



Asia CLE Mock Sentencing Hearing
Workshop & Event

2024 Asia CLE Mock Sentencing Hearing Planning, Arguments and Presentation Techniques

PARTICIPANT HANDBOOK



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1. What is a Mock Sentencing Hearing

A Mock Sentencing Hearing focuses on what should be the appropriate penalty for a person who has already been found guilty during a criminal trial. At these hearings the Prosecution and Defense lawyers argue for aggravators and mitigators, and apply fact and law related to the proper sentencing of a criminal convicted person. These types of hearings provide students with an insight into court sentencing procedures and potential penalties of crimes that breach the criminal code. They further develop students' knowledge, values and skills in relation to court procedure and sentencing hearings, in-line with both local and international court procedure standards and practice.

1.1. Steps in a Mock Sentencing Hearing

The following is an outline of the steps in the Mock Sentencing Hearing:

Step 1: Judges enter the courtroom.

Judges enter the courtroom and take their seats.

Step 2: The clerk announces, "All rise," signalling that everyone should stand as a sign of respect for the judges entering the courtroom.

Clerk: "All Rise."

Step 3: Judges are seated.

Judges take their seats.

Step 4: Chief Judge addresses the courtroom, welcomes everyone, introduces themselves and the other judges, and asks the prosecutor to introduce themselves and their team including the victim/survivor.

Chief Judge: "Thank you, please be seated. This is the time and place set for the sentencing of the Defendant/Perpetrator. Is everyone ready to proceed? I am _____. I will be your Chief Judge today. On my right is Judge _____ and on my left is Judge _____. Will the Prosecutor please introduce herself or himself and the team?"

Step 5: Prosecutor introduces themselves and their team, including the victim/survivor.

Prosecutor: "Blar Blar Blar."

Step 6: Chief Judge asks the Defense Lawyer to introduce themselves and their team.

Chief Judge: "Thank you. Will the Defence Lawyer please introduce herself or himself and the team?"

Step 7: Defense Lawyer introduces him or herself and the team including the Defendant/Perpetrator.

Defense Lawyer: "Blar Blar Blar."



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Step 8: Chief Judge acknowledges the introductions and grants the prosecutor permission to make their statement to the court.

Chief Judge: "Thank you. Prosecutor, you may proceed."

Step 9: Prosecutor makes a statement to the court **(8 minutes)**

Prosecutor: "Blar Blar Blar"

Step 10: Chief Judge invites the victim/survivor to make a statement.

Chief Judge: "Thank you. Would the victim/survivor like to make a statement?"

Step 11: Victim/Survivor makes a statement to the court. **(5 minutes)**

Victim/Survivor: "Blar Blar Blar."

Step 12: Judges question the prosecution.

The judges have the opportunity to pose questions to the Prosecutor and/or Victim/Survivor. **(5 minutes)**

Judges: "Blar Blar Blar".

Step 13: Chief Judge grants the Defense Lawyer permission to make a statement.

Chief Judge: "Defense Lawyer, you may proceed."

Step 14: Defense Lawyer makes a statement to the court. **(8 minutes)**

Defense Lawyer: "Blar Blar Blar."

Step 15: Chief Judge invites the defendant/perpetrator to make a statement.

Chief Judge: "Thank you. Would the defendant/perpetrator like to make a statement?"

Step 16: Defendant/Perpetrator makes a statement. **(5 minutes)**

Defendant/Perpetrator: "Blar Blar Blar."

Step 17: Judges question the Defense team.

The judges have the opportunity to pose questions to the Defense Lawyer and/or Defendant/Perpetrator. **(5 minutes)**

Judges: "Blar Blar Blar."

Step 18: The Chief Judge announces that the judges will leave for a breakout room to deliberate the appropriate sentence for the case.

Chief Judge: "Thank you. We will now retire to consider the sentence."

Step 19: The Clerk announces, "All Rise," signalling that everyone should stand as the judges exit the courtroom to deliberate on the sentence.

Clerk: "All Rise."

Step 20: Judges leave the room to consider the sentence **(Up to 20 minutes)**

The judges exit the courtroom and move to a breakout room where they will deliberate on the appropriate sentence for the case.

Step 21: Judges return to the courtroom.

Judges re-enter the courtroom after concluding their deliberation on the sentence.





Step 22: The clerk announces, "All rise," signaling that everyone should stand as a sign of respect for the judges returning to the courtroom.

Clerk: "All Rise."

Step 23: Chief Judge instructs them to be seated and announces the sentence, summarizing the factors considered and the decision reached by the judges.

Chief Judge: "Thank you, please be seated. We have now reviewed the nature of the crime, including the aggravating and mitigating circumstances and the criminal history of the Defendant/Perpetrator. We have considered the statements of counsel and we have read the statements of the Victim/Survivor and the Defendant/Perpetrator. Accordingly, we hereby sentence _____ to _____."

Step 24: Chief Judge states the reasons for the sentence so that the Defendant/Perpetrator and the Victim/Survivor understand why the Judges have ruled in this way. The Associate Judges may also provide their reasoning or perspective on the sentence.

Chief Judge: "Blar Blar Blar."

Judge B: "Blar Blar Blar."

Judge C: "Blar Blar Blar."

Step 25: The Chief Judge formally concludes the sentencing hearing and adjourns the court session.

Chief Judge: "Thank you. Court is adjourned."

Step 26: As the court session concludes, the clerk announces, "All Rise," signaling that everyone should stand as the judges exit the courtroom.

Clerk: "All Rise". Judges leave the Courtroom.

