also happen after all the evidence has been given. It could even happen during the closing arguments of the case.

2.4 The Case Packet: Motion to Exclude and Evidence Exclusionary Hearing in *Zaltanu Public Prosecutions v Eltra Parker*

This case packet contains a Motion to Exclude Evidence that was filed by the Defence Lawyer in the case of *Zaltanu Public Prosecutions v Eltra Parker*. The motion was filed by the Defence Lawyer requesting the Court to exclude certain types of evidence from being introduced during the actual trial. Because the Defence filed a Motion to Exclude Evidence, it is now necessary for the Court to have an Evidence Exclusionary Hearing to make a ruling on the motion. This Evidence Exclusionary Hearing takes place before the trial and is called a Pre-Trial Evidence Exclusionary Hearing. However, it is important to note, and remember, that the purpose of this Pre-Trial Evidence Exclusionary Hearing is not to decide if the accused in this case, Eltra Parker, is guilty or not guilty of the criminal charges. The purpose of the Evidence Exclusionary Hearing is to decide whether the evidence that is the subject of the motion can be introduced at, or should be excluded from, trial.

During the Evidence Exclusionary Hearing, both the Prosecution and the Defence Lawyers will try to convince the Court, through both witnesses and documents, that evidence should, or should not, be excluded during the trial. The Prosecution will try to convince the Court that the evidence should be allowed to be used at trial, and the Defence Lawyers will try to convince the Court that the evidence should not be allowed to be used. However, it is important to note that while the Defence Lawyers may try to convince the Court that the evidence should not be allowed, the burden of proof is on the Prosecutor to convince the Court to allow the evidence to be introduced. This will be explained in more detail below.

2.5 Motions to Exclude and Burden of Proof

Depending on the jurisdiction, either or both the Defence Lawyer and the Prosecutor can file a Motion to Exclude. As well, depending on the jurisdiction, the burden of proof may be on the party who filed the Motion to Exclude, or in some jurisdictions, the burden of proof in the Motion to Exclude hearing may be on the party who is trying to admit the evidence in the main trial. For the purposes of this Mock Exclusionary packet, the burden of proof is on the Prosecutor because it is the Prosecutor who wants to admit the evidence at the main trial.

Unlike a criminal trial, where the burden is on the Prosecution to prove an accused is guilty “beyond a reasonable doubt,” in an Evidence Exclusionary Hearing on a Motion to Exclude Evidence, the Prosecution’s burden of proof to prove the evidence was obtained legally and properly is by “a preponderance of evidence,” also known as “the balance of probabilities.” This standard is much lower than what is required to prove a person guilty at trial (“proof beyond a reasonable doubt”). Under the preponderance of evidence or balance of probabilities standard, the burden of proof is met when the party with the burden convinces the Court that there is a greater than 50% chance that the claim is true. This level of proof generally authorizes the Court to allow evidence to be used at trial if it is “more probable than not” that it was obtained legally.

ZALTANU PUBLIC PROSECUTIONS

V

ELTRA PARKER

3.0 Scenario

3.1 Statement of Facts

1. Eltra Parker is a 28-year-old transgendered person, who was born in the State of Zaltanu. For the past year, Eltra has been working part-time as a delivery driver for PDP, a courier company, whilst studying Chemical Engineering full-time. Eltra comes from a wealthy background and is very private about his/her sexuality, even to the point of keeping it a secret from his/her family.
2. Eltra has been in a relationship with Daine Carriér for the past two years. Daine is 24 years old, unemployed and loves to party. Daine has one prior conviction for possession of a dangerous drug.
3. As a delivery driver, Eltra is responsible for collecting and delivering various packages. For some deliveries, payment is required upon delivery. Eltra uses his/her own car for the deliveries, but he/she is required to wear a company uniform with PDP's logo.
4. PDP has been under police surveillance for suspected connections to the drug trade in Zaltanu.
5. On March 1, 2023, Eltra was on a delivery run. Eltra had plans to go to a party after work with Daine, and as such was eager to complete the deliveries as promptly as possible. In order to save time, Daine was helping out with the deliveries. On the way to his/her third delivery of the day, Eltra was directed by Senior Officer Strait to stop at a police checkpoint on Pacific Avenue at the crossroad of Aster Road.
6. Upon approaching the vehicle, Senior Officer Strait immediately recognised Daine in the passenger seat from a previous arrest. Senior Officer Strait introduced themselves to Eltra and explained that the checkpoint was a routine police checkpoint stop and asked Eltra and Daine where they were heading. Eltra introduced them and explained that they were out on a delivery run and

that he/she worked for PDP. Senior Officer Strait then asked for Eltra's name and identification.

7. From the outside of the vehicle, Senior Officer Strait saw a packet of cigarettes on the dashboard, two packets of rolling papers on the back seat, an open envelope containing cash in the centre console, and an assortment of clip-seal bags and empty envelopes on the back seat. Senior Officer Strait described Eltra as appearing to be very nervous and that he/she was restlessly playing with his/her pockets.
8. Senior Officer Strait then asked Eltra if he/she could search the car. Eltra then responded: "Why? I have nothing to hide."
9. Senior Officer Strait then asked Eltra and Daine to step out of the vehicle. Eltra and Daine then stepped out of the vehicle and stood on the sidewalk. Senior Officer Strait then called over Officer Narrow, who was waiting in their police car, to assist with searching the vehicle. The two officers then began to search the vehicle.
10. As a result of the search, the police found various packages held in a crate marked clearly with PDP's branding in the trunk of the car. One of the packages contained an address, but no name. Upon opening the package, the officers found a large bag containing white powder. This was later confirmed to be 1kg of pure cocaine. The officers also found a black bag with a large amount of money placed next to the crate in the trunk. The officers also found two mobile phones in the glove compartment of the vehicle. One phone was unlocked, and a search of it found nothing of value. The other phone was locked by a passcode. Senior Officer Strait approached Eltra and asked for the passcode; however, Eltra refused, stating that the phone belonged to his/her employer. Senior Officer Strait insisted that Eltra should unlock the phone if he/she had nothing to hide. Eltra then provided the passcode. A list of names and corresponding amounts of money was found on the phone.
11. Senior Officer Strait then conducted a frisk search of both Eltra and Daine. The search found nothing of interest.
12. Senior Officer Strait then placed Eltra under arrest, handcuffed him/her, and directed him/her to a police car. All the while, Eltra was saying: "What are you talking about? I don't do drugs!"
13. Eltra was later charged with possession of a dangerous drug with intent to sell.

14. Eltra was subsequently represented by a Defence Lawyer. The Defence Lawyer filed a Motion to Exclude Evidence arguing that the roadside checkpoint was conducted illegally and that the officers conducted an improper search of Eltra's vehicle.

