

# **GAMBIA HIGH COURT DIGEST**

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# GAMBIA HIGH COURT DIGEST

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### **Civil Procedure – Service of Process -**

Application for Order of Substituted Service – Affidavit in support to give specific details or instances how and why personal service cannot be conveniently effected – vague affidavit will not suffice.

Per Singhateh J, in **Mahamadou Jako Dukuray Vs. Sanna Sambou & another** (Suit No HC 407/09/CL/078/AO) delivered on 7<sup>th</sup> December 2009.

### **Civil Procedure –**

**Interlocutory Injunction Pending Determination of Suit –**

## **Principles Guiding Grant of –**

Applicant seeking interlocutory injunction is required to satisfy the Court that the grant is necessary in the interest of justice and that the balance of convenience is on his side to maintain the status quo.

P. 6 - Per Singhateh J, in **Jean Carayole & another Vs. Rene Carayol & 2 another** (Suit No HC 055/09/CL/ 014/AO) delivered on 17<sup>th</sup> December 2009.

## **Civil Procedure -**

### **Amendment of Title of Suit After Conclusion of Trial – Propriety –**

Duty of Court in the circumstances – Guiding Principles

Per Singhateh J, in **ULF Linden & another Vs. Amadou Mareneh** (Suit No HC 334/93L. No.6) delivered on 25<sup>th</sup> March 2010.

### **Suit By Attorney – Invalid Power of Attorney – Competency of Suit**

Plaintiff suing by his Attorney – Invalid Powers of Attorney – Effect on the competency of the suit and jurisdiction of Court to entertain same.

Per Mbai J, in **Anne Whiting Vs. Bakary Ceesay & others** (Suit No HC 143/05/BK/13(A) delivered on 18<sup>th</sup> June 2010

## **Pleadings –**

Pleadings not supported by evidence go to no issue in the same way as evidence not supported by pleadings.

Per Mbai J, in **Anne Whiting Vs. Bakary Ceesay & others** (Suit No HC 143/05/BK/13(A) delivered on 18<sup>th</sup> June 2010.

## **Civil Procedure –**

### **Application For Stay of Execution Pending Appeal -**

Where no evidence of notice of appeal pending to the supporting affidavit – Application incompetent.

P2 – Per Mbai J, in **Saidou Jallow Vs. Kabba Jallow U another** (Suit No HC/170/10) delivered on 8<sup>th</sup> December 2010.

Refusal to pay cost awarded would amount to contempt of Court.

P 3 – 4 Per Mbai J, in **Saidou Jallow Vs. Kabba Jallow U another** (Suit No HC/170/10) delivered on 8<sup>th</sup> December 2010

## **Civil Procedure –**

### **Applications Before a Court –**

Granting or refusal of an application does not necessarily depend on whether or not an affidavit in opposition is filed.

P2 – Per Mbai J, in **Tamba Mary Baldeh Vs. The Attorney General & another** (Suit No HC/51/02B No. 5) delivered on 8<sup>th</sup> December 2010.

Power of a High Court Judge to set aside or review the Orders or Judgment of another High Court Judge. – No such powers exist in the Judicial System.

Pp 3 – 5 Per Mbai J, in **Tamba Mary Baldeh Vs. The Attorney General & another** (Suit No HC/51/02B No. 5) delivered on 8<sup>th</sup> December 2010.

## **Civil Procedure –**

### **The Sole Defendant Died –**

Application to substitute filed in 2008 but not moved – In 2010, on plaintiff's application case was struck out – A further motion by the same plaintiff to relist the suit struck out when there was no defendant - application cannot be granted.

Per Mbai J, in **Lamin Darboe Vs. Arfang Sanyang** (Suit No CS NO. 86/2004) delivered on 23<sup>rd</sup> March 2011.

## **Civil Procedure –**

### **Contempt of Court –**

Application to commit defendant to Prison for contempt for disobeying Orders/Judgment in favour of the plaintiff - What the applicant can show for the Order to be granted.

Pp 2– 3 Per Mbai J, in **Mariama Bah Vs. Abdou Jallow** (Suit No CA/33/99) delivered on 28<sup>th</sup> February 2011.

## **Civil Procedure –**

### **Relitigation of Claim - Estoppel Per Rem Judicatam –**

A party is precluded from re-litigating the same issue and subject matter previously decided by a Court of competent jurisdiction between same parties – option open to the aggrieved party is to appeal against the existing/subsisting Judgment.

Per Mbai J, in **Sidi Braham Alami Vs. Continent Bank Ltd.** (Suit No HC 127/01/BK/09/ on delivered on 2<sup>nd</sup> July 2010

## **Civil Procedure –**

### **Stay of Proceedings Pending Appeal –**

When can a stay of proceedings be granted – Jurisdiction of the Court questioned on appeal – ground of appeal touches on the root of the case at the trial.

Per Mbai J, in **Bernd George Diedrich Vs. Alakali Yankuba Jatta & 14 others** (Suit No HC 313/09/BK/035/AO) on delivered on 1<sup>st</sup> June 2010.

**Civil Procedure –**

- (1) Stay of Execution – Granting the Order of stay with or without a condition – merely discretionary, not mandatory.
- (2) No where in the Rules is it stated that an application for stay of execution of the Judgment of a Magistrates' Court must first be made to the Magistrates' Court before coming to the High Court.

Per Mbai J, in **Russel Eastwood Vs. Mbye Nyang** (Suit No HC 360/09/BK/042/CO) on delivered .

**Undefended List Procedure –**

Defendant admitting owing the sum claimed but disputed the rate of interest claimed- Court's discretion – basis thereof

Per Mahoney J, in **Assets Management and Recovery Corporation Vs. Alieu Ngum** (Suit No. HC 296/10/CO/075/D2) delivered on 18<sup>th</sup> June 2010.

**Civil Procedure –****Pleadings – Order 23 Rule 16 as Amended –**

Defendant failing to file a defence, etc, after the expiration of time provided by the Rules, including the 14 days extension of time if earlier granted – effect.

Per Jobarteh J, in **Abdullah M. K. Bojang Vs Zakaria Sanneh & 2 others** (Suit No. HC 401/10/CL/050/AO)

**Civil Procedure –**

Pleadings – Order 23 Rule 16(4)(a) Rules of the High Court as Amended – Rule Unambiguous, - Mandatory - Court has no discretion than abide by what the statute says.

Pp 12 – 16 Per Jobarteh J, in **Dr. Sheriff Aba Dumbuya Vs. John Gomez and 4 others** (Civil Case No. 379/10/CC/046/AO) delivered on 2<sup>nd</sup> February 2011.

**Civil Procedure –**

Plaintiff resident out of jurisdiction and sues by an Attorney – He can still testify in the case as a witness.

Per Jobarteh J, in **Angelica John Vs Mbow Kanyi** (Civil Suit No. HC/299/10/CL/042/AO) delivered on 2<sup>nd</sup> February 2011.

## **Civil Procedure –**

The Importance of Address of Counsel in Trial Process

P. 5 - Per Ikpala J, in **The State Vs. Sheriff Jallow and 2 others** (Criminal Case No. (HC/268/09/CR/057/AO) delivered on 14<sup>th</sup> February 2011.

## **Company Law -**

**Private Company** – Can have only a Director. Two or more Directors not mandatory - A sole director cannot also be the secretary of the company. Membership cannot reduce below 2.

P. 9 - Per Fagbenle J. in **Jamil Farage Vs. Afro Kong Industrial (Gambia) Ltd & another** (Civil Suit No. CS/376/93/F NO. 5) delivered on 10<sup>th</sup> June 2010.