2. Establishing the Law

2.1. Aggravating and Mitigating Factors

Aggravating

1. Death
2. Physical injury (Serious injury makes it more aggravating)
3. Extreme psychological injury
4. Kidnapping
5. Property Damage
6. Terrorism/Hate Crime
7. An offence committed in the presence of a child
8. Evidence of significant planning for the offense
9. Using a Weapon: Being armed with, using (for example, pointing), or firing a gun or other deadly weapon (or an instrument that looks like such a weapon)
10. Committing the crime while out on bail, probation, or parole



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11. Previous History as a Dangerous Offender
12. **Repeat Offenses:** A court may impose a harsher penalty on a defendant/perpetrator with multiple prior convictions. This then leads to a relatively minor offense may result in a lengthy jail or prison term if the defendant/perpetrator has two or more prior convictions.
13. **Vulnerability of Victim/Survivor:** In some jurisdictions, court may impose a harsher sentence if the victim/survivor is found to be vulnerable, either according to an objective standard or in relation to the defendant/perpetrator. Vulnerability based on age, such as a crime of violence against a child or a fraudulent scheme targeting the elderly, may be an aggravating factor. Other factors may include physical or mental disability, illness or injury, and incapacitation.
14. **Leadership Role:** If the defendant/perpetrator played a prominent role in a criminal scheme, such as a leadership or managerial role, some jurisdictions allow courts to consider that as an aggravating factor. This is particularly true if the defendant/perpetrator influenced, or controlled others involved in the offense.
15. **Hate Crimes:** Some states have enacted laws that allow sentencing enhancements if the state proves that the defendant/perpetrator was motivated by bias or animus based on a group characteristic. Most hate crime statutes include categories like race, religion, and national origin. Some states include categories like sexual orientation and gender identity as well.
16. **Mandatory Minimum Sentencing:** For certain offenses, the circumstances of the case may trigger laws that remove a court's discretion to adjust a sentence downward. Mandatory minimum sentencing laws are still common for many drug-related offenses. The penalties for offense involving crack cocaine, for example, used to vary widely from the penalties for offenses involving cocaine in powder form, due to mandatory minimum laws targeting crack. The Fair Sentencing Act of 2010 sought to eliminate the disparity, but other laws still have a similar effect.
17. **Gang crimes:** Generally, gang enhancements increase the penalties for crimes committed for the benefit of or in association with a criminal street gang.
18. The offense involved more than one victim/survivor.
19. Offenders abused a position of power, authority or trust.





Mitigating

1. Diminished Capacity
2. Coercion
3. Guilty Plea
4. Cooperation
5. Financial need of Survivor
6. Past circumstances, such as abuse that resulted in criminal activity;
7. Mental or physical illness
8. **Minor role.** The defendant/perpetrator played a relatively minor role in the crime. For example, suppose the defendant/perpetrator received \$20 for knowingly driving a codefendant/perpetrator to a location where the latter made a drug deal. At sentencing for his conviction for transporting methamphetamine, the defendant/perpetrator has a good argument that his small role in the criminal activity is a mitigating circumstance.
9. **Victim/Survivor culpability.** The victim/survivor willingly participated in the crime or initiated the events leading to it. (Example, if the victim/survivor/complaining witness started a fight by attacking the accused, and the accused responded with more force than was necessary to defend him/herself, this may be a mitigating factor to be argued by the Defence).
10. **Unusual circumstance.** The defendant/perpetrator committed the crime because of temporary emotional difficulty or significant provocation. Circumstances at the time of the offense, such as provocation, stress, or emotional problems that might not excuse the crime but might offer an explanation. This circumstance applies when a defendant/perpetrator acts out while under extreme stress. For example, suppose that Jesse, in anguish over the recent death of his girlfriend, stole some beer from a liquor store so he could get drunk.
11. **No harm.** The defendant/perpetrator did not hurt anyone and committed the crime in a manner unlikely to cause harm. The no-harm circumstance would be relevant if Hank carjacked a driver by sternly ordering her out of her car, but carefully and gently helped her out of it.
12. **Lack of record.** The defendant/perpetrator doesn't have a criminal record, or only has a relatively minor record.



13. **Relative necessity.** The defendant/perpetrator acted out of a desire to provide life necessities. This circumstance would be relevant for someone who stole a rotisserie chicken from the grocery store so that he could feed his starving family.
14. **Remorse.** The defendant/perpetrator accepted responsibility and showed remorse. A defendant/perpetrator who confesses upon arrest and is contrite in court has this factor in his favor.
15. **Difficult personal history.** The defendant/perpetrator's unique upbringing or family circumstances led to her criminal conduct. For example, a lawyer might try to persuade a sentencing judge that the client's violent acts are attributable to abuse she suffered as a child.
16. **Addiction.** Drug or alcohol addiction contributed to—but wasn't just an incentive or excuse to commit—the crime. Addiction to drugs may be a mitigating factor for a defendant/perpetrator's sale of drugs if the defendant/perpetrator was able to show a real effort at his/her drug rehabilitation, but relapsed into drug use, and the sale of drugs was related to drug use.
17. **Rehabilitation.** Efforts to participate in rehabilitation or substance abuse programs
18. **Motivation.** Lack of motivation to cause harm
19. **Age of Defendant/Perpetrator.** The offender is very young/old.

Both Aggravating and Mitigating Circumstance (this can be applied both ways)

1. Impact of Sentence on Others: This can include family, the community at large, etc
2. Wishes/Desire of the Victim/Survivor

2.2. Sentencing Options

1. Custodial Sentence

A custodial sentence is a judicial sentence that requires mandatory custody of the defendant/perpetrator in prison or another closed institution;

If a defendant/perpetrator has already served time in prison at the time of sentencing hearing, and the judge finds that time has been a sufficient punishment this is called 'time served'.

2. Non- conviction order

This option allows a court to deal with a perpetrator who pleads guilty by dismissing the charges completely.



A judge will take into account:

- the person's character, antecedents, age, health and mental condition,
- the trivial nature of the offence,
- the extenuating circumstances in which the offence was committed,
- any previous non-conviction orders made.

3. Good behavior bond with or without supervision and conditions

A good behaviour bond is a penalty where the judge orders a person to be of 'good behaviour' for a specified amount of time. This penalty is generally given in lieu or in addition to other penalties such as fines. Breaching the conditions of a good behaviour bond can lead to revoking the bond, and imposing a harsher penalty such as a custodial sentence.

Supervision is when you are supervised by the court in some manner. This can include:

- Undergoing regular supervision by a parole officer who can drop in at your address,
- Checking in at the local police station at a set time/amount of days per week,
- Attending court when requested.

Conditions imposed will depend on the individual circumstances but can include:

- Restrictions governing who you associate with, and what places you can attend.
- Mandatory drug and/or alcohol rehabilitation or attendance at an approved program (such as driving offence program),
- A curfew preventing you from going out at certain times.