3.2 The Prosecution (Zaltanu Public Prosecutions)

3.2.1 Witnesses for the Prosecution

1. Senior Officer Strait
2. Officer Narrow
3. Ziggy Bagmann

3.2.2 The Role of the Prosecutors

In order to proceed to trial, the Prosecution must establish:

1. The police officer had reasonable suspicion to set up the roadside checkpoint;
2. There was reasonable suspicion to search the vehicle, its contents, and conduct a frisk search; and
3. Drugs were found in the Defendant's possession.

See the Zaltanu law and rules of evidence in section 4.0.

3.3 The Defense

3.3.1 Witnesses for the Defense

1. Eltra Parker (the Defendant)
2. Daine Carriér
3. Bancha Kale

3.3.2 The Role of the Defence Lawyers

In order to successfully exclude evidence on admissibility grounds, the Defence Lawyers must establish:

1. The roadside checkpoint was conducted illegally (e.g., there was no reasonable suspicion that justified setting up the roadside checkpoint);
2. There was no reasonable suspicion to search the vehicle and its contents or to conduct a frisk search; and

3. The value of the evidence is outweighed by the risk that it would unfairly prejudice the Defendant.

See the Zaltanu law and rules of evidence in section 4.0.

4.0 Materials

4.1 Prosecution Witness Statement: Senior Officer Strait

1. My name is Senior Officer Strait. I am 49 years old and I have been a member of the Zaltanu Police Force for the past 16 years. I have worked as part of the Traffic Control Unit for the past 9 years. I have conducted numerous traffic checkpoints prior to 2023. I am honoured to be a part of this Traffic Control Unit because I consider drugs to be very bad for our society and I feel that the checkpoints are a great way to help stop the trafficking of drugs.
2. On the 1st of March 2023, I was in charge of operating a traffic checkpoint on the corner of Pacific Avenue and Aster Road. I set up the checkpoint at 10:00 in the morning. I set this up because we had received reports of drugs being moved along Pacific Avenue. On that morning, I was accompanied by Officer Narrow.
3. Pacific Avenue is about 8 kilometers long. At 11:00 AM, I directed an older model black BMW into the checkpoint. I approached the vehicle and saw two people in the front seats of the vehicle. As I approached the vehicle, I immediately recognised the passenger as Daine Carrier from a previous arrest. I introduced myself to the driver, and then said: "This is a routine police checkpoint stop. Where are you two heading today?" The driver, who introduced himself as Eltra Parker, responded by saying that he/she was out on a delivery run and that he/she worked for a company called PDP.
4. I then asked for his/her name and identification. As I inspected Eltra Parker's driver's licence, I noticed a packet of cigarettes on the dashboard, an open envelope containing cash in the centre console, rolling papers, clip-seal bags, and empty envelopes on the back seat. Parker appeared anxious, his/her eyes were bloodshot, and he/she was constantly fidgeting and looking at his/her watch. Parker avoided direct eye contact with me.
5. I started questioning the driver on the contents of the packages. Parker refused to disclose the nature of the packages and responded in an aggressive tone: "I'm only a delivery driver and I don't know what's in the packages. Someone else at the company loaded them this morning."
6. I then ordered Parker to step out of the vehicle. Parker responded in an aggressive tone: "Why? I have nothing to hide." I replied, saying: "Would you

both please step out of the vehicle.” Both Parker and Daine Carriér got out of the vehicle. Carriér then walked around to stand beside Parker on the sidewalk. Parker asked: “Do I need a Lawyer?” He/she then said: “How can I get one now?”

7. After both individuals exited the car, I informed them that I would need to conduct a frisk search. At this time, Officer Narrow who was sitting in our police car about 10 meters away, got out of the car and approached in case assistance was required with the frisk search. Once again, Parker responded in an aggressive tone: “You shouldn’t have the right to do this.” I told Parker that I wanted to conduct the investigation as efficiently as possible, and that both Parker and Carriér could continue forward with their business if they were not hiding any dangerous weapons. I asked them both if they had any dangerous weapons or illegal substances on their persons that I should be aware of. Both replied: “No.” However, after I asked this question, Parker became more upset and aggressive.
8. Parker reached into his/her pocket and began to take something out of it. He/she told me that it was a stress ball, but I was not completely sure that it was not a weapon. I then forcibly took hold of Parker and Carriér as a public safety measure to prevent any potential harm that could be caused by a dangerous weapon. Due to Parker’s suspicious and aggressive behaviour, I had to immediately conduct a frisk search of him/her to confirm there was no dangerous weapon that would threaten public safety.
9. I proceeded to conduct a frisk search: first on Parker, then on Carriér. When I was conducting the frisk search on Parker, I found a stress ball in the area of his/her clothes that he/she was reaching for. Following this, I still wanted to make sure he/she did not have a weapon on him/her, so I continued to do the frisk search. I then found a small electronic scale in the inside front pocket of Parker’s jacket. From my experience, such scales are commonly used by drug dealers when portioning out small quantities of drugs for individual sale. I informed Parker that I would have to confiscate the electronic scale for further investigation.
10. Following the discovery of the electronic scale, I directed Officer Narrow to conduct a search of the vehicle so I could question Parker. After I questioned Parker, I joined Officer Narrow in the search. In the trunk, we observed a crate

labelled with PDP's branding, holding various packages. PDP is the delivery company that Parker works for. Officer Narrow and I observed one package that appeared different to all the other packages, as it was marked with an address but no name. Officer Narrow and I decided to open the package and found a self-seal baggie containing white powder. From my past experience, this is the type and size of a baggie drug dealers use to transport cocaine. Drug analysis later confirmed the white powder to be pure cocaine, weighing 750g. We also found a black bag containing large amounts of cash placed next to the crate in the trunk.

11. Officer Narrow and I then went around to the passenger side of the vehicle and opened the glove compartment. We found two mobile phones. I passed one of the mobile phones to Officer Narrow to be checked; however, his/her search of the phone revealed nothing. I opened the other mobile phone and learned that it required a passcode. I walked over to Parker and asked if he/she could provide the passcode to the phone. Parker replied: "No, that belongs to PDP." I then told Parker that he/she should open the phone if he/she had nothing to hide. Parker then put in the passcode. My search of the phone revealed a list of names with corresponding amounts of money listed. Officer Narrow then proceeded to place the scale and baggie into a duffel bag.
12. I asked Parker if the car belonged to him/her. Parker stated: "Yes." I then advised Parker that he/she was under arrest for possession of a dangerous drug with intent to sell. I also detained Carriér. At that time, Officer Narrow took the baggie of white powder and walked to the trunk of the police car. I told both of them that they had the right not to say anything to us, and the right to have a Lawyer. After I gave them this warning, I asked why Parker was selling drugs and why he/she was with Carriér who is a convicted drug dealer. Parker resisted and defended himself/herself, exclaiming: "What are you talking about? I don't do drugs anymore!"
13. After placing Parker and Carriér in the back of the police car, I went to the trunk to check on Officer Narrow. Officer Narrow had placed the baggie containing white powder in an evidence bag and wrote his initials, the date, time, and location of where the evidence was obtained. We then proceeded to take both individuals to the Police Station.

