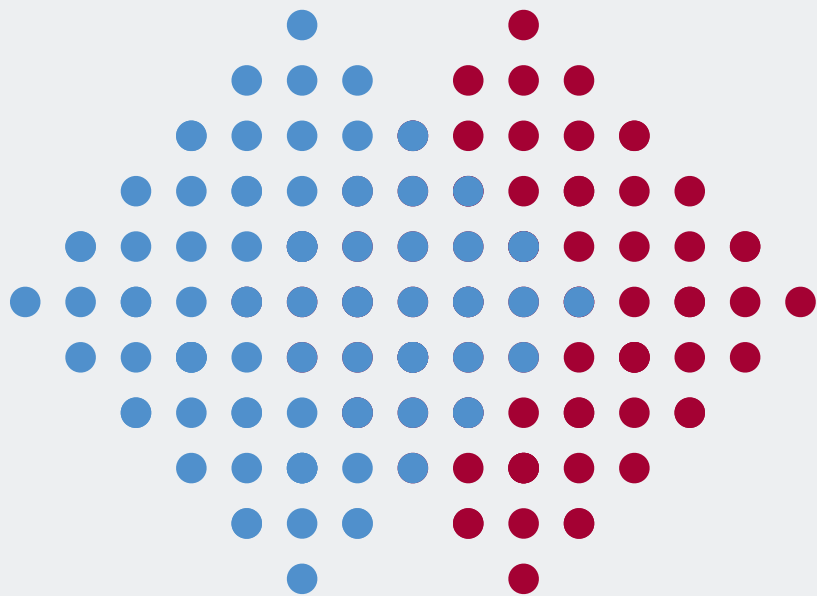


JUDICIAL CONDUCT AND ETHICS

SELF-DIRECTED COURSE



UNODC

United Nations Office on Drugs and Crime

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

JUDICIAL CONDUCT AND ETHICS

SELF-DIRECTED COURSE



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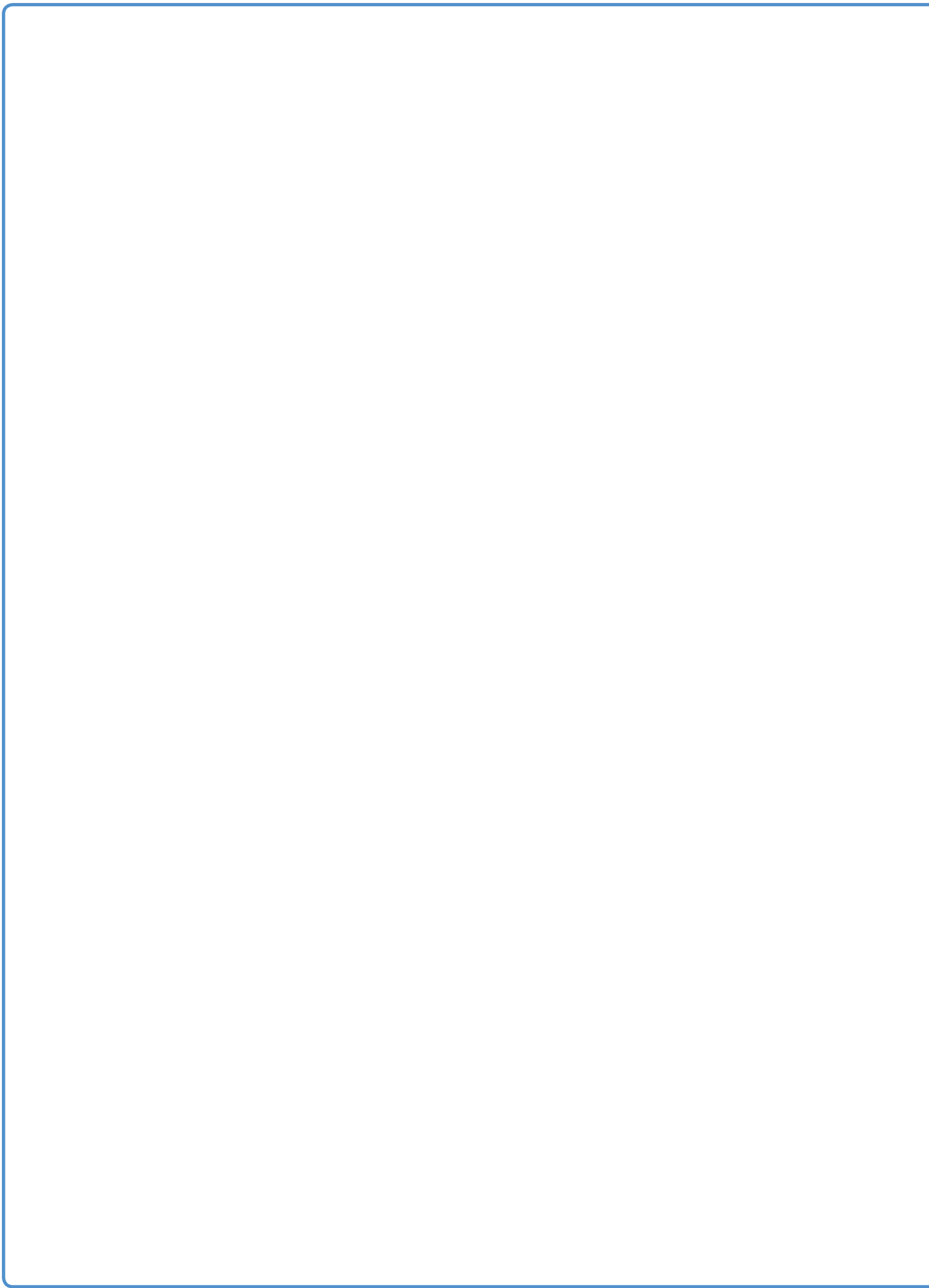
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“ So long as we may have an independent judiciary the great interests of the people will be safe.”

*John Rutledge,
Second Chief Justice, United States Supreme Court, 1795*

“ Being a judge is as equally beautiful and utterly absorbing, as being a doctor or being a scholar. The profession of being a judge is not a good career for persons who do not possess a sufficiently well-established sense of personal and professional dignity, the virtue of personal integrity, impeccable past, professional and practical knowledge, social and family maturity, and personal maturity to be able to assume full responsibility for each ruling passed in accordance with the law and with their own conscience.”

*Professor Andrzej Rzeplinski,
President of the Constitutional Tribunal of Poland, 2015*

INTRODUCTION

Lack of judicial integrity in the justice sector—whether actual or perceived—poses a real threat to confidence in the rule of law. With this in mind, boosting and maintaining judicial integrity is a core obligation of judges around the world and an integral part of the UNODC Global Programme for the Implementation of the Doha Declaration.

The Judicial Integrity initiative within the Global Programme aims to assist judiciaries across the globe in strengthening judicial integrity and preventing corruption in the justice sector, in line with article 11 of the United Nations Convention against Corruption. For that purpose, the initiative has facilitated the establishment of the Global Judicial Integrity Network, a platform of judges for judges to share good practices, learn from each other, provide peer-to-peer support, and join forces in the development of knowledge products and tools. The establishment of the Network represents a historic milestone in creating a space for judges and other justice sector stakeholders to work together on strengthening judicial integrity, a message that was echoed by many participants at the official launch of the Global Judicial Integrity Network in April 2018 in Vienna.¹

One of the priority areas for the Global Judicial Integrity Network, as identified during seven regional preparatory meetings in 2016–2017, the 2017 online survey disseminated to more than 1,000 stakeholders as well as during the launch event itself, is to strengthen training for judges on judicial integrity issues.

For this reason, UNODC decided to develop the Judicial Ethics Training Package, based on the broadly accepted Bangalore Principles of Judicial Conduct and the requirements for the implementation of article 11 of the United Nations Convention against Corruption. The package aims to be easily adaptable to different jurisdictions and equip judges with a deep understanding of the Bangalore Principles and their relevance and application to the work and life of a judge.

The Judicial Ethics Training Package is composed of the following tools:

- A widely applicable and interactive e-learning course dealing with various aspects of judicial conduct and ethics.
- The present text-based self-directed “offline” course capturing the key points of the e-learning course for those who cannot complete the online course.
- A trainers’ manual to guide national trainers in developing and designing their own training courses, ideally once the participants have completed the e-learning or the self-directed course.

¹For more information about the Network and its activities, please visit www.unodc.org/ji.

These tools are the result of several rounds of consultations with pilot sites, i.e. jurisdictions that have agreed to pilot-test the tools and roll out national/regional training activities based on the tools. Numerous other stakeholders and partners in the context of the Global Judicial Integrity Network have also provided valuable comments on the tools.

Although the primary participant “target group” for the tools is likely to be newly, or recently appointed judges, it may also be the case that senior lead judges will wish to take the course themselves. Such an approach would reflect the view of the Judicial Integrity Group, as stated in their first draft of the Bangalore Principles in 2002 when they advocated that senior judges should “lead by example” in the promulgation of the Principles. In this manner, senior judiciary members could add their considerable authority to the course brand, and at the same time guide their more junior colleagues concerning possible ethical dilemmas they may face, as well as examine possible emerging breaches of the principles of judicial conduct in their own jurisdictions.

The present self-directed course mirrors to the extent possible the content of the e-learning course and is intended for those judges who prefer not to use e-learning tools or for those environments where e-learning remains technically difficult. The main purpose of the course is to equip judges with the necessary skills to effectively apply the Bangalore Principles of Judicial Conduct and its Commentary in resolving ethical dilemmas potentially arising in the context of carrying out their judicial functions. Apart from theoretical sections, the course includes practical exercises, case studies and links to videos and further resources on the topic.

Upon completion of the present course, users are recommended to visit the UNODC e-learning platform to access the final test and obtain a certificate of completion of the course.

Following the completion of the e-learning or self-directed course, judiciaries are recommended to organize a face-to-face follow-up training course based on the trainers’ manual. The face-to-face training could then aim to allow judges to apply and deepen the acquired knowledge and set the topic of judicial ethics into the local context and existing domestic judicial ethics regulations.

► For more information about how to use and combine the training tools, please visit:
http://www.unodc.org/ji/en/judicial_ethics.html

LEARNING OUTCOMES

On completion of this course, you will have acquired the following knowledge and skills:

- A deep understanding of the origins, purpose and content of the Bangalore Principles of Judicial Conduct and their relevance and application to your life and work as a judge.
- An increased capacity to recognize when judicial conduct and ethics issues come into play, both within and outside the workplace, and a range of methods to help you deal with any associated challenges.
- A basic understanding of the interaction between social media and judicial conduct.
- An awareness of a range of cognitive biases that can affect your work as a judge, and the reflective skills to counter these biases.

SHORT ENTRY TEST

Before you embark upon this self-directed course, we invite you to test the current state of your knowledge on the topic by answering the following 10 questions. Please do so without reference to any other materials. All the issues raised in the questions below will be later covered by the course.

1. What are the Bangalore Principles?



2. Can you name the six values underpinning the Bangalore Principles?



3. What is the legal status of the Bangalore Principles?



4. What is the Judicial Integrity Group?



5. Should a judge hear a case in which his or her partner is defending counsel?

- ☐ Yes, but...
- ☐ No



6. Do judicial oaths have to include the Bangalore Principles?

- ☐ Yes, but...
- ☐ No



7. Should a judge attend night clubs?

- ☐ Yes, but...
- ☐ No



8. Can judges be members of secret brotherhoods or fraternities?

- ☐ Yes
☐ No



9. Can a judge's food intake during a trial affect his or her impartiality?

- ☐ Yes
☐ No



10. Can a judge's body language form the basis of a recusal challenge?

- ☐ Yes
☐ No



CORE DOCUMENTS

The core documents for this course are:

- The Bangalore Principles of Judicial Conduct (2002)
- Commentary on the Bangalore Principles (2007)

You will need to use them extensively throughout the course.

Additional documents include:

- Implementation Guide and Evaluative Framework for Article 11 of the United Nations Convention against Corruption
- Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct
- Basic Principles on the Independence of the Judiciary
- Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary

► All core documents can be accessed in all official United Nations languages at:
<https://www.unodc.org/ji/en/core-documents.html>.

You are also encouraged to consult existing codes of conduct or regulations that are in place in your jurisdiction and compare them with the international standards.

BANGALORE PRINCIPLES OF JUDICIAL CONDUCT

The Bangalore Principles of Judicial Conduct are intended to establish standards of ethical conduct for judges. They are designed to provide guidance to judges in the performance of their judicial duties and to afford the judiciary a framework for regulating judicial conduct in all Member States of the United Nations.

They are also intended to assist members of the executive, the legislature, lawyers and the public in general to better understand the judicial role and to offer the community a standard by which to measure and evaluate the performance of the judicial sector. The Commentary on the Bangalore Principles is intended to contribute to a better understanding of these Principles.

“These Principles have been formulated by national and international judges working together for a common purpose. They should help not only to render judicial institutions ethically stronger, but also, through their implementation by the judicial branch, assist in strengthening the independence of judicial institutions.”

Mr Justice Weeramantry, Chairperson of Judicial Integrity Group, 2002-2017

History

In early 2000, the [Judicial Integrity Group](#)², initially consisting of eight Chief Justices (four from Africa and four from Asia), met in Vienna under the auspices of the United Nations Global Programme against Corruption.

The Group decided that, as representatives of the world's senior judiciary, they would initiate a process to agree on a definitive set of principles of judicial conduct and ethics that should underpin the exercise of judicial office everywhere, without regional variation.

Over the following 20 months, the draft principles were disseminated and discussed among senior judges in over 75 countries.

In November 2002, the Principles were finally settled as the following:

- Independence
- Impartiality
- Integrity
- Propriety
- Equality
- Competence and diligence

In April 2003, these Principles, now known as the Bangalore Principles, were adopted by the United Nations Human Rights Commission as “the first ever instrument not drafted by representatives of governments to have been accepted and endorsed by the United Nations”. They remain in place today with the same authority.

In July 2006, the [United Nations Economic and Social Council \(ECOSOC\)](#)³ adopted a resolution recognizing the Bangalore Principles as representing a further development of, and as being complementary to, the 1985 United Nations Basic Principles on the Independence of the Judiciary.

² For more information about the Judicial Integrity Group, visit: <https://www.judicialintegritygroup.org/>

³ For more information about ECOSOC, visit: <https://www.un.org/ecosoc/en/home>

ECOSOC invited States to encourage their judiciaries to take into consideration the Principles when reviewing or developing rules with respect to judicial conduct.

In 2007, following extensive consultations and a dedicated expert meeting, the Judicial Integrity Group, with support of UNODC, published the detailed Commentary on the Bangalore Principles.

In 2010, the Judicial Integrity Group adopted the Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct, also known as the “Implementation Measures”.



What is the legal status of the Principles?

- In 2003, the United Nations Human Rights Commission brought the Principles to the attention of Member States. In 2006, they were endorsed by ECOSOC.
- They are the first ever instrument not drafted by representatives of governments to have been accepted and endorsed by the United Nations.
- The Principles are not legally binding and do not aim to set out directly enforceable standards of behaviour, but rather offer guidance to the judiciaries of the world. The Principles underwent extensive consultations involving chief justices and senior judges from over 75 Member States.

Link to the United Nations Convention against Corruption

The [United Nations Convention against Corruption \(UNCAC\)](#)⁴ is a multilateral treaty negotiated by Member States of the United Nations and promoted by the United Nations Office on Drugs and Crime (UNODC).

The Convention is a legally binding international anti-corruption agreement. It provides further reinforcement for the ideas that underpin the Bangalore Principles.

Article 11. Measures relating to the judiciary and prosecution services:

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

⁴ For more information about UNCAC, visit: <http://www.unodc.org/unodc/en/corruption/uncac.html>

How do the Bangalore Principles correspond with judicial oaths?

It is standard practice across the world for a judge to take a judicial oath upon appointment. To what extent do these oaths replicate the Bangalore Principles of Judicial Conduct?

In the following exercise you will be shown a sample of a few oaths, drawn from every continent.

E1 Exercise 1

Take a moment to work out how many of the Principles each oath covers. Match the oaths on the left with the values underpinning the Bangalore Principles on the right.

I do solemnly swear that I will administer justice with respect to persons and do equal rights to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me under the Constitution.		Equality, Competence and diligence. Bahrain
I do solemnly swear that I will perform my judicial duties in accordance with the Constitution and the law.		Independence, Impartiality, Integrity, Propriety, Competence and diligence. Burundi
I swear to... faithfully discharge my duties with integrity, impartially and independently, and confidentiality of the deliberations and to constantly carry myself with dignity.		Independence, Impartiality, Equality, Competence and diligence. United States
I swear (by God, the Almighty), to render justice among people and to observe the Kingdom's laws and regulations.		Impartiality, Integrity, Propriety, Competence and diligence. Russian Federation
I solemnly swear to discharge my duties honestly and conscientiously, to administer justice, obeying only the law, and to be impartial and just, as my duty as a judge and my conscience dictate to me.		Competence and diligence. Montenegro

Before you continue, we invite you to pause for a moment and reflect upon the views of four distinguished jurists on the constitutional importance of an effective judiciary in an ever-evolving world.

“ All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous judiciary.”

*Andrew Jackson,
United States President, 1767-1845*

“ To the extent that I have seen judges in other countries with legal structures that do not include the same expansive constitutional provisions that we have in South Africa taking positions that keep alive in a meaningful way the core values of an open and democratic society, I take pride in our profession.”

*Albie Sachs,
South Africa Constitutional Court, 1994-2009*

“ There are some new and emerging issues with which a judge in the world today may be confronted and which never arose for judicial consideration thirty or forty years ago.”

*Desirée Bernard,
Caribbean Court of Justice, 2005-2014*

“ All the mechanisms and safeguards enshrined in laws, and rules for the administration of justice, will be futile in the absence of judicial integrity.”

*Walter Samuel Nkanu Onnoghen,
Chief Justice of Nigeria, during the launch of the
Global Judicial Integrity Network, 2018*

PRINCIPLE 1

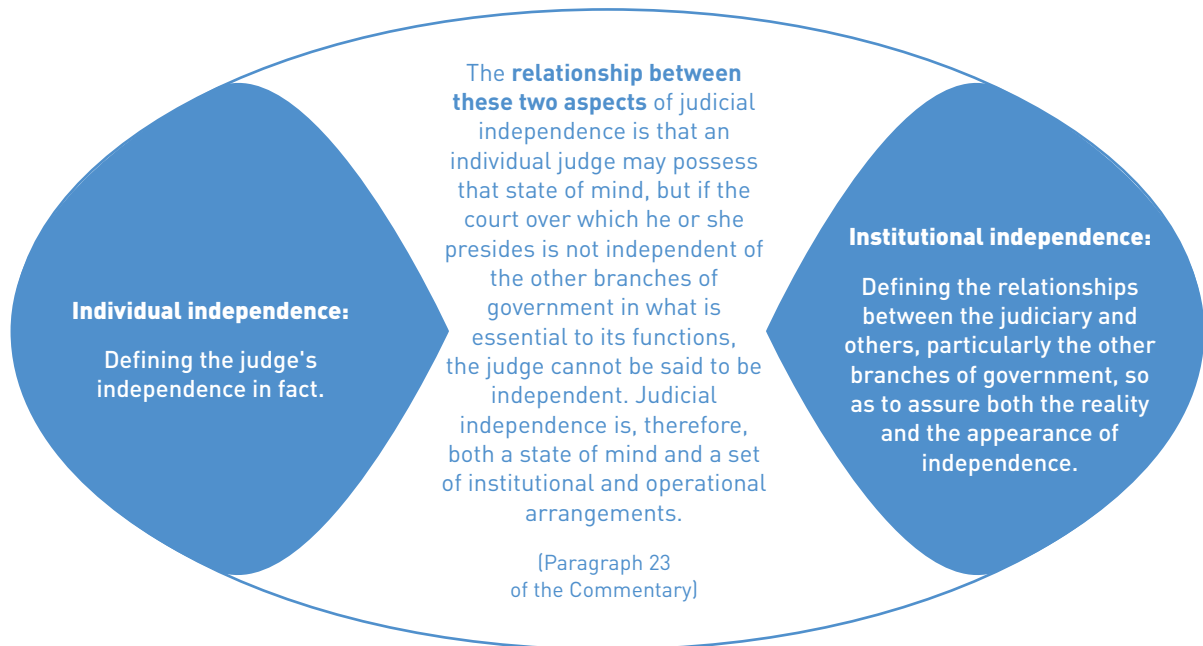
JUDICIAL INDEPENDENCE

The First Bangalore Principle states as follows:

Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

INDIVIDUAL AND INSTITUTIONAL INDEPENDENCE

The Commentary on the Principles explains the difference between individual and institutional independence in the following terms:



LINK BETWEEN JUDICIAL CONDUCT AND INDEPENDENCE

Let's have a look at the words of a well-known judge from South Africa and another eminent judge, the retired President of the Supreme Court of the United Kingdom.

“Anybody sitting on a high court in any land must feel the pressures of the threatening and disturbing events of our times... If we judges are not here to say through our decisions something profound about what our country stands for when it is being tested, then we are not fulfilling our vocation as judges.”

*Albie Sachs,
The Strange Alchemy of Life and Law, 2009.*

“The rule of law requires respect for judges—but only as judges, not as individuals. And we need to earn and retain that respect. We must maintain our high quality while doing everything we can to be more diverse, we must remain steadfast to the law, notwithstanding media pressure. We must be humane and socially aware but not sentimental or pandering to short-term trends. We must be consistent and clear in developing legal principles and we must be fearless but restrained when exercising our public-law powers.”