4. Suspended sentence

A suspended sentence is a term of imprisonment where the execution or the entire length of the sentence is suspended to allow the perpetrator to comply with a good behaviour order. If the perpetrator complies with the order throughout the period then they would not have to serve the term of imprisonment. If they commit a further crime or breach their conditions the court can activate the suspended sentence and the perpetrator will be sent to jail as well as any punishment imposed for the new offence.

5. Community Corrections Order/ Community Service

Community service refers to undertaking work for the benefit of the community as a punishment for an offence you have committed. A community corrections order is a non-custodial sentence served in the community.

A sentence of community service is given out by the number of hours depending on the offence.

Some things you may be required to undertake when under a community service order include removal of graffiti, working on environmental projects, and other forms of work in the community.



6. An order to undertake medical treatment

When dealing with an perpetrator who is suffering from mental health issues in the criminal justice system, an order can be made for an perpetrator who may be mentally ill to be taken to a mental health facility and held there for assessment, or undertake community treatment, or be discharged into the care of a responsible person, rather than dealt with under the usual criminal law and sentencing options.

7. Fine

A fine is money you pay as a penalty for breaking the law.

8. Additional considerations:

- a. an order to undertake medical treatment
- b. supervision orders/ electronic monitoring
- c. curfews
- d. exclusion orders (i.e stay away from nominated areas like schools, victim/survivor homes)
- e. restraining orders

3. How it is Presented

Remember, at this point a guilty verdict has been plead or

Submissions should be both “balanced” and persuasive” - present as a wise and respected advisor and not as a “mere mouthpiece to your client”

3.1. Handout for Prosecution/Defence to prepare sentencing

Template for Defence/Prosecution to Prepare Sentencing Submissions:

Name of Defendant:

Age:

Charge:

Max Penalty:

Guilty Plea:

<p>Opening Words (hook) Should be engaging!</p>	
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What Happened?	
Objective Seriousness of the offence	
Aggravating Factors	
Mitigating Factors	
Guilty Plea or Trial	
Deterrence	
Previous Criminal Record?	
Background / subjective circumstances at time of offending? (for defence)	



Remorse and Restitution (if any)	
Prospects for Rehabilitation?	
Suggested Sentence	
Why is that sentence appropriate?	

3.2. Opening Statement

The purpose of an Opening Statement is to introduce your case theory and your case themes; and provide an overview of the evidence or facts that you will present. Opening Statement is your first interaction with the Judge and an opportunity to establish yourself as a trustworthy, reliable and confident lawyer in his or her eyes. While each lawyer will have their own style and their own approach to Opening Statements, the hallmarks of an effective opening include:

1. A strong introduction

In the first few minutes you should provide a brief overview of your case that is built around your case themes and that is cast in a positive and engaging way.

2. Engaging storytelling

Engaging storytelling involves using sensory language and visual images that put the fact finder firmly in the picture and reinforce your key themes. In particular:

- the labels you choose to apply to parties, events and other important elements of the case will shape the way your client and your case is viewed by the Judge. You should aim to personalise your client and witnesses and depersonalise the other side. For example, always refer to your client by name (e.g. “Mr/Ms Parker” rather than “my



client” or “the plaintiff”); and

- take the time to spell out details that are important to your case. For example, if it is a personal injury claim and you appear for the plaintiff, spend time drawing out the precise nature of the injury.

3. Being a reliable storyteller

While you should tell a compelling story, your story must be grounded in facts to which your witnesses will testify. Do not overstate the evidence. If you do, it will be exploited by the other side and damage your credibility in the eyes of the Judge. By taking a measured, fact-based approach that does not venture into personal opinions or arguments, you are more likely to win the Judge’s trust and ultimately the case.

3.3. Victim/Survivor Impact Statement

The victim/survivor impact statement is an opportunity for the victim/survivor to tell the court about how the crime has affected them.

The victim/survivor impact statement is different to the statement made to police during the investigation about what happened at the time of the crime.

It is the victim/survivor’s choice whether to make a Victim/Survivor Impact Statement.

Usually a victim/survivor will write their own victim/survivor impact statement, and then decide if they want to read it at the sentencing hearing or have it read by the Prosecution team. If a person is under 18, is ill or has a physical or intellectual disability someone will be able to help the victim/survivor write the statement.

A Victim/Survivor Impact Statement **should** cover:

- How the crime has affected the victim/survivor **physically**, such as:
 - Any injuries the victim/survivor has as a result of the crime,
 - How the injuries have affected their life,
 - Any long term impacts of injuries on their life,
 - Any ongoing medical treatment required.
- How the crime has affected the victim/survivor **emotionally**, such as:
 - Their general feelings of wellbeing or enjoyment of life,
 - How the crime has affected any relationships (partner, family, friends etc.)
 - Any emotions or feelings related to the crime (hurt, anger, fear, frustration etc.),



- Any effects on their lifestyle and activities (trouble sleeping, eating or working),
- Psychological effects of the crime, including any treatment you need,
- How these impacts might change your life into the future.
- How the crime has affected the victim/survivor **financially**, such as:
 - Loss of future earnings because of the crime (such as loss of work),
 - General expenses caused by the crime (such as replacing items),
 - Travel expenses (such as court appearances),
 - Cost of medical treatment if required.
- How the crime has affected the victim/survivor **socially**, such as:
 - Work or study commitments,
 - Family or social life (social events, sporting commitments, friendships),
 - How safe they feel.

There are also rules about what a Victim/Survivor can and cannot include in their Victim/Survivor Impact Statement. This is because there are laws about what evidence is allowed in court (admissible evidence) and what is not allowed (inadmissible evidence).

A Victim/Survivor Impact Statement should therefore **not cover**:

- **don't** describe the crime more than what is necessary to explain how it affected you (the judge or magistrate already knows about the crime)
- **don't** say what sentence you think the offender should get or what should happen to them (this is the judge or magistrate's decision)
- **don't** mention crimes the offender may have committed in the past (the judge or magistrate already knows about the offender's criminal record, and is only sentencing the offender for the current crime)
- **don't** give an opinion about the chance of the offender committing other crimes in the future
- **don't** give an opinion about the offender's ability to change their ways
- **don't** give an opinion about the personality or character of the offender

4. Techniques Used in Presentation

Keep in mind the four P's

1. **Projection**; size of the courtroom, do not look down and read from your notes as your voice will project to the table, not up and out to the magistrate.
2. **Presence**; stand up straight, no hands in pockets, no one leg lean, no resting on bar table, minimize hand talking.
3. **Pause**; it is OK to do so - silence can be powerful, sometimes for effect, sometimes to simply gather your thoughts.