## **Director - Defined**

Chairman and Managing Director –

Can be removed by the Company at its general or any other special meeting of which notice is given as provided in the Articles or according to the terms of the contract by which he was appointed.

P.8 per Fagbenle J, in **Jamil Farage Vs. Afro Kong Industrial (Gambia) Ltd & another** (Civil Suit No. CS/376/93/F NO. 5) delivered on 10<sup>th</sup> June 2010.

## **Commercial Transaction – Appointment of a Referee –**

When necessary – When appointed, Referee agent of Court

Per Fagbenle J, in **Jeetn Dubai Textile Co. Ltd Vs. Ebrim Aidora** (Civil Suit No. HC/416/08/CO/096/D2) delivered on 10<sup>th</sup> May, 2010.

## **Constitution –**

### **Court's Jurisdiction – Ouster Provisions –**

As a matter of law, Courts are bound to uphold ouster clauses in appropriate and relevant cases where the language of the ouster clause is clear. Courts of Law are entitled to refuse jurisdiction in a matter – see paragraphs (1)(3) and 13 of schedule 2 to the Constitution and S.15 of Decree No. 25 of 1994.

Per Singhateh J, in **Ajaratou Mariam Denton Vs. Asset Management & recovery Corporation I & 3 other** (Suit No HC 216/2000) delivered on 10<sup>th</sup> February 2011.

### **Constitution - Supremacy of the Constitution -**

Law that is inconsistent with the Constitution is void to the extent of the inconsistency.

P. 6 - Per Ikpala J, in **The State Vs. Sheriff Abba Hydera** (Criminal Case No. (HC/479/10/CR/124/AO) delivered on 14<sup>th</sup> February 2011.

### **Contract of Guarantee of Loan/Debt –**

Who is a guarantor? - Any person or company acting as guarantee has the responsibility to read and fully understand the guarantee document before signing same as he will be personally bound by the terms and cannot resile therefrom when called upon later to repay the amount guaranteed by him.

Per Joof J in **Bank PHB (Gambia) Ltd. Vs. Maligam International & 2 others** (Civil Suit No. HC/433/11/105/ (D2) delivered on 26<sup>th</sup> September, 2011

### **“Contract of Exchange” – Defined.**

Like in all forms of contracts, there must be consideration, intention to create legal relations and the parties must have the capacity to contract. It is unenforceable by action unless there is either a sufficient memorandum in writing evidencing the contract of exchange or an act of part performance.

Pp 5-6 - Per Singhateh J. in **Abdoulie Njie Vs. The Administrators of the Estate of Abdoulie Sallah** Suit No. HC/189/07/040/AO delivered on 9<sup>th</sup> June. 2010.

### **Contract – Frustration – What Remedy?**

P8 Per Fagbenle J, in **Sannon Investment Corporation Africa Ltd Vs. SSHFC** (Civil Suit No. HC/176/96/S.N0. 34) delivered on 2<sup>nd</sup> June 2010.

### **Contract – Written Contract –**

Oral Evidence - precluded in proving contents of written contract except where forgery or fraud or misrepresentation is alleged.

P.3 Per Fagbenle J, in **Reliance Financial Services Co. Ltd. Vs. Katim Touray** (Civil Suit No. HC/477/09/CO/123/C3) delivered on 26<sup>th</sup> May 2010.

### **Contract – Breach of – Claim for Damages for Breach of Contract -**



Damages for breach of contract defined as compensation to the plaintiff for a damage, loss or injury he has suffered through the breach is, as far as money can do it, to place plaintiff in the same position as if the contract had been performed.

### **Special Damages – Need to specifically plead and strictly prove same**

Whether or not the defendant defends the action, the plaintiff is required to prove his case to be entitled to damages – special damages must be pleaded specifically and proved strictly – Failure to do so, Court may award nominal damages

Pp 4 – 5 Per Singhateh J, in **Yassin Drammeh Vs. Jorjoh Mboge** (Suit No HC 593/09/CL/126/AO) delivered on 22<sup>nd</sup> February 2011.

### **Court –**

Cadi Court – The High Court has no jurisdiction to set aside the decision of a Cadi Court or declare same null and void – S. 132(2) of the 1997 Constitution.

P.3 Per Singhateh J, in **Babou Lowe Vs. Babou Lowe & others** (Misc. App. HC/401/08 delivered on 3<sup>rd</sup> March 2010.

Pp 3 – 4 Per Singhateh J, in **Dr Lamin Sidibeh and others Vs. Susanna Boedeka and others** (Suit No. CS/164/96) dated 29<sup>th</sup> November 2010.

### **Court –**

### **Inherent Powers – Definition and Source – When and How Exercised –**

Distinction between Court's inherent powers and Court's jurisdiction to review its Orders under Order 41 Rule 1 of the Rules of the High Court as amended.

Pp. 2 -6 Per Singhateh J, in **Fanta Bai Secka Vs. Abdoulie N'Dimbalan & 2 others** (Suit N0. HC 318/09/CL/A0) delivered on 14<sup>th</sup> June 2011.

### **Court – Jurisdiction – S. 27 of Rent Decree (1996) (Decree 67) -**

In consistent with S.132 of the 1997 Constitution, and, to that extent, S. 27 of the Rent Decree is void.

Per Singhateh J, in **Catherina Zwart<sup>th</sup> Vs. Musa Jatta** (Suit No HC 163/07/CO/033/D2) delivered on 11 March 2010.

### **Court – District Tribunal – Line of Appeal -**

By combined effect of S.120 (1)(b) of the Constitution, and S. 26 of District Tribunal Act Cap. 603, appeals from District Tribunal lie to the High Court and governed by Order 53 of the High Court Rules.

Pp 3 – 4 Per Singhateh J, in **Faye Drammeh Vs. Lamin Baldeh** (Suit No HC 221/08/CL?056?CO) delivered on 15<sup>th</sup> March 2010.

### **Criminal Law –**

Rape – S. 127(1) of the Criminal Code as amended – Evidence – Corroboration – What amounts to corroboration in Law – Sections 179 and 180(1)(2)(b) of the Evidence Act.

Pp 4 -13 - Per Jobarteh J, in **Musa Ceesay Vs. The State** (Crim. Appeal No. 279/09/CR/059/BO).

### **Criminal Law – Rape**

Ingredients of Rape – Corroboration – What amount to corroboration in law –When proved - Effect

Per Jobarteh J, in **The State Vs Lamin Jah** (Crim. Case No. HC/571/09/CR/160/AO) delivered on 6<sup>th</sup> May 2011.

### **Criminal Law –**

#### **Issue of False Cheque –**

Section 296A (1)(b) of Decree 86 of the Criminal (Amendment) Decree 1996 – Offence of strict liability – Where prosecution proves the actus reus, the burden shifts to the accused to prove excuse.

Per Jobarteh J, in **State Vs Amadou Diop** (Crim. Case No. 040/10/CR/021/AO) delivered on 22<sup>nd</sup> August 2011.

### **Criminal Law –**

#### **Murder – S.187 Criminal Code –**

Ingredients of the offence - Defences open to the accused – Court to consider all the possible defences open to the accused even if not raised in his evidence. The concept of “NOVUS ACTUS INTERVENIENS” .

Per Ikpala J, in **The State Vs. Bakary Daffeh** (Criminal Case No.

(HC/388/09/CR/098/AO) delivered on 4<sup>th</sup> June 2010.

## **Criminal Law – Rape -**

### **Section 121 of the Criminal Code Cap. 10 – Ingredients of the Offence of Rape–**

When is the offence complete?