14. A few days later, on 5 March 2023, I prepared a Business Record of Roadside Checkpoint.

4.2 Prosecution Witness Statement: Officer Narrow

1. My name is Officer Narrow. I am 28 years old. I graduated from the Zaltanu Police Academy one year ago and was assigned to traffic duty with Senior Officer Strait. The 1st of March 2023 was my third day on the job. On that day, we had set up a random traffic checkpoint. I think that Senior Officer Strait had placed the proper signage required for the checkpoint to be legal. Senior Officer Strait was responsible for directing cars into the checkpoint and conducting further inspection. I was there to assist, as necessary.
2. Senior Officer Strait directed a black BMW into the bay (which I now know to be Eltra Parker's car). Senior Officer Strait approached the vehicle and appeared to speak to the driver. I noticed that the driver and the passenger got out of the car and moved to stand on the sidewalk. Senior Officer Strait continued to question the driver, and I observed that his/her body language became more animated, and I could hear that he/she was speaking more loudly. Senior Officer Strait then called me over to assist. The driver then appeared to reach into his/her pocket and began to take something out of it: however, I could not clearly see what it was.
3. At that moment, Senior Officer Strait took hold of Parker and began to conduct a frisk search. During the frisk search, Senior Officer Strait found a small electronic scale in a pocket of the driver's jacket.
4. Senior Officer Strait and I then began searching the car. When we opened the trunk, we observed a crate marked with PDP's branding that contained many packages. I understand that Parker is employed by PDP. I was familiar with the PDP logo, as the company had been under police investigation for potential links to the drug trade. Senior Officer Strait and I observed a package that appeared different from the other packages, as it had an address but no name. Senior Officer Strait said that this was unusual and proceeded to open the package. Inside the package, there was a self-seal baggie, containing what appeared to be a white powder. I later learned that drug analysis confirmed the white powder to be pure cocaine, weighing 750g.
5. Senior Officer Strait continued searching the car. In the trunk, he came across a black bag containing a large sum of money. Senior Officer Strait also found two mobile phones in the glove compartment. Senior Officer Strait handed one of the phones to me and told me to look through it. However, that phone

revealed nothing. Senior Officer Strait tried to look through the other phone, but it was locked with a passcode. Senior Officer Strait then walked over to where Parker and Carrier were standing and spoke to Parker whilst I continued to search the car.

6. After I had completed the search, I placed the baggie of white powder and the scales into a duffel bag, then walked to the police car and placed the bag into the trunk. Senior Officer Strait then came back to the vehicle and told me: "We have enough evidence to charge him/her for possession of a dangerous drug with the intention to sell." I responded with "Okay."
7. Senior Officer Strait then arrested Mr./Ms. Parker. While I was walking towards the police car, I heard Parker say: "What are you talking about? I don't do drugs!" I put the evidence in the police car and drove Parker to the station.
8. Once we arrived at the police station, I informed Senior Officer Strait that I had to leave on an urgent family matter, so I gave him/her the evidence we had collected and ended my shift.

4.3 Prosecution Witness Statement: Ziggy Baggmann

1. My name is Ziggy Baggmann. I am 63 years old. I am unemployed. I have been living on the streets of Zaltanu for the past few years. Prior to that, I owned a motor garage.
2. On the 1st of March 2023, I was sitting on my usual spot on the side of Pacific Avenue, when the police came by and set up what I later realised was a traffic checkpoint. I do not recall any signage being placed by the officers. There were two officers at the checkpoint, who I now know to be Senior Officer Strait and Officer Narrow. Later that day, I noticed a black BMW approach the checkpoint. It immediately captured my interest because one of our garage specialties was working on BMWs, and whenever I see them, I always watch and study them.
3. I immediately got up and approached the car to inspect it closer, but before I could take a good look, Senior Officer Strait approached the car as well and told me to move away. I took a couple steps back but stayed quite close as I still wanted to find out who was driving. There were two persons in the car. Senior Officer Strait introduced him/herself to the driver, then asked for the driver's name and identification. Senior Officer Strait then asked the driver, who I now know to be Eltra Parker, if he/she could conduct a search of the car. Parker responded by saying: "Yes, I have nothing to hide."
4. Senior Officer Strait then asked Parker and his/her passenger to step out of the vehicle. Both of them then stepped out of the vehicle. I noticed that Parker appeared to be agitated as he/she was unable to stand still. Senior Officer Strait then directed Officer Narrow to come over and assist with the frisk search. Senior Officer Strait conducted a pat down of both Parker and his/her passenger. Senior Officer Strait appeared to find a small electronic scale on Parker from the pat down.
5. Both Senior Officer Strait and Officer Narrow began searching through the car and engine bay. Senior Officer Strait and Officer Narrow then approached the rear of the car and opened the trunk. I then took the opportunity to inspect the now-open engine bay of the car. When I was done, I noticed that Senior Officer Strait had approached Parker with one mobile phone in his/her hand. Senior Officer Strait then handed the phone to Parker, who unlocked it, and handed it back to Senior Officer Strait.

6. Senior Officer Strait then advised Parker that he/she was under arrest, reminding him/her of his/her right to remain silent. He/she placed handcuffs on Parker and escorted him/her into a police car. As he/she was escorted to the police car, Parker kept yelling out: "What are you talking about? I don't do drugs!"

4.4 Defense Witness Statement: Eltra Parker

1. My name is Eltra Parker and I am 28 years old. I have lived in the State of Zaltanu since birth. I am not married, but I live with my partner Daine Carrier. I work part-time as a delivery driver for PDP (a package delivery service) and study Chemical Engineering. I have worked at PDP for 1 year. As a delivery driver, I collect and deliver various packages. I also collect payments for the deliveries. I am required to wear a uniform when working, and I use my own car to make deliveries.
2. On the 1st of March 2023, I drove my black BMW to work with Daine. We arrived at PDP's warehouse and Daine remained in the car. As usual, I entered my morning meeting with my boss to learn about the locations of my deliveries of that day. I was also handed my daily list of deliveries, containing only the serial number of each package and the corresponding address. On that day, we also spoke about the business generally and how we wanted to grow as a company. It is standard that while I am in the meeting, another employee loads the crate of packages into the car. Once I finished my meeting, I then started making the deliveries pursuant to our normal schedule. I did not inspect the contents of the crate as that is not my role. I trust the people I work with and simply make the deliveries on the list and pursuant to instructions.
3. I was on the third delivery run driving along Pacific Avenue when I was directed by a police officer to pull over at a traffic checkpoint. I did not see any sign indicating the existence of a checkpoint. I now know this police officer to be Senior Officer Strait. I did not see any sign indicating the existence of a checkpoint. As I slowed down and passed Senior Officer Strait at the entry of the checkpoint, I noticed that he/she was looking inside my vehicle. The passenger side windows were down. Senior Officer Strait introduced him/herself and said: "This is a routine police checkpoint stop. Where are you two heading today?" I then responded: "I am on a delivery run. Officer – is everything okay?" I also told him/her that I worked for PDP. Meanwhile, Senior Officer Strait was crouching up and down to look throughout the car. This made me nervous, so I started to fiddle with my watch and pocket where I keep my stress ball. Senior Officer Strait then asked for my identification, and I handed him/her my driver's licence.