4. **Perception**; watch the judge, consider their reaction to what you are saying, listen to their questions as they usually tell you what they're thinking about what you're saying.

5. Sample Mock Sentencing Hearing – Cyber Bullying

2023 Mock Sentencing Hearing Scenario Cyber Bullying/Harassment

Scenario 1

Cyber bullying and Harassment

On 15 January 2023 Leap Hun was found guilty under harassment / cyber bullying in the province of Mandara as per Article 299 of the Mandara Criminal Code. Due to increased internet penetration across Mandara, there has been an increase in cyberbullying and harassment in Mandaran society. Article 299 is a recent amendment that has been implemented in response to this alarming trend.

Article 299: Bullying and Harassment

- (1) A person must not harass / bully another person.

Penalty: Level 2 imprisonment (5 years maximum).

- (2) A person (the offender) harasses / bullies another person (the victim/survivor) if the offender engages in a course of conduct which includes any of the following—

- (a) contacting the victim/survivor or any other person by post, telephone, fax, text message, e-mail or other electronic communication or by any other means whatsoever;

- (b) publishing on the Internet or by an e-mail or other electronic communication to any person a statement or other material—

- (i) relating to the victim/survivor or any other person; or

- (ii) purporting to relate to, or to originate from, the victim/survivor or any other person;

- (c) entering or loitering outside or near the victim/survivor's or any other person's place of residence or of business or any other place frequented by the victim/survivor or the other person;

- (d) making threats to the victim/survivor;

- (e) performing abusive or offensive acts in the presence of the victim/survivor;

- (f) acting in any other way that could reasonably be expected—

- (i) to cause physical or mental harm to the victim/survivor, including self-harm; or

- (ii) to arouse apprehension or fear in the victim/survivor for his or her own safety....



299A: Sentencing options in Bullying and Harassment

- (1) If a court finds a person guilty of bullying and harassment, the following sentence options are available:
 - (a) A custodial Sentence including a suspended sentence,
 - (b) A good behaviour bond up to 5 years with supervision and conditions,
 - (c) A good behaviour bond up to 5 years without supervision and conditions,
 - (d) Community Service up to 500 hours,
 - (e) An order to undertake medical treatment,
 - (f) A non conviction order,
 - (g) A fine.

- (2) A court must not sentence an offender to imprisonment unless it is satisfied, having considered all possible alternatives, that no penalty other than imprisonment is appropriate.



Case History

Leap Hun is a 50-year-old man. He is married to Terry and has 3 children aged 22, 20 and 18. He and his wife have not been getting along well for some time, they hardly talk to each other, and they have many disagreements.

Leap is always on his phone and Terry does not know what he is doing but he is always on the internet.

Leap's friend Kakada told him about sites on the internet where he can get to know women and see them naked or half-naked. On the night of September 6, 2022, Leap had just had a big argument with his wife. He left the house to have a beer and found Kakada at the beer station. He asked Kakada to show him this internet site so he could see the women.

He found it funny and exciting. Over many months he went to the internet site often. One night he decided to try other social network sites and found one site where he could send a message to women. Within a short time, he got a reply. For three weeks, each time he sent a message there was a reply from a woman called Jorani Ma (who is 35 years old). They talked about many things, all very innocent, such as things they liked doing and not doing. Leap said he wanted to meet Jorani. Jorani at first did not respond but then sent a reply to say she was not available to meet. They kept messaging for about 2 months. Leap asked more and more often for them to meet, his requests were getting more and more demanding. He told Jorani that he knew the bank she worked in and if she did not agree to meet him, he would come to the bank. Jorani was getting concerned about having any contact with Leap and told him she did not want to meet him and did not want to have any more contact with him. Over the next week, Jorani received 100 messages from Leap using the social network messenger forum. She tried to ignore them but when they did not stop, she told her family. Her father told his brother who is a police officer. The uncle knew that this behaviour was not right. The police department had made an announcement on social networking sites that stated that where there is bullying on the internet, the person being bullied can ring a number to report this to the police department and to give his email address and social network username.

The police tracked Leap to his IP address and then contacted the ISP to get his name, ID number and home address. The police went to his home. As Leap was not there, they spoke to his wife. She was very worried as she did not know anything about what he did on his phone. Leap's wife said she would ask him to go to the police station when he got home from work.

When Leap got home that night, his wife was very upset asking him what he had been doing as the police had come to the house. Leap did not want to hear anymore from his wife. At first he thought he could ignore it and ignore his wife but then realised this was not going to go away. He went to the police station for questioning. He told the police that he did not believe he had done anything wrong. He was just talking with someone on the internet, he did not do anything.

Leap angrily contested the charges and said he was not guilty.

After a full and fair trial in January, 2023 Leap was found guilty by a judge.

The Court set sentencing for October 2023.



Leap's Background Information/Current Status/Criminal History

Leap Hun is a 50-year-old man. He manages the local supermarket. He lives with his wife and 3 children who are aged 22,20,18. The eldest child, a boy, is doing really well and has a girlfriend and they are talking about getting married. Leap does not have much contact with his children, they always seem to be busy with other things. Leap's wife is always complaining that he does not do anything with the family. They often get into arguments over the smallest of things. To get away from this Leap goes to the bar to be with his friends.

Leap's friend Kakada had told him about internet pornography sites that he goes to often to watch naked women having sex. Leap started using these sites so often that even when he was at home, he was always on his phone, causing even more arguments with his wife.

One night he decided to try other sites and found one where he could send a message. He wrote a post saying that he was a lonely man looking for company. Within a few minutes there was a reply from a woman who called herself Jorani. Over a period of 3 weeks, each time he sent a message on this site, Jorani replied. She said she was 35 years old and worked in a bank. They talked about many things, about their work, their likes and dislikes. Jorani even told him about her work colleagues and things that were happening that she did not like. Leap was able to give her some advice on how to deal with these things. They chatted like this almost every night. Leap said he would like to meet Jorani but when she did not reply he did not ask again. After about 2 months of regular contact Leap decided to ask again for them to meet, he suggested they meet at lunchtime near her work. When Jorani did not reply to that request Leap started asking every time they chatted. He thought she was just being shy. He kept asking her to say where she was comfortable to meet, he didn't think there was anything wrong with that as she could name the place and time.