Pp 4 – 7 - Per Ikpala J, in **The State Vs. Davidson Jones** (Criminal Case No. (HC/190/09/CR/058/AO) delivered on 1<sup>st</sup> June 2010.

## **Criminal Law –**

### **Murder – S.187 of the Criminal Code Cap 10-**

Ingredients of the offence of murder – “malice aforethought” defined in S.190 of the code.

Evidence In proof of murder – By direct or circumstantial evidence – proof of intention can be inferred from the circumstances of the case.

Pp 12 – 15 - Per Ikpala J, in **The State Vs. Amadou Jarra** (Criminal Case No. (HC/193/09/CR/041/AO).

## **Defence of Provocation –**

### **Statutory Defence – S.192 of the Criminal Code –**

When the defence of provocation can avail the accused.

Pp 19 – 20 - Per Ikpala J, in **The State Vs. Amadou Jarra** (Criminal Case No. (HC/193/09/CR/041/AO).

## **Rape –**

### **Issue of Proper Identification of the Accused –**

Duty of Counsel appearing for the accused

Per Ikpala J, in **The State Vs. Modou Musa Sidibeh** (Criminal Case No. (HC/986/09/CR/011/AO) delivered on 18<sup>th</sup> June 2010.

## **Criminal Law –**

### **Rubbery – defined – S. 272 of the Criminal Code –**

Ingredients of the offence of Robbery.

P. 3 - Per Ikpala J, in **The State Vs. Charles Agbagwua and another** (Criminal Case No. (HC/349/10/CR/076/AO) delivered on 15th March 2011

#### **Criminal Law –**

##### **Murder – S.187 of the Criminal Code – Ingredients of the Offence of Murder –**

Malice aforethought defined – S.190 of the Criminal Code – Proof by either direct or circumstantial evidence.

P. 5 – 9 Per Ikpala J, in **The State Vs. Terrick Bright and another** (Criminal Case No. (HC/017/10/CR/009/AO) delivered on 7th April 2011.

**Accessory after the fact of Murder** – Section .202 of the Criminal Code – Who is an accessory after the fact of an offence? – One who helps the culprit to escape punishment.

P. 18 – 19 Per Ikpala J, in **The State Vs. Terrick Bright and another** (Criminal Case No. (HC/017/10/CR/009/AO) delivered on 7th April 2011.

#### **Criminal Law –**

Concealment of birth of a child – S. 207 of the Criminal Code – Ingredients of the offence -

Pp 11 – 13 – Per Ikpala J, in **The State Vs. Serah Gomez** (Criminal Case No. HC/396/09/CR/104/AO) delivered on 22<sup>nd</sup> November 2010.

#### **Section 368 of the Criminal Code -**

When is the offence of conspiracy committed?

P. 11 - Per Ikpala J, in **The State Vs. Charles Agbagwua and another** (Criminal Case No. (HC/349/10/CR/076/AO) delivered on 15th March 2011.

#### **Criminal Law –**

##### **Murder – S. 187 of the Criminal Code –**

Ingredients of the offence of Murder – Proof – By direct or circumstantial evidence or by confession.

P. 4 - Per Ikpala J, in **The State Vs. Sheriff Abba Hydara** (Criminal Case No. (HC/479/10/CR/124/AO) delivered on 14th February 2011.

## **Criminal Law**

**Murder** – Defence of delusion or hallucination.- Meaning of - When the defence of delusion avails an accused person.

Pp 6 – 7 Per Ikpala J, in **The State Vs. Lamin Faye** (Crim. Case No. HC 395/09/CR/103/AO) delivered on 8<sup>th</sup> June 2010

## **Criminal Procedure -**

Appellant unrepresented at trial in a charge carrying capital punishment –

What the Trial Court must do in the interest of justice – S.24 (3) (f) of the Constitution.

## **Arraignment –**

What constitutes proper arraignment – Accused not represented by counsel – What the Record should show as to the process of arraignment

Pp 10 – 11 Per Jobarteh J, in **Ahmed Ibrahim Vs. The State** (Criminal Appeal No. HC/428/06/CR/087/BO) delivered in 2010.

## **Arraignment –**

Accused pleading guilty – Prosecution to state facts thereof – Need to disclose elements of the offence charged – Failure negatives the guilty plea.

Pp 11 – 12 Per Jobarteh J, in **Ahmed Ibrahim Vs. The State** (Criminal Appeal No. HC/428/06/CR/087/BO) delivered in 2010.**Conspiracy to Commit an Offence –**

## **Criminal Procedure –**

**Forfeiture of Recognizance – Statutory - Procedure –**

Section 107 of the Criminal Procedure Code Cap 12 – Irregular Procedure would lead to injustice

Pp 4 -13 - Per Jobarteh J, in **Yankuba Fatty Vs. The State** (No.HC 162/09/CSR/032/BO)

### **Criminal Procedure – Identification Parade –**

Proper Identification parade. Factors to consider.

Per Jobarteh J, in **The State Vs Lamin Jah** (Crim. Case No. HC/571/09/CR/160/AO) delivered on 6<sup>th</sup> May 2011.

### **Criminal Procedure –**

#### **Stay of Proceedings Pending Appeal – Section 285A of the CPC –**

Principles that guide the Court in considering application.

Per Jobarteh J, in **Amadou Diop Vs The State** (Misc App. No. HC 015/10/CR/008/CO).

### **Criminal Law and Procedure –**

#### **The Powers of the Attorney - General in Criminal Prosecution –**

Section 64 of the CPC and S.85 of the Constitution. The AG's control and direction exercisable by the DPP – Court's jurisdiction to question the exercise of such powers.

P.7 - Per Jobarteh J, in **The State Vs. Alhagie L.S. Sonko and 3 others** (Criminal Case No. HC/111/10/CR/045/AO).

### **“Charge” or “Information” – Meaning of – Defective Change or Information –**

What the Court should do as laid down by the GCA – S.218(1) of CPC.

Pp 6, 8 and 9 - Per Jobarteh J, in **The State Vs. Alhagie L.S. Sonko and 3 others**

(Criminal Case No. HC/111/10/CR/045/AO).

### **Criminal Procedure – Voir Dire –**

Accused person's statement recorded by him prior to his arrest and detention –

Rules 3 and 5 of the Judges Rule as construed by the GCA – S.31(2) Evidence Act not applicable.

Per Jobarteh J, in **The State Vs. Lamin Jaiteh and another** (HC 306/09/CR/068/AO) delivered on 22<sup>nd</sup> August 2011.

### **Criminal Procedure –**

Where Accused's extra Judicial Statement to the Police contradicts his sworn evidence in Court – Effect on the truthfulness of the accused -

Pp 4 – 5 - Per Ikpala J, in **The State Vs. Bakary Daffeh** (Criminal Case No. (HC/388/09/CR/098/AO) delivered on 4<sup>th</sup> June 2010.

### **Criminal Procedure –**

#### **Corroboration Required in Rape Cases –**

Nature of corroborative evidence;

Pp 8 – 9 - Per Ikpala J, in **The State Vs. Davidson Jones** (Criminal Case No. (HC/190/09/CR/058/AO) delivered on 1<sup>st</sup> June 2010.

### **Criminal Procedure –**

Presumption of facts not established by evidence –

In criminal trial, the law is settled that the Courts will not presume the existence of facts which are central to an offence.

P. 8 - Per Ikpala J, in **I.G.P Vs. Mariama Singhateh** (Criminal Case No. (HC/28/2000) delivered on 27th November 2010.

### **Criminal Procedure –**

#### **Accused’s Presence at the Scene of Crime –**

Distinction between “mere presence” and presence for a purpose connected with unlawful purpose.