*Valedictory remarks of Lord Neuberger,
Supreme Court, 28 July 2017*

SEPARATION OF POWERS

The concept of judicial independence forms part of the doctrine of the separation of powers. What is the doctrine, when was it first propounded and by whom?

Separation of powers refers to the idea that the major institutions of the State should be functionally independent and that no individual should have powers that span these offices. The principal institutions are usually taken to be the executive, the legislature and the judiciary.

The theory was first propounded by the French Philosopher Charles-Louis de Secondat, Baron de La Brède de Montesquieu, in his work *The Spirit of the Laws*, published in 1748.

The separation of powers is intended to guard against tyranny and preserve liberty. Montesquieu held that the major institutions should be divided and dependent upon each other so that one power would not be able to exceed that of the other two.

Today, the separation of powers is more often suggested as a way to foster a system of checks and balances necessary for good government.

E2

Exercise 2

The text of the Principles provides a series of examples of the application by a judge of judicial independence. Before proceeding further, give examples of your own application of judicial independence to illustrate to the wider community the importance of this issue.

Try to find two examples and write them here:



BANGALORE PRINCIPLE 1.1

A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law and free of any

- Extraneous influences
- Inducements
- Pressures
- Threats or
- Interference, direct or indirect, from any quarter or for any reason

PRINCIPLE 1.1

Paragraph 29 of the Commentary deals with the issue in more detail:

"All attempts to influence a court must be made publicly in a court room, and only by litigants or their advocates. A judge may occasionally be subjected to efforts by others outside the court to influence his or her decisions in matters pending before the court. Whether the source be ministerial, political, official, journalistic, family or otherwise, all such efforts must be firmly rejected. These threats to judicial independence may sometimes take the form of subtle attempts to influence how a judge should approach a certain case or to curry favour with the judge in some way. Any such extraneous attempt, direct or indirect, to influence the judge, must be rejected. In some cases, particularly if the attempts are repeated in the face of rejection, the judge should report the attempts to the proper authorities. A judge must not allow family, social or political relationship to influence any judicial decision."

C

Case study: Ms. White

Situation

You have pending before you a matter involving Ms. White. The matter has been pending for an extraordinarily long time, partly through your own poor time management and partly for other extraneous reasons. Ms. White is very frustrated about this, as the matter is important to her and the delay is causing her much distress.

She has now complained to her Member of Parliament that her case is taking far too long to be resolved. The Member of Parliament agrees with her and he decides to try to speed things up. To this end, he has written to you indicating that he is writing on behalf of his constituent, Ms. White. He criticizes your lack of expedition and raises doubts as to your competence. The letter is copied to your Court President and also to the Court Manager. He goes on to request an expeditious and just resolution of the matter and threatens otherwise to write a formal letter of complaint to the Chief Justice, and to the authority responsible for the discipline and removal from office of incompetent judges.

Questions

We invite you to spend a few moments considering the facts of this case study and answer the following questions. One or more answers can be correct. You can read an additional explanation in annex II.

1. This case study involves looking in particular at three of the six values. Which ones?

- | | |
|---------------------------------------|---|
| <input type="checkbox"/> Independence | <input type="checkbox"/> Propriety |
| <input type="checkbox"/> Impartiality | <input type="checkbox"/> Equality |
| <input type="checkbox"/> Integrity | <input type="checkbox"/> Competence and diligence |

2. Which of the following paragraphs of the Commentary are especially relevant to this case study?

- ☐ 29 ☐ 34 ☐ 38 ☐ 44 ☐ 100 ☐ 137 ☐ 207

3. Who, if any of the following, should reply to the MPs letter?

- | | |
|---|---|
| <input type="checkbox"/> You as the sitting judge | <input type="checkbox"/> The Court Manager |
| <input type="checkbox"/> The Chief Justice | <input type="checkbox"/> Your Court President |

C**Case study: The Philanthropic Club****Questions**

Before you continue with the next case study, please answer the following questions:

1. Which paragraph in the Commentary covers membership in secret societies?

☐ 127☐ 115☐ 117

2. Which paragraph in the Commentary states that any attempt to influence a judgement must be rejected?

☐ 31☐ 29☐ 35**Situation**

You are a member of a philanthropic club. You are also a judge in a case where one of the parties is a member of the same club. That person approaches you and begs you to talk about the legal aspects of the case involving the reimbursement of a loan. The legal situation is such that if he or she loses the dispute, his or her company will go bankrupt, he or she will lose a large personal mortgaged property, and 200 workers will be fired. On the other side is the creditor, a commercial bank, who would not in practice be significantly affected by non/delayed reimbursement of the loan.

Key issues

Write here the key issues that have arisen in this case study, before consulting the model answer provided in annex II.



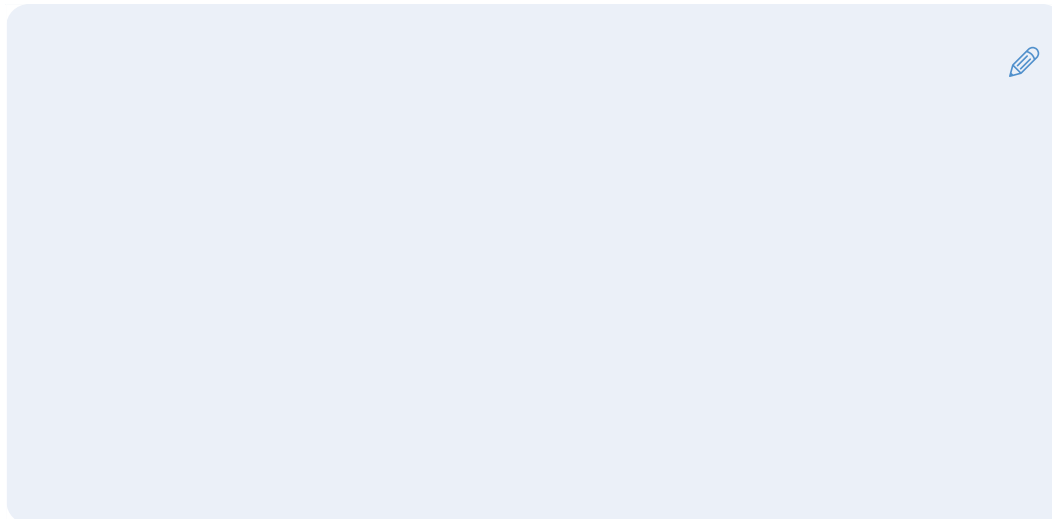
BANGALORE PRINCIPLE 1.2

A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.

PRINCIPLE 1.2

E3 Exercise 3

Think of five examples of possible abuses of this principle within your own jurisdiction and write them here:



Reflection

The reflection on possible abuses of this principle raises the following question:

How far should a judge go in ensuring that he or she strikes an appropriate balance between true independence and a keen awareness and understanding of the lives of others?

The poet John Donne writing over 400 years ago lyrically expressed this dilemma in the following immortal words:

“ No man is an island,
Entire of itself,
Every man is a piece of the continent,
A part of the main.”

A judge shall be independent in relation to society in general but complete isolation is neither possible nor beneficial. So how independent of society is a judge expected to be?

Have a look at the Commentary to get assistance on this dilemma.

“While a judge is required to maintain a form of life and conduct more severe and restricted than that of other people, it would be unreasonable to expect him or her to retreat from public life altogether into a wholly private life centred around home, family and friends.”

Commentary, paragraph 31

“The complete isolation of a judge from the community in which the judge lives is neither possible nor beneficial [...]. A judge is not merely enriched by knowledge of the real world; the nature of modern law requires that a judge live, breathe, think and partake of opinions in that world [...] Increasingly, the judge is called upon to address broad issues of social values and human rights, to decide controversial moral issues, and to do so in increasingly pluralistic societies. A judge who is out of touch is less likely to be effective.”

Commentary, paragraph 32

E4 Exercise 4

Bearing in mind the desirability not to isolate judges from society, consider which of the following activities of a judge are acceptable and which are not and discuss them with your colleagues. Match the scenarios with the relevant Commentary paragraphs. Please note that apart from these paragraphs, paragraphs 103, 109, 111, 113, 114 and 115 are also relevant to all the scenarios.

Attending a night club at 1.00 am		74 76 52 156
Agreeing to appear on a live TV chat show		116
Drinking regularly in a local bar in a country where the consumption of alcohol is legal		166 167
Dressing up as judge for a local event that invites people to throw wet sponges at you		118
Distributing food to homeless people in the street at night		111 114 166

SOCIAL MEDIA AND DIGITAL SECURITY

There is little doubt that the impact of social media upon the lives of us all is the phenomenon of our times. The proliferation of social media is also creating new conduct and ethics issues with regard to all Bangalore Principles. The ways in which social media operate present a huge challenge to the modern judge whether it be in the preparation and conduct of a hearing or in the personal life of a judge. How a judge handles social media may well involve questions of conduct and ethics.

› Refer to annex I to learn more about the main social media terms currently in use.

Social media game

We invite you to spend a few moments considering some social media facts.

1. What company owns WhatsApp and Instagram?

☐ LinkedIn

☐ Facebook

☐ Youtube

2. Do WhatsApp and Instagram share data with Facebook?

☐ No

☐ Yes

3. Does the Commentary cover the use of Facebook?

☐ No

☐ Yes

4. Is the following statement true or false?

“Facebook is a free social networking website that allows registered users to create profiles, upload photos and video, send messages and keep in touch with friends, family and colleagues.”

☐ True

☐ False

Top tips

Before we go any further, we would like to offer you a practical piece of assistance and give you some tips on how to keep safe on the Internet.

Personal information

Find out what information about you is public. Make every effort to ensure that your home address and telephone number are not online.

Online services

When signing up for online services, enter the minimum amount of authentic information possible. Consider providing an untraceable answer to a security question (for example, that your first pet was called “The Statue of Liberty”).

Non-usage of social media

If you don’t use social media, protect yourself by speaking to those who do and find out how they protect themselves (or don’t!).

Usage of social media

If you do use social media, do the following:

- Take care of your privacy. Check who can see what you post: friends, friends of friends, everyone? By default, social media accounts are often set as public so always check the settings to control your visibility. Don’t announce online your holiday plans or your house move. Be careful of the photographs you share. Ask friends or family members not to “tag” you in photographs.
- Do not post anything that would damage public confidence in the impartiality of the judiciary, e.g. political views, matters of public debate.
- Do not identify yourself on social media as a judge or a member of the judiciary. Do not discuss your cases on social media. Be very wary about accepting “friend requests” from lawyers or representatives who may appear before you.

Websites and browsers

Check the default settings of websites and browsers you use. Can you increase the privacy settings? Be wary of signing up to websites using your social media profiles. For your email and social media accounts, check in the settings if there is an option to turn on two-step verification and if there is, enable it. For example, apart from the usual password, a code will be sent to your phone via text or call – this will help you protect your account and have stronger security.

Password

Change your passwords if you have reason to fear they might have been compromised (bank fraud, etc.). Do not use the same password for everything. Make sure that they are strong passwords preferably “pass phrases” and that they contain both upper case and lower-case letters, numbers and special characters.

Smartphones

Maximize privacy settings on your smartphones. Turn off location services. Do not allow apps to access all your contacts or photos. Back up your data. Use encryption services for calls and texts where you can, such as WhatsApp, SIGNAL, or Confide. Use anti-virus and anti-spyware software. Keep software up-to-date, because that is how weaknesses are identified and repaired.

Public WiFi

Be wary of using free public WiFi, which is usually not encrypted.

Email address

Use more than one email address. For personal use, consider using an email address that does not contain your name.

Untrustworthy sources

Treat unsolicited texts and emails warily. Do not reply. Do not open attachments if you are not confident that the source is safe. Never give out confidential information (usernames, passwords, credit card details) – legitimate organizations do not ask for sensitive information via email.

Examples

In addition to following the tips just described, be aware that the codes of conduct and discipline of your own State may also set out rules or guidelines for social media usage.

Please see below some examples of how the issue of the use of social media by judges is being dealt with by various jurisdictions.

Czechia

The Union of Judges of the Czech Republic issued the following six conclusions with regard to the use of social media by judges:

1. All communications by a judge (posts, comments, photos, etc.) must respect the dignity of judicial functions and cannot cast doubt on his or her impartiality or independence.
2. A judge should not create relationships that would give an impression that they could affect a judge's decision-making.
3. A judge does not comment on ongoing court proceedings.
4. A judge does not provide legal advice.
5. A judge avoids political judgments (among others to support a candidate for a political function, does not "like" political parties or movements, does not give an opinion on controversial political questions unless they concern justice matters)
6. A judge should bear in mind that he or she can never be certain as to where his or her communication might end up appearing, even if it was originally meant only for a limited circle of addressees.

Brazil

The Brazilian Magistrates Association issued a Manual for the Magistrates' Use of Social Media.

► [This resource is only available in Portuguese: http://www.amb.com.br/wp-content/uploads/2017/07/Manual-da-AMB-para-magistrados_-o-uso-das-redes-sociais_SITE_v2.pdf]

The Manual advises judges:

- Not to use social media to write a personal diary
- Not to add people to a conversation without introducing them
- To pay attention to correct spelling
- To refrain from posting advertising or political messages, which might be politically incorrect or prejudiced
- To take part in closed groups;
- Not to give opinions on political issues
- Not to share posts of hatred or violence
- Not to share posts of alcohol consumption or nudity
- To avoid posts that show off ostentation

The United States of America

Codes of conduct of several States include comments on the use of social media.

Idaho:

While judges are not prohibited from participating in online social networks, such as Facebook, Instagram, Snapchat . . . they should exercise restraint and caution in doing so. A judge should not identify himself or herself as such, either by words or images, when engaging in commentary or interaction that is not in keeping with the limitations of this Code.

New Mexico:

Judges and judicial candidates are encouraged to pay extra attention to issues surrounding emerging technology, including social media, and are urged to exercise extreme caution in its use so as not to violate the Code.

West Virginia:

The same Rules of the Code of Judicial Conduct that govern a judicial officer's ability to socialize and communicate in person, on paper, or over the telephone also apply to the Internet and social networking sites like Facebook.

E5**Exercise 5**

While bearing in mind that the six values underpinning the Bangalore Principles are of a crosscutting nature and may touch upon several scenarios at once, choose one value for each scenario that is most closely related to it.

Judge carries out Google search regarding defendant's background without informing court.		Integrity
Judge's unguarded views on the "honesty" of citizens of a particular country secretly recorded at private party and published online.		Propriety
Hacked details of the judge's savings account in offshore tax haven published in national newspaper.		Independence
Facebook picture of the judge dancing in brief swimming trunks at daughter's 18th birthday goes viral.		Equality
Internal email in which the judge expresses view that female members of staff in his or her court work harder than the men, forwarded by male staff member to Equalities Commission.		Diligence and competence
Judge's written decision in a case shown to have been cut and pasted from several previous decisions by other judges.		Impartiality

Example: Facebook

When the Bangalore Principles and Commentary were first drafted, social media were in their infancy. Neither document made any reference to social media. In contrast, the impact of social media today constitutes an increasing area of concern for the judiciary. This is not only because of how social media may influence the conduct and reporting of cases before, during and after the hearing, but also because the universal presence of social media monitoring of so many human activities can render a judge vulnerable to breaches of any of the six Principles.

Read a judicial case about Facebook friendship:

An appellate court in Texas was asked to decide whether a criminal trial had been unfair because of a Facebook friendship between the judge and the victim's father. In the course of deciding that the trial was not tainted by the appearance of bias (principle of impartiality), the court also said that:

Allowing judges to use Facebook and other social media is also consistent with the premise that judges do not "forfeit [their] right to associate with [their] friends and

acquaintances nor [are they] condemned to live the life of a hermit. In fact, such a regime would ... lessen the effectiveness of the judicial officer.” (Comm. on Jud. Ethics, State Bar of Tex., Op. 39 (1978)). Social websites are one way judges can remain active in the community. For example, the American Bar Association has stated, “[s]ocial interactions of all kinds, including [the use of social media websites], can ... prevent [judges] from being thought of as isolated or out of touch.” (ABA Op. 462.)

Now read a case study about a judge who is a keen user of social media.

C

Case study: Judge Sheen

Situation

Judge Sheen of the High Court Criminal Division is a user of multiple social media platforms. She uses WhatsApp and has had Twitter, Facebook and LinkedIn accounts for several years.

On Facebook she keeps contact with more than 250 “friends”, mostly consisting of members of her family, friends as well as acquaintances. There are a small number of colleagues, including fellow judges, prosecutors and private attorneys who at one point or the other sent her “friend” requests. While in some cases these are genuine friendships, mostly these requests have followed encounters during conferences and workshops, appearances in her court and similar encounters of a professional nature. The judge accepted most of these requests as she felt it would be impolite not to do so. The judge is not particularly active on Facebook and uses it only occasionally to congratulate her “Facebook friends” on their birthdays, or post pictures of holidays and gatherings with family and friends.

Issue 1

A Prosecutor, one of the judge’s “Facebook friends” prosecutes a case in her court.

Should she recuse herself?

When you have made your decision, read the answer.

Issue 2

On her 50th birthday, the judge’s mother posts a photo on the judge’s Facebook timeline showing her as a teenager in a bikini frowning at the camera with the caption “How far you have come - so proud of you on your 50th birthday!”

How should she handle this?

When you have made your decision, read the answer in annex II.

BANGALORE PRINCIPLE 1.3

A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

PRINCIPLE 1.3

C

Case study: The gift basket

Questions

Before you continue with the next case study please answer the following questions:

1. Identify the paragraph of the Commentary that states that judges are not beholden to the government of the day.

☐ 25

☐ 38

☐ 40

2. Identify the paragraph of the Commentary that states that outside influences must not colour judgement.

☐ 27

☐ 28

☐ 30

Situation

You have just been appointed to the bench as a middle ranking judge hearing both civil and criminal trials. You work in a country where Christmas is celebrated as an important event for sharing with friends and family. You believe yourself to be a fair and conscientious judge and you are ambitious to get on with your career. You hope you might ultimately rise to the most senior level of the judiciary.

Returning to your judicial chambers from court on the last day before the Christmas break, you discover a lavish basket containing foods, drinks and luxury groceries. The basket is a gift from the State Governor, the leading elected politician in your area. A colleague informs you that every year the Governor sends such baskets as “expressions of thanks and gratitude to all my hard-working public servants”. He tells you that all the other judges accept the baskets with gratitude, and so should you.

Key Issues

We invite you to spend a few moments considering the facts of the case study, and jot down here the **main issues that it raises**, then consult the model answer provided in annex II.



BANGALORE PRINCIPLE 1.4

In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.

PRINCIPLE 1.4

Judicial independence requires freedom from undue influence that might come from the actions or attitudes of other judges. In line with Commentary paragraph 40, this means the following:

1. Although a judge may sometimes find it helpful to pick the brain of a colleague on a hypothetical basis, judicial decision-making is the responsibility of the individual judge, including each judge sitting in a collegiate appellate court.
2. The hierarchical organization of the judiciary is irrelevant.
3. Apart from any system of appeal, a judge deciding a case shall not act on any order or instruction of a third party inside or outside the judiciary. Any hierarchical organization of the judiciary and any difference in grade or rank shall, in no way, interfere with the right of a judge to pronounce the judgment freely, uninfluenced by extrinsic considerations or influences.
4. The above guidance does not advise against discussions, conferences, meetings, etc. among judges on problematic or new areas of law. As long as independence on the part of judges is protected, such exchanges may have a wide range of permissible results and provide judges with useful guidance.

BANGALORE PRINCIPLE 1.5

A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

PRINCIPLE 1.5

This is a complex manifestation of the independence principle, as it appears to encourage judges to be proactive in ensuring that threats to the effective discharge of justice (e.g. inadequate resources, poor quality support staff, inappropriate political interventions) should be actively exposed. Read the following two sections of the Commentary and reflect for a moment upon their content.

"A judge should recognize that not everyone is familiar with these concepts and their impact on judicial responsibilities. Public education with respect to the judiciary and judicial independence thus becomes an important function, both of the government and its institutions, and of the judiciary itself, for misunderstanding can undermine public confidence in the judiciary. The public may not get a completely balanced view of the principle of judicial independence from the media, which may portray it incorrectly as protecting judges from review of and public debate concerning their actions. A judge should, therefore, in view of the public's own interest, take advantage of appropriate opportunities to help the public understand the fundamental importance of judicial independence."

Commentary, paragraph 44

"Occasions may arise when a judge – as a human being with a conscience, morals, feelings and values – considers it a moral duty to speak out. For example, a judge might exercise his or her right to freedom of expression by: joining a vigil; holding a sign or signing a petition to express opposition to war; supporting energy conservation or independence efforts; or funding an anti-poverty agency. These are expressions of concern for the local and global community. If any of these issues were to arise in the judge's court, and if the judge's impartiality might reasonably be questioned, the judge must disqualify himself or herself from any proceedings if past actions cast doubt on the judge's impartiality and judicial integrity."

Commentary, paragraph 140

Examples

There remains a strong tradition of judicial silence when under attack. But there is increasing encouragement to be found for the promotion of judicial proactivity to uphold the independence principle in the words of many eminent judges, of which the following are but two examples.

“ No higher duty or more solemn responsibility rests upon this Court than to uphold social justice.

Indian Supreme Court

“ Criticism of public office holders is common and normal in a democracy and it is right and proper that this is so. Within limits fixed by law, judges should not expect immunity from criticism or their decisions, reasons and conduct of a case. But insofar as judicial independence is central to the rule of law in each of our nations, we also have to protect it or to fight for it. Strong judicial leadership and engagement are needed. Judges cannot expect others to do all that is necessary to protect the position of the judiciary and the justice system. They must expect at times, to take a proactive stance.