One night he had a big fight with his wife. He logged on to the social networking site and sent a message to Jorani. This time he said he really needed to meet her as he was so unhappy with his life. He asked them to meet up. When she did not reply to that but kept talking about other things he got mad and said if she did not agree to meet him he would come to the bank where she worked as he knew that bank. He didn't really know which branch she worked at, but he thought he could probably work it out. He could not believe her reply, she said she would not meet with him ever and did not want to have any more contact with him. Leap was angry. How could she do that? First his wife was annoying him and now Jorani said she did not want any more contact. He left the house and went to find his friend at the bar.

Next day he felt a bit clearer in the head and decided he would tell Jorani that he really did not know where she worked, he had only said that because he was annoyed. When he logged on and sent Jorani a message, there was no reply. He sent another and another message, sending them each day. He does not know how many messages he sent; he just wanted her to reply. He was feeling really desperate.

One day about 2 weeks later and still no contact from Jorani, he got home from work to find his wife really upset. She said the police from the cybercrime unit had come to the house and they wanted to speak to Leap. His wife was shouting at him wanting to know what he had been up to. She knew he had been doing something wrong as he was always on his phone. At first he tried to ignore his wife and ignore what was happening but then realised it was not going to go away so he contacted the police using the number they had left and went to the police station.



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He met Officer Jess and was questioned about his contact with Jorani on the social networking site. He agreed they had had a lot of contact over some months, he wasn't sure how long. He kept saying he had done nothing wrong, in fact he had often helped her when she was having trouble at work. He agreed that Jorani had said she did not want to have any more contact with him but that he thought she would change her mind. He sent her messages to contact him, knowing she would change her mind and start talking to him again. He had not done anything wrong. He had not hurt her in any way, in fact he had been a good support for her, she often said that.

The police decided to charge Leap with cyber harassment/bullying.





Jorani's Background/Current Status

Jorani Ma is 35 years old. Her husband works away from home as a seaman and is often gone for 7 months at a time. She works at a bank every day. She has one child, a girl Lin aged 7 years old. The child is at primary school. Jorani lives alone with her daughter as her parents live in another township with her brothers and sister and their families. Jorani and her daughter have a very happy life together in the city but when her daughter goes to bed, she gets lonely and has started to use social networking sites.

One night, when Jorani logged on to the messaging site she used she saw a message from a man who said his name was Leap. He said he was looking for someone to talk with. She replied that that is what she wanted also, she said she was lonely and just wanted to talk with someone. They started messaging often. They would talk about things they liked in the city, places they liked to go to. Sometimes they talked about how frustrating children can be when they do not do as they are told to do. She did not tell him she had a daughter; she did not want to get that personal. He also did not tell her if he had any children and Jorani did not ask.

Jorani sometimes told him about her work, things she liked doing and some of the things her workmates and bosses did that she did not like. Leap was very easy to talk to and always sent her nice messages that made her feel good.

One time, he said that he wanted to meet her. Jorani did not reply straight away as she was a bit hesitant, he had been so nice, but Jorani has a husband and did not want to meet another man.

Jorani replied the next day that she was unable to meet him when he suggested. They kept messaging each other for a while longer, talking as they had done but each time Leap would ask to meet. At first she ignored the requests, but they got stronger and stronger. One time, Leap told her he had found out where she worked and if she did not agree to meet him somewhere, he would come to her work. This scared Jorani, she did not want to have a relationship with another man, she had been happy just to have someone to talk to but had never intended anything more. She certainly didn't want anyone coming to her work. She was not sure what to do so did not reply to Leap for about a week. She finally replied saying that she did not want to meet with him and that she did not want to have any more contact with him.

Over the next week, there were more than 100 messages from Leap. Jorani was so concerned she did not know what to do. She finally told her father who told his brother who was a police officer. Jorani's uncle contacted her telling her about a recent police announcement that people who were being harassed or bullied on the internet could contact the police using a special telephone number and report the person.

Jorani decided she had to do this as she was scared what Leap would do next. She rang the police number, and they asked her for the email address she was replying to and what username Leap used on the social networking site. She agreed to go to the police station to show them all the messages she had received from Leap.

Initially Jorani's main objective was to make sure Leap leaves her alone and to not have any more contact with her or her friends/family. However, since Leap never admitted to the charge and made the case go to trial this caused her much more pain. Due to this she would like him to be punished, with a possible small imprisonment sentence, but she also understands that Leap helps to provide support for his family, and this may harm his family. She also wants to make sure Leap does not do this to anyone else in the future.



Jorani's Background/Current Status

Jorani is 35 years old. Her husband works away from home as a seaman and is often gone for 7 months at a time. She works at a bank every day. She has one child, a girl Lin aged 7 years old. The child is at primary school. Jorani lives alone with her daughter as her parents live in another township with her brothers and sister and their families. Jorani and her daughter have a very happy life together in the city but when her daughter goes to bed, she gets lonely and has started to use social networking sites.

One night, when Jorani logged on to the messaging site she used she saw a message from a man who said his name was Leap. He said he was looking for someone to talk with. She replied that that is what she wanted also, she said she was lonely and just wanted to talk with someone. They started messaging often. They would talk about things they liked in the city, places they liked to go to. Sometimes they talked about how frustrating children can be when they do not do as they are told to do. She did not tell him she had a daughter she did not want to get that personal. He also did not tell her if he had any children and Jorani did not ask.

Jorani sometimes told him about her work, things she liked doing and some of the things her workmates and bosses did that she did not like. Leap was very easy to talk to and always sent her nice messages that made her feel good.

One time, he said that he wanted to meet her. Jorani did not reply straight away as she was a bit hesitant, he had been so nice, but Jorani has a husband and did not want to meet another man.