P. 11 - Per Ikpala J, in **The State Vs. Charles Agbagwua and another** (Criminal Case No. (HC/349/10/CR/076/AO) delivered on 15th March 2011.

### **Criminal Law and Procedure –**

#### **Estoppel:**

#### **Estoppel Per Rem Judieatam –**

By this doctrine, a party is precluded from bringing a fresh action on the same cause of action or issues already decided by a Court of competent jurisdiction between same parties in a previous litigation. The rationale of this rule is that there should be an end to litigation between same parties over the same subject matter

Per Mahoney J. in **Alhaji Jallow Vs. Guaranty Trust Bank and 2 others** (Civil Suit No. HC/262/09/CO/080/D2) delivered on 17<sup>th</sup> May, 2010.

#### **Evidence:**

Proof – Pleadings having been filed and issue joined, the plaintiff must, before Judgment is entered, produce prima facie proof of his case to the satisfaction of the Court, the failure of the defendant testifying notwithstanding.

#### **Evidence –**

#### **Incidence of burden of proof – Negligence – Res ipsa liquitur –**

On whom lies? It is only when the plaintiff has established negligence on the part of the defendant does the burden shift on the defendant to prove that he was not negligent or explains how the cause of the accident does not connote negligence on his part.



Pp 6 Per Singhateh J, in Dr **Lamin Sidibeh and others Vs. Susanna Boedeka and others** (Suit No. CS/164/96) dated 29<sup>th</sup> November 2010

### **Stamp duty – S. 18(1) of Stamp Act -**

Admissibility of unstamped document – could be admitted in evidence and the Court will countenance it as long as the requisite stamp duty is paid anytime before Judgment.

Pp. 5 Per Singhateh J, in **Nelisa Mendy Vs. Abdoulie Ceesay** (Civil Suit No. HC/153/05/CL/17/(A) delivered on 23<sup>rd</sup> June 2011.

## **EVIDENCE**

### **Confession –**

#### **Weight to Attach to a Confessional Statement –**

What questions the Court should ask itself and resolve in considering confessional statement.

Pp 17 – 18 - Per Ikpala J, in **The State Vs. Amadou Jarra** (Criminal Case No. (HC/193/09/CR/041/AO).

## **Confession – S. 179 Evidence Act –**

Admissibility – S.31 (1) Evidence Act – Test of Confessional statement – Retraction thereafter in Court – effect.

Pp 9, 13, 17 - Per Ikpala J, in **The State Vs. Terrick Bright and another** (Criminal Case No. (HC/017/10/CR/009/AO) delivered on 7th April 2011.

**Confessional Statement** – Proved to have been made voluntarily and is direct, positive, unequivocal amounts to an admission of guilt – Where maker later resiles therefrom or retracts same later at trial, such retraction does not make the statement in admissible; the Court should act on it.

P. 5 - Per Ikpala J, in **The State Vs. Alkali Dampha** (Criminal Case No. (HC/356/09/CR/082/AO) delivered on 14th April 2011.

## **Evidence – An Expert – Who is an Expert Witness? –**

Probative value of evidence of an expert.

Pp 11 – 13 – Per Ikpala J, in **The State Vs. Serah Gomez** (Criminal Case No. HC/396/09/CR/104/AO) delivered on 22<sup>nd</sup> November 2010.

## **LAND**

**Declaration of title to land** – duty of plaintiff – A plaintiff in an action for declaration of title must rely on the strength of his own case and not on the weakness of the defendant's.

Page 6 Per Singhateh J. in **Abdoulie Njie Vs. The Administrators of the Estate of Abdoulie Sallah** (Suit No. HC/189/07/040/AO) delivered on 9<sup>th</sup> June. 2010.

## **Land –**

### **Proof of Title to Land –**

Declaration of title to land – Onus on the plaintiff to prove root of title and ownership of the suit land including location, identity and size of the land claim – need for a sketch plan -

Pp. 5 Per Singhateh J, in **Nelisa Mendy Vs. Abdoulie Ceesay** (Civil Suit No. HC/153/05/CL/17/(A) delivered on 23<sup>rd</sup> June 2011.

**Acts of possession of land –**

Plaintiff relying on acts of possession must plead and prove by evidence the acts of ownership or possession relied upon.

Pp. 5 Per Singhateh J, in **Nelisa Mendy Vs. Abdoulie Ceesay** (Civil Suit No. HC/153/05/CL/17/(A) delivered on 23<sup>rd</sup> June 2011.

**LAND****Claim for Declaration of Title to Land -**

Plaintiff bears the onus to accurately identify the suit land in his statement of claim and evidence; and show satisfactorily that his plan corresponds with the land to which he claims.

Pp 4 – 6 Per Singhateh J, in **Duwa Jatta Vs. Driss Bensouda and 3 others** (Suit No HC 159/203) delivered on 15<sup>th</sup> June 2010.

**Land –****Declaration of Title to –**

Onus on the plaintiff to prove his claim by the strength of his own case and not on the weakness of the defence.

Per Mbai J, in **Afang Karamo Bojang Vs. Samba Jallow & 4 others** (Suit No HC 161/06) delivered on 18<sup>th</sup> March 2011.

**Land – Rival Claims of Ownership –**

What amounts to complete transfer of land from the original owner to a claimant – authentic documents of transfer – proper parties to the action.

Pp 2 – 4 Per Mbai J, in **Musa Jallow Vs. Bala Jallow & 2 others** (Suit No HC 234/07/MF/074/E1) delivered on 5<sup>th</sup> April 2011.

**Land –**

Declaration of Title – State Land – Onus on the claimant to accurately prove the identity of the suit land in his pleading and evidence together with an accurate sketch plan

showing features thereon – Acts of ownership and evidence of registration of title – Effect of registration.

Per Singhateh J, in **Dulab Real Estate Afric Ltd. Vs. Mahmoud Hakim** HC/381/07/88/AO) delivered on 18<sup>th</sup> January 2010.

**Standard of Proof in Land Cases** – proof on the preponderance of possibilities.

Pp 3, 4 and 6 - Per Singhateh J. in **Abdoulie Njie Vs. The Administrators of the Estate of Abdoulie Sallah** (Suit No. HC/189/07/CL/040/AO) delivered on 9<sup>th</sup> June. 2010.

**Land –**

**Proof of Title to Land – 5 Ways to Prove Title to Land**

Declaration of title to land – Identity of the suit land – Duty of plaintiff to accurately prove the identity of the land claimed – Plaintiff to prove title and establish ownership of the suit land on the strength of his case, not on the weakness of the defendant's case.

Pp 5 – 6 Per Singhateh J, in **Demba Sillah Vs. Mbemba Bojang & others** (suit No. HC/010/09/B19/003/AO) delivered on 17<sup>th</sup> February 2011; **Nelisa Mendy Vs. Abdoulie Ceesay** (Civil Suit No. HC/153/05/CL/17/(A) delivered on 23<sup>rd</sup> June 2011.

**Tort – Negligence – Defined -**

The failure to use such care as a reasonably prudent and careful person would use under similar circumstances; the doctrine of negligence rests on duty of every person to exercise due care in his conduct towards others from which injury may result.

**Negligence - A Question of Fact Not of Law -**

Pp 4 Per Singhateh J, in **Dr Lamin Sidibeh and others Vs. Susanna Boedeka and others** (Suit No. CS/164/96) dated 29<sup>th</sup> November 2010; **Fouad Mahmoud Vs. Zygote Oil Co. Ltd.** HC/237/11/CO/043/D2 delivered on 27<sup>th</sup> July 2011

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## **REMEDY -**

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# GAMBIA HIGH COURT DIGEST

## VOL.THREE

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- b) The object of the Court is to decide the rights of the parties and not to punish them for their mistakes. Once the error is not fraudulent or intended to over reach or lead to injustice to the other party, and the proposed amendments are relevant and necessary; not prejudicial or embarrassing to the other party, or introduce a new cause of action and the other party can be compensated by cost, the amendment sought should be allowed.