*Lord Thomas,
Chief Justice of England and Wales, 2017*

C

Case study: Judge Onani

Situation

Judge Onani is a judge of the first instance court and a member of the Council of his country's National Association of Judges. At meetings of the Association, he speaks very often of the dissatisfaction of many judges, as well of his personal dissatisfaction. Many consider that the Ministry of Justice does nothing to solve the problems that heavily burden the work of judges, such as:

- Working conditions below a satisfactory level
- The number of cases which by their nature and the legal weight do not need to come to the courts is increasing, which takes time for judges and prevents high-quality work on more complex cases
- No policy for hiring new staff at the courts
- Generally no necessary reform activities contemplated

Judge Onani proposes that the National Association of Judges should send to the Ministry an official complaint regarding the above-mentioned problems, thinking that this would encourage the Ministry to take positive action. But because nothing has happened after several meetings of the Association, Judge Onani decides to act independently. He writes a very critical article in a national law journal. A journalist of a very influential newspaper reads the article. He contacts Judge Onani and proposes an interview in which the judge could speak openly about the problems in the judiciary. The interview took place and was published in the newspaper.

Questions

Please answer the following questions with regard to this case:

1. Identify the paragraph of the Commentary dealing with the question: "When the judge feels a moral duty to speak."

☐ 140☐ 179☐ 166

2. Does paragraph 140 cover Judge Onani's dilemma with the question "When does the judge feel a moral duty to speak?"

☐ Yes☐ Partially

3. Which of these reasons is given in the Commentary to explain why a judge should exercise great restraint when speaking?

☐ The judge's personal security☐ A judge should not be seen as lobbying government☐ Effect upon the judge's career

4. Identify the paragraph of the Commentary that states judicial independence includes "independence with respect to matters of administration that relate directly to the exercise of the judicial function."

☐ Paragraph 26 (a)☐ Paragraph 26 (b)☐ Paragraph 26 (c)

You can read an additional explanation in annex II.

Ethical issues

We also raise two serious ethical issues facing some judges.

Issue 1

The first problem is one that a judge faces when working in a country with an oppressive law, or one that is slow to change or is not genuinely democratic. Judges across the world operate on very uneven playing fields.

Can a judge in conscience say he or she is upholding the rule of law in a country where the law is the vehicle for enforcing much that is in reality unjust?

We raise this issue because of its importance, but it is beyond the scope of this course for us to provide any solution. However, whether working with an overarching theory of adjudication that limits them to the express statutory text and its logically necessary implications, or with one that is more amenable to the careful development of the meaning of statutory texts by reference to values that may be external to the text, judges should recognize that adjudication does not take place in a moral vacuum but rather a rule-of-law context.

Issue 2

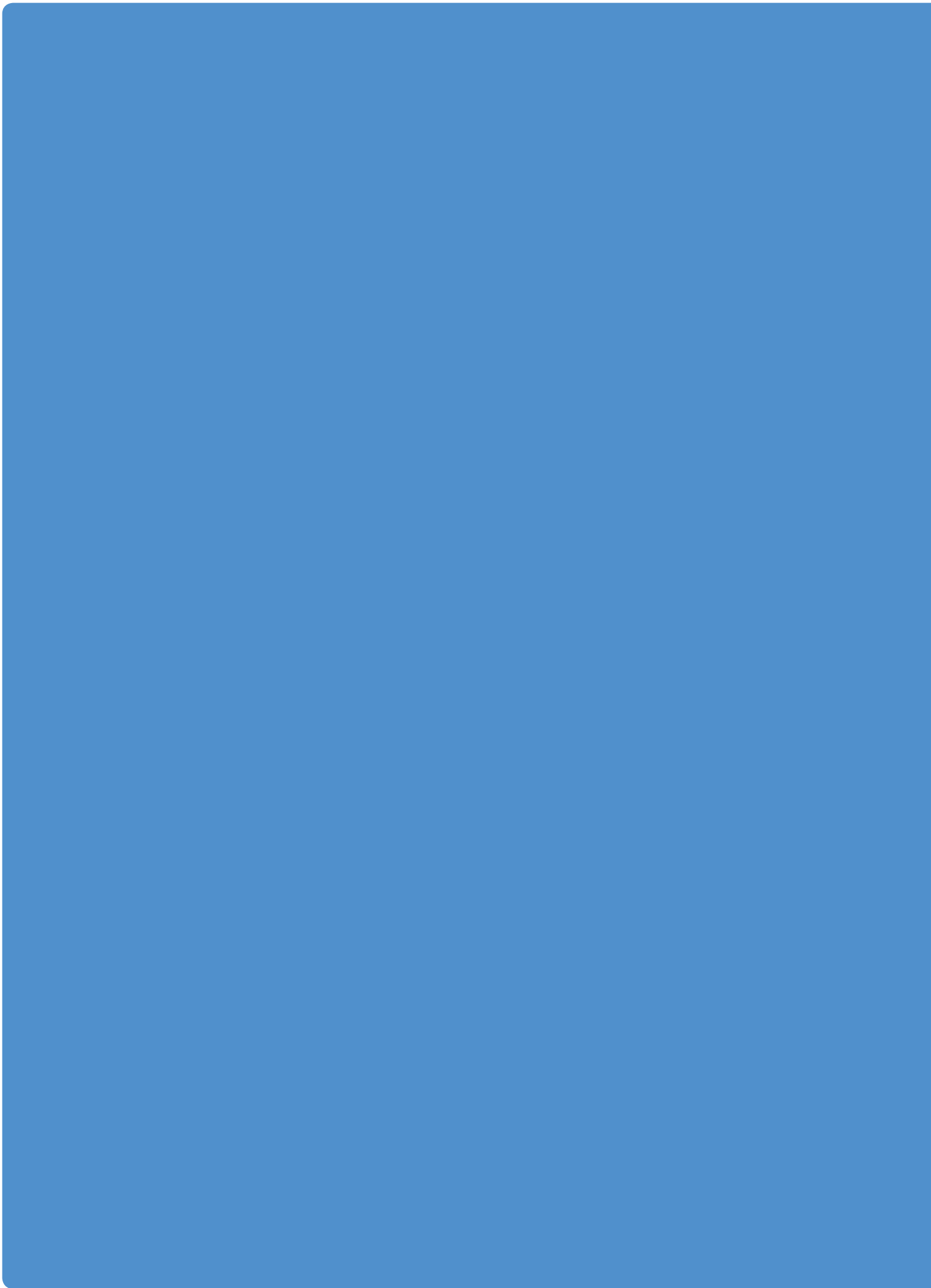
The second problem concerns judges having to deliver a judgement that is correct in law but out of step with popular sentiment. This is an existential problem facing judges that requires our special attention. The advice in these circumstances must always be the same: Be firm to the principle of independence. Read what two very eminent judges have said in judgements where this issue was raised.

“ The question before us, however, is not what the majority of South Africans believe a proper sentence should be. It is whether the Constitution allows the sentence. Public opinion ... is no substitute for the duty vested in the Courts to interpret the Constitution and to uphold its provisions without fear or favour. If public opinion were to be decisive, there would be no need for constitutional adjudication.

President Chaskalson of the Constitutional Court of South Africa

“ It is not our job to protect the people from the consequences of their political choices.

Justice Roberts of the United States Supreme Court



PRINCIPLE 2

IMPARTIALITY

The Second Bangalore Principle states as follows:

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

BANGALORE PRINCIPLE 2.1

A judge shall perform his or her duties without favour, bias or prejudice.

PRINCIPLE 2.1

Paragraph 52 of the Commentary further states:

“Impartiality is the fundamental quality required of a judge and the core attribute of the judiciary. Impartiality must exist both as a matter of fact and as a matter of reasonable perception. If partiality is reasonably perceived, that perception is likely to leave a sense of grievance and of injustice, thereby destroying confidence in the judicial system. The perception of impartiality is measured by the standard of a reasonable observer. The perception that a judge is not impartial may arise in a number of ways, for instance through a perceived conflict of interest, the judge’s behaviour on the bench or his or her associations and activities outside the court.”

OBJECTIVE IMPARTIALITY


Impartiality can be either objective or subjective. Let’s first have a look at objective impartiality.

Objective impartiality: A judge should never make any comments in public that might impair the manifest fairness of the judicial process. Out of court too, a judge should avoid deliberate use of words or conduct that could reasonably give rise to a perception of an absence of impartiality. Everything – from a judge’s associations or business interests, to remarks that he or she may consider to be nothing more than harmless banter – may diminish the judge’s perceived impartiality.

E6 Exercise 6

The Commentary on the Bangalore Principles should become a working tool for you in your work as a judge. To help you better find your way around the Commentary in the context of impartiality, match the following themes with the number of the relevant paragraph:

A perception of partiality erodes public confidence		93
Correspondence with litigants		55
Manifestations of bias or prejudice		73
Personal knowledge of disputed facts		58

When judges should make disclosure		69
Irrelevant grounds		64
Duty to restrain the activities of family members		89
Ex parte communications must be avoided		80

E7 Exercise 7

Now answer the following questions based upon the paragraphs you have just identified. Additional feedback can be found in annex II.

1. Bias may manifest itself in the judge's body language.

☐ Correct

☐ Incorrect

2. Bias is only relevant if directed towards a party.

☐ Correct

☐ Incorrect

3. An action of a judge's family may be relevant to an assessment of his or her impartiality.

☐ Correct

☐ Incorrect

4. A judge should not communicate with disappointed litigants after the trial is concluded.

☐ Correct

☐ Incorrect

5. It is generally inappropriate for a judge to defend judicial reasons publicly.

☐ Correct

☐ Incorrect

6. It is open to a judge to recuse him or herself after a trial has begun.

☐ Correct

☐ Incorrect

7. Private communications between a judge and any of the legal representatives in a trial are generally prohibited.

☐ Correct

☐ Incorrect

8. If a judge hearing a case receives any private communication in the course of a case from a party to the proceedings, a witness or a juror, all other parties and their legal representatives must be informed of this communication, and the court record must note it accordingly.

☐ Correct

☐ Incorrect

Political activity

Paragraph 65 of the Commentary on the Bangalore Principles states that:

1. All partisan political activity and association should cease upon the assumption of judicial office.
2. Partisan political activity or out-of-court statements concerning issues of a partisan public controversy by a judge may undermine impartiality and lead to public confusion about the nature of the relationship between the judiciary, on the one hand, and the executive and legislative branches, on the other.
3. By definition, partisan actions and statements involve a judge in publicly choosing one side of a debate over another.

E8

Exercise 8

Find the paragraph in the Commentary that deals with the question of whether a judge's political affiliations prior to becoming a judge might present grounds for disqualification.



In which of the following circumstances might recusal be necessary?

1. A human rights case in which a judge was previously a human rights lawyer but since appointment to the bench has publicly stated that his past advocacy work is now irrelevant.

☐ Judge should sit on case.

☐ Judge should not sit on case.

2. Judge in the above circumstances who has made no public statement of this nature.

☐ Judge should not sit on case.

☐ Judge should sit on case calling in response to any recusal request their judicial oath, and the Bangalore Principle on Impartiality.

3. Judge appointed to try a rape case who has previously been an outspoken supporter of the Campaign Group Women Against Rape.

☐ Judge should offer to recuse herself and make final decision having heard arguments from both parties.

☐ Judge should proceed to hear case without hearing arguments.

E9 Exercise 9

A judge should not express opinions privately that might compromise the sense of their impartiality, as this might undermine public confidence in the judiciary.

Here are three examples of observations made by a judge in private. Which (if any) of these statements do you think compromises the judge's impartiality?

1. Men with untethered dogs frighten me.
2. My clerk has fantastic breasts.
3. I believe most of our cabinet are corrupt.

Political activity: a word of caution and exceptions

Before moving on, we should stress one important point. The strict rules about political activity apply to full-time judges only. They do not necessarily apply to part-time judges, whether paid or unpaid. In a number of jurisdictions, part-time judges are permitted a wider margin of political activity than their full-time colleagues. If you are a part-time judge you can find out more about this distinction by consulting your relevant code(s) of judicial conduct. You may wish to consult again paragraph 88 of the Commentary for further advice on this issue.

Paragraph 65 of the Commentary lists several exceptions to the above rule about partisan political activity and association.

Exception 1: Comments by a judge, on an appropriate occasion, in defence of the judicial institution.

Exception 2: Explaining particular issues of law or decisions to the community or to a specialized audience.

Exception 3: Public defence of fundamental human rights and the rule of law.

Reflect for a moment upon your jurisdiction and think of a concrete example where you could rely upon each exception.



However, even on such occasions, a judge must be careful to avoid, as far as possible, entanglements in controversies that may reasonably be seen as politically partisan. The judge serves all people, regardless of politics or social viewpoints. That is why the judge must endeavour to maintain the trust and confidence of all people, in so far as is reasonably possible.

BANGALORE PRINCIPLE 2.5

A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially.

PRINCIPLE 2.1

E10 Exercise 10

In which of the following circumstances should a judge recuse him or herself?
Additional feedback is available in annex II.

1. Where he or she has previously served as a witness in the matter currently under adjudication.

☐

2. Where he or she, or a member of his or her family, has any financial interest in the outcome of the case. Family includes anybody close enough to be treated as "family" especially if they live in the same household as the judge.

☐

3. Where he or she is a customer in the ordinary course of business with the bank/credit card company that is a party to the dispute in question.

☐

4. Where he or she has personal knowledge of disputed facts in the case.

☐

5. Where he or she is having an undisclosed (secret) affair with one of the advocates in the case.

☐

C

Case study: Friend and former colleague

Situation

You have a long-standing friend, a member of your former chambers, who was your junior in a number of cases in your days at the Bar. She appears before you in a civil case against a litigant in person. The litigant has learnt of your personal friendship and has checked your reported cases together on the Internet. He objects to you hearing the case. None of your judicial colleagues at the court centre can take the case and an adjournment will cause considerable delay and expense. What do you do?

Questions

Before you read a model answer in annex II, please try to answer the following questions:

1. Identify the principle that is relevant for this scenario.

☐ 2.1 ☐ 2.2 ☐ 2.3 ☐ 2.4 ☐ 2.5

2. Identify and read the paragraph of the Commentary that provides advice on dealing with your own feelings when challenged to recuse yourself.

☐ 81 ☐ 87 ☐ 88

3. Identify the paragraph of the Commentary stating that the standpoint of the litigant (or accused) in these circumstances is "important but not decisive".

☐ 52 ☐ 53 ☐ 54

4. Identify and read the paragraph of the Commentary dealing with friendship, animosity and other relevant grounds for disqualification and the ability of a judge to ignore extraneous considerations.

☐ 90 ☐ 94 ☐ 97

5. Identify and read the paragraphs that provide advice on what constitutes reasonable apprehension of bias.

☐ 61-65 ☐ 76 ☐ 81-86

C

Case study: Speech

Situation

A judge is invited by a lawyer, who is also an accomplished writer, to make a speech to launch his book. At the launch, the publisher and the lawyer are present. A photograph is taken of the judge actually launching the book and posted on Facebook. The writer/lawyer subsequently sues the publisher for royalties, and the case comes before the judge who had launched his book.

At the hearing, the publisher objects to the judge presiding over the matter on the basis that the judge has too close a relationship with the writer/lawyer. To support his argument the publisher produces the Facebook picture.

Questions

Please answer the following questions:

1. Identify the relevant Principle(s) of the Commentary to which you need to refer.
One or more answers can be correct.

- ☐ 2.1 ☐ 2.2 ☐ 2.3 ☐ 2.4 ☐ 2.5

2. Identify the relevant paragraph of the Commentary for this scenario.

- ☐ 65 ☐ 66 ☐ 90

You can read an additional explanation in annex II.

SUBJECTIVE IMPARTIALITY

Let's now turn our attention to the complex but highly relevant topic of subjective partiality, which can be either conscious or unconscious. To set the scene, read the following quotes.

“ We do not see things as they are.
We see things as we are.

Ancient wisdom

“ To observations which ourselves we make,
we grow more partial for the observer's sake.

Poet Alexander Pope

Unconscious bias

Subjective partiality is complicated by the fact that it is more often than not unconscious.



Watch this short YouTube video as an introduction to the world of unconscious bias and how to counter it:

► <https://www.youtube.com/watch?v=dVp9Z5k0dEE>
(This video is only available in English.)

At the end of the video, the speaker listed the advice that the Royal Society gives to the members of its selection and appointment panel in order to reduce the risks of unconscious bias in their decision-making.

Try to write down the four tips listed. Consider how they might also assist you in reducing your risk of unconscious bias in your work as a judge. If you cannot remember them, read the tips in the annex. But try writing down what you remember first!



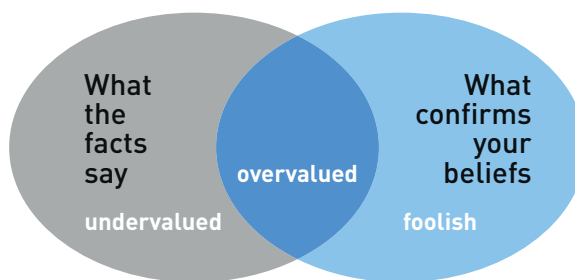
Common cognitive biases

We will now introduce you to some of the most common cognitive biases of which you should be aware:

Confirmation bias

We pay more attention to information that confirms our existing assumptions.

It is human nature to seek out evidence to support your preliminary theory when trying to solve a problem. We do it all the time. It is called confirmation bias. As a judge you should make every effort to resist this bias whether considering written evidence or oral testimony. The overlapping circles (Venn diagram) on the screen clearly demonstrate the dangers of overvaluing any evidence obtained in this way.



Anchoring bias

This describes the common human tendency to rely too heavily on the first piece of information offered (“the anchor”), when making a decision. During decision-making, anchoring occurs when individuals use an initial piece of information to make subsequent judgments. Once an anchor is set, other judgements are made by adjusting away from that anchor.

Research demonstrates that the anchoring effect is real and can operate in a courtroom setting. It is therefore a bias that judges should be astute to recognize. Objective studies have shown that the higher a plaintiff’s request for damages in court, the higher the award obtained; in rape cases judges have been shown to be strongly influenced by the prosecutor’s sentencing demand: the higher the demand, the higher the sentence; bail decisions have been shown to depend on whether the prosecution requested conditional bail or opposed bail. Sceptical? We suggest you read the research paper by the German social psychologists Birte Englich, Thomas Mussweiler and Fritz Strack, referenced at the end of this course, and think again.

Affinity bias

This is the natural tendency to like those who are similar to us or someone we know and like. Affinity bias also can lead us to ignore or play down the negative traits of people we like and focus on the faults of those we do not.

Affinity bias means feeling then becoming positively biased towards “people who make me comfortable” or “people who are like me”, and feeling then becoming negatively biased towards “people who make me uncomfortable” and “people who are not like me”. As a judge, you must be vigilant to this potential bias when listening to the evidence of parties or witnesses, especially in

cases that are emotionally or politically charged. Remember you are constantly under surveillance in your public role as a judge and any hint of affinity bias will be picked up instantly and will most likely reduce your authority in the courtroom.

Framing bias

The framing effect describes the process by which people react to a particular choice in different ways depending on how it is presented; e.g. as a loss or as a gain. Framing affects many realms of decision-making.

It seems to be part of human nature that the way a proposition is initially framed can influence how we react to the same piece of information. For example, a “95 per cent cure rate” for a drug appears more effective than a “5 per cent failure rate.” People normally prefer to take a 5 per cent rise when inflation is 12 per cent than take a 7 per cent cut when inflation is zero. Considering two packages of ground beef, most people would pick the one labelled, “80 per cent lean” over the one labelled, “20 per cent fat”. As a judge, you must be vigilant to the framing effect of the way in which a problem is presented to you either by parties, witnesses or lawyers. It can create a subjective bias, but by remaining vigilant and using your intelligence you should be able to resist.

Gender bias

Gender bias is a preference or prejudice towards one gender over the other. It can be conscious or unconscious, and may manifest itself in many ways, both subtle and obvious.



Take a look at this short clip:

► <https://www.youtube.com/watch?v=oMoCfpbVels>
(This resource is only available in English)

You will find more details about gender-related integrity issues later under the principle of equality.

Blind spot

Remember that no matter how hard we try to be objective, we all have blind spots.

Describe what you see in the picture.

Can you see (a) a young woman; (b) an old woman; or (c) both?

Now look again. You will discover the correct answer is (c).

Did you have a blind spot?



Conflict of interest

Principle 2.3 of the Commentary states the following:

A judge shall, so far as is reasonable, so conduct himself or herself as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding case.

This principle raises particular issues related to conflict of interest.

Paragraphs 67 and 68 of the Commentary deal explicitly with conflicts of interest and the duty to reduce conflicts of interest arising from financial activities. The potential for interests to conflict arises when the personal interests of the judge (or of those close to him or her) conflict with the judge's duty to adjudicate impartially.

"The potential for interests to conflict arises when the personal interests of the judge (or of those close to him or her) conflict with the judge's duty to adjudicate impartially. Judicial impartiality is concerned both with impartiality in fact and impartiality in the perception of a reasonable observer. In judicial matters, the test for conflict of interest must include both actual conflicts between the judge's own interests and the duty of impartial adjudication, and the circumstances in which a reasonable observer would (or might) reasonably apprehend a conflict. For example, although members of a judge's family have every right to be politically active, the judge should recognize that the political activities of close family members may, even if erroneously, adversely affect the public perception of his or her impartiality."