Jorani replied the next day that she was unable to meet him when he suggested. They kept messaging each other for a while longer, talking as they had done but each time Leap would ask to meet. At first she ignored the requests, but they got stronger and stronger. One time, Leap told her he had found out where she worked and if she did not agree to meet him somewhere, he would come to her work. This scared Jorani, she did not want to have a relationship with another man, she had been happy just to have someone to talk to but had never intended anything more. She certainly didn't want anyone coming to her work. She was not sure what to do so did not reply to Leap for about a week. She finally replied saying that she did not want to meet with him and that she did not want to have any more contact with him.

Over the next week, there were more than 100 messages from Leap. Jorani was so concerned she did not know what to do. She finally told her father who told his brother who was a police officer. Jorani's uncle contacted her telling her about a recent police announcement that people who were being harassed or bullied on the internet could contact the police using a special telephone number and report the person.

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Initially Jorani's main objective was to make sure Leap leaves her alone and to not have any more contact with her or her friends/family. However, since Leap never admitted to the charge and made the case go to trial this caused her much more pain. Due to this she would like him to be punished, with a possible small imprisonment sentence, but she also understands that Leap helps to provide support for his family and this may harm his family. She also wants to make sure Leap does not do this to anyone else in the future.



6. Victim/Survivor Impact Statement Sample

Example 1:

I would like to thank your honour and the court for their time, attention, and their consideration of the charges against the accused. It was never my intention for a simple conversation between two individuals to be brought before the legal system in this way. But this behaviour has upset me deeply and I do not wish for this to happen to another person.

I am committed to my husband, but he travels for work and this distance between us can often make me feel very lonely. Which is why I would use this social media site to talk to Leap. I only ever intended to talk to others to keep myself company during the time my husband was away. I never intended to form another relationship with another man. This made Leap's constant advances deeply upsetting and stressful. His insistent messages to me were a major source of anxiety and it affected my daily function at work as well as my relationships with my family. When Leap threatened to come to my workplace I began to fear for my safety and that he would do something untoward if I did not agree to meet with him. His constant messages demanding to meet me made this all the more terrifying.

I am deeply upset by the knowledge that Leap has denied any wrongdoing. His actions affected me and my family. Not only do I fear for my personal safety, but I also fear for the safety of my daughter, for my marriage, and for my respect at work. I want other people like Leap to know that if they harass anyone online the way I was harassed, the law will punish them.

Example 2¹:

I am Jorani, thirty-five years old. I am the plaintiff in today proceeding. I would like to begin with my personal background. I am married and I have got one child. Currently, I am working at the bank, and my husband is a seaman—he works away from home and is often gone for seven months at a time.

About the relationship of me and the defendant—starting from the days that we met, we normally talked about our favorite activities and destinations in the city—was common. We also, occasionally, discussed how annoying our kids can be, and I liked to talk to him about my job, the thing I enjoy doing, and also what was happening at my workplace, and about my colleagues, too. I think that he's a kind of man that easy to communicate with, and he also constantly give me positive comments. He wanted to express a desire to see me, but I hesitated to respond right soon, because I already have a husband, and I did not want to see any other men. I consider him a really sweet, though. The following day I responded that I would like to meet him, but I was unable to do so. A bit longer, we still communicated and kept our communication in the same platform, but every time he would like to request for a meeting, I rejected him. I was very terrified when he warned me that he discovered my workplace, and that if I continue to reject him he would come to see me at my work place. I had never intended anything more. I have been contented simply to have someone to chat with. I definitely didn't want anyone to visit my workplace, and I didn't respond to other defendant for almost a week, because I wasn't sure what to do next, and when I finally respond to him, I stated that I was not interested in meeting him, and was also done communicating with him. But later on, it is very unbelievable that he tries to reach out to me by sending texts more than one hundred times. And I

¹ Example from the KASFLY Mock Sentencing Hearings Workshop organized by KONRAD ADENAUER STIFTUN (Cambodia) and BABSEACLE on 7-8 October 2023.



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was concerned about what he's going to do next. And finally, I decided to tell my family that about what has happened. And I also did decide to call the police and gave them the evidence of the case as well as his username on the social media and his email address.

Chief Justice, my wishes want to ensure that the defendant would leave me alone, and will not get in touch with me or my friends and my family again. But he has refused to admit to the charge, and subsequent needs for proceed through the trial cost me more suffering. As a result, I want him to be held accountable, and may even take a minor freezing sentence consideration, but I understand that the defendant provides for his family so sentencing might cause him and his family worse, and I also want to make sure that the defendant is kept from helping anyone in the future. Thank you, Chief Justice.





7. Prosecutor Statement Sample²

Your Honours, the defendant, a fifty-year-old man with three children was found guilty of cyber bullying after a trial in January 2023. To give a clear context to the court, the prosecutor will be briefing the event relating to the case. Your honours, for two months Mr. Leap has been contacting on the Internet site with a woman called Miss Jordani, which is the victim in this case. They have been happily talking with one another for the whole time, until Mr. Leap kept asking Ms. Jorani to meet up, and Ms. Jorani kept rejecting him. With the frustration, Mr. Leap told Jorani that he would go to her workplace if she still did not agree to meet him. Having this concern, your Honours, Ms. Jorani told Mr. Leap that she did not want to meet him or have any more contact with him, but Mr. Leap still kept messaging her. Ms. Jorani then rang a number to report Mr. Leap to the police department for cyber bullying. Your Honours, after the trial, in January 2023, Mr. Leap was already found guilty, and on to this next step in today's hearing, the prosecutor will be considering on various factors as to whether to aggravate or mitigate the crime, and finally, it says the sentencing to the court.

First, your Honours, the thing to be considered here is the criminal record of the defendant as to whether the defendant in this case has ever committed any crimes before. And here, your Honours, for the case happened, Mr. Leap, which is the defendant had no criminal record, which means this is the very first time he committed such a crime that could clearly reflect his good character in the law. With this, the prosecutor is of the opinion that the commission of the crime could be a mistake, as up until the time he was called to the police station, he still did not believe that he had done anything wrong. Second, your Honours, the family situation of the defendant should also be taken into consideration as well. In this case, Mr. Leap has always been a good father to his three children. However, due to the daily argument with his wife and dysfunctional family, have led to his loneliness, and did such things. Hence, the prosecutor would suggest these mitigated factors to be considered by the court. However, your Honours, all these factors are considered thematically in order to mitigate the defendant's punishment. Some other aggravating factors should also be taken into consideration as well.