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### **Representative Capacity –**

A plaintiff sues on behalf of himself and others he claims to represent in the suit - must prove to the Court that he has the authority of the persons he alleges to represent – Failure to show such authority will rob him the competence to represent them in the suit.

### **Representative Capacity –**

A head of a family can take an action in his capacity as family head to protect the family's property without prior authority of the members of his family.

Pp 4 (1) Per Singhateh J, in **Demba Sillah Vs. Mbemba Bojang and 4 others** (Civil Suit No. HC/010/09/B19/003/AO) delivered on 17<sup>th</sup> February 2011.

### **Civil Procedure – Pleading –**

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Pp 3 -4 Per Singhateh J, in **Dr Lamin Sidibeh and others Vs. Susanna Boedeka and others** ( Suit No. CS/164/96) dated 29<sup>th</sup> November 2010.

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Pp 5 Per Singhateh J, in **Fouad Mahmoud Vs. Zygote Oil Company. Ltd.** (Suit No. HC/237/11/CO/042/D2) delivered on 27<sup>th</sup> July 2011.

### **Civil Procedure**

### **Party to a Suit – Capacity –**

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### **Service of process on a defendant –**

A condition precedent before any proceedings in the suit is commenced.

Pp. 2 Per Singhateh J, in **Tajco Company Ltd Vs. Oceanic Bank (Gambia) Limited** (Suit No. HC/224/11/CO/038/D2) delivered on 24<sup>th</sup> June, 2011.

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Application to relist a case struck out – Order 34 Rule 6, Rules of the High Court – Court's discretion. Application to relist must be by motion on notice (not ex-parte) -supported by affidavit stating facts that will enable Court exercise its discretion one way or the other.

Per Singhateh J, in **Mariama Camara Vs. Alasana Sumareh** (Suit No. CS/201/98) delivered on 14<sup>th</sup> July 2011.

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Pp. 8 – 9 Per Singhateh J, in **Banyuma Sillah Vs. Momodou Jagne** (Suit No. HC 039/10/CL/004/AO) delivered on 20<sup>th</sup> June, 2011.

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##### **Order 43 Rule 18 (1) (2) (3) Rules of the High Court as amended –**

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P. 6 Per Singhateh J, in **Medway Development co. Ltd Vs. The Gambia Tourism Authority & others** (Suit N0. HC 209/08/CL/052/AO) delivered on 10<sup>th</sup> January 2011.

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Per Singhateh J, in **Christal Brokman Vs. TAdama Saidy** (Suit No HC 593/09/CL/126/AO) delivered on 22<sup>nd</sup> February 2011.

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Per Singhatoh J, in **Ali Traboulsi & another Vs. Lamin Njie** (Suit No HC 527/09 /CL/107/AO ) delivered on 12<sup>th</sup> March 2011.

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Pp 6 – 7 Per Singhatoh J, in **Faye Drammeh Vs. Lamin Baldeh** (Suit No HC 221/08/CL/056/CO) delivered on 15<sup>th</sup> March 2010.

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Per Singhatoh J, in **Mahamadou Jako Dukuray Vs. Sanna Sambou & another** (Suit No HC 407/09/CL/078/AO) delivered on 7<sup>th</sup> December 2009.

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Per MBai J, in **Anne Whiting Vs. Bakary Ceesay & others** (Suit No HC 143/05/BK/13(A) delivered on 18<sup>th</sup> June 2010

## **Pleadings –**

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Per MBai J, in **Anne Whiting Vs. Bakary Ceesay & anothers** (Suit No HC 143/05/BK/13(A) delivered on 18<sup>th</sup> June 2010.

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Pp 3 – 7 Per MBai J, in **Oumie Ceesay Vs. Alhaji Momodou Gaye & another** (Suit No CS NO. 42/2000 delivered on 2<sup>nd</sup> December 2009.

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(1) Stay of Execution – Granting the Order of stay with or without a condition – merely discretionary, not mandatory.

(2) No where in the Rules is it stated that an application for stay of execution of the Judgment of a Magistrates' Court must first be made to the Magistrates' Court before coming to the High Court.

Per MBai J, in **Russel Eastwood Vs. Mbye Nyang** (Suit No HC 360/09/BK/042/CO) on delivered .

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Per Jobarteh J, in **Abdullah M. K. Bojang Vs Zakaria Sanneh & 2 others** (Suit No. HC 401/10/CL/050/AO)

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Pp 12 – 16 Per Jobarteh J, in **Dr. Sheriff Aba Dumbuya Vs. John Gomez and 4 others** (Civil Case No. 379/10/CC/046/AO) delivered on 2<sup>nd</sup> February 2011.

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Per Jobarteh J, in **Angelica John Vs Mbow Kanyi** ( Civil Suit No. HC/299/10/CL/042/AO) delivered on 2<sup>nd</sup> February 2011.

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When necessary – When appointed, Referee agent of Court

Per Fagbenle J, in **Jeetn Dubai Textile Co. Ltd Vs. Ebrim Aidora** ( Civil Suit No. HC/416/08/CO/096/D 2) delivered on 10<sup>th</sup> May, 2010.

## **Company Law -**

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P. 9 - Per Fagbenle J. in **Jamil Farage Vs. Afro Kong Industrial (Gambia) Ltd & another** (Civil Suit No. CS/376/93/F NO. 5) delivered on 10<sup>th</sup> June 2010.

## **Constitution –**

### **Court's Jurisdiction – Ouster Provisions –**

As a matter of law, Courts are bound to uphold ouster clauses in appropriate and relevant cases where the language of the ouster clause is clear. Courts of Law are entitled to refuse jurisdiction in a matter – see paragraphs (1)(3) and 13 of schedule 2 to the Constitution and S.15 of Deeree No. 25 of 1994.

Per Singhateh J, in **Ajaratou Mariam Denton Vs. Asset Management & recovery Corporation I & 3 other** (Suit No HC 216/2000) delivered on 10<sup>th</sup> February 2011.

## **Constitution - Supremacy of the Constitution -**

Law that is inconsistent with the Constitution is void to the extent of the inconsistency.

P. 6 - Per Ikpala J, in **The State Vs. Sheriff Abba Hydera** (Criminal Case No. (HC/479/10/CR/124/AO) delivered on 14th February 2011.

## **Contract of Guarantee of Loan/Debt –**

Who is a guarantor? - Any person or company acting as guarantee has the responsibility to read and fully understand the guarantee document before signing same as he will be personally bound by the terms and cannot resile there from when called upon later to repay the amount guaranteed by him.

Per Joof J in **Bank PHB (Gambia) Ltd. Vs. Maligam International & 2 others** (Civil Suit No. HC/433/11/105/ (D2) delivered on 26<sup>th</sup> September, 2011.

## **“Contract of Exchange” – Defined.**

Like in all forms of contracts, there must be consideration, intention to create legal relations and the parties must have the capacity to contract. It is unenforceable by action unless there is either a sufficient memorandum in writing evidencing the contract of exchange or an act of part performance.

Pp 5-6 - Per Singhateh J. in **Abdoulie Njie Vs. The Administrators of the Estate of Abdoulie Sallah** Suit No. HC/189/07/040/AO delivered on 9<sup>th</sup> June. 2010.