Commentary, paragraph 67

"Similarly, a judge must not allow his or her financial activities to interfere with the duty to preside over cases that come before the court. Although some disqualifications will be unavoidable, a judge must reduce unnecessary conflicts of interest that arise when the judge retains financial interests in organizations and other entities that appear regularly in court, by divesting himself or herself of such interests. For example, the mere ownership of one per cent or less of the outstanding stock in a publicly held corporation is usually considered to be a de minimis interest not requiring the disqualification of a judge in a case involving that corporation. But often the issue of recusal implicates several considerations, any of which might require disqualification. The stock owned by a judge may be of such significance to him or her, regardless of its de minimis value when viewed in light of the size of the corporation, that recusal is warranted. Likewise, the judge should be aware that the public might view stock ownership as a disqualifying interest. Nevertheless, the judge should not use obviously de minimis stock holdings as a means to avoid the trial of cases. If a judge is frequently recused because of stock ownership, he or she should divest himself or herself of such stock."

Commentary, paragraph 68

E11 Exercise 11

Read the following examples of challenging situations. Are any objective or subjective biases at play here such that you should recuse yourself?

Situation 1: A major airline has called a strike for the forthcoming holiday period. The airline applies to your court for an injunction to halt the strike. On the morning of the case a national newspaper publishes a story revealing that you have booked a family holiday next weekend with this airline. Should you recuse yourself?

Situation 2: You are a well-known supporter of your local basketball team. Their biggest star has been arrested for alleged affray and is currently in custody. He has applied to your court for bail, as the team is competing tomorrow in the National Cup Final. Should you recuse yourself?

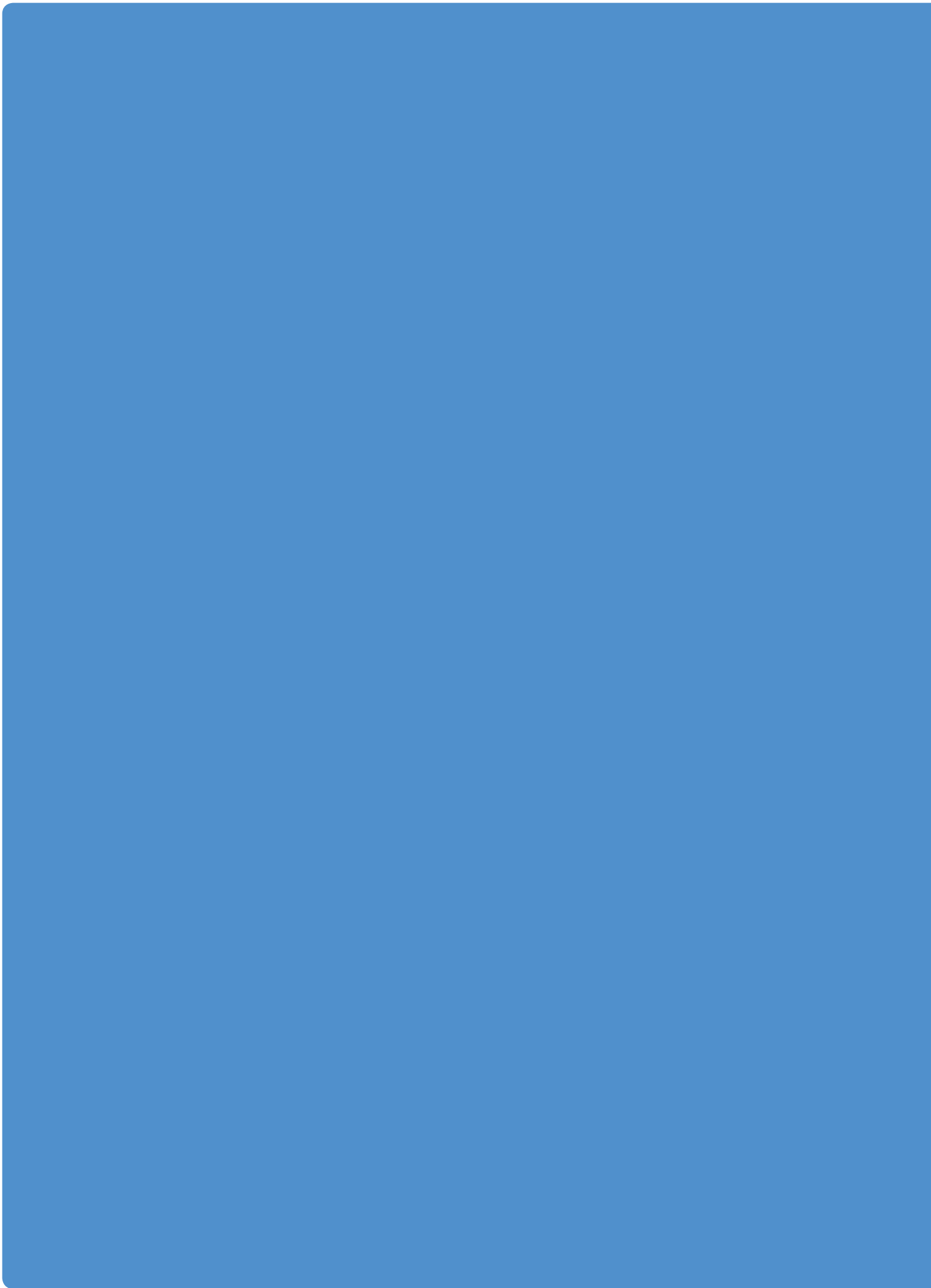
Situation 3: You are the sentencing judge in the case of a female law student, the same age as your daughter. She has pleaded guilty to shoplifting. You feel an emotional connection with the student as she resembles your daughter, with whom you are very close. Your daughter was acquitted last year on a similar charge. Should you recuse yourself?

Why not discuss the scenarios with a colleague, or in a group discussion with colleagues? We do not propose any firm answers. They are all “on the cusp” and could be argued either way, a situation that is not unusual. However, here are some pointers to assist your analysis.

- Recusal would not automatically follow in any of the three situations as long as the judge deals honestly and fairly in assessing the pros and cons in each case. However, it would probably be expedient for the judge to recuse him or herself in Situations 1 and 2, but not 3, on the principle that justice must not only be done but must also be seen to be done (Integrity Principle 3.2). In all three examples the judge should be conscious of the dangers of the “framing effect”.
- Situation 1: Paragraph 99 of the Commentary makes it clear that a “financial interest” in a company appearing before a judge does not include any standard everyday connection as a customer of a big company, bank, etc. Any possible interference with the judge’s planned holiday is mitigated by the fact that many others will also be affected. However, the fact that he or she has a ticket for a holiday with the airline may create the impression (however wrong) of a real risk of bias and the judge should seriously consider recusal.
- Situation 2: The reasonable and informed observer is likely to form a view that a judge’s open affiliation to a basketball team club will trump his or her obligation to impartial adjudication. There is also a risk of affinity bias.
- Situation 3: The judge here should be aware of and deal with the risk of affinity bias. Having done this, recusal is not necessary.

Be careful what you eat

A while back, a team of researchers were interested to find out if the state of a judge's stomach (full, empty, grumbling) might have any impact upon the decisions he or she were making. The results were quite a shock. The team studied more than 1,000 parole decisions made by eight experienced judges in Israel over 50 days, in a ten-month period. After a snack or lunch break, 65 per cent of cases were granted parole. The rate of favourable rulings then fell gradually, sometimes as low as zero, within each decision session and would return to 65 per cent after a break. The evidence clearly suggests that when judges make repeated rulings, they show an increased tendency to rule in favour of the status quo. This tendency can be overcome by taking a break to eat a meal, which is consistent with previous research that demonstrated the positive impact of a short rest and glucose on mental resource replenishment.



PRINCIPLE 3

INTEGRITY

The Third Bangalore Principle states as follows:

Integrity is essential to the proper discharge of the judicial office.

Integrity stands alone as probably the most important of all six Bangalore Principles as it underpins all of them. Integrity is not so much about how a judge behaves. Its principal concern is what sort of the person he or she really is. At its most basic, a person of integrity is honest and in possession of high principles that are strong and do not bend in the breeze.

The word integrity has evolved from the Latin root *integer*, meaning “whole or complete”. Hence the core manifestation of integrity is “living your life in accordance with the core values, beliefs and principles you claim to hold”.

Your integrity is defined by how you act when nobody is watching you and requires you to demonstrate an internally consistent framework of principles.

The writer and philosopher Albert Camus has expressed this idea in the following way:

“Integrity is the integration of what we believe, who we are.
Integrity has no need of rules.

Examples

There is a good lawyers’ joke which goes as follows:

Question: What is 2 plus 2?

Lawyer’s answer: Somewhere between 3 and 5.

This joke is of course intended to show the flexibility of the lawyer’s mind when seeking to do the best for his or her client. But there is also a cynical undertone implying that lawyers will bend any rule in the interest of their client. This is the opposite of integrity. On the other hand, integrity should not be pompous or inflexible.

Two hundred applicants for a senior position in a large company were posed the following question as part of their interview:

On a dark windy night, you are driving your car. Suddenly you notice three people waiting at a lonely bus stop.

- An old woman looking as if she is near death.
- An old friend who once saved your life.
- The woman/man of your dreams.

Your car is just a two seater? To whom would you give a ride?

So, how did you do? Your sense of integrity has probably left you grappling between the first and the second possibility? You should probably give a ride to the old, sick woman, because you have to try and save her life. Or you could choose the old friend, because he saved your life once, and it would be an excellent chance to return the favour. But the answer that got the applicant the job was as follows: I would give the car keys to my old friend and ask him to take the old woman to the hospital. We can sort out the car later. In the meantime, I would stay with the person of my dreams.

BANGALORE PRINCIPLE 3.1 AND 3.2

A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

PRINCIPLE 3.1

The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

PRINCIPLE 3.2

What does it mean to be “above reproach”? The Commentary offers the following guidance in paragraphs 103-105:

- A judge must maintain high standards in private as well as public life.
- A judge should not violate universally accepted community standards although in view of cultural diversity and the constant evolution in moral values, the standards applying to a judge's private life cannot be laid down too precisely.
- A judge should not engage in activities that clearly bring disrepute to the courts or the legal system.

The following further advice is offered regarding integrity:

- A judge must be a good person as well as a good judge.
- A judge's standard of conduct is expected to be higher than that of society as a whole.
- A judge must not break the law.
- A judge should seek to embody in his or her professional and personal life the ideas of honesty and truth for which the justice system stands.

“Thieves for their robbery have authority
when judges steal themselves.

William Shakespeare, Measure for Measure.

Cultural diversity

When providing advice on integrity and cultural diversity, the Commentary becomes more controversial stating as follows:

“In view of cultural diversity and the constant evolution in moral values, the standards applying to a judge’s private life cannot be laid down too strictly.”

Commentary, paragraph 105

Do you agree with this statement?

The Commentary (paragraph 106) suggests that in making a judgement on the role of “cultural diversity” in defining integrity, six factors should be considered:

- (a) The public or private nature of the act and specifically whether it is contrary to a law that is actually enforced;
- (b) The extent to which the conduct is protected as an individual right;
- (c) The degree of discretion and prudence exercised by the judge;
- (d) Whether the conduct was specifically harmful to those most closely involved or reasonably offensive to others;
- (e) The degree of respect or lack of respect for the public or individual members of the public that the conduct demonstrates; and
- (f) The degree to which the conduct is indicative of bias, prejudice, or improper influence.

Let us now examine this proposition and its implications for you as a judge through a case study.

C

Case study: Judge McKenzie

Situation

Judge McKenzie is 48 years old. He is a married man with two teenage children. He is looking forward to participating in a conference on international regulatory law on a Caribbean Island. He has been asked to give a paper on the state of law in his country on the conference topic. The conference will be attended by judges and lawyers from across the world. His economy air fare is paid for by his court as are the fares of the two people accompanying him, a junior judge in his court and his clerk. He will receive a cash per diem from the conference organizers in the local currency upon arrival, to cover the cost of his hotel accommodation and meals during the conference. The following sequence of events occurs:

- Upon check-in, he is allocated a seat with his two colleagues at the rear of the plane. He later returns to the check-in desk stating that he has a bad back (not true) and also he is a judge. He is subsequently upgraded to Business Class. He does not inform his colleagues.
- Armed with his Business Class ticket he goes to the VIP lounge and enjoys a free meal, and drinks. On leaving, he takes a couple of small miniatures of alcohol, as he sees others doing so, despite notices stating they are not to be taken from the lounge.
- Upon arrival at the destination airport, Judge McKenzie heads for the VIP exit on the basis that he is a judge travelling in Business Class. He waves to his two colleagues, lost in a long immigration queue.
- Upon exiting the airport, he bumps into an old friend, an attractive widowed judge who lives locally. She immediately invites him and his colleagues to dinner with her at her villa. He accepts, but declines on behalf of his colleagues, without consulting, them claiming they will be “too tired”.
- At the end of a happy evening, his friend suggests he stays in her villa with her for the duration of the conference, in the guest suite. He willingly accepts.
- Upon arrival at the conference the next day, he claims his per diem expenses for the conference “to cover all meals and accommodation”.
- During the day he telephones his wife and children telling them that his hotel accommodation is “fantastic.”
- On Day 2 of the conference, feeling a little guilty towards his colleagues, he treats them to dinner in an expensive local restaurant.
- Before returning home, the judge gives his host a sumptuous bouquet of flowers as a “thank you” gesture. He also leaves a generous donation to her favourite charity “Donkeys in Distress”.
- Judge McKenzie does not deliver a paper at the conference stating that he unfortunately left it in his office back home. He had not written any paper. He does however take copious notes at the conference with the intention of briefing his judicial colleagues on his return.

Questions

Please analyse each of the judge's actions and decide whether each of these actions does or does not breach the integrity principle. In doing so, take into account the advice set down in paragraph 106 of the Commentary.

1. Stating that he had a bad back and is a judge in order to be upgraded to Business Class, not informing his colleagues and subsequently enjoying the VIP lounge

☐ Yes

☐ No

2. Taking miniatures from the VIP lounge

☐ Yes

☐ No

3. Using the VIP exit on the basis that he is a judge travelling in Business Class

☐ Yes

☐ No

4. Waving at his two colleagues, lost in a long immigration queue

☐ Yes

☐ No

5. Accepting an invitation to dine with his old friend

☐ Yes

☐ No

6. Declining the dinner invitation on behalf of his colleagues without consulting

☐ Yes

☐ No

7. Staying at his friend's villa for the duration of the conference

☐ Yes

☐ No

8. Claiming per diem expenses for the conference to cover all meals and accommodation

☐ Yes

☐ No

9. Lying to his wife and children about the hotel accommodation

☐ Yes

☐ No

10. Treating his colleagues to dinner in an expensive restaurant

☐ Yes

☐ No

11. Buying a bouquet of flowers as a thank you to his friend and leaving a generous donation to her favourite charity

☐ Yes☐ No

12. Not delivering the conference paper stating that he left it at home, when in fact he had not written any paper

☐ Yes☐ No

13. Taking copious notes at the conference with the intention of briefing his judicial colleagues

☐ Yes☐ No

C**Case study: Judge De Souza****Situation**

One morning, Judge De Souza feels a sharp pain in the stomach. He cannot concentrate on his work and decides to seek medical help. He attends a nearby hospital for an examination by a medical specialist. Walking into the waiting room, he sees a crowd of patients waiting their turn for examination, some of whom have been waiting since early morning.

That afternoon he has scheduled an important two-hour court hearing in which it is necessary to hear several witnesses coming from abroad; the hearing has already been postponed several times. He decides to call a friend, a doctor at the same hospital. The friend comes over and escorts him to the front of the queue in full sight of the crowd of patients who had been waiting long before him.

Now consider the facts of this case study. Jot down your views and then continue to read the discussion points:



Discussion points

Under the integrity principle, a judge “shall ensure that his or her conduct is above reproach in the view of the reasonable observer”. In this situation, the way in which this sensitive issue is handled is therefore crucial.

Does the judge have really good reasons for seeking preferential treatment? He feels a pain in the stomach and has an important hearing of witnesses coming from abroad later in the day which has already been postponed. Might this affect the judge's approach to the case? Alternatively, might this just be a small convenient arrangement between the judge and his doctor friend? What about the needs of other patients? Maybe someone with more urgent needs than those of the judge was patiently waiting his or her turn to see the doctor. Does it happen in your countries that people use acquaintances among medical staff to get faster and better health care?

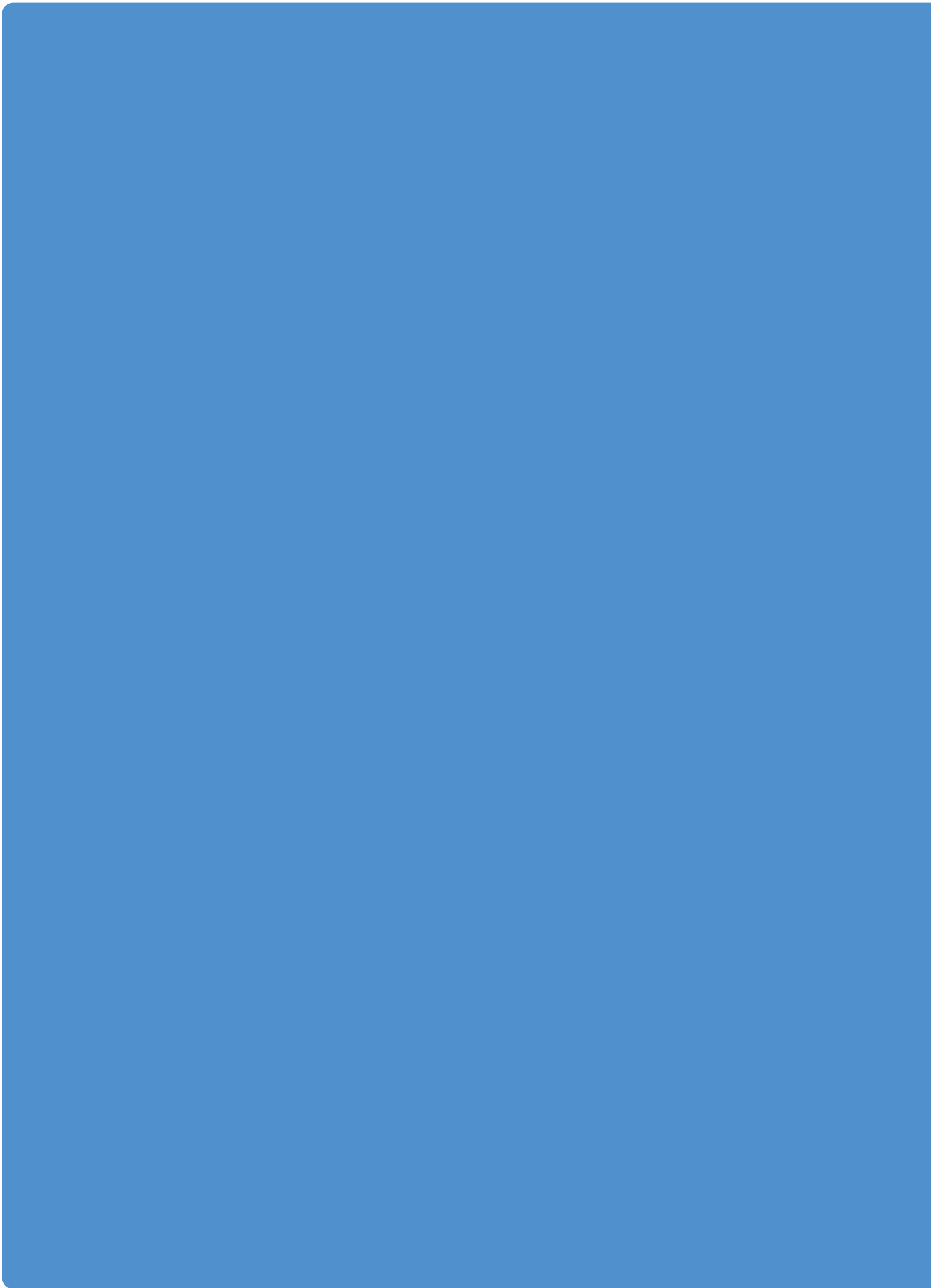
The judge could honestly explain the urgent situation to patients in the waiting room and ask to be let through. If this is your solution, who should go to the patients? A doctor or the judge?

“The behaviour and conduct of a judge must reaffirm the people’s faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.”

Principle 3.2

Paragraph 110 amplifies the statement in Principle 3.2 and states that:

“Because appearance is as important as reality in the performance of judicial functions, a judge must be beyond suspicion. The judge must not only be honest, but also appear to be so. A judge has the duty not only to render a fair and impartial decision, but also to render it in such a manner as to be free from any suspicion as to its fairness and impartiality, and also as to the judge’s integrity. Therefore, while a judge should possess proficiency in law in order competently to interpret and apply the law, it is equally important that the judge act and behave in such a manner that the parties before the court are confident in his or her impartiality.”



PRINCIPLE 4

PROPRIETY

The Fourth Bangalore Principle states as follows:

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Propriety requires conformity to conventionally accepted standards of behaviour or morals. Propriety is in essence the flip side of integrity. While integrity reflects the private side of a judge's values, propriety reflects his or her public side. Although a judge, like any other citizen, is entitled to a private life, paragraph 114 of the Commentary stresses that "a judge must expect to be the subject of constant public scrutiny and comment, and must therefore accept a restriction on his or her activities that might be viewed as burdensome by the ordinary citizen."

E12 Exercise 12

By reference to the relevant paragraphs in the Commentary, decide which (if any) of the following examples of judicial conduct would breach the propriety principle and if so why?