4. As Senior Officer Strait inspected my licence, he/she leaned over and stuck his/her head through the window whilst looking throughout the car. I told him/her that we were in a rush and that he/she was wasting our time. I also told him/her that someone else loaded the packages in the car this morning. Senior Officer Strait then stepped back and (in a serious tone) asked Daine and me to step out of the car and to keep our hands visible. I asked: "Do I need a Lawyer; how can I get one now?"
5. Daine and I both exited the car. As Daine and I stood waiting on the sidewalk, Senior Officer Strait asked if he could perform a frisk search on me and Daine. Senior Officer Strait then called over Officer Narrow. Prior to the search, he/she asked if either of us had any weapons on us. Feeling uncomfortable, I refused, telling him/her: "You shouldn't have the right to do this." I became more nervous due to Senior Officer Strait's aggressive attitude. To calm myself down, I reached for my stress ball, but stopped when Senior Officer Strait instructed me to. I told him/her it was a stress ball, and it was visible to him/her, but he/she continued to grab me and accused me of concealing a weapon.
6. Senior Officer Strait then said that I would be released immediately if I didn't have anything to hide. Still uncomfortable, I kept silent. Senior Officer Strait began conducting the search. Senior Officer Strait pushed me against my car and then conducted a pat down search from my shoulders to the bottom of my legs. While conducting the search, he/she felt something in the front right pocket of my jacket. He/she immediately reached in and pulled out a small electronic scale. Senior Officer Strait told me that the scale would need to be confiscated and ordered us to wait as they continued their investigation. However, these scales are necessary for my Chemical Engineering Degree. We often do lab work and require precision measurements of different chemicals.
7. After Senior Officer Strait performed the frisk search, Officer Narrow searched my car while Senior Officer Strait questioned me aggressively. He/she asked me: "What are you hiding in the packages in the car? What are you hiding on your person? Do you have anything illegal in the car?" I replied and told him/her: "I'm only a delivery driver and I don't know what's in the packages." Senior Officer Strait also questioned me about my relationship with Daine, how we

knew each other and whether I was aware that Daine had previously been convicted for dealing drugs.

8. After looking through the car, they opened the trunk and searched it. I could not see exactly what they were doing as Daine and I were standing near the front of the car. However, they seemed to take particular interest in what they found. I saw Senior Officer Strait hand a baggy, as well as my black bag, to Officer Narrow. I then saw Officer Narrow walk to the trunk of the police car with the package, but I did not see what he/she was doing.
9. The two officers then headed over to the front passenger door and looked through the glove compartment. Senior Officer Strait pulled out two mobile phones. One of them was my old phone, which I keep in my car as a spare. The other is a phone provided to me by PDP. I was given the pin by PDP but instructed to only use the phone to answer calls from the company. So far, I have never received a call on that phone; in fact, it has never rung. Senior Officer Strait handed my old phone to Officer Narrow and walked over to me with the company phone. Senior Officer Strait demanded the pin to open the phone. I was reluctant to open the phone as I did not have permission from my employer to do so. I told this to Senior Officer Strait, but he/she insisted that I should open the phone since I had nothing to hide. I reluctantly complied with his/her demand and unlocked the phone.
10. Senior Officer Strait then told me I was under arrest for drug possession with intent to sell. Senior Officer Strait then said: "We got you now." I yelled: "What are you talking about? I don't do drugs anymore. I don't know what's in those packages. I didn't load the car!" While I was put under arrest, I saw Officer Narrow take a duffel bag to the trunk of the police car, but I was unable to see clearly what he was doing. Daine was also detained. We were both taken to the police station. I was never informed that I had the right to a Lawyer or that I did not have to say anything.

4.5 Defense Witness Statement: Daine Carriér

1. My name is Daine Carriér. I am 23 years old. I am currently unemployed, although I am trying to seek employment. I like to go to parties and occasionally help Eltra Parker with his/her deliveries. I have been in a relationship with Eltra for the past four years.
2. On the 1st of March 2023, I was with Eltra giving him/her a hand with deliveries. Once completed, we had plans to go to a party. On the way to the third delivery, a police officer directed us into a checkpoint. There was no sign before the checkpoint. We were both a bit nervous as neither of us get stopped by police often. I soon recognised the officer to be Senior Officer Strait who arrested me on a previous occasion. It was during this occasion where I remember Senior Officer Strait being somewhat discriminatory because of my relationship with another person of my same gender, and my joyful character.
3. Coming back to the day of the 1st of March 2023, once the car was stationary, he/she introduced him/herself as Senior Officer Strait. He/she proceeded to say: "This is a routine police checkpoint stop. Where are you two heading today?" I recall Eltra responding: "I am on a delivery run." Senior Officer Strait then asked if we could step out of the car, to which Eltra responded: "Do I need a Lawyer? How can I get one now?"
4. Senior Officer Strait ignored Eltra's question and insisted that Eltra and I step out of the car. He/she then called over Officer Narrow, who was waiting in the police car. Eltra and I were directed to stand on the sidewalk.
5. Senior Officer Strait advised both Eltra and me that he/she would be conducting a frisk search of each of us. Eltra refused, saying that he/she felt uncomfortable and demanded to know whether the police had the right to conduct a frisk search. Senior Officer Strait insisted, suggesting that Eltra and I would be released immediately if we had nothing to hide. I could tell that Eltra was still uncomfortable about this. As a result, Eltra reached for his/her stress ball in her jacket and the police felt this was suspicious. So, Senior Officer Strait took the opportunity to grab Eltra and violently pushed him/her against our car. Senior Officer Strait then conducted the frisk search. After the frisk search, Senior Officer Strait advised us that he/she would need to confiscate an electronic scale he/she had found in Eltra's pocket and that we would have to wait longer

as he/she continued a search of the car. Otherwise, the frisk search revealed nothing else of interest.