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P8 Per Fagbenle J, in **Sannon Investment Corporation Africa Ltd Vs. SSHFC** (Civil Suit No. HC/176/96/S.NO. 34) delivered on 2<sup>nd</sup> June 2010.

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P.3 Per Fagbenle J, in **Reliance Financial Services Co. Ltd. Vs. Katim Touray** (Civil Suit No. HC/477/09/CO/123/C3) delivered on 26<sup>th</sup> May 2010.

## **Contract – Breach of – Claim for Damages for Breach of Contract -**



Damages for breach of contract defined as compensation to the plaintiff for a damage, loss or injury he has suffered through the breach is, as far as money can do it, to place plaintiff in the same position as if the contract had been performed.

### **Proof of Damages –**

Whether or not the defendant defends the action, the plaintiff is required to prove his case to be entitled to damages – special damages must be pleaded specifically and proved strictly – Failure to do so, Court may award nominal damages

Pp 4 – 5 Per Singhateh J, in **Yassin Drammeh Vs. Jorjoh Mboge** ( Suit No HC 593/09/CL/126/AO ) delivered on 22<sup>nd</sup> February 2011.

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**Murder** – Defence of delusion or hallucination.- Meaning of - When the defence of delusion avails an accused person.

Pp 6 – 7 Per Ikpala J, in **The State Vs. Lamin Faye**\_( Crim. Case No. HC 395/09/CR/103/AO) delivered on 8<sup>th</sup> June 2010

### **Court – District Tribunal – Line of Appeal -**

By combined effect of S.120 (1)(b) of the Constitution, and S. 26 of District Tribunal Act Cap. 603, appeals from District Tribunal lie to the High Court and governed by Order 53 of the High Court Rules.

Pp 3 – 4 Per Singhateh J, in **Faye Drammeh Vs. Lamin Baldeh** ( Suit No HC 221/08/CL?056?CO ) delivered on 15<sup>th</sup> March 2010.

### **Criminal Law –**

Rape – S. 127(1) of the Criminal Code as amended – Evidence – Corroboration – What amounts to corroboration in Law – Sections 179 and 180(1)(2)(b) of the Evidence Act.

Pp 4 -13 - Per Jobarteh J, in **Musa Ceesay Vs. The State** (Crim. Appeal No. 279/09/CR/059/BO).

### **Criminal Law –**

**Rape – Ingredients of the Offence of Rape – Corroboration –**

What amounts to Corroboration Law?

### **Criminal Law – Rape**

Ingredients of Rape – Corroboration – What amount to corroboration in law –When proved - Effect

Per Jobarteh J, in **The State Vs Lamin Jah** (Crim. Case No. HC/571/09/CR/160/AO) delivered on 6<sup>th</sup> May 2011.

### **Criminal Law –**

**Issue of False Cheque –**

Section 296A (1)(b) of Decree 86 of the Criminal (Amendment) Decree 1996 – Offence of strict liability – Where prosecution proves the actus reus, the burden shifts to the accused to prove excuse.

Per Jobarteh J, in **State Vs Amadou Diop** (Crim. Case No. 040/10/CR/021/AO) delivered on 22<sup>nd</sup> August 2011.

### **Criminal Law –**

**Murder – S.187 Criminal Code –**

Ingredients of the offence - Defences open to the accused – Court to consider all the possible defences open to the accused even if not raised in his evidence. The concept of “NOVUS ACTUS INTERVENIENS” .

Per Ikpala J, in **The State Vs. Bakary Daffeh** (Criminal Case No. (HC/388/09/CR/098/AO) delivered on 4<sup>th</sup> June 2010.

## **Criminal Law – Rape -**

### **Section 121 of the Criminal Code Cap. 10 – Ingredients of the Offence of Rape–**

When is the offence complete?

Pp 4 – 7 - Per Ikpala J, in **The State Vs. Davidson Jones** (Criminal Case No. (HC/190/09/CR/058/AO) delivered on 1<sup>st</sup> June 2010.

## **Criminal Law –**

### **Murder – S.187 of the Criminal Code Cap 10-**

Ingredients of the offence of murder – “malice aforethought” defined in S.190 of the code.

Evidence In proof of murder – By direct or circumstantial evidence – proof of intention can be inferred from the circumstances of the case.

Pp 12 – 15 - Per Ikpala J, in **The State Vs. Amadou Jarra** (Criminal Case No. (HC/193/09/CR/041/AO).

## **Defence of Provocation –**

### **Statutory Defence – S.192 of the Criminal Code –**

When the defence of provocation can avail the accused.

Pp 19 – 20 - Per Ikpala J, in **The State Vs. Amadou Jarra** (Criminal Case No. (HC/193/09/CR/041/AO).

## **Rape –**

### **Issue of Proper Identification of the Accused –**

Duty of Counsel appearing for the accused

Per Ikpala J, in **The State Vs. Modou Musa Sidibeh** (Criminal Case No. ( HC/986/09/CR/011/AO ) delivered on 18thg June 2010.

## **Criminal Law –**

### **Rubbery – defined – S. 272 of the Criminal Code –**

Ingredients of the offence of Robbery.

P. 3 - Per Ikpala J, in **The State Vs. Charles Agbagwua and another** (Criminal Case No. (HC/349/10/CR/076/AO) delivered on 15th March 2011

## **Conspiracy to Commit an Offence –**

### **Section 368 of the Criminal Code -**

When is the offence of conspiracy committed?

P. 11 - Per Ikpala J, in **The State Vs. Charles Agbagwua and another** (Criminal Case No. (HC/349/10/CR/076/AO) delivered on 15th March 2011.

## **Criminal Law -**

### **Rape – Ingredient of the Offence of Rape – Corroboration**

When is the offence committed? - Definition - What factors amount to corroboration in law?

Per Ikpala J, in **The State Vs. Omar Kitan** (Criminal Case No. (HC/298/09/CR/065/AO) delivered on 15th November 2010.

## **Criminal Law –**

### **Murder – S. 187 of the Criminal Code –**

Ingredients of the offence of Murder – Proof – By direct or circumstantial evidence or by confession.

P. 4 - Per Ikpala J, in **The State Vs. Sheriff Abba Hydera** ( Criminal Case No. (HC/479/10/CR/124/AO ) delivered on 14th February 2011

## **Criminal Law –**

### **Murder – S.187 of the Criminal Code – Ingredients of the Offence of Murder –**

Malice aforethought defined – S.190 of the Criminal Code – Proof by either direct or circumstantial evidence.

P. 5 – 9 Per Ikpala J, in **The State Vs. Terrick Bright and another** (Criminal Case No. (HC/017/10/CR/009/AO) delivered on 7th April 2011.

**Accessory after the fact of Murder** – Section .202 of the Criminal Code – Who is an accessory after the fact of an offence? – One who helps the culprit to escape punishment.

P. 18 – 19 Per Ikpala J, in **The State Vs. Terrick Bright and another** (Criminal Case No. (HC/017/10/CR/009/AO) delivered on 7th April 2011.

## **Criminal Law - Murder**

When the cause of death and identity of the deceased can arise.

Sentence in Murder Case - S188 of the Criminal Code – Mandatory – Court has no discretion.

Pp .9 – 14 – Per Ikpala J, in **Dawda Bojang Vs. The State** ( Criminal case No. HC/332/07/CR/081/B 0) delivered on 30<sup>th</sup> July, 2010.

## **Criminal Law –**

**Procedural law** cannot create an offence triable by the court. Economic Crimes (Specified Offences) Act. – S.3 (2) (a) of the Act – **ousts** court's jurisdiction to hear application under S.238 of the CPC for “No Case Submission”.

Per Ikpala J, in **The State Vs. Lang Dibba & 2 others** (Criminal case No. HC/1441/10) ruling delivered on 4<sup>th</sup> July, 2011.