1. Judge gives preferential seating to a State official attending his or her court.

- ☐ Breaches the principle
- ☐ Does not breach the principle



2. Judge gives preferential seating to a school child attending his or her court on an educational visit.

- ☐ Breaches the principle
- ☐ Does not breach the principle



3. Judge speaks privately and at length to a litigant in a pending case, although the conversation is completely unrelated to the case.

- ☐ Breaches the principle
- ☐ Does not breach the principle



4. Judge accepts a lift to court from a defence counsel.

- ☐ Breaches the principle
- ☐ Does not breach the principle



5. Judge is given and accepts a small gift at a public event.

- ☐ Breaches the principle
- ☐ Does not breach the principle



E13 Exercise 13

Let us now continue to look at propriety and the judge's public role, in particular in and around the courtroom. You will see below a number of statements regarding judicial behaviour some of which are correct, and some of which are incorrect. By reference to the Commentary and the Principles, select the statements that are correct.

1. A judge may engage in appropriate extra-judicial activities so as not to become isolated from the community.

☐ Correct☐ Incorrect

2. A judge may participate in community, non-profit-making organizations of various types by becoming a member of an organization and its governing body.

☐ Correct☐ Incorrect

3. A judge has the same rights as an ordinary citizen with respect to his or her private financial affairs.

☐ Correct☐ Incorrect

4. A judge has the right to protect his or her rights and interests, including by litigation in court.

☐ Correct☐ Incorrect

5. A judge may join associations of Judges or participate in other organizations representing the interests of judges.

☐ Correct☐ Incorrect

6. A judge may use, or lend the prestige of the judicial office to advance his or her private interests or those of their family or friends.

☐ Correct☐ Incorrect

7. A judge may represent his or her country, state or locality on ceremonial occasions.

☐ Correct☐ Incorrect

8. The appearance of a judge on a commercial radio or TV network cannot be seen as advancing the financial interests of that organization.

☐ Correct☐ Incorrect

9. While exercising functions as a judge, he or she can be involved in executive or legislative activities.

☐ Correct

☐ Incorrect

10. A judge may give legal advice even to those who are not close family member or close friends.

☐ Correct

☐ Incorrect

11. A judge has a duty to inform family members and court staff subject to his or her influence, direction or authority of ethical constraints.

☐ Correct

☐ Incorrect

E14 Exercise 14

As a judge, you must be able to set a good example by your own lifestyle. Take a look at the following three examples and decide if any of them breaches the required standards of propriety.

1. Accepting regular hospitality from the leading law firm in the area of your court.
2. Keeping short hours, taking long lunches at the best-known restaurant in town in the course of the working week.
3. Judge in a small community holds monthly late parties, with much loud music.

Additional feedback can be found in annex II.

Social hospitality and attending social events

Where to draw the line regarding social hospitality offered to you as a judge is often difficult to decide. The following text is based on the advice provided in paragraph 180 of the Commentary. Please reflect upon its relevance to your own life as a judge.

The line between “ordinary social hospitality” and an improper attempt to gain your favour is sometimes difficult to draw. The context is important and no one factor will usually determine whether it is proper for the judge to attend the event or not. One question that should be asked is whether acceptance of such hospitality would adversely affect:

- (a) Your independence;
- (b) Your integrity;
- (c) Your obligation to respect the law;
- (d) Your impartiality; and
- (e) Your dignity or the timely performance of your judicial duties.

Other considerations might include:

- (a) The length of your relationship with your host;
- (b) Your host’s reputation in the community;
- (c) The size of the gathering;
- (d) Is the gathering spontaneous or has it been long arranged?;
- (e) Does anyone attending have a case pending before you?; or
- (f) Are you by attending receiving a benefit not offered to others that will reasonably excite suspicion or criticism?

E15 Exercise 15

We now give you three small scenarios and invite you to decide on which side of the propriety fence each example falls. The examples are all drawn from recent real judge activities brought to our attention. We are not going to provide you with definitive answers to each of these scenarios as they are designed to get you thinking about appropriate lifestyles for contemporary judges, trying both to be part of and distant from the world they inhabit. Why not discuss them with your colleagues? The paragraphs of the Commentary that apply to each example are paragraphs 113-118. Suffice to say that each these real-life events led to significant public controversy and in some cases disciplinary action was initiated.

- A judge (single) regularly attends a local Kizomba Bar, often dancing with different friends. Would your answer differ if he or she only danced with their own partner?
- A judge attends a private club where members buy dancers drinks in return for conversation (this is not a lap dance club). Would your answer be different if the owner tells the judge they need not pay for their drinks?
- A female judge in a small town regularly swims in the local public swimming pool. She normally wears a bikini. Would your answer be different if she wore a one-piece swimsuit? A male judge in the same town regularly attends the same pool wearing skimpy Speedos. Same considerations apply.

C**Case study: Garden party****Situation**

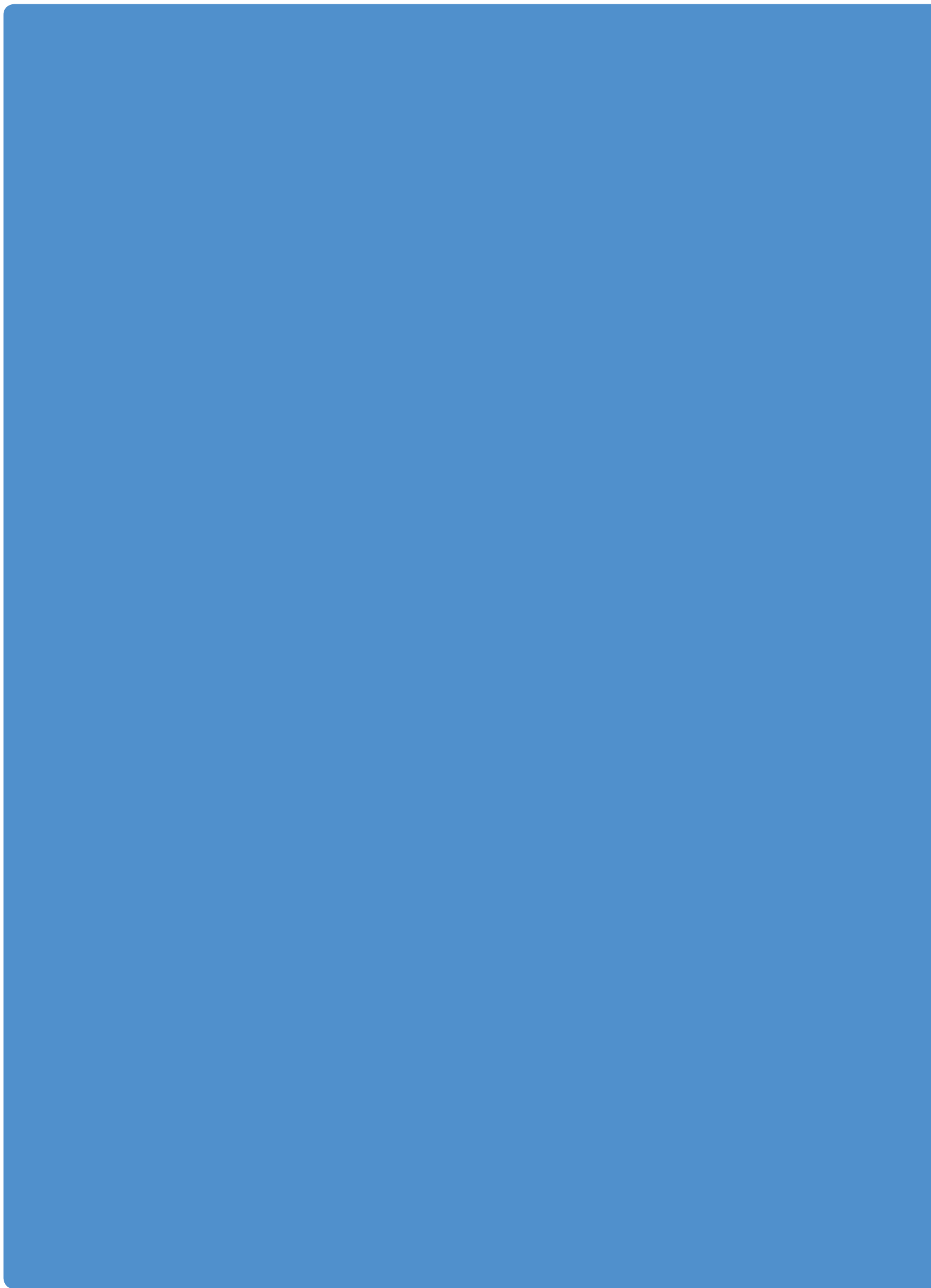
You are a judge, invited to a summer garden party at the home of the mayor of your town. On a personal level you like the mayor but you are aware that he has a number of political enemies, none of whom will be invited to the party. On arrival at the party, the mayor greets you warmly and puts his arm around your shoulder, to escort you into the garden. A press photographer takes your picture in this pose. You notice a large bucket asking for donations to the mayor's political party. As the party progresses you overhear several conversations that appear to include racist jokes, with much accompanying laughter. When you go to the bathroom you notice evidence of cocaine having been used. You decide to leave the party before the food is served, and your host is upset, and asks you why you are going?

1. Should you have attended the party?
2. Having arrived, did you do anything wrong?

Task

Try to write down your views on each incident with reference in particular to the relevant paragraphs of the Commentary. Then look at the answer in annex II.





PRINCIPLE 5

EQUALITY

The Fifth Bangalore Principle states as follows:

Ensuring equality of treatment
to all before the courts
is essential to the due performance
of the judicial office.

E16 Exercise 16

The principle of equality is divided into five subprinciples. The first subprinciple lists a number of specific aspects of diversity and difference in society to which a judge should be sensitive, when carrying out his or her duties. There are eleven (11) in total (the twelfth is “other like cause”).

Try to list them, before you refer to the principle in full, then check your answers against the Principle (S. 1).



1.

7.

2.

8.

3.

9.

4.

10.

5.

11.

6.

Reflection

Now look at the text of the judicial oath that you made when taking up office. Match its wording against the equality principle and determine whether your oath did or did not explicitly or implicitly cover the equality principle.

We do not provide any answers as they will differ according to the oath in question.

BANGALORE PRINCIPLE 5.2

A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

PRINCIPLE 5.2

Principle 5.2 is a slightly curious statement as it could be read to imply that there are relevant grounds on which bias or prejudice towards a group or individual might be acceptable. However, this cannot be the intention of the subprinciple, and the Commentary makes it clear that any indication or suggestion by the judge that he or she is not giving each individual the same consideration and respect is unacceptable (Commentary paragraphs 187-188).

“A judge should strive to ensure that his or her conduct is such that any reasonable observer would have justifiable confidence in his or her impartiality. A judge should avoid comments, expressions, gestures or behaviour that may reasonably be interpreted as showing insensitivity or disrespect. Examples include irrelevant or derogatory comments based on racial, cultural, sexual or other stereotypes and other conduct implying that persons before the court will not be afforded equal consideration and respect. A judge’s disparaging comments about ethnic origins, including the judge’s own, are also undignified and discourteous. A judge should be particularly careful to ensure that his or her remarks do not have a racist overtone and that they do not, even unintentionally, offend minority groups in the community.”

Commentary, paragraph 187

“A judge must not make improper and insulting remarks about litigants, advocates, parties and witnesses. There have been occasions when a judge, on sentencing a convicted person, has showered the prisoner with insulting remarks. While the judge may, depending on local convention, properly represent the outrage of the community concerning a serious crime, judicial remarks should always be tempered with caution, restraint and courtesy. Sentencing an accused person who has been convicted of a crime is a heavy responsibility involving the performance of a legal act on behalf of the community. It is not an occasion for the judge to vent personal emotions. Doing so tends to diminish the essential qualities of the judicial office.”

Commentary, paragraph 188

BANGALORE PRINCIPLES 5.3-5.5

The remaining three subprinciples of the equality principle deal with a number of the specific relationships in which a judge will be engaged in the course of a hearing, stressing that the principle of equality and respect for diversity must be adhered to in all of these relationships.

A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

PRINCIPLE 5.3

A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned in a matter before the judge on any irrelevant ground.


PRINCIPLE 5.4

A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

PRINCIPLE 5.5

E17 Exercise 17

Complete the following sentences by making reference to the Commentary (equality principle). Match the beginnings of the statements on the left with the missing parts on the right.

Judicial remarks must be tempered with		cultural diversity (Commentary para. 186)
People in court must be treated with		derogatory remarks (Commentary para. 187)
A judge has a duty to be responsive to		comments, expressions, gestures or behaviour (Commentary para. 187)
A judge must avoid		human dignity and fundamental human rights (Commentary para. 189)
A judge has a duty to refrain from making		caution and courtesy (Commentary para. 188)
A judge should attempt, by appropriate means		racist, sexist or other inappropriate conduct (Commentary para. 191)
Sentencing is not an occasion for the judge		stereotyping (Commentary para. 184)
A judge has a duty to prevent lawyers from engaging in		dignity (Commentary para. 189)
All who appear in court are entitled to be treated in a way that respects their		to vent personal emotions (Commentary para. 188)
A judge should avoid that may reasonably be interpreted as showing insensitivity or disrespect.		to remain informed about changing attitudes and values in society (Commentary para. 186)

WIDER GENDER-RELATED ISSUES

Although understanding and executing equality is explicitly identified as a core principle governing judicial conduct, there are a number of further gender-related topics not explicitly mentioned in the Bangalore Principles. Each of these issues raises potential breaches of the Principles, in addition to a breach of the equality principle, as identified in the square brackets.

The gender-related issues we wish you to consider are the following:

- Sexual harassment [Integrity, Propriety]
- Sexual discrimination [Impartiality]
- Gender bias [Impartiality]
- Gender stereotyping [Impartiality]
- Sextortion [Independence, Impartiality, Integrity, Propriety].

Please have a look at the definitions of these terms:

Sexual harassment: Unwanted conduct of a sexual nature which has the purpose or effect of violating someone's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

Sexual discrimination: This occurs where a person is either directly or indirectly treated differently because of their sex.

Gender bias: Gender bias is a preference or prejudice toward one gender over the other. It can be conscious or unconscious, and may manifest in many ways, both subtle and obvious.



Take a look at this short clip:

▶ <https://www.youtube.com/watch?v=oMoCfbpVels>
(This resource is only available in English.)

Gender stereotyping: Preconceived ideas whereby females and males are arbitrarily assigned characteristics and roles determined and limited by their gender. For example, research shows that women who post on social media are more likely to receive more abuse and negative comments than men. Email harassment, “flaming” (abusive or obscene language), and cyberstalking are some of the issues faced commonly by women in social media.

Sextortion: The abuse of power to obtain a sexual benefit or advantage. According to the International Association of Women Judges (IAWJ), what distinguishes sextortion from other types of sexually abusive conduct is that it has both a sexual component and a corruption component. Conduct that does not include both components is not sextortion. The term sextortion is relatively new, although it describes a practice of an unfortunately long history. The IAWJ has produced a paper entitled “Stopping Abuse of Power Through Sexual Exploitation” that provides an analysis of the issue of sextortion and can be read at:

▶ <http://www.iawj.org/wp-content/uploads/2017/04/Corruption-and-Sextortion-Resource-1.pdf>.
(This resource is only available in English.)

Sextortion is not limited to the relationship between a judge and a litigant. It also extends to demanding any favour of a sexual nature by a judge in connection with his or her judicial duties, and thus extends to the relationship between a judge and court, staff, witnesses and lawyers (Principle 4.14). However, please note that sextortion – like corruption or sexual harassment – is not a problem that is unique to the judiciary.

C**Case study: Training**

Read the following case study and (a) identify what, if any gender-related issues need to be addressed?; and (b) where you have identified a gender-related issue, further identify what, if any of the Bangalore Principles are engaged? You can read an additional explanation in annex II.

Situation

Thirty judges are attending a three-day residential seminar on human rights law. They are of mixed age and gender. The trainers are all experienced lawyers who frequently appear before many of the judges attending the seminar. Two trainers are male, two trainers are female.

The conference organizers have allocated bedrooms in the main building to the female judges and trainers and bedrooms in the more luxurious bungalow suites across the hotel grounds to the male judges and trainers. The reason given for this decision is that “women like to be closer to the training rooms and lounges” and also “women do not like walking across the hotel grounds at night, for security reasons”.

The course is intense with much role play on case studies. In most of the cases of human rights abuses, the victims are women and the perpetrators are men. In the role plays, the male judges are assigned to the roles of the perpetrators, the women judges the roles of victims.

In the course of the training event, one of the trainers makes humorous remarks that could be deemed to be sexist, but nobody challenges him. In fact, quite a few of the judges (male and female) find them rather amusing. One of the judge trainees takes an obvious fancy to one of his female judge colleagues and makes frequent reference to her “saucy dresses”. At the coffee break, he puts his arm around her shoulders in an unsolicited and unwelcome manner.

C**Case study: Favourable decision****Situation**

A young woman files an application for refugee status. Her case is heard by an immigration judge sitting alone. Weeks after the hearing, he arranges to meet the woman in a coffee shop. He tells her that he is minded to deny her application but, if they “could do things on the side”, he could issue a favourable decision, as long as she keeps this secret.

You can read an additional explanation in annex II.

Short scenarios

Now look at the following short scenarios, which are based upon reported recent examples of judicial behaviour. Identify which if any of the Bangalore Principles have been violated by the judge’s conduct in each of the scenarios. You can read an additional explanation in annex II.

Scenario 1

In a case involving a sexual assault on a young woman, the male judge discounts the credibility of the young woman’s evidence because she went to a coffee shop alone at 10 pm, after which the assault occurred, and assumes that for that reason the woman invited the sexual assault.

Scenario 2

In the same case of a sexual assault on a young woman, the woman bursts into tears while giving her evidence and the judge berates her, telling her to “pull herself together”.

Scenario 3

A male judge invites his female law clerk to watch pornography with him at the end of the working day on his personal computer.

Scenario 4

A judge offers leniency to a defendant in exchange for “community service” which involves the defendant visiting the judge’s home to be photographed bending over to pick up cans.

Further study on gender-related issues

If you are interested in exploring any of these issues in greater depth, we recommend the following materials:

(These resources are only available in English)

Sexual harassment:

- ▶ <http://www.un.org/womenwatch/osagi/pdf/whatish.pdf>
- ▶ <http://hrlibrary.umn.edu/svaw/harassment/explore/5prevention.htm>

Sexual discrimination:

- ▶ <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/know-your-rights-sex-discrimination-and-sexual-harassment>

Gender bias:

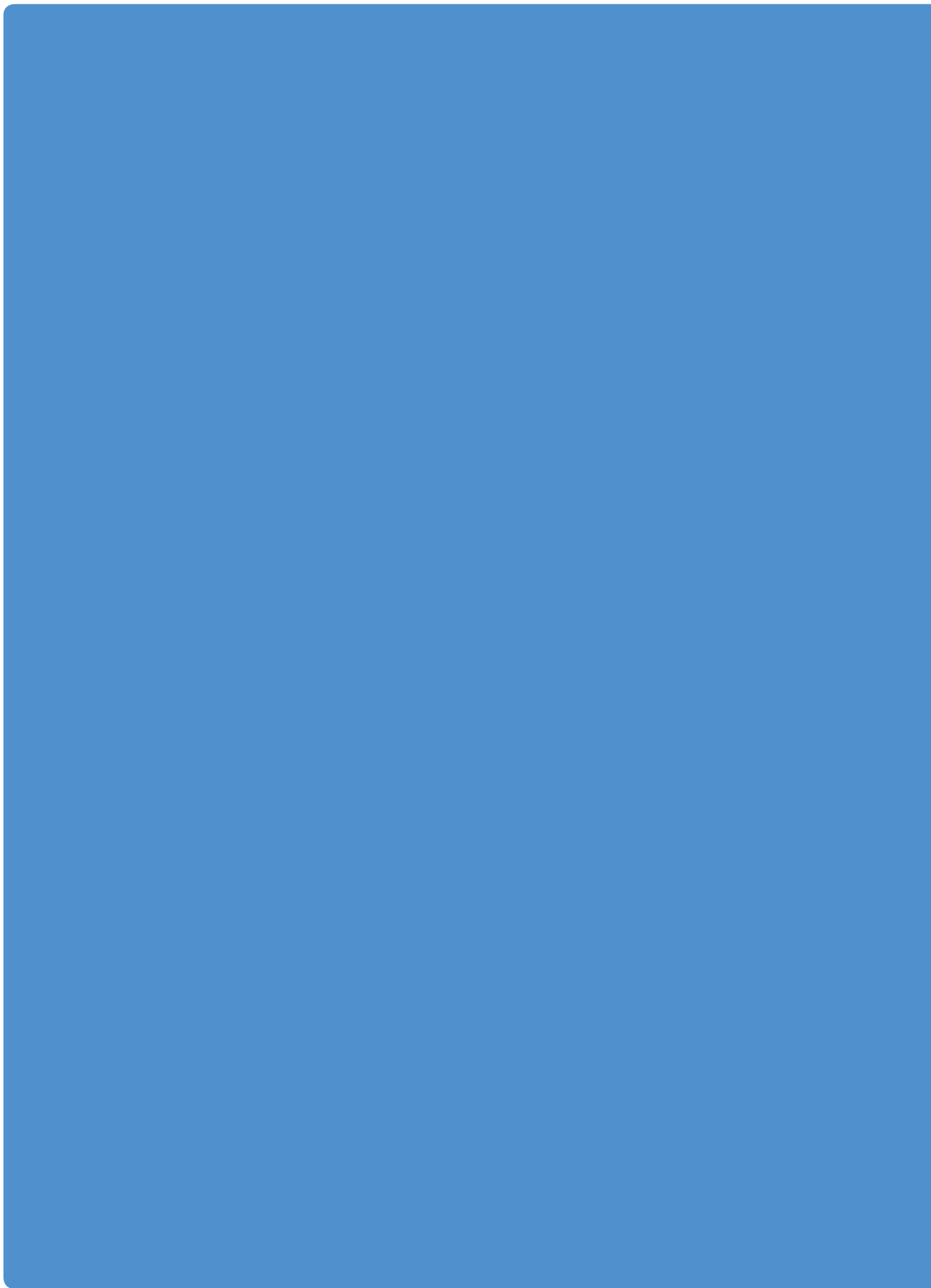
- ▶ <https://www.techrepublic.com/blog/10-things/10-examples-of-gender-bias-you-may-encounter-in-the-workplace/>
- ▶ <https://aplus.com/a/do-you-have-a-gender-bias-bbc-three-video>

Gender stereotyping:

- ▶ <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/GenderStereotypes.aspx>
- ▶ <https://www.goodreads.com/quotes/tag/gender-stereotypes>
- ▶ <https://www.youtube.com/watch?v=383aRjfNljk>

Sextortion:

- ▶ <https://en.wikipedia.org/wiki/Sextortion>
- ▶ <https://www.wearethorn.org/sextortion/>



PRINCIPLE 6

COMPETENCE AND DILIGENCE

The Sixth Bangalore Principle states as follows:

Competence and diligence
are prerequisites to the due performance
of judicial office.