6. After the frisk search, Senior Officer Strait and Officer Narrow began to search the car. I recall Senior Officer Strait and Officer Narrow beginning the search in the back seat of the car, then moving to the trunk of the car. Both officers seemed to spend quite a lot of time searching the trunk of Eltra's car. From where Eltra and I were standing, it was difficult to see exactly what the officers were doing.
7. A short time later, I was shocked to see Officer Narrow receive a package and a black bag from Senior Officer Strait. Senior Officer Strait then proceeded to search the front of the car, including the glove compartment. Senior Officer Strait then passed Officer Narrow a mobile phone that he/she said was from the glove compartment. Senior Officer Strait then approached Eltra and asked him/her for the pin code for another phone that he/she said was from the glove compartment. Eltra refused, saying that the phone did not belong to him/her, and that he/she did not have permission to open the phone. Senior Officer Strait insisted, suggesting that Eltra should have no issue unlocking the phone, as he/she had nothing to hide. Eltra finally complied and unlocked the phone.
8. After the car search, Senior Officer Strait advised Eltra that he/she was under arrest and proceeded to place handcuffs on him/her. He/she then escorted Eltra and me to his/her police car. All the while, Eltra was yelling out: "What are you talking about? I don't do drugs anymore and I don't even put the packages in the car!"
9. Once we reached the police station, I was asked to wait, and they took Eltra into another room. After about 30 minutes, I was told that I could leave, and I went home.

4.6 Defense Witness Statement: Bancha Kale

1. My name is Bancha Kale. I am 42 years old, and I have worked as a waitress at Zed Burgers for two years. Zed Burger is located on Pacific Avenue. I work five days a week. I do not recall the exact date, but one day in February or March, I saw two police officers set up a checkpoint on the opposite side of the road. They were setting up the checkpoint as I arrived at 10:00 that morning. The restaurant is located directly opposite from where the checkpoint was placed. Between the checkpoint and the restaurant is a two-lane road with one lane heading in each direction.
2. On that morning, I had a direct view of the checkpoint and observed the police pull over an old black BMW. At the time, I was cleaning the tables outside the restaurant. It was about 11:00 in the morning.
3. It was the first car that was stopped so I continued to watch. I observed a police officer approaching the BMW who I now know to be Senior Officer Strait. I could see two people in the BMW. I saw Senior Officer Strait speaking with the two individuals for a short time and crouching as he/she looked around the vehicle.
4. Then Senior Officer Strait stepped back and gestured with his/her right arm, pointing a finger at the driver. It looked like he/she was telling the driver to get out of the vehicle. I could see the driver shaking his/her head with his/her arms raised at the same time. The driver and his/her passenger stepped out of the vehicle onto the sidewalk. At that point, Senior Officer Strait signaled another officer, who I now know to be Officer Narrow, to come over.
5. I then saw Senior Officer Strait conduct a frisk search of both the driver and his/her passenger.
6. The two officers then conducted a search of the vehicle. The two officers seemed to spend a long amount of time inspecting the trunk of the car. After a while, I saw Senior Officer Strait hand a small package and a black bag to Officer Narrow.
7. The two officers then proceeded to the front passenger door and appeared to search through the glove compartment although I am not positive of that since I was observing from across the street. I then saw Senior Officer Strait pick up two small objects, which I believe to be mobile phones, and handed one to Officer Narrow. Senior Officer Strait then approached the driver and handed the other object to him/her. The driver soon handed it back.

8. Senior Officer Strait then placed the driver in handcuffs and escorted him/her over to a police car. Throughout this entire ordeal, I noticed Ziggy standing near the car. Ziggy is a homeless person that we regularly give leftovers to.

4.7 MOTION TO EXCLUDE

COUNTRY OF ZALTANU
PUBLIC PROSECUTIONS

IN THE PROVINCIAL COURT
CAUSE NO. 2022-67983

vs.

ELTRA PARKER

Defendant.

MOTION TO EXCLUDE EVIDENCE

Comes now the Defendant and respectfully requests that this Court exclude all property seized by the arresting officers, all observations made by the arresting officers, and all statements made by the Defendant, and in support thereof says:

1. That the Defendant is charged with Possession of cocaine with Intent to Sell or Distribute.
2. That on March 1, 2023, police officers, without lawful authority, stopped the Defendant's vehicle and detained the Defendant.
3. That any information from the stop of the Defendant's vehicle, was unlawfully obtained because:
 - a. At the time the police officer stopped the Defendant's vehicle, the police officer conducted a road-side checkpoint stop that failed to follow the legal requirements and procedures under the law of Zaltanu. Therefore, the road-side checkpoint was improperly established and any evidence resulting from vehicles or persons stopped by this check-point should be excluded, and not allowed to be used as evidence in Court.

- b. At the time the police officer stopped the Defendant's vehicle, the Defendant was not committing a traffic violation and the police officer lacked reasonable suspicion that the Defendant was committing a crime.
- c. The police officer exceeded the scope of the stop by detaining the Defendant for an unnecessary length of time, thus, violating the law of Zaltanu and invalidating any consent to search obtained during the unlawful detention.
- d. Considering the totality of the circumstances, the police officer's warrantless stop of the Defendant's vehicle was unreasonable.
- e. Considering the totality of the circumstances, the length of the police officer's detention of the Defendant was unreasonable.
- f. The police officer's seizure of evidence and observations of the Defendant was a direct result of the unlawful stop and detention, and thus, must be excluded from evidence.
- g. The Zaltanu laws relied upon in this motion are:
 - i. Article IV and V of the Zaltanus Constitution
 - ii. Section 590AA of the Zaltanu Criminal Code
 - iii. Section 56 of the Zaltanu Police Powers and Responsibilities Act
 - iv. Section 57 of the Zaltanu Police Powers and Responsibilities Act
 - v. Section 58 of the Zaltanu Police Powers and Responsibilities Act
 - vi. Section 29 of the Zaltanu Police Powers and Responsibilities Act
 - vii. Schedule 6 of the Zaltanu Police Powers and Responsibilities Act

WHEREFORE, the Defendant prays the Court:

- (a) Exclude and bar from use as evidence in the trial of this cause any seized items and observations, which resulted from the illegal stop and detention.

(b) Exclude and bar from use in the trial of this cause all testimony relating to any seized items and observations, which resulted from the illegal stop and detention.

Respectfully submitted,

Liberty for All



Attorney

Zaltanu Bar Number-908933434

Submitted: July 23, 2023

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been provided to all parties herein by first class mail, postage prepaid.

Liberty for All



4.8 Business Record of Roadside Checkpoint (March 1, 2023)

(a) The reasons for establishing roadside checkpoint:

Repeated information being received during January-February, 2023 from reliable confidential informants of excessive drug trafficking occurring along Pacific Avenue in the area of Aster Road. The information was that the drug trafficking usually occurs during the evening to night-time hours.

(b) the roadside checkpoint was established at:

Roadside checkpoint was established on 1st March, 2023 at the intersection of Pacific Avenue and Aster Road.

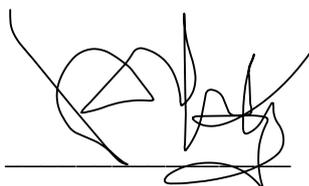
(c) the roadside checkpoint was established for the following length of time:

Roadside checkpoint was established from 5am-11pm.

(d) relevant signage to warn road users of roadside checkpoint ahead was placed at the following areas:

Pacific Avenue.