In this case the prosecutor would like to point out to the fact that the defendant, Mr. Leap, did not plead guilty and still deny the commission of the crime. The prosecutor is of the opinion that the defendant was not feeling sorry toward what he did at all and not even realise his mistake. Concerning this, your Honours, if the court was to take this particular fact lightly and relieve all the punishment. For the defendant, it could lead to the future crime committed by the same person, Mr. Leap, since he did not admit his mistake or any other persons seeing this as an example and commit the same crime again.

With all the above consideration regarding both the mitigating and aggravating factors, the prosecutor believes that there are prospects of rehabilitation for the defendant—thereby suggesting the court to rule on a two year and half of supervision, including the compliance to undertake the mental treatment, and consoling regularly.

Your Honours, the prosecutor would also like to emphasise that, in any event, that the defendant fully comply with the Court's order for one year, the supervision in accordance with this decision shall be terminated. This shall conclude the prosecutor's statement, and thank you.

² Example from the KASFLY Mock Sentencing Hearings Workshop organized by KONRAD ADENAUER STIFTUN (Cambodia) and BABSEACLE on 7-8 October 2023.



8. Victim/Survivor Statement Sample

I am Jorani, thirty-five years old. I am the plaintiff in today proceeding. I would like to begin with my personal background. I am married and I have got one child. Currently, I am working at the bank, and my husband is a seaman—he works away from home and is often gone for seven months at a time.

About the relationship of me and the defendant—starting from the days that we met, we normally talked about our favorite activities and destinations in the city—was common. We also, occasionally, discussed how annoying our kids can be, and I liked to talk to him about my job, the thing I enjoy doing, and also what was happening at my workplace, and about my colleagues, too. I think that he's a kind of man that easy to communicate with, and he also constantly give me positive comments. He wanted to express a desire to see me, but I hesitated to respond right soon, because I already have a husband, and I did not want to see any other men. I consider him a really sweet, though. The following day I responded that I would like to meet him, but I was unable to do so. A bit longer, we still communicated and kept our communication in the same platform, but every time he would like to request for a meeting, I rejected him. I was very terrified when he warned me that he discovered my workplace, and that if I continue to reject him he would come to see me at my work place. I had never intended anything more. I have been contented simply to have someone to chat with. I definitely didn't want anyone to visit my workplace, and I didn't respond to other defendant for almost a week, because I wasn't sure what to do next, and when I finally respond to him, I stated that I was not interested in meeting him, and was also done communicating with him. But later on, it is very unbelievable that he tries to reach out to me by sending texts more than one hundred times. And I was concerned about what he's going to do next. And finally, I decided to tell my family that about what has happened. And I also did decide to call the police and gave them the evidence of the case as well as his username on the social media and his email address.

Chief Justice, my wishes want to ensure that the defendant would leave me alone, and will not get in touch with me or my friends and my family again. But he has refused to admit to the charge, and subsequent needs for proceed through the trial cost me more suffering. As a result, I want him to be held accountable, and may even take a minor freezing sentence consideration, but I understand that the defendant provides for his family so sentencing might cause him and his family worse, and I also want to make sure that the defendant is kept from helping anyone in the future. Thank you, Chief Justice. (BABSEACLE/KAS-FLY Mock Sentencing Hearings Training, 2023)



9. Defense Lawyer Statement Sample³

Your honours, I am arguing in place of the defendant Mr. Leap. In today's sentencing hearing, I will be assisting the court to consider the mitigating factors that would further mitigate the sentences proposed by the prosecutor in the case of cyber bullying and harassment. Mr. Leap was found guilty of cyber bullying and harassment after the trial on January 2023. To provide a more in-depth context to what has not been said by the prosecutor, I will add more information relating to the case. For the 2 months that Mr. Leap has been contacting through a messaging site called "Tuckler" with Ms. Jorani. These two lonely people have been happily talking with one another almost every night, sharing problems and thoughts on subjects varying from co-workers to different interests.

It was when Mr. Leap asked Ms. Jorani to meet up that Ms. Jorani rejected him in thought that she already has a husband, and only wanted someone to talk to, and not to be in a relationship with another men. With frustration, Mr. Leap told Jorani that he would go to her work place if she still did not agree to meet in which he never intended to do so, since he did not know how far exact working place. After that Jorani told Mr. Leap that she did not want to meet him or have any more contact with him. Mr. Leap was desperate, and wanted to clear the air of him, having no knowledge of her workplace, so he still insisted on messaging her. That was before Jorani reported Mr. Leap to the police department for the crime.

Now your Honours, onto the next step, we concurred with the mitigating factors raised by the prosecutor on the status of no past criminal records of Mr. Leap and his broken relationship with the family that may have caused his loneliness and anger issue. However, I will be presenting other mitigating factors that should be considered as to why the sentence should be further mitigated.

Your Honours, in addition to the mitigating factors mentioned above, unusual circumstances should also be considered. On the night that Mr. Leap was telling Jorani that he would go to her workplace if she would not meet him. He had just had arguments with his wife. This act and words that he said was not done on a daily basis, and his lashing anger toward Ms. Jorani was not done on a daily basis. But on a certain day, when anger and annoyance was clouding his head.

Your Honours, the cooperation of Mr. Leap with the police officers should also be considered as another mitigating factors. After being told by his wife that the police officers from the cyber-crime unit wanted to speak to him. He contacted the police and went to the police station. This shows his cooperation with the police officers.

Your Honours, one of the aggravating factors raised by the prosecutor was the fact that Mr. Leap did not plead guilty, and still deny commission of the crime. The prosecutor is then of the opinion that Mr. Leap was not feeling sorry towards what he did, and might not even realise his mistake. In this case we have two responses. First of all, the article 299, on bullying and harassment that Mr. Leap was charged with was a recent amendment to the law. This proves that it is more than likely that a fifty-year-old local supermarket manager, who was just introduced to a new entertaining site to cope with

³ Example from the KASFLY Mock Sentencing Hearings Workshop organized by KONRAD ADENAUER STIFTUN (Cambodia) and BABSEACLE on 7-8 October 2023.