Society has a right to expect that every judge is sufficiently competent to carry out his or her judicial tasks accurately and effectively and has sufficient diligence to ensure that such tasks are carried out in a timely and efficient manner. A diligent person is careful, serious and determined to do things correctly.

A judge is expected to maintain his or her competence and diligence in a number of ways of which the four key ways are identified below. Take a moment to read it through: we will examine each factor in turn.

1. Judicial duties must take precedence over all other activities. Such duties extend to all other tasks relevant to judicial office and the courts' operations (See Bangalore Principles 6.1 and 6.2).
2. A judge must perform all judicial duties (including delivery of reserved decisions) efficiently, fairly and with reasonable promptness (See Bangalore Principle 6.5).
3. A judge should demonstrate adequate control of his or her courtroom and shall not engage in conduct incompatible with the diligent discharge of judicial duties (See Bangalore Principles 6.6 and 6.7).
4. A judge should maintain and enhance all relevant knowledge and skills and should take advantage of any relevant training available (See Bangalore Principles 6.3 and 6.4).

E18 Exercise 18

Read the Commentary paragraphs 195-198 which are linked to Principles 6.1 and 6.2 and answer the following questions.

1. A judge should resist any temptation to devote excessive attention to extrajudicial activities:

☐ and never attend bars and clubs.

☐ if this reduces the judge's capacity to discharge the judicial office.

2. The judiciary is an institution of service to the community. [...]

☐ It is not just another segment of the competitive market economy.

☐ However, it is also a segment of the market economy.

3. Is a judge responsible for the efficient administration of justice in his or her court?

☐ Yes

☐ No

4. Is a judge responsible for the recovery of lost court files?

- ☐ Yes, a judge should institute systems for the investigation of the loss and disappearance of court files.
- ☐ No

5. What paragraphs of the Commentary outline a judge's duties regarding promptness, punctuality and transparency?

- ☐ Commentary paragraphs 207-210
- ☐ Commentary paragraphs 212-215

Advice for a judge in the courtroom

A judge must demonstrate adequate control over his or her courtroom.

In order to be in control of your courtroom, as a judge you must be alert to everything, not only to what is happening, but also to what is not happening. You must be an acute observer.

Pema Chodrun, the well-known contemporary Buddhist teacher, puts this idea in the following way:

“In my own training, I have been taught to look for the gaps: the gap at the end of each out breath; the space between thoughts; the naturally occurring, non-conceptual pause after a sudden shock, unexpected noise, or moment of awe... These fleeting moments of no-big-deal-me, no internal conversations, no frozen opinions, are very simple and powerful.

This is sound advice for a judge in the courtroom.

Paragraph 215 of the Commentary states that:

“In court and in chambers, a judge should always act courteously and respect the dignity of all who have business there. A judge should also require similar courtesy from those who appear before him or her, and from court staff and others subject to the judge's direction or control. A judge should be above personal animosities and must not have favourites among advocates appearing before the court. Unjustified reprimands of counsel, offensive remarks about litigants or witnesses, cruel jokes, sarcasm and intemperate behaviour by a judge undermines both order and decorum in the court. When a judge intervenes, he or she should ensure that impartiality and the perception of impartiality are not adversely affected by the manner of the intervention.”

BANGALORE PRINCIPLES 6.3-6.4

A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.

PRINCIPLE 6.3

A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.

PRINCIPLE 6.4

IOJT Declaration on Judicial Training Principles

On 8 November 2017, the members of the International Organization for Judicial Training (IOJT), composed of 129 judicial training institutions from 79 countries, have unanimously adopted the following principles of judicial training.

► For the full text <http://www.iojt.org/~media/Microsites/Files/IOJT/Microsite/2017-Principles.ashx>

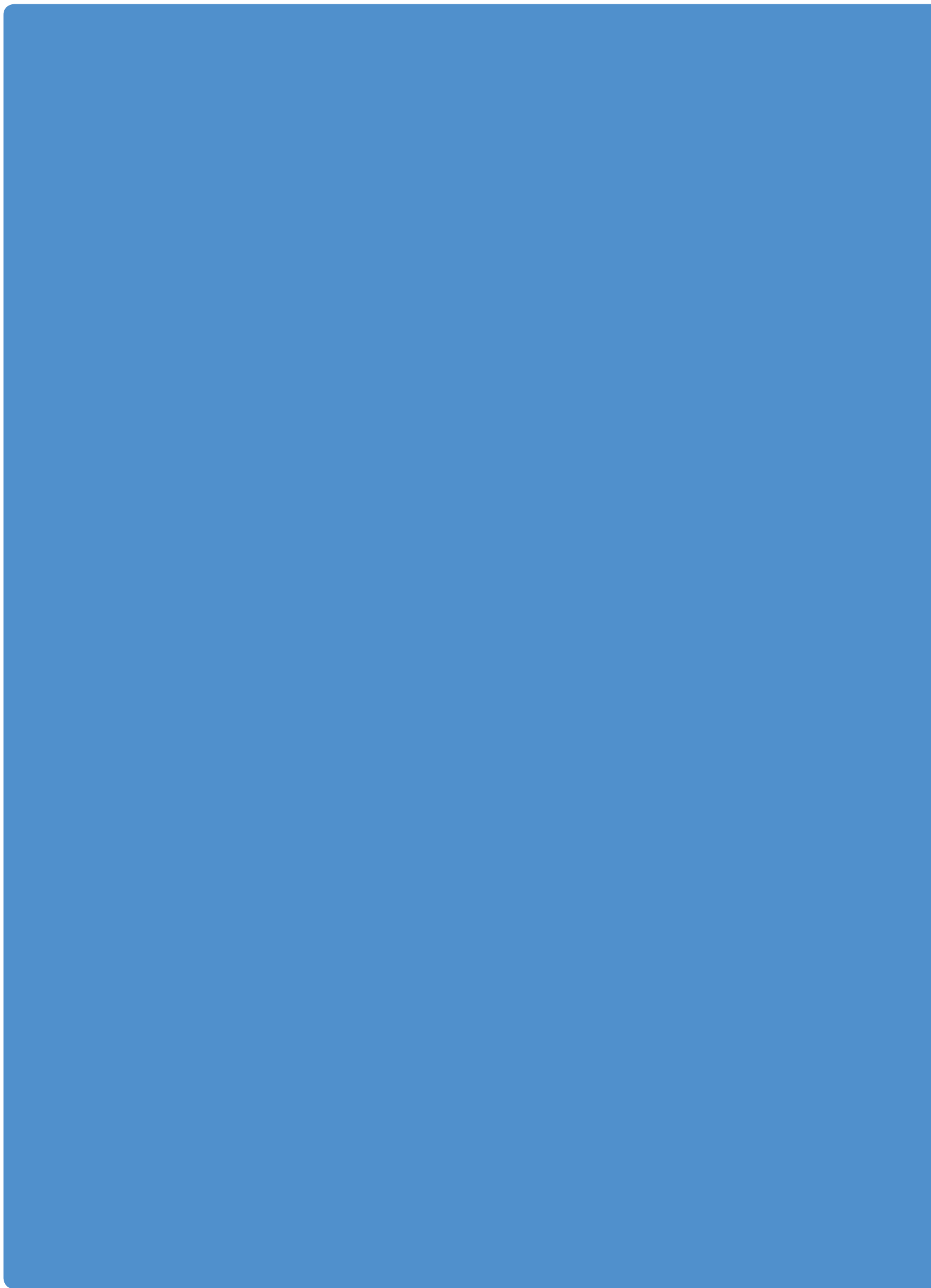
1. Judicial training is essential to ensure high standards of competence and performance. Judicial training is fundamental to judicial independence, the rule of law, and the protection of the rights of all people.
2. To preserve judicial independence, the judiciary and judicial training institutions should be responsible for the design, content, and delivery of judicial training.
3. Judicial leaders and the senior judiciary should support judicial training.
4. All States should:
 - (i) Provide their institutions responsible for judicial training with sufficient funding and other resources to achieve their aims and objectives; and
 - (ii) Establish systems to ensure that all members of the judiciary are enabled to undertake training.
5. Any support provided to judicial training should be utilized in accordance with these principles, and in coordination with institutions responsible for judicial training.
6. It is the right and the responsibility of all members of the judiciary to undertake training. Each member of the judiciary should have time to be involved in training as part of their judicial work.
7. All members of the judiciary should receive training before or upon their appointment, and should also receive regular training throughout their careers.

8. Acknowledging the complexity of the judicial role, judicial training should be multi-disciplinary and include training in law, non-legal knowledge, skills, social context, values and ethics.
9. Training should be judge-led and delivered primarily by members of the judiciary who have been trained for this purpose. Training delivery may involve non-judicial experts where appropriate.
10. Judicial training should reflect best practices in professional and adult training programme design. It should employ a wide range of up-to-date methodologies.

E19 Exercise 19

You have just been shown the Principles of Judicial Training which were adopted at the General Assembly of the IOJT in November 2017. Now, refer back to the Principles and decide which of the following statements are correct:

1. Judicial training should be multidisciplinary.	<input type="checkbox"/>
2. Training for judges should be available throughout their careers.	<input type="checkbox"/>
3. Failure to attend training events should be a disciplinary matter.	<input type="checkbox"/>
4. All judges should be given time to be involved in training as part of their judicial work.	<input type="checkbox"/>
5. The State has a duty to provide adequate funding to train judges.	<input type="checkbox"/>
6. Performance at training events should be linked to promotion opportunities.	<input type="checkbox"/>



SUMMARY

By now you should have a good understanding of all six Bangalore Principles of Judicial Conduct.

As for all six Principles, remember that the Principles and the Commentary apply not just to you, but also to all your judicial colleagues. You cannot merely turn a blind eye if a colleague misbehaves. The Principles do not explicitly address the issue of what you are supposed to do when observing unprofessional conduct by a colleague or a lawyer. Moreover, the drafters of the Principles did not want to go as far as establishing an obligation to report. Nevertheless, the drafters felt that the obligation under Principle 6.7 to not engage in any conduct incompatible with the diligent discharge of judicial duties also requires a judge to initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by another judge or lawyer. Appropriate action may include direct communication with the judge or lawyer who is alleged to have committed the violation, other direct action if available, and reporting the violation to the appropriate authorities.

Paragraph 218 of the Commentary states that:

A judge should take appropriate action when he or she becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by another judge or lawyer. Appropriate action may include direct communication with the judge or lawyer who is alleged to have committed the violation, other direct action if available, and reporting the violation to the appropriate authorities.



ANNEX I

GLOSSARY OF SOCIAL MEDIA TERMS

SOCIAL MEDIA NETWORKING SITES – GLOSSARY OF TERMS

Facebook

- A networking site where users post information and pictures of themselves, communicate with each other, create events, and can create pages for their businesses.
- Users communicate with each other by posting on each other's "walls," commenting on each other's photographs or posts, and sending private messages.
- Privacy settings: Users can select what type of users (friends, friends of friends, public) can view individual items on their profiles. Users become connected when they accept invitations from each other to connect.

Flickr

- A photo sharing site, where users create albums of their photographs.

Instagram

- A photo sharing site, where photos are shared individually as posts, often with artistic filters and hashtags. Instagram photographs are often linked to specific geographic locations.
- Users can interact with each other by "liking" each other's posts (by clicking a heart icon), and can send each other private messages.
- Privacy settings: Instagram accounts that are set to "public" may be viewed by anyone who has the web address. "Private" accounts may only be viewed by Instagram accounts that have been approved by the user.

LinkedIn

- A social networking site targeted at professionals. Users typically upload the information from their resumes and include a professional photograph.
- Users are added to the same network when they "connect" with each other (send and accept an invitation to be added as a connection). Users can interact with each other by private messages.
- Privacy settings: LinkedIn accounts may be viewed by all other LinkedIn users and a summary of information is typically available to non-users unless altered in the privacy settings. By default, other users also receive a notification that you have viewed their profile.

Pinterest

- A hobby-related online pinboard. Users save pictures from the Internet, often of inspirational topics related to fashion, cooking, or home-decorating and save them to "boards."
- Users can share each other's pictures, as well as comment.
- Privacy settings: boards are public, unless the user specifies otherwise.

Reddit

- A site which hosts discussion forums. Some discussion forums have been criticized for having inappropriate content.
- After registering, users can comment on each other's posts, as well as rate each other's posts, so that they appear at the top of the newsfeed. Receiving ratings on your comments helps users to accumulate points to unlock special features.
- Privacy settings: Although posts are public, users' identities are largely anonymous.

Skype

- A site that allows users to video chat with each other from their accounts
- Privacy settings: users have to add each other to send/receive calls

Snapchat

- A messaging application for smartphones. The messages are often pictures or videos and disappear after a selected amount of time.
- Users may send each other messages directly after connecting. The user sending the message selects how many seconds the message will stay on the receiver's screen before disappearing.

Tumblr

- A hosting site for blogs, including photo-blogs, or blogs that consists of GIFs.
- Users can follow other users' blogs and comment on individual posts.

Twitter

- A social networking site where users share posts of up to 140 characters and/or photographs.
- Users can tag each other in their posts, or send each other private messages (direct message).
- Privacy settings: accounts (and therefore posts) are public by default, although users can change their accounts to be private.

WhatsApp

- A messaging application for smartphones.
- Users can message each other once they have added other users' numbers into the application. Groups of users can also be created.

ADDITIONAL TERMS

Blog/Vlog:

- A blog is a website where a user writes entries (or shares pictures). It is usually written like a journal, although the posts can also be structured similar to articles. A vlog is a video-blog.

DM (direct message)/PM (private message):

- Many social networking sites have the option of sending a message to one other user without everyone on the site being able to view it.

Emoticons/Emojis:

- Small icons to display what users are thinking. These range from faces expressing emotions, to icons of food or locations.

Friend/Follower:

- Social media sites often have the option of connecting with users (LinkedIn, Facebook) by adding them as “friends” or “connections.” Friends can often see more of the content you post and can message you directly.
- Sites that are more content-focused (such as Twitter or Instagram) have the option to “follow” other users to see the content that they post.

GIF:

- A short, animated video of a few seconds that often repeats itself.

Handle:

- The username of a user on social media. (For instance, @dohadeclaration is the Doha Declaration’s Twitter handle.)

Hashtag:

- A word or phrase (without space) preceded by the pound symbol “#” makes that word or phrase searchable in many social media sites. For instance, if a user has tagged a post as #unitednations then other users will see that content when they search for #unitednations.

Like:

- Many social networking sites have a button that users can click when they like the content of another user. On Instagram, for instance, this is a heart icon and on Facebook it is a thumbs-up. Facebook now offers other options, such as sad faces.

Live stream:

- Many social media sites have the option of sending videos that are being recorded directly to the website as they are being recorded.

Newsfeed:

- A list of all of the items recently posted by other users with whom the user is connected.

NSFW (Not Safe for Work):

- Inappropriate content.

Podcast:

- Typically a series of episodes (in the form of short audio clips) on a specific topic which users can download. Podcasts can be produced by official institutions, or recorded by individual users.

Selfie:

- A photograph taken of oneself.

Stories:

- Many social media sites (Facebook, Instagram, Snapchat) have the option to post photos or videos that are viewable by all of that user's connections for a limited amount of time.

Tag/Mention:

- By using the @ symbol, users can connect other users to a post or photograph. On some sites this content then appears on the tagged user's profile.

Tweet/Retweet:

- On Twitter, users' posts are referred to as "tweets." When users share other user's tweets they are known as "retweets."

Viral:

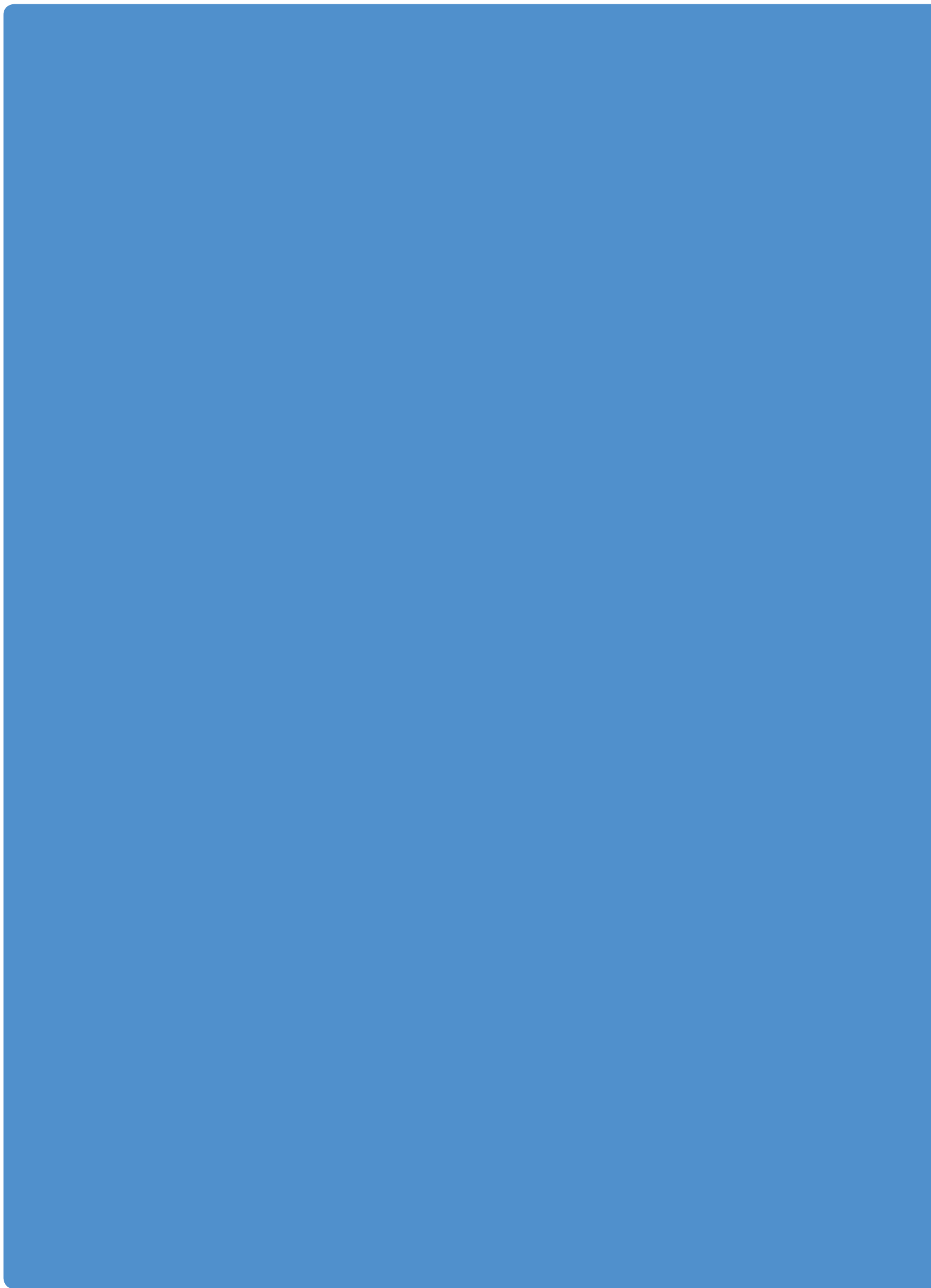
- When a post on social media reaches many viewers and spreads rapidly.

Wall:

- Each Facebook user has a "wall" – a page which has all of their posts, as well as posts sent to them by other users.

Webinar:

- An online seminar, often a video conference, that users can watch remotely.



ANNEX II

ANSWERS

CORRECT ANSWERS

Short entry test

Page 3

1. What are the Bangalore Principles?

Answer: They establish standards for ethical conduct of judges and are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct.

2. Can you name the six values underpinning the Bangalore Principles?

Answer: Independence, Impartiality, Integrity, Propriety, Equality, Competence and diligence

3. What is the legal status of the Bangalore Principles?

Answer: The Principles are not legally binding and do not aim to set out directly enforceable standards of behaviour, but rather offer guidance to the judiciaries of the world in preparing their own codes of judicial conduct. The Principles underwent extensive consultations involving chief justices and senior judges from over 75 countries.

4. What is the Judicial Integrity Group?

Answer: The Judicial Integrity Group (JIG) is an independent, non-profit group of heads of the judiciary or senior judges that strives to deepen and broaden judicial integrity and the quality of the administration of justice. Among other work, JIG led the development of the Bangalore Principles.