Senior Officer Strait



Officer Submitting Report

Date of Report 5th, March 2023

5.0 Applicable Law

5.1 Charge Against Eltra Parker

“Eltra Parker is charged with possession of a controlled substance with the intent to sell, in that on 1 March 2023, Parker was in possession of pure cocaine in an amount of 750 grams in violation of Section 881.12 of the Zaltanu Criminal Code.”

5.1.1 State of Zaltanu Legal Provisions

Section 881.12 of the Zaltanu Criminal Code states:

Except as authorized by law, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance.

Article IV of the Zaltanu Constitution states:

All persons in Zaltanu have a right to be secure against unreasonable searches and seizures. Evidence seized in violation of this rule shall be subject to suppression and exclusion.

Article V of the Zaltanu Constitution states:

All persons in Zaltanu have a right from being forced to incriminate themselves. Evidence seized in violation of this rule shall be subject to suppression and exclusion.

Section 590AA – Zaltanu Criminal Code states:

If the Prosecution has presented an indictment before a court against a person, a party may apply for a direction or ruling, or a judge of the court may on his or her initiative direct the parties to attend before the court for directions or rulings, as to the conduct of the trial or any Evidence Exclusionary Hearing.

...

(e) deciding questions of law including the admissibility of evidence and any step that must be taken if any evidence is not to be admitted...

Section 56 of the Zaltanu Police Powers and Responsibilities Act states:

A police officer may establish a roadside checkpoint if the police officer reasonably suspects a roadside checkpoint may be effective to locate persons committing an offence.

Section 57 of the Zaltanu Police Powers and Responsibilities Act states:

The police officer present at the roadside checkpoint must ensure a record of the relevant details of the roadside checkpoint is made, including:

- (a) the reasons for establishing a roadside checkpoint;*
- (b) when and where it was established;*
- (c) for how long the roadside checkpoint is established; and*
- (d) relevant signage to warn road users of roadside checkpoint ahead.*

Section 58 of the Zaltanu Police Powers and Responsibilities Act states:

(1) Where a roadside checkpoint has been established:

- (a) Police officers have the power to ask the driver and/or occupants for their name, address and registration details; and*
- (b) Where it would not be reasonably practicable for a search warrant to be obtained beforehand, a police officer may conduct a search without a warrant if there are reasonable grounds to suspect the commission of an offence.*

...

(4) For the avoidance of doubt, if Consent is given by the driver or occupant/s of a vehicle, police can conduct a search in the absence of a reasonable belief as stated in (1)(b) above and without a warrant.

Section 29 of the Zaltanu Police Powers and Responsibilities Act states:

(1) A police officer who reasonably suspects the commission of an offence may, without a warrant, do any of the following:

(a) stop and detain a suspected person;

(b) search the person and anything in the person's possession for anything relevant to the reason for which the person is detained.

(2) For the avoidance of doubt, a police officer can search a person and anything in the person's possession with:

(a) consent given by the suspect; or

(b) a search warrant obtained.

...

(6) If the police officer/s find a mobile phone or some other device in a person's possession, provided they continue to have a reasonable suspicion that commission of an offence exists, the device can also be searched pursuant to the Zaltanu Police Powers and Responsibilities Act. If, however, the device is password protected, the police officer/s do not have the power to gain access to the password without:

(a) Consent, or

(b) A search warrant obtained.

Schedule 6 of the Zaltanu Police Powers and Responsibilities Act states:

Consent means permission for something to happen or agreement to do something in which the permission or agreement was freely and voluntarily given. Consent does not include silence, submission or compliance.

Example of consent not freely and voluntarily given:

OFFICER: Do you mind if I enter your home?

OCCUPANT: Actually, I do mind.

OFFICER: May I remind you of the penalties associated with obstructing police.

OCCUPANT: Fine, you can come in.

Compliance means acting in accordance with a command, rule or official instruction.

Commission of an Offence means committed, or being likely to have committed, or of committing or being likely to be committing, an offence.

Reasonable suspicion means a suspicion that something exists more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust amounting to a slight opinion; it also includes reasonable belief of the existence of facts which are sufficient to induce that state of mind in a person.

Suspect means a person reasonably suspected of having committed, or being likely to have committed, or of committing or being likely to be committing, an offence.

4.2 Zaltanu Evidence Exclusionary Hearing Procedure & Rules of Evidence

5.2.1 Steps and Time in the Evidence Exclusionary Hearing

The Evidence Exclusionary Hearing is an application brought by the defense for the purposes of having evidence of the prosecution excluded.

Note the roles of the counsel for the prosecution and defense must be equally divided. That is, time must be evenly distributed between examination-in-chief and cross-examination.

Process:

Several Judges will preside over the proceedings. However, one Judge will be selected as the Presiding Judge to control the proceedings.

JUDGE'S CLERK: "Everybody stand-up."

JUDGES: Judges enter the courtroom.

PRESIDING JUDGE: Asks both sides "are you ready?"

CLERK: Calls the case number.

PROSECUTOR: Reads the case number and charge.

JUDGE: Asks if the prosecution is ready to proceed with the hearing to establish its burden that the evidence obtained during the roadside checkpoint was lawfully obtained.

PROSECUTOR: Answers "We are ready to proceed, your honor."

PROSECUTOR: Gives opening statement. **(no more than 10 minutes)**

DEFENCE LAWYER: Gives opening statement. **(no more than 10 minutes)**

PROSECUTOR: Calls first witness (Senior Officer Strait).

CLERK: Administers oath.

PROSECUTOR: Examination-in-chief of Senior Officer Strait. **(no more than 10 minutes)**

DEFENCE LAWYER: Cross-examination of Senior Officer Strait. **(no more than 10 minutes)**

PROSECUTOR: Opportunity for re-examination. **(no more than 5 minutes)**

PROSECUTOR: Calls second witness (Officer Narrow).

CLERK: Administers oath.

PROSECUTOR: Examination-in-chief of Officer Narrow. **(no more than 10 minutes)**

DEFENCE LAWYER: Cross-examination of Officer Narrow. **(no more than 10 minutes)**

PROSECUTOR: Opportunity for re-examination. **(no more than 5 minutes)**

PROSECUTOR: Calls third witness (Ziggy Baggmann).

CLERK: Administers oath.

PROSECUTOR: Examination-in-chief of Ziggy Baggmann. **(no more than 10 minutes)**

DEFENCE LAWYER: Cross-examination of Ziggy Baggmann. **(no more than 10 minutes)**

PROSECUTOR: Opportunity for re-examination. **(no more than 5 minutes)**

JUDGE: The Judge states: "The Defense may now call its witnesses."

DEFENCE LAWYER: Calls first witness (Defendant - Eltra Parker).

CLERK: Administers oath.