**Economic Crimes (Specified Offences) Act** – S. 3 (2) (a) of the Act **ousts** Court's discretion to entertain an application for “No Case Submission” in charges under the Act – Both the Prosecution and the Defence must give evidence in Court.

Per Ikpala J, in **The State Vs. Land Dibba and another** ( Criminal case No. HC/441/10/) Ruling delivered on 4<sup>th</sup> July, 2011.

## **Criminal Law –**

**Murder – Elements of the Offence of Murder** – Element of intent – S. 190 of the Criminal Code – “Where accused has confessed to the commission of the offence and which confession is positive, direct and believable the issue of intent is established thereby”.

P. 5 Per Ikpala J, in **The State Vs. Bakary Kanyi** (Criminal Case No. HC/120/10/CR/048/AO) delivered on 6<sup>th</sup> May, 2011.

## **Criminal Law**

## **Murder – Ingredients of the Offence of Murder –**

**Mens rea** “Malice aforethought” defined – S.190 criminal Code – Ingredients of murder proveable by direct or circumstantial evidence or by confession – “The law is trite that a free and voluntary confessional statement alone properly taken, tendered and admitted and proved to be true is sufficient to support a conviction provided it satisfies the 6 tests enunciated in the case of R. Vs. Skyes (1913) 8 Gr. Appl. P.333”.

P. 6 Per Ikpala J, in **The State Vs. Musa Bah** ( Criminal Case No. HC/388/10/CR/093/AO) delivered on 11<sup>th</sup> July, 2011.

## **Criminal Law -**

**Issuing of False Cheque – S. 296 A (1) (b) of the Criminal Code -** Ingredients/elements of the offence – (i) **Actus Reus**: mere issuance of false cheques(s); (ii) **mens rea**; when the accused has no reasonable ground to believe that there are funds or adequate funds in the account to pay the specified amounts on the cheque – Proof of reasonable ground for the belief is on the accused not on the prosecution. “Once the prosecution leads evidence and tenders the vexed cheques which have been dishonored on presentation, the evidential burden of proving reasonable ground or belief by the accused that there were funds or adequate funds to meet the sum specified therein when he so drew the cheque is on him” .

Pp. 6, 8-9 - Per Ikpala J, in **The State Vs. Omar Ndow** (Criminal Case No. HC/410/10/CR/109/AO) delivered on 20<sup>th</sup> June, 2011.

## **Obtaining Goods by False Pretences –**

**S. 288 of the Criminal Code -** “False Pretence” defined – S.287 of the Criminal Code.

Pp. 11-12 - Per Ikpala J, in **The State Vs. Omar Ndow** (Criminal Case No. HC/410/10/CR/109/AO) delivered on 20<sup>th</sup> June, 2011.

## **Criminal Law –**

**Murder – S. 187 of Criminal Code –** Ingredients of the offence - Proof – by direct/eye witness account or confession, or circumstantial evidence. Circumstantial evidence to secure conviction must render the commission of the crime certain and leave no ground for reasonable doubt.

P. 7 – Per Ikpala J, in **The State vs. Rameh Trawally** (Criminal case No.. HC/091/10/CR/040/(AO) delivered on 25<sup>th</sup> July, 2011.

## **Criminal Law – Treason – Contrary to;**

- S.35 (1) (a) of the Criminal Code – **prepares or endeavours to overthrow the Government by unlawful means -**
- Sections 61(1), 190 (1) (c) and (4) of the 1997 Constitution.
- Section 36 (a) of the Criminal Code – **concealment of treasons by failure to give information to a Minister or a Magistrate or a Police Officer or a member of the Armed Forces –**

Section 36 (b) of the Criminal Code – **Concealment of Treason by failure to use other reasonable endeavour to prevent the commission of the offence of treason –** Ingredients of each arm of the above stated offences.

P6 – 14 Per Ikpala J, in **The State Vs. Lang Tombong Tamba and another** (Criminal case No. HC/333/10/CR/072/90) delivered on 23<sup>rd</sup> May, 2011.

## **Treason – Contrary to –**

S.35 (1) (g) of the Criminal Code – **Conspiracy to commit treason –** Ingredients of the offence – When is the offence of conspiracy committed – Element of corroboration vide S.38 of the Criminal Code – Definition of corroboration – Sections 179 and 180 of the Evidence Act – What factors amount to corroboration in law.

Pp 4, 6, 14 – Per Ikpala J, in **The State Vs. Lt. Gen. Lang Tombong Tamba and another** ( Criminal case No. HC/333/10/CR/072/AO) delivered on 23<sup>rd</sup> May 2011.

## **Criminal Law –**

**Rash and Negligent act leading to the death of a person** - S. 221 and S. 221A of the criminal code – Ingredients of the offence

Pp – 7 – 9 Per Ikpala J. in **The State Vs. Dembo Bojang and another** in (Criminal case No. HC/406/10/CR/098/AO) delivered on 25<sup>th</sup> July, 2011.

## **Murder –**

**S. 187 of the criminal code** - Ingredients of the offence – Whether the acts or omissions of the accused caused the death of the deceased; malice aforethought (S. 190 of the code – The test of the omission of the accused is that of the reasonable man.

Pp – 18, 11 – 13 Per Ikpala J. in **The State Vs. Ansumana Camara and 5 other** in (Criminal case No. HC/034/10/CR/1016/AO) delivered on 11<sup>th</sup> July, 2011.

## **Criminal Law –**

**Murder – S. 187 of the criminal code** - Ingredients of the offence – Proof thereof by the prosecution beyond reasonable doubt – Any doubts arising from the case of the prosecution to be resolved in favour of the accused.

Per Ikpala J. in **The State Vs. Yusupha Conteh** in (Criminal case No. HC/117/10/CR/047/AO) delivered on 30<sup>th</sup> May, 2011.

## **Criminal Law –**

**Unlawful Possession of Fire Arms; Arms of War** - S. 8 of the Arms and Ammunition Act – Illegal entry into the Republic of the Gambia – S. 31 (c) of the Immigration Act – Ingredients of both offences contained in the aforesaid sections creating the offence – Prosecution to prove the ingredients beyond reasonable doubt.

## **Criminal Law -**

**Rape – S. 121 of the Criminal Code** – Ingredients of the offence –When proved. – Aiding and abetting – S. 23 of the Code – Effect – Defilement of a girl under 16 – S. 127 of the code – Proviso under S. 127 (2) of the Code – Evidence thereto.

Per Ikpala J. in **The State Vs. Landing Mboob and others** in (Criminal case No. HC/111/09/CR/016/AO) delivered on 12<sup>th</sup> July, 2010.

## **Criminal Law –**

Concealment of birth of a child – S. 207 of the Criminal Code – Ingredients of the offence -

Pp 11 – 13 – Per Ikpala J, in **The State Vs. Serah Gomez** (Criminal Case No. HC/396/09/CR/104/AO) delivered on 22<sup>nd</sup> November 2010.

## **Criminal Law**

### **Economic Crimes – (Specified Offences) Decree No. 16 of 1994 –**

Application for the BAIL of accused person(s) – Duty of an applicant to state sufficient and relevant facts In his supporting affidavit on which the Court can exercise its discretion judicially and judiciously – Absence of an affidavit in apposition immaterial – Conditions of bail in a charge under S.5 of the Decree are governed by S. 8 of the Decree

Per Ikpala J. in **The State Vs. Mounir Elkarni & 2 others** in (Criminal case No. BDG/488/08) Ruling delivered on 28<sup>th</sup> May, 2010

## **Criminal Procedure -**

Appellant unrepresented at trial in a charge carrying capital punishment –  
What the Trial Court must do in the interest of justice – S.24 (3) (f) of the Constitution.