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his anger and loneliness, would not have had any knowledge of the law. Secondly, even if he has knowledge of that law, his close bond with Jorani makes him believe that she might just be feeling shy to meet him. His value of their relationship and his desperate need to save their bond after Jorani said that she did not want any more contact with him, leads him to send around a hundred messages to her, expecting that she would forgive him, and he would be able to save their relationship.

Concerning this, the prosecutor stated that if the court was to take this particular fact lightly and relieve all the punishment it could lead to the future crime committed by the same person, since he did not admit his mistake or any other person seeing this as an example. We argue that this is false. Firstly, after he was found guilty in January 2023, Mr. Leap is already aware that: one, there is a crime of cyber bullying and harassment; two, his continuation of committing similar acts in the future might constitute to the crime again; and three, Ms. Jorani really wants no more contact with him, and he has no more chance of trying to save their relationship no matter how much he tries. With this, we believe that Mr. Leap would already be deterred from committing similar acts in the future, and this would deter other people and make them more careful in what they say and do online.

With all the above consideration regarding the mitigating factors, we believe that there are prospects of rehabilitation for the defendant—thereby suggesting the court to rule on a one year of supervision, including the compliance to undertake counseling regularly, which include couple and family counseling and counseling on his anger issue. We also would like to note that if Mr. Leap fully comply with the Court's order for five months, the supervision in accordance with the court decision shall be terminated. The reason for this is that the supervision order would act as a prevention of Mr. Leap from contacting Ms. Jorani, or other people of similar case throughout the counseling process. The counseling process would allow Mr. Leap to let go of his anger or grudge against his wife and fix his loneliness problem. This shall conclude our submission may please the court.





10. Defendant/Perpetrator Statement Sample⁴

Your Honours, I am Leap, fifty-year-old man, having a not so good relationship with my family, especially with my wife. We raised three children. Your Honours, please hear my background on this matter as well. I did not know what I did wrong. I was introduced to an online Internet platform “Tuckler” by my friend after I just had a big argument with my wife. I go to that Internet site often where it allows me to send messages to women, and I happen to contact Jorani. We had a very good conversations about many different casual topics, including work, things that we enjoy and things that we didn't enjoy. I even gave her advice on how to deal with the topics that we discussed. I found that I had a good connection with her because of our conversations, so I thought it was a good idea to meet each other physically. I suggested a convenient meet up for lunch near her workplace, and I thought she was shy and timid to meet me because she left me on scene most of the times, and I didn't hear her response during the conversations. But one night I had a really bad argument with my wife, and I had no one to talk to, so I logged onto the social networking site and sent messages to Jordani. Because I was very unhappy with my life. I threw out my annoyance through the many messages that I sent to Jorani. and I really hated my life back then. I really wanted to meet Jorani, but instead she rejected. I told her that I knew where she worked but actually, I didn't know. I only said that because I was so annoyed, and all I wanted to do was for her to reply to me. I felt very desperate at that time, and all I wanted was someone to talk to and someone to comfort. When I heard about the information that the police came to my home from my wife. We had an argument again at home so I went to the police right away and cooperated with the officer. I told the truth about everything that happened.

Your Honours. I did not or never intend to hurt Jorani in any way. I was only texting with her and having conversations with her through the online platform. In fact, I have also been a good support for her, too, and Jorani often said that. Your Honours, I have a family to provide, and raising children. Please understand my side of the story as well. That is all from me, your Honours. Thank you.

⁴ Example from the KASFLY Mock Sentencing Hearings Workshop organized by KONRAD ADENAUER STIFTUN (Cambodia) and BABSEACLE on 7-8 October 2023.



11. Breakdown of Sentencing Options

11.1 Custodial Sentence

A custodial sentence is a judicial sentence that requires mandatory custody of the defendant/perpetrator in prison or another closed institution;

If a defendant/perpetrator has already served time in prison at the time of sentencing hearing, and the judge finds that time has been a sufficient punishment this is called 'time served'.

11.2 Non- Conviction Order

This option allows a court to deal with a perpetrator who pleads guilty by dismissing the charges completely.

A judge will take into account:

- the person's character, antecedents, age, health and mental condition,
- the trivial nature of the offence,
- the extenuating circumstances in which the offence was committed,
- any previous non-conviction orders made.

11.3 Good Behaviour Bond With or Without Supervision and Conditions

A good behaviour bond is a penalty where the judge orders a person to be of 'good behaviour' for a specified amount of time. This penalty is generally given in lieu or in addition to other penalties such as fines. Breaching the conditions of a good behaviour bond can lead to revoking the bond, and imposing a harsher penalty such as a custodial sentence.

Supervision is when you are supervised by the court in some manner. This can include:

- Undergoing regular supervision by a parole officer who can drop in at your address,
- Checking in at the local police station at a set time/amount of days per week,
- Attending court when requested.

Conditions imposed will depend on the individual circumstances but can include:

- Restrictions governing who you associate with, and what places you can attend.
- Mandatory drug and/or alcohol rehabilitation or attendance at an approved program (such as driving offence program),
- A curfew preventing you from going out at certain times.



11.4 Suspended Sentence

A suspended sentence is a term of imprisonment where the execution or the entire length of the sentence is suspended to allow the perpetrator to comply with a good behaviour order. If the perpetrator complies with the order throughout the period then they would not have to serve the term of imprisonment. If they commit a further crime or breach their conditions the court can activate the suspended sentence and the perpetrator will be sent to jail as well as any punishment imposed for the new offence.

11.5 Community Corrections Order/ Community Service

Community service refers to undertaking work for the benefit of the community as a punishment for an offence you have committed. A community corrections order is a non-custodial sentence served in the community.

A sentence of community service is given out by the number of hours depending on the offence.

Some things you may be required to undertake when under a community service order include removal of graffiti, working on environmental projects, and other forms of work in the community.

11.6 An order to Undertake Medical Treatment

When dealing with an perpetrator who is suffering from mental health issues in the criminal justice system, an order can be made for an perpetrator who may be mentally ill to be taken to a mental health facility and held there for assessment, or undertake community treatment, or be discharged into the care of a responsible person, rather than dealt with under the usual criminal law and sentencing options.

11.7 Fine

A fine is money you pay as a penalty for breaking the law.



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