DEFENCE LAWYER: Examination-in-chief of Eltra Parker. **(no more than 10 minutes)**

PROSECUTION: Cross-examination of Eltra Parker. **(no more than 10 minutes)**

DEFENCE LAWYER: Opportunity for re-examination. **(no more than 5 minutes)**

DEFENCE LAWYER: Calls second witness (Daine Carrier).

CLERK: Administers oath.

DEFENCE LAWYER: Examination-in-chief of Daine Carrier. **(no more than 10 minutes)**

PROSECUTION: Cross-examination of Daine Carrier. **(no more than 10 minutes)**

DEFENCE LAWYER: Opportunity for re-examination. **(no more than 5 minutes)**

DEFENCE LAWYER: Calls third witness (Bancho Kale).

CLERK: Administers oath.

DEFENCE LAWYER: Examination-in-chief of Bancho Kale. **(no more than 10 minutes)**

PROSECUTION: Cross-examination of Bancho Kale. **(no more than 10 minutes)**

DEFENCE LAWYER: Opportunity for re-examination. **(no more than 5 minutes)**

PROSECUTION: Closing argument. **(no more than 10 minutes)**

DEFENSE: Closing argument. **(no more than 10 minutes)**

JUDGE'S CLERK: "Everybody stand-up."

JUDGES: Judges leave the room to make a decision on which team was the strongest according to the points evaluation.

JUDGE'S CLERK: "Everybody stand-up."

JUDGES: Judges return to the room and give their decisions on which team was the strongest according to the points evaluation. Judges provide constructive feedback to each participant.

5.2.2 Burdens and Standards of Proof

The trial judge determines the admissibility of any evidence according to the Rules of Evidence. In determining whether evidence will be excluded at a subsequent trial, the party must prove its case on the balance of probabilities.

5.2.3 Relevance of Evidence

Before a party can introduce an item of evidence at trial, it must be relevant. Where the relevance of evidence is not obvious, a party introducing it must explain how it is relevant. Irrelevant evidence is inadmissible.

Evidence can be directly relevant, or indirectly relevant:

- **Directly Relevant:** if it makes a fact of the case MORE or LESS likely.
- **Indirectly Relevant:** if it affects the probative value of the *direct evidence* and thus the accuracy of the other facts/evidence.

Test: Does the evidence carry you forward in proving or disproving the occasion in issue? Where the effect of the evidence is so ambiguous that it could not rationally affect the judging of the fact in issue, the evidence is irrelevant.

In order to be relevant, evidence must:

1. Directly or indirectly relate to the existence or non-existence of a fact in issue in the trial; or
2. Be relevant to a party's disposition in the alleged crime.

Note: evidence may become more or less relevant depending on circumstances and surrounding information.

Example:

QUESTION: What did you eat for lunch on the morning of the accident?

OBJECTION: I object, your honor. What the witness ate for lunch is not relevant to circumstances surrounding the accident.

POSSIBLE RESPONSE: Your honor, there is evidence that the witness attended a business meeting at which alcohol was served before the accident. This evidence goes to whether the witness was affected by alcohol at the time of the accident.

5.2.4 Probative Value of Evidence

The Court must refuse to admit evidence if its probative value is substantially outweighed by the risk that the evidence might:

1. Be unfairly prejudicial to the accused;
2. Be misleading or confusing; or
3. Result in an undue waste of time.

Probative value refers to the weight that should be placed on the particular piece of evidence.

Where there are **inconsistencies in evidence**, the fact finder must compare and weight up the probative value of each piece of evidence and decide which set of facts are more likely to be accurate.

5.2.5 Right to Silence

The accused has a right to silence. This right exists before and during the trial. The right of the accused to raise this defense exists regardless of whether they choose to remain silent upon arrest.

No adverse inferences can be drawn from the accused's choice to exercise their right to silence.

Where the accused was not cautioned as to their right to silence and was subsequently manipulated, coerced or elicited into making an admission to their detriment, the Court must determine the admissibility of the evidence in accordance with the illegality provisions in 4.2.6.

5.2.6 Illegally Obtained Evidence

The Court must, on application from the defendant, exclude evidence where it has been illegally or improperly obtained. In establishing any illegality in the collection of evidence, the party asserting illegality must raise it on the balance of probabilities. In determining whether the evidence has been illegally or improperly obtained, the Court must weigh up the competing public interests in convicting those who commit criminal offences and in protecting the individual from unlawful and unfair treatment. The Court must consider:

1. Whether there was a deliberate or reckless disregard for the law;
2. Whether the illegality was a result of a mistake;

3. Whether the illegality impacts the reliability and probative value of the evidence;
4. How easy it would have been to comply with the law; and
5. The nature of the offence.

The abovementioned indicia should not be considered in isolation. For example, the fact that the charged offence is serious will not automatically result in the admissibility of illegally obtained evidence. All indicia must be considered to assist the Court in determining whether the aid of an unlawful or improper act to obtain the evidence was at too high of a price.

5.2.7 Hearsay Evidence

Hearsay is defined as an out-of-court statement, made in court, to prove the truth of the matter asserted. The out-of-court statement may be spoken, written, or made through other forms of communication (e.g., hand gestures).

The **rationale** for finding hearsay inadmissible is because:

- it is unreliable;
- it is not made under oath;
- it does not involve reporting a direct observation;
- it cannot be cross-examined;
- it is impossible to determine the statement maker's demeanour and body language;
- it is impossible for the factfinder to determine whether the evidence is believable.

However, there are many **exceptions** to the hearsay rule. If an exception is established, the out-of-court statement is admissible.

Exceptions to hearsay include:

- Where the out-of-court statement does not go towards proving the truth of the matter asserted, rather **proving some other fact**.
- Where the out-of-court statement was made by a person who had **personal knowledge** of the asserted fact and it is the best evidence available (first-hand hearsay).

- Where the out-of-court statement is used as **original evidence** to prove the person's state of mind, intention, motive or plans.

For example, an out-of-court statement saying 'I want ice-cream' is acceptable as evidence of the intention to go buy ice-cream. It is not, however, used as evidence to prove that the person was at the ice-cream shop.

- Where the out-of-court statement was an **admission** (something that can be used to incriminate the defendant) or a confession (admitting to having committed the crime). The rationale behind this exception is that a reasonable person would not admit to a fact hurting his or her interest unless it were true.

Note, however, that an out-of-court admission:

- Must be free and voluntary. Here the Court must consider whether the defendant's will was overborne by external pressure. For example:
 - Any inducements, threats, trickery, violence; or oppressive, inhuman or degrading conduct;
 - Persistent questioning;
 - The defendant's capacity to resist improper pressure; and
 - The defendant's age, intelligence, maturity, self-sufficiency, psychological health and physical health.
- Must not be unfair on the defendant (e.g., they were cautioned and understood their right to silence prior to making the admission); and
- Must not be illegally obtained (see the above indicia in 2.2.6).

5.2.8 Character Evidence

Generally, evidence of the defendant's character cannot be brought out in trial, unless the defendant first raises evidence of their good character.