5. Should a judge hear a case in which his or her partner is defending counsel?

- ☐ Yes, but...
☒ No

Answer: No. A judge must avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality. Specifically, a judge is ordinarily required to recuse him- or herself if any member of the judge's family has entered an appearance as counsel.

6. Do judicial oaths have to include the Bangalore Principles?

- ☐ Yes, but...
☒ No

Answer: No. The Bangalore Principles only offer guidance and there is no obligation for States to include the Principles in their judicial oaths. However, many States have decided to incorporate the Principles into judicial oaths.

7. Should a judge attend night clubs?

- ☒ Yes, but...
☐ No

Answer: Yes, but a judge should always exercise discretion in going to any clubs or other social facilities.

8. Can judges be members of secret brotherhoods or fraternities?

☐ Yes☒ No

Answer: No. It is not advisable for a judge to belong to a secret society where lawyers who appear before him or her are also members, since it may be inferred that favours might be extended to those particular lawyers as part of the brotherhood code.

9. Can a judge's food intake during a trial affect his or her impartiality?

☒ Yes☐ No

Answer: Yes. A research study showed that judges are more generous in their adjudications immediately after a refreshment break.

10. Can a judge's body language form the basis of a recusal challenge?

☒ Yes☐ No

Answer: Yes. See paragraph 58 of the Commentary on Bangalore Principles.

E1 Exercise 1

Page 7

I do solemnly swear that I will administer justice without respect to persons and do equal rights to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me under the Constitution.

I do solemnly swear that I will perform my judicial duties in accordance with the Constitution and the law.

I swear to... faithfully discharge my duties with integrity, impartially and independently, and confidentiality of the deliberations and to constantly carry myself with dignity.

I swear [by God, the Almighty], to render justice among people and to observe the Kingdom's laws and regulations.

I solemnly swear to discharge my duties honestly and conscientiously, to administer justice, obeying only the law, and to be impartial and just, as my duty as a judge and my conscience dictate to me.



Equality, Competence and diligence.
Bahrain

Independence, Impartiality, Integrity, Propriety, Competence and diligence.
Burundi

Independence, Impartiality, Equality, Competence and diligence.
United States

Impartiality, Integrity, Propriety, Competence and diligence.
Russian Federation

Competence and diligence.
Montenegro

C

Case study: Ms. White

Page 13

1. This case study involves looking in particular at three of the six values. Which ones?

- | | |
|--|--|
| <input checked="" type="checkbox"/> Independence | <input checked="" type="checkbox"/> Propriety |
| <input type="checkbox"/> Impartiality | <input type="checkbox"/> Equality |
| <input type="checkbox"/> Integrity | <input checked="" type="checkbox"/> Competence and diligence |

2. Which of the following paragraphs of the Commentary are especially relevant to this case study?

- ☒ 29
 ☐ 34
 ☐ 38
 ☒ 44
 ☐ 100
 ☒ 137
 ☒ 207

3. Who, if any of the following should reply to the MPs letter?

- | | |
|---|--|
| <input type="checkbox"/> You as the sitting judge | <input checked="" type="checkbox"/> the Court Manager |
| <input checked="" type="checkbox"/> the Chief Justice | <input checked="" type="checkbox"/> your Court President |

Explanation

Although the Member of Parliament (MP) may believe he is acting correctly in writing to you in this manner, he is in fact acting improperly as his letter constitutes an attempt by one limb of government to influence another, which is in clear breach of the principle of the separation of powers, and thereby threatens judicial independence. Whether he has done this as a result of an overzealous desire to support his constituent, or by virtue of “constitutional illiteracy” is a moot point, and not one which need concern you. You will recall that paragraph 29 of the Commentary states as follows: *All attempts to influence a court must be made publicly in a court room, and only by litigants and their advocates.*

Go back and read the full text of that paragraph, and feel its force. This letter from the MP should be firmly rejected in deference to the principle of independence. The matter however cannot rest here as there are other considerations at play.

Bangalore Principle Four

Bangalore Principle Four (Propriety), which will be examined later in this course, deals explicitly in the Commentary paragraph 137 with the issue of criticism of the judge.

“Members of the public, the legislature and the executive may comment publicly on what they may view to be the limitations, faults or errors of a judge and his or her judgments. Owing to the convention of political silence, the judge concerned does not ordinarily reply. While the right to criticize a judge is subject to the rules relating to contempt, these are invoked more rarely today than they were formerly to suppress or punish criticism of the judiciary or of a particular judge.

The better and wiser course is to ignore any scandalous attack rather than to exacerbate the publicity by initiating contempt proceedings. [...]"

Note that a clear distinction is made between the legitimate public criticism of a judge and an attempt by that criticism to influence the outcome or conduct of a case which is not legitimate.

Bangalore Principle Six

Bangalore Principle Six (Competence and diligence), which will be examined later in this course, deals explicitly in the Commentary paragraph 207 with the duty to dispose of matters with reasonable promptness:

"In disposing of matters efficiently, fairly and promptly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. [...] The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. A judge can be efficient and business-like while being patient and deliberate."

In light of this duty, it would be prudent for you to review your own conduct of this case, probably in discussion with your court President, who has received a copy of the letter in order to ensure that everything is being done to dispose of the matter in the way set out in paragraph 207. It is unlikely to be appropriate to include the court manager in this discussion, although he or she can be informed of any practical outcome. However, please be reminded that you are responsible for the efficient administration of justice. Delays in your cases should never be caused by your own poor time management. Paragraph 196 states that:

"To some degree, every judge must manage as well as decide cases. The judge is responsible for the efficient administration of justice in his or her court. This involves case management (including the prompt disposition of cases), record-keeping, management of funds and supervision of court staff. If the judge is not diligent in monitoring and disposing of cases, the resulting inefficiency will increase costs and undermine the administration of justice. A judge should therefore maintain professional competence in judicial administration and facilitate the performance of the administrative responsibilities of court officials."

Remaining questions

There remains the question as to who, if anybody should reply to the letter from the MP, and if so what should they say? It is a matter of common courtesy that the MP should receive a reply to the letter, but under no circumstances should you as the judge hearing the case be the one to reply. The best solution would be for a letter to be sent to the MP from the Court Manager explaining in courteous terms the nature of the separation of powers and the fact that the judge is unable to engage in correspondence in connection with any case in which he adjudicates. The letter may also make mention of paragraph 44 of the Commentary which states as follows:

"A judge should recognize that not everyone is familiar with these concepts and their impact on judicial responsibilities. Public education with respect to the judiciary and judicial independence thus becomes an important function, both of the government and its institutions and of the judiciary itself, for misunderstanding can undermine public confidence in the judiciary. [...] A judge should, therefore, in view of the public's own interest, take advantage of appropriate opportunities to help the public understand the fundamental importance of judicial independence."

C

Case study: The Philanthropic Club

Page 14

1. Which paragraph in the Commentary covers membership in secret societies?

☒

127

☐

115

☐

117

2. Which paragraph in the Commentary states that any attempt to influence a judgement must be rejected?

☐

31

☒

29

☐

35

Explanation

Under the independence principle, a judge must be “independent in relation to the particular parties to a dispute which he or she has to adjudicate”.

Paragraph 29 of the Commentary states categorically that any attempt to influence a judgement must be rejected. It is therefore fairly easy to conclude that the judge should not enter into any discussions with either party to the case outside the courtroom.

Paragraph 127 of the Commentary further warns that it is not advisable for a judge to belong to a secret society where lawyers who appear before him or her are also members, since it may be inferred that favours might be extended to those particular lawyers as part of the brotherhood code.

You should also address the wider issue of joining organizations such as brotherhoods, clubs, masonic lodges, etc. which encourage loyalties, favours, etc. Such “elite clubs” are often engaged in important philanthropic work such as raising funds, awarding scholarships or organizing humanitarian events. But at the same time, club members are usually rich and influential and people from the world of business, politics and media who are often closely related to each other and it is not rare that they offer a variety of services and preferential treatment that favour one another. Is the membership of elite clubs therefore a potential danger to a judge? Could such an environment constitute a latent source of some morally dubious propositions or requests for help in the future, such as the one in this case study? As a judge, if you join such a club, you must draw a clear line between judicial ethics and possible expectations of some members to do something in their favour as a judge in the courtroom.

E4 Exercise 4

Page 16

<p>Attending a night club at 1.00 am <i>118: Frequenting clubs</i></p>		<p>74 76 52 156</p>
<p>Agreeing to appear on a live TV chat show <i>74: Media criticism</i> <i>76: Relations with the media</i> <i>152 and 156: Appearance on commercial radio or television and participation in community education both apply.</i></p>		<p>116</p>
<p>Drinking regularly in a local bar in a country where the consumption of alcohol is legal <i>116: Visits to public venues such as bars</i></p>		<p>166 167</p>
<p>Dressing up as judge for a local event, that invites people to throw wet sponges at you <i>111: How might this look in the eyes of the public?</i> <i>114: A judge must accept restrictions on his or her activities</i> <i>166: Participation in extrajudicial activities</i></p>		<p>118</p>
<p>Distributing food to homeless people in the street at night <i>167: Membership in a non-profit organization</i> <i>166: Participation in extrajudicial activities</i></p>		<p>111 114 166</p>

Social media game

Page 17

- What company owns WhatsApp and Instagram?

☐ LinkedIn
 ☒ Facebook
 ☐ Youtube
- Do WhatsApp and Instagram share data with Facebook?

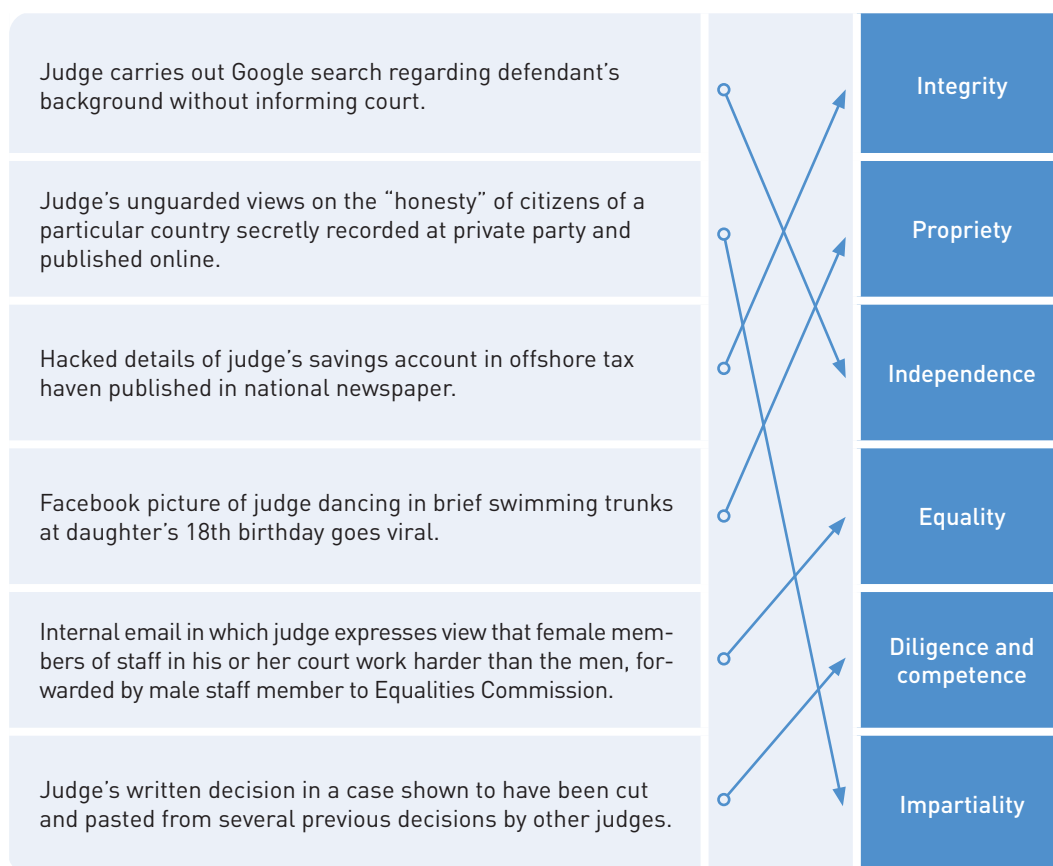
☐ No
 ☒ Yes
- Does the Commentary cover the use of Facebook?

☒ No
 ☐ Yes
- Is the following statement true or false?
 "Facebook is a free social networking website that allows registered users to create profiles, upload photos and video, send messages and keep in touch with friends, family and colleagues."

☒ True
 ☐ False

E5 Exercise 5

Page 21

**C** Case study: Judge Sheen

Page 22

Issue 1 - Answer

A modern judge must understand how social media operate, both positively and negatively, and it could be argued that given their prevalence in the modern world, it is perfectly sensible for judges to make use of social media in their own lives. But discretion is the key issue here, and it is clearly arguable that by using Facebook so widely and freely, Judge Sheen was asking for trouble. Her belief that by refusing a request from somebody to become her friend she would somehow be acting discourteously does not give confidence that she understands the importance of judicial independence in this context and the role it can play in avoiding embarrassment.

It may well be the case that rules of conduct are already in place in her jurisdiction regarding Facebook, and if so, she should have been aware of them. There is no absolute ethical rule that a judge either should, or should not, use Facebook. But this case illustrates how problems will arise if usage is not more restrained than in the case of Judge Sheen. In deciding whether recusal is appropriate in this case, Judge Sheen should ask herself whether a fair-minded and well-informed member of the public would consider there was a real risk that she was biased, due to her "Facebook relationship" with the prosecutor.

Issue 2 - Answer

As for the picture of the judge in her teenage bikini, as it was not she who posted the picture she cannot really be held culpable, and thereby in breach of the Principles. The photo will perhaps cause her some embarrassment, but it is not per se grounds for further disciplinary action for any ethics or conduct breach. However, it will certainly lead to a strong exchange of words between Judge Sheen and her mother and will also hopefully lead to her reviewing the privacy settings, both her own and of those closest to her!

C

Case study: The gift basket

Page 24

1. Identify the paragraph of the Commentary that states that judges are not beholden to the government of the day.

☒

25

☐

38

☐

40

2. Identify the paragraph of the Commentary that states that outside influences must not colour judgement.

☒

27

☐

28

☐

30

Explanation

The arrival of this basket immediately creates for you a moral dilemma.

- Should you keep your head down and quietly accept the basket as a standard practice that you are told causes no difficulties for your fellow judges?
- Should you return the basket, in which case what reasons will you give to the Governor for its return? And if you do so, as a junior judge, apparently out of line with your other colleagues, what effect might this have upon your own career and on your chances of promotion.
- Could you be branded a troublemaker?

Judicial independence

This situation strikes right at the heart of the principle of judicial independence. Your actions will define your understanding of what the principle is all about. You should return the basket. Remember, you must not only be free from “inappropriate connections with and influence by the executive branch of government”, you must also “appear to a reasonable observer to be free therefrom”. You cannot hide behind the fact that the Governor has (mistakenly) bracketed you with other state employees as a “public official”. A cursory understanding of the principle of the separation of powers puts paid to that argument.

Propriety

Furthermore, the fourth Bangalore Principle, that of Propriety, which we will examine later in this course, specifically states that a judge shall not accept any gift in connection

with the performance of his or her duties (please see Principles 4.14, 4.15 and 4.16). The limited exception to this rule at 4.16 cannot apply to this situation as it involves a senior politician whose actions are most surely “justiciable”.

Address the issue collectively

How you handle the matter is the challenge, but it must be addressed. It is surely preferable that, emboldened by your awareness of the Bangalore Principles, you raise the matter with your fellow judges. The President of your court should be brought into the discussion as a matter of principle to address the issue collectively and find a firm but diplomatic way to end the practice.

C

Case study: Judge Onani

Page 28

1. Identify the paragraph of the Commentary dealing with the question: “When the judge feels a moral duty to speak.”

☒ 140

☐ 179

☐ 166

2. Does paragraph 140 cover Judge Onani’s dilemma with the question “When does the judge feel a moral duty to speak”?

☐ Yes

☒ Partially

(It partially covers his situation but a better choice would be paragraph 138: A judge may speak out on matter that affect the judiciary.)

3. Which of these reasons is given in the Commentary to explain why a judge should exercise great restraint when speaking?

☐ The judge’s personal security

☒ A judge should not be seen as lobbying government

☐ Effect upon judge’s career

4. Identify the paragraph of the Commentary that states judicial independence includes “independence with respect to matters of administration that relate directly to the exercise of the judicial function”?

☐ Paragraph 26 (a)

☐ Paragraph 26 (b)

☒ Paragraph 26 (c)

Explanation

On the face of it, the judge will argue that he is seeking to uphold the principle of independence in that he is upholding safeguards for the discharge of judicial duties by criticizing the Ministry’s failure to take action to address the issues that undermine effective “discharge” (poor working conditions, inadequate court staffing, poor case selection, lack of reform).

See below the questions you must ask yourself in assessing whether Judge Onani has acted improperly:

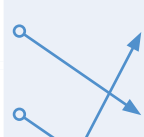
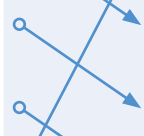
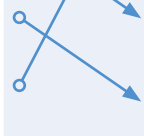


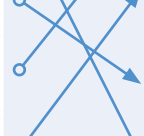

“Questions to ask yourself”

- Can a judge be actively engaged in public in any matter and in addition seek media help in solving problems of any kind?
- What kind of possible dangers lie in contacts with the media?
- How can a judge protect himself or herself from the possible unpleasantness and damage caused by talking to journalists and making critical public statements?
- In this particular case, is the degree of involvement indicated by the judge acceptable?
- Has he used all available instruments within the judiciary system to address the problems?
- Can potential positive consequences for the work of the courts and judges justify this kind of action?
- Was the interview with the media an appropriate use of the media in order to “take advantage of appropriate opportunities to help the public understand the fundamental importance of judicial independence”?

Note should also be taken of paragraph 140 of the Commentary which is headed “When the judge may feel a moral duty to speak”. It has already been cited earlier.

E6 Exercise 6

Page 32

A perception of partiality erodes public confidence		93
Correspondence with litigants		55
Manifestations of bias or prejudice		73
Personal knowledge of disputed facts		58
When judges should make disclosure		69
Irrelevant grounds		64
Duty to restrain the activities of family members		89
Ex parte communications must be avoided		80

E7 Exercise 7

Page 34

1. Bias may manifest itself in the judge's body language.

☒ Correct ☐ Incorrect

2. Bias is only relevant if directed towards a party.

☐ Correct ☒ Incorrect

3. An action of a judge's family may be relevant to an assessment of his or her impartiality.

☒ Correct ☐ Incorrect

4. A judge should not communicate with disappointed litigants after the trial is concluded.

☒ Correct ☐ Incorrect

5. It is generally inappropriate for a judge to defend judicial reasons publicly.

☒ Correct ☐ Incorrect

6. It is open to a judge to recuse him or herself after a trial has begun.

☒ Correct ☐ Incorrect

7. Private communications between a judge and any of the legal representatives in a trial are generally prohibited.

☒ Correct ☐ Incorrect

8. If a judge hearing a case receives any private communication in the course of a case from a party to the proceedings, a witness or a juror, all other parties and their legal representatives must be informed of this communication, and the court record must note it accordingly.

☒ Correct ☐ Incorrect

Feedback

1. Bias may manifest itself in the judge's body language. *Correct*
Constructive feedback: Commentary paragraph 58 explains that bias or prejudice may also manifest themselves in body language, appearance or behaviour in or out of court. Physical demeanour may indicate disbelief of a witness, thereby improperly influencing a jury. Facial expression

can convey an appearance of bias to parties or lawyers in the proceedings, jurors, the media and others. The bias or prejudice may be directed against a party, witness or advocate.

2. Bias is only relevant if directed towards a party. *Incorrect*
Constructive feedback: Commentary paragraph 58 notes that bias or prejudice may be directed against a party, witness or advocate.
3. An action of a judge's family may be relevant to an assessment of his or her impartiality. *Correct*
Constructive feedback: Commentary paragraph 67 explains that although members of a judge's family have every right to be politically active, the judge should recognize that the political activities of close family members may, even if erroneously, adversely affect the public's perception of his or her impartiality. Paragraph 67 further adds that a judge should discourage members of his or her family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This is necessary to avoid creating an appearance of exploitation of office or favouritism and to minimize the potential for disqualification.
4. A judge should not communicate with disappointed litigants after the trial is concluded. *Correct*
Constructive feedback: Commentary paragraph 73 explicitly states that if after the conclusion of a case the judge receives letters or other forms of communication from disappointed litigants or others criticizing the decision or decisions made by colleagues, the judge should not enter into contentious correspondence with the authors of such communications.
5. It is generally inappropriate for a judge to defend judicial reasons publicly. *Correct*
Constructive feedback: Commentary paragraph 74 on media criticism states that a judge should convey his or her opinion only by means of his or her reasons for judgements in dealing with cases under review, and that it is generally inappropriate for a judge to defend judicial reasons publicly.
6. It is open to a judge to recuse him or herself after a trial has begun. *Correct*
Constructive feedback: Commentary paragraph 66 states that a judge must be available to decide the matters that come before the court. However, to protect the rights of litigants and preserve public confidence in the integrity of the judiciary, there will be occasions when disqualification is necessary. On the other hand, frequent disqualification may bring public disfavour to the bench and to the judge personally, and impose unreasonable burdens on the judge's colleagues. Litigants may get the impression that they can pick and choose which judge will decide their case, and this would be undesirable. A judge should, therefore, organize his or her personal and business affairs in a way that minimizes the potential for conflict with judicial duties.
7. Private communications between a judge and any of the legal representatives in a trial are generally prohibited. *Correct*
Constructive feedback: Commentary paragraph 64 states that the principle of impartiality generally prohibits private communications between the judge and any of the parties or their legal representatives, witnesses or jurors.
8. If a judge hearing a case receives any private communication in the course of a case from a party to the proceedings, a witness or a juror, all other parties and their legal representatives must be informed of this communication, and the court record must note it accordingly. *Correct*
Constructive feedback: Commentary paragraph 64 states that if the court receives private communications from any of the parties or their legal representatives, witnesses or jurors, it is important that it ensure that the other parties concerned are fully and promptly informed and the court record noted accordingly.