Example:

DEFENDANT: "I am not the sort of person who goes around stealing other people's wallets."

As the defendant has raised his/her good character, the Prosecution may cross-examine the defendant on his/her bad character.

PROSECUTOR: "You gave evidence that you were not the sort of person who stole people's wallets, but it's true that you have previous convictions for theft, isn't it?"

If the defendant had not previously raised his/her good character, the defense could object to this question on the basis of improper character evidence. However, since the defense raised good character as an issue, the Prosecutor's question is proper and should be allowed.

5.2.9 Prior Inconsistent Statements

A Lawyer in cross-examination may test the reliability of a witness's evidence by highlighting contradictions with a prior inconsistent statement. Note: in some circumstances, a witness may be honest but mistaken.

5.2.10 Tendency Evidence & Previous Convictions

Generally, evidence must not be led to prove that a person has a tendency to act in a particular way or has a particular state of mind. The rationale behind the tendency rule is that the Court must consider evidence in relation to the case before it. Tendency evidence is highly prejudicial to the defendant and may result, for example in him/her being punished again for prior convictions.

The Court nonetheless may allow the tendency/propensity evidence if the risk of the evidence being "highly prejudicial" is outweighed by the probative value of the evidence.

5.2.11 Opinion Evidence

A witness is not usually allowed to give their opinion in evidence. An opinion is a conclusion or view formed by a witness based on something that they have observed or experienced. It is not for the witness, but rather the fact finder, to form these conclusions. The rule against opinion evidence assists the Court to objectively assess all of the facts and draw its own objective conclusions. If a witness testifies about their opinion, then it may confuse or mislead the Court.

Example:

A witness cannot give evidence that the defendant was angry. Rather, the witness must describe what s/he saw (e.g., the defendant spoke loudly, was red in the face and was shaking his/her fist.)

Exceptions:

Opinion evidence may nonetheless be admissible if:

- The topic is something that ordinary people are knowledgeable about (e.g., the age someone appears to be);
- The opinion of a witness is relevant to a fact in issue (e.g., self-defense); or
- The opinion of a qualified expert with training, study or experience in the area is required to explain and give meaning to the evidence.

5.2.12 Contested Evidence must be Put to the Witness

A Lawyer must cross-examine a witness on all aspects of the witness's evidence that the Lawyer disputes.

In particular, the Lawyer must ask the witness to comment on the alternative version of events that the Lawyer's case relies on.

5.2.13 Questions in Examination-in-Chief v Cross-Examination:

At trial, both the prosecution and defense counsel have an opportunity to call witnesses. The Lawyer calling a witness must only ask open-ended questions which require the witness to explain in their own words what happened. This process is called "examination-in-chief." During the examination-in-chief, the Lawyer may ask closed or leading questions for preliminary matters only. If the matter is not preliminary and the Lawyer calling the witness asks leading questions, the other Lawyer should object. The purpose of this rule is to ensure that the witness gives an accurate account of events and is not misled.

After the Lawyer concludes the examination-in-chief, the other party's Lawyer will have the opportunity to cross-examine the witness. During cross-examination, the Lawyer should only ask leading or closed questions that can generally be answered with yes, no or I don't know. If the Lawyer asks open-ended questions, then s/he gives the witness an opportunity to say too much.

Examples:

OPEN-ENDED: "What did you do on Saturday the 13th of July?" This question is open-ended because it invites the witness to explain in his/her own words what s/he did on the 13th of July.

LEADING: "Is it true that you went to Zoe in Yellow on Saturday the 13th of July?" This question is leading or closed because it generally forces the witness to answer yes or no.

5.2.14 Direct speech

Conversation must be recited as it occurred in direct speech and not summarized by the witness.

Where an objection is based on indirect speech, the witness must convert the evidence to direct speech.

Example:

CORRECT: Brian said to me: "Could you please drive?"

INCORRECT: Brian asked me to drive.

5.2.15 Double Questions/Compound Questions

A double (or compound) question is one in which two questions are contained in one question. Lawyers should object to double questions being asked of the witness. This is to ensure clarity as to which question the witness is answering.

Example:

DOUBLE QUESTION: Is it true that the weather was warm and sunny on Friday?

This is considered a double question because the Lawyer is really asking two questions – "Was it warm on Friday?" and "Was it sunny on Friday?" The witness may not be able to answer this question with a simple "yes" or "no." For example, if it were sunny and overcast, the answer to the first part of the question would be "yes", while the answer to the second part of the question would be "no."

5.2.16 Harassment of the Witness

While Lawyers in cross-examination are permitted to ask questions to test the witness's reliability, the Court must forbid any question which appears intended to insult, offend or annoy a witness. Indecent and scandalous questions are also forbidden. Where a Lawyer appears to harass a witness, the other Lawyer should object.

5.2.17 Admission of Exhibits into Evidence

During the trial, the Lawyers may want to admit certain types of evidence, such as documents, police reports, photographs, and other things for the court to review.

Doing this requires a step-by-step procedure which includes the following:

1. Pre-mark the exhibit;

2. Show it to opposing counsel;
3. Show it to the witness;
4. Ask the right foundational questions (see below the foundational questions);
5. Ask the court to admit the exhibit (see below for magic terminology); and
6. Let the clerk mark the exhibit into evidence.

Foundational Questions:

Business Record Documents:

You should ask the following questions in order to establish the foundation for documents to be admitted into evidence:

- I am showing you what has been marked as Exhibit "A" for identification. Do you recognize this business record document?
- Was the business record was made at or near the time of the event it records?
- Was the business record made by, or from information given by, a person with knowledge acting in the regular course of business?
- Was this business record kept in the normal course of business?

Move the business record into evidence.

Photographs:

You should ask the following questions in order to establish the foundation for photographs to be admitted into evidence:

- I am showing you what has been marked as Exhibit "B" for identification. Do you recognize what is shown in this photograph?
- Are you familiar with the scene (person, product, etc.) portrayed in this photograph?
- How are you familiar with the scene portrayed in the photograph?
- Does the scene portrayed in the photograph fairly and accurately represent the scene as you remember it on (date in question)?

Move the photograph into evidence.

Diagrams:

You should ask the following questions in order to establish the foundation for diagrams to be admitted into evidence:

- I am showing you what has been marked as Exhibit "C" for identification. Are you familiar with the area located at Pacific Avenue and Aster Road in Zaltanu?
- How are you familiar with this area?
- Based on your familiarity with the area, can you tell us whether the scene depicted in this diagram fairly and accurately represents the area as you recall it on the date in question?

Move the diagram into evidence.

Tangible Objects:

- I am showing you what has been marked as Exhibit "D" for identification. Do you recognize what I'm showing you?
- Do you know what the exhibit looked like on the relevant date?
- Does the exhibit appear in the same or substantially same condition as when you saw it on the relevant date?

Move the tangible object into evidence.