E8**Exercise 8**

Page 35

Answer : Paragraph 88 of the Commentary

Paragraph 88 of the Commentary:

Any responsibilities and interests that the judge may have had during the course of his or her career prior to appointment to the judiciary may be taken into account in assessing his or her impartiality. In countries where judges are drawn from the private profession of advocate, a judge is likely to have held an office or appointment in which he or she may have given public expression to particular points of view or acted for particular parties or interests. This will necessarily be so if he or she was involved in political life. Experience outside the law, whether in politics or in any other activity, may reasonably be regarded as enhancing a judicial qualification rather than disabling it. But it has to be recognized and accepted that a judge is expected to leave behind and put aside political affiliations or partisan interests when he or she takes the judicial oath and commits himself or herself to performing judicial duties with independence and impartiality. That has to be one of the considerations that should be weighed by a reasonable, fair-minded and informed person when deciding whether there is a reasonable apprehension of bias or not.

In which of the following circumstances might recusal be necessary?

1. A human rights case in which a judge was previously a human rights lawyer but since appointment to the bench has publicly stated that his past advocacy work is now irrelevant.

☒

Judge should sit on case.

☐

Judge should not sit on case.

2. Judge in the above circumstances who has made no public statement of this nature.

☐

Judge should not sit on case.

☒

Judge should sit on case calling in response to any recusal request their judicial oath, and the Bangalore Principle on Impartiality.

3. Judge appointed to try a rape case who has previously been an outspoken supporter of the Campaign Group Women Against Rape.

☒

Judge should offer to recuse herself and make final decision having heard arguments from both parties.

☐

Judge should proceed to hear case without hearing arguments.

E9 Exercise 9

Page 36

Answer

Although these matters are always subjective, our advice regarding the three statements is as follows:

1. **Men with untethered dogs frighten me.**
Does not compromise the judge's impartiality, rather it shows they are honest.
2. **My clerk has fantastic breasts.**
Is in poor taste, inappropriate, and breaches the principles of equality and propriety, but it does not necessarily compromise the judge's impartiality. Module 3 of this course will address in more detail various gender-related integrity issues.
3. **I believe most of our cabinet are corrupt.**
If a genuinely held statement, it is a legitimate expression of free speech, but the judge will have to give careful consideration to recusal if he or she is given a case involving a cabinet member to adjudicate.

E10 Exercise 10

Page 37

1. Where he or she has previously served as a witness in the matter currently under adjudication.



*Recusal is necessary.
Please refer to Bangalore Principle 2.5.2 and Commentary paragraph 97.*

2. Where he or she, or a member of his or her family, has any financial interest in the outcome of the case. Family includes anybody close enough to be treated as "family" especially if they live in the same household as the judge.



*Recusal is necessary.
Please refer to Bangalore Principle 2.5.3 and Commentary paragraphs 98 and 99.*

3. Where he or she is a customer in the ordinary course of business with the bank/credit card company that is a party to the dispute in question.



*Recusal is not necessary.
Please refer to Bangalore Principle 2.5.3 and Commentary paragraphs 98 and 99.*

4. Where he or she has personal knowledge of disputed facts in the case.



*Recusal is necessary.
Please refer to Bangalore Principle 2.5.1 and Commentary paragraph 93.*

5. Where he or she is having an undisclosed (secret) affair with one of the advocates in the case.



Recusal is necessary under the principle of integrity even though nobody need to know the reason why.

C

Case study: Friend and former colleague

Page 38

1. Identify the Principle that is relevant for this scenario.

- ☐ 2.1 ☒ 2.2 ☐ 2.3 ☐ 2.4 ☐ 2.5

2. Identify and read the paragraph of the Commentary that provides advice on dealing with your own feelings when challenged to recuse yourself.

- ☐ 81 ☒ 87 ☐ 88

3. Identify the paragraph of the Commentary stating that the standpoint of the litigant (or accused) in these circumstances is “important but not decisive”.

- ☐ 52 ☐ 53 ☒ 54

4. Identify and read the paragraph of the Commentary dealing with friendship, animosity and other relevant grounds for disqualification and the ability of a judge to ignore extraneous considerations.

- ☒ 90 ☐ 94 ☐ 97

5. Identify and read the paragraphs that provide advice on what constitutes reasonable apprehension of bias.

- ☐ 61-65 ☐ 76 ☒ 81-86

Answer

A judge shall, in his personal relations with individual members of the legal profession who practise regularly in the judge’s court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality. This is a potentially difficult area in which problems increasingly arise. It is a question of context and of degree. The close relationship between bench and bar in many jurisdictions is a feature which most consider valuable and most well-informed fair-minded observers would start with the presumption that special circumstances have to be present to require a recusal. The strong professional traditions of bench and bar should be a sufficient safeguard to counter any fear of bias or undue influence. Therefore, this judge would normally not be seen by the informed observer to be influenced by his relationship with the lawyer in question.

C

Case study: Speech

Page 39

1. Identify the relevant Principle(s) of the Commentary to which you need to refer. One or more answers can be correct:

- ☐ 2.1 ☐ 2.2 ☐ 2.3 ☒ 2.4 ☒ 2.5

2. Identify the relevant paragraph of the Commentary for this scenario:

- ☐ 65 ☐ 66 ☒ 90

Answer

This case study differs from the previous case study in several respects. The relationship between the judge and the lawyer is not described as one of ex-professional colleagues, so the special connection of trust and respect is not necessarily established. It is likely that at the time of the book launch, the judge made flattering comments about its author who is now a party before him. An objective observer might therefore feel that there is a risk that such public comment might reduce the chance of a fair trial (Principle 2.4) and prevent him from deciding the case impartially (Principle 2.5). The additional evidence of the Facebook photograph intensifies the pressure on the judge to recuse himself on the general principle that “justice must not only be done, but must also be seen to be done”.

Unconscious bias

Page 40

Tips

1. Deliberately slow down the decision-making process.
2. Reconsider the reasons for your decisions.
3. Question cultural stereotypes.
4. Monitor each other for unconscious biases.

C

Case study: Judge McKenzie

Page 51

1. Stating that he had a bad back and is a judge in order to be upgraded to Business Class, not informing his colleagues and subsequently enjoying the VIP lounge

☒ Yes

☐ No

2. Taking miniatures from the VIP lounge

☒ Yes

☐ No

3. Using the VIP exit on the basis that he is a judge travelling in Business Class

☒ Yes

☐ No

4. Waving at his two colleagues, lost in a long immigration queue

☒ Yes

☐ No

5. Accepting an invitation to dine with his old friend

☐ Yes

☒ No

6. Declining the dinner invitation on behalf of his colleagues without consulting

☒ Yes

☐ No

7. Staying at his friend's villa for the duration of the conference

☐ Yes

☒ No

8. Claiming per diem expenses for the conference to cover all meals accommodation

☒ Yes

☐ No

9. Lying to his wife and children about the hotel accommodation

☒ Yes

☐ No

10. Treating his colleagues to dinner in an expensive restaurant

☐ Yes

☒ No

11. Buying a bouquet of flowers as a thank you to his friend and leaving a generous donation to her favourite charity

☐ Yes

☒ No

12. Not delivering the conference paper stating that he left it at home, when in fact he had not written any paper

☒

Yes

☐

No

13. Taking copious notes at the conference with the intention of briefing his judicial colleagues

☐

Yes

☒

No

E12 Exercise 12

Page 58

1. Judge gives preferential seating to a State official attending his or her court.

☒

Breaches the principle

☐

Does not breach the principle

Additional feedback: Breaches the principle, as it creates the appearance to the average observer that the official has special access to the court and its decision-making processes: Commentary paragraph 112.

2. Judge gives preferential seating to a school child attending his or her court on an educational visit.

☐

Breaches the principle

☒

Does not breach the principle

Additional feedback: Does not breach the principle as children are not in a position of power or influence and the visit is purely educational: Commentary paragraph 112.

3. Judge speaks privately and at length to a litigant in a pending case, although the conversation is completely unrelated to the case.

☒

Breaches the principle

☐

Does not breach the principle

Additional feedback: Breaches the principle, as this may appear to the public to be giving an advantage to one party: Commentary paragraph 111.

4. Judge accepts a lift to court from a defence counsel.

☒

Breaches the principle

☐

Does not breach the principle

Additional feedback: Breaches the principle as it might suggest that a special relationship exists between them: Commentary paragraph 113.

5. Judge is given and accepts a small gift at a public event.

☒

Breaches the principle

☐

Does not breach the principle

Additional feedback: Breaches the principle: How might this look in the eyes of the public?: Commentary paragraph 111.

E13 Exercise 13

Page 59

1. A judge may engage in appropriate extra-judicial activities so as not to become isolated from the community.

☒

Correct

☐

Incorrect

[See Commentary para. 166]

2. A judge may participate in community, non-profit-making organizations of various types by becoming a member of an organization and its governing body.

☒

Correct

☐

Incorrect

[See Commentary para. 167]

3. A judge has the same rights as an ordinary citizen with respect to his or her private financial affairs.

☒

Correct

☐

Incorrect

[See Commentary para. 169]

4. A judge has the right to protect his or her rights and interests, including by litigation in court.

☒

Correct

☐

Incorrect

[See Commentary para. 175]

5. A judge may join associations of judges or participate in other organizations representing the interests of judges.

☒

Correct

☐

Incorrect

[See Principle 4.13]

6. A judge may use, or lend the prestige of the judicial office to advance his or her private interests or those of their family or friends.

☐

Correct

☒

Incorrect

[See Principle 4.9]

7. A judge may represent his or her country, state or locality on ceremonial occasions.

☒

Correct

☐

Incorrect

[See Commentary para. 165]

8. The appearance of a judge on a commercial radio or TV network cannot be seen as advancing the financial interests of that organization.

☐

Correct

☒

Incorrect

[See Commentary para. 152]

9. While exercising functions as a judge, he or she can be involved in executive or legislative activities.

☐

Correct

☒

Incorrect

[See Commentary para. 164]

10. A judge may give legal advice even to those who are not close family member or close friends.

☐

Correct

☒

Incorrect

[See Commentary para. 174]

11. A judge has a duty to inform family members and court staff subject to his or her influence, direction or authority of ethical constraints.

☒

Correct

☐

Incorrect

[See Commentary para. 177]

E14 Exercise 14

Page 60

Answer

All three examples fall below the standards set by the propriety principle and should therefore be avoided.

1. “Hospitality from leading law firm”
Not a good idea as it might be seen as a bribe, especially if the lawyers regularly appear in your court.
2. “Short working hours and long lunches in the best-known restaurant”
Not a good idea as: (a) short hours suggest a lack of seriousness attached by you to your work; and (b) regularly and publicly dining out suggests a hedonistic lifestyle, especially if any alcohol is consumed. In most contemporary societies, mixing work and alcohol is not acceptable, especially by a judge.
3. “Late loud parties”
Not a good idea as a judge is particularly vulnerable to public scrutiny living and working in a small community and to subsequent gossip, plus some possible genuine grievances held by close neighbours regarding noise, etc.

C Case study: Garden party

Page 63

Answer

You should have thought very carefully when accepting the invitation as by doing so you may have been perceived as showing partisan political association, in breach of the Commentary paragraph 65, especially as there was an element of fundraising taking place at the party. Note that “a perception of partiality erodes public confidence” in a judge (Commentary paragraph 55). The fact that the mayor in question has a number of political enemies will undoubtedly sharpen the desire of these enemies to seek to cast his “friends” in a suspicious light. Paragraph 180 of the Commentary warns against a judge associating with a person who has “an unfavourable reputation in the community.” You were not sharp enough to spot the photographic journalist, once again flagging up the need to be eternally vigilant if you are a judge in a public place. Note, in this context, paragraph 113 of the Commentary stresses the need for a judge to “avoid contacts that may lead people to speculate that there is a special relationship between him or her and someone whom they may be tempted to favour in some way.” Being in the presence of racist humour should lead you to indicate at the very least your disapproval. The discovery of cocaine consumption on the premises would put you in a very vulnerable position if you remain at the premises. In conclusion, you were naïve to attend the party, and the embarrassments thereby caused by your leaving could have been avoided by declining the invitation which you should have done. You are right to leave.

E16 Exercise 16

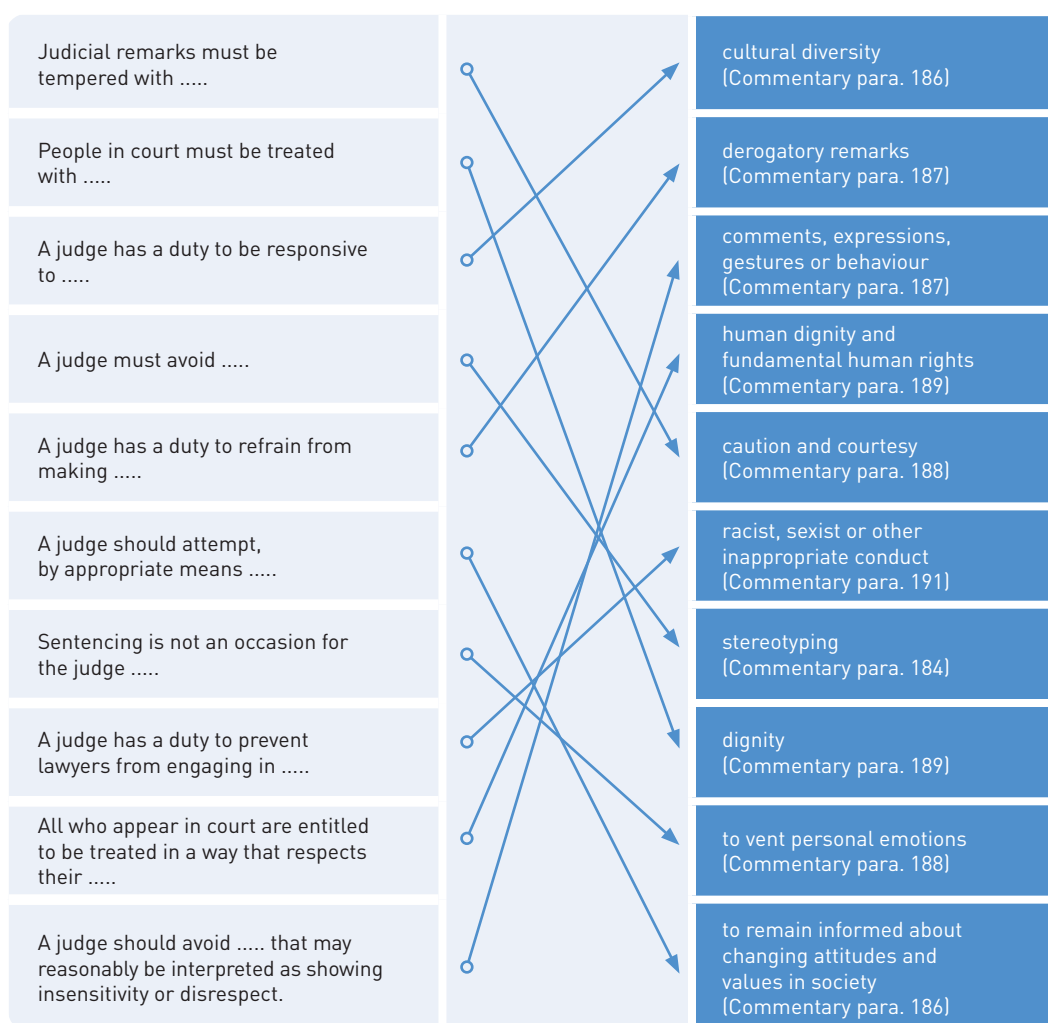
Page 66

Correct answers

Race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status.

E17 Exercise 17

Page 69



C

Case study: Training

Page 71

Answer

Several gender-related topics are touched upon in this case study.

Sexual harassment: The fact that one of the trainers makes humorous remarks that could be deemed sexist, but nobody challenges him is an example of covert sexual harassment of an audience. The failure of any members of the audience to challenge the speaker either directly or in private thereafter raises the question, what has happened to the integrity principle? Depending on the exact nature of the remarks the propriety principle may also be engaged.

The male judge who makes remarks about, and offers unwanted physical conduct with a female judge is clearly guilty of sexual harassment as he is not conducting himself in a way that is consistent with the dignity of the judicial office (Propriety Principle 4.2), nor with the equality principle “Sexual harassment of court staff, advocates, litigants or colleagues is often illegal as well as unethical” (Commentary paragraph 185).

Sexual discrimination: There is direct sexual discrimination by the conference organizers in locating the sleeping arrangements for women and men attendees in different parts of the premises, without seeking their views.

Gender stereotyping: There is gender stereotyping throughout this seminar, for example choice of rooms, gender for role plays.

C

Case study: Favourable decision

Page 72

Analysis

Sextortion relies on the coercive power of authority rather than physical violence or force to obtain sexual favours. The abuse of authority implies an imbalance of power between the perpetrator and the victim. This imbalance allows the perpetrator to exert coercive pressure on the victim to accede to sexual demands. An immigration judge holds an applicant’s entire future in his hands when he decides whether to grant her application for refugee status. Where the perpetrator’s power is so great, and the victim so powerless, no physical restraint or force is needed to extort sexual favours.

A judge who offers a litigant leniency in exchange for a sexual favour is not exercising his or her judicial functions independently of any extraneous influences or inducements (Independence Principle 1.1), nor in a manner that is independent in relationship to a party to the dispute (Independence Principle 1.2), nor exhibiting a high standard of judicial conduct (Independence Principle 1.6). Furthermore, his or her conduct is not above reproach, nor does it maintain a scrupulous respect for the law required of judges (Integrity Principle 3.1). In addition, the judge is clearly not adhering to the standards of the Propriety Principle required of judges (4.1).

This case study is based upon real events that occurred and led to an 18-month prison sentence for the judge in question. In sentencing the perpetrator, the judge said “his actions call for denunciation

in the strongest terms.” The judge focused on the power imbalance between him and the young woman, and his violation of the “significant trust” placed in him as an immigration adjudicator.

If as judge you are operating in an environment where you have concerns about any of your colleagues in this context, you should examine your own court’s rules and procedures. Do they make clear that sexual, as well as monetary bribes are corrupt? Are there rules against sexual harassment, and is everyone who works for, or comes before, the court covered by them? If a court employee were being pressured for sexual favours, would he or she have a clear, open, and effective grievance procedure to follow? Consider the supervisory role that judges can and do play in court personnel issues.

Short scenarios

Page 72

Scenario 1 - Analysis

The gender stereotyping and gender bias shown by the judge are affecting the judge’s exercise of his official function to the detriment of the female witness and in violation of the principles of equality and impartiality.

Scenario 2 - Analysis

This is poor court management and brings into question the judge’s competence (Principle 6.6: “A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants [...]”). It is also likely that the judge in the case has both gender bias and gender stereotyping issues and would benefit from further training on both issues.

Scenario 3 - Analysis

This constitutes sexual harassment and an abuse of power, and thereby violates the principles of integrity, propriety and equality. The fact that this occurs outside working hours and on the judge’s own computer appear irrelevant as the integrity principle clearly clouds the action with impropriety.

Scenario 4 - Analysis

This provides a clear example of sextortion which will always breach the principles of independence, impartiality, integrity and propriety.

E18 Exercise 18

Page 76

1. A judge should resist any temptation to devote excessive attention to extrajudicial activities:

☐ and never attend bars and clubs.
This is incorrect.
See Commentary paragraph 195, as well as 116 and 118.

☒ if this reduces the judge’s capacity to discharge the judicial office.
This is correct.
See Commentary paragraph 195.

2. The judiciary is an institution of service to the community. [...]



It is not just another segment of the competitive market economy.

This is correct.

See Commentary paragraph 195.



However, it is also a segment of the market economy.

This is incorrect.

See Commentary paragraph 195.

3. Is a judge responsible for the efficient administration of justice in his or her court?



Yes

This is correct.

See Commentary paragraph 196.



No

This is incorrect.

See Commentary paragraph 196.

4. Is a judge responsible for the recovery of lost court files?



Yes, a judge should institute systems for the investigation of the loss and disappearance of court files.

This is correct.

See Commentary paragraph 196.



No

This is incorrect.

See Commentary paragraph 196.

5. What paragraphs of the Commentary outline a judge's duties regarding promptness, punctuality and transparency?



Commentary paragraphs 207-210

This is correct.



Commentary paragraphs 212-215

This is incorrect.

See Commentary paragraphs 207-210.

E19 Exercise 19

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1. Judicial training should be multidisciplinary.



2. Training for judges should be available throughout their careers.



3. Failure to attend training events should be a disciplinary matter.



4. All judges should be given time to be involved in training as part of their judicial work.



5. The State has a duty to provide adequate funding to train judges.

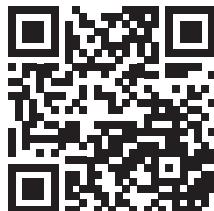


6. Performance at training events should be linked to promotion opportunities.



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