## **Arrestment –**

What constitutes proper arrestment – Accused not represented by counsel – What the Record should show as to the process of arrestment

Pp 10 – 11 Per Jobarteh J, in **Ahmed Ibrahim Vs. The State** (Criminal Appeal No. HC/428/06/CR/087/BO) delivered in 2010.

## **Arrestment –**

Accused pleading guilty – Prosecution to state facts thereof – Need to disclose elements of the offence charged – Failure negates the guilty plea.

Pp 11 – 12 Per Jobarteh J, in **Ahmed Ibrahim Vs. The State** (Criminal Appeal No. HC/428/06/CR/087/BO) delivered in 2010.

## **Criminal Procedure –**

### **Forfeiture of Recognizance – Statutory - Procedure –**

Section 107 of the Criminal Procedure Code Cap 12 – Irregular Procedure would lead to injustice

Pp 4 -13 - Per Jobarteh J, in **Yankuba Fatty Vs. The State** (No.HC 162/09/CSR/032/BO)

## **Criminal Procedure – Identification Parade –**

Proper Identification parade. Factors to consider.

Per Jobarteh J, in **The State Vs Lamin Jah** (Crim. Case No. HC/571/09/CR/160/AO) delivered on 6<sup>th</sup> May 2011.

## **Criminal Procedure –**

### **Stay of Proceedings Pending Appeal – Section 285A of the CPC – Principles**

that guide the Court in considering application.

Per Jobarteh J, in **Amadou Diop Vs The State** (Misc App. No. HC 015/10/CR/008/CO).

## **Criminal Procedure –**

### **The Powers of the Attorney - General in Criminal Prosecution –**

Section 64 of the CPC and S.85 of the Constitution. The AG's control and direction exercisable by the DPP – Court's jurisdiction to question the exercise of such powers.

P.7 - Per Jobarteh J, in **The State Vs. Alhagie L.S. Sonko and 3 others** (Criminal Case No. HC/111/10/CR/045/AO).

## **“Charge” or “Information” – Meaning of – Defective Charge or Information – What**

the Court should do as laid down by the GCA – S.218(1) of CPC.

Pp 6, 8 and 9 - Per Jobarteh J, in **The State Vs. Alhagie L.S. Sonko and 3 others** (Criminal Case No. HC/111/10/CR/045/AO).

## **Criminal Procedure – Voir Dire –**

Accused person's statement recorded by him prior to his arrest and detention –  
Rules 3 and 5 of the Judges Rule as construed by the GCA – S.31(2) Evidence Act not applicable.

Per Jobarteh J, in **The State Vs. Lamin Jaiteh and another** (HC 306/09/CR/068/AO) delivered on 22<sup>nd</sup> August 2011.

### **Criminal Procedure –**

Where Accused's extra Judicial Statement to the Police contradicts his sworn evidence in Court – Effect on the truthfulness of the accused -

Pp 4 – 5 - Per Ikpala J, in **The State Vs. Bakary Daffeh** (Criminal Case No. (HC/388/09/CR/098/AO) delivered on 4<sup>th</sup> June 2010.

### **Criminal Procedure –**

#### **Corroboration Required in Rape Cases –**

Nature of corroborative evidence;

Pp 8 – 9 - Per Ikpala J, in **The State Vs. Davidson Jones** ( Criminal Case No. (HC/190/09/CR/058/AO ) delivered on 1<sup>st</sup> June 2010.

### **Criminal Procedure –**

#### **Accused's Presence at the Scene of Crime –**

Distinction between “mere presence” and presence for a purpose connected with unlawful purpose.

P. 11 - Per Ikpala J, in **The State Vs. Charles Agbagwua and another** (Criminal Case No. (HC/349/10/CR/076/AO) delivered on 15th March 2011.

### **Criminal Procedure –**

**Confessional Statement** – Proved to have been made voluntarily and is direct, positive, unequivocal amounts to an admission of guilt – Where maker later resiles therefrom or retracts same later at trial, such retraction does not make the statement in admissible; the Court should act on it.

P. 5 - Per Ikpala J, in **The State Vs. Alkali Dampha** (Criminal Case No. ( HC/356/09/CR/082/AO ) delivered on 14th April 2011.

### **Criminal Procedure –**

The Importance of Address of Counsel in Trial Process

P. 5 - Per Ikpala J, in **The State Vs. Sheriff Jallow and 2 others** (Criminal Case No. (HC/268/09/CR/057/AO) delivered on 14th February 2011.

### **Criminal Procedure – Bail Pending Trial –**

Factors for consideration in a pre-trial bail applications – Burden on the applicant to show he is entitled to the court's discretion in his favour – Need to exhibit copy of the pending charge - The effect of the violation of S.19 of the Constitution.

Per Ikpala J, in **Alhassan Touray Vs. A.G.** (Criminal Case No. HC/615/10/CR/170/CO) Ruling delivered on 22<sup>nd</sup> December, 2010.

### **Criminal Procedure –**

**Criminal Trial – Proof – “Benefit of Doubt”** – Where a piece of evidence is capable of two meanings – there is a doubt which must be resolved to the benefit of the accused.

Pp. 5 – 6 Per Ikpala J, in **The State Vs. Alieu Faal** ( Criminal case No. HC/120/09/CR/024/AO) delivered on 29<sup>th</sup> June, 2010.

### **Criminal and Practice –**

**Accused making two extra-judicial statements** - One confessional and the latter a denial – trial Judge will be right to accept the one which is less favourable to the accused.

P.2 - Per Ikpala J, in **I.G.P Vs.** (Criminal Case No. HC/1441/10) ruling delivered on 4<sup>th</sup> July, 2011.

## **Criminal Procedure –**

**Joinder of Offences – Murder and Robbery** in one information or charge – Misjoinder of offences not allowed under common law; but possible under statute: Sections 112 and 113 of the CPC. “However the prosecution has a lot of discretion in charging an offender. Multiplicity of counts creates multiplicity of problems associated with proof”.

P. 6 Per Ikpala J, in **The State Vs. Musa Bah** (Criminal Case No. HC/388/10/CR/093/AO) delivered on 11<sup>th</sup> July, 2011.

## **Criminal Procedure**

### **Compensation For a Crime Victim –**

#### **S. 145 of the Criminal Procedure Code - purpose**

Pp. 13 - Per Ikpala J, in **The State Vs. Omar Ndow** (Criminal Case No. HC/410/10/CR/109/AO) delivered on 20<sup>th</sup> June, 2011.

## **Criminal Procedure –**

**Murder – S. 187 of the Criminal Code** – prosecution proves that accused caused the death of the deceased but failed to prove the element of malice aforethought as defined in S. 190 of the code – verdict of Manslaughter (S.186 CC).

Per Ikpala J, in **The State Vs. Ousman Bah** (Criminal Case No. HC/436/10) delivered on 6<sup>th</sup> May, 2011.

## **Criminal Procedure –**

**“No case submission”** – Court rules that the prosecution has made out a prima facie case against the accused – The accused refuses or declines to give evidence in his defence – resultant verdict – liable to be convicted.

Per Ikpala J, in **The State Vs. Ousman Jarjue & 15 others** (Criminal Case No. HC/517/09/CR/143/AO) delivered on 18<sup>th</sup> July, 2011;

Pp 2, 3, 15 – Per Ikpala J, in **The State Vs. Lt. Gen. Lang Tombong Tamba and another** (Criminal case No. HC/333/10/CR/072/AO) delivered on 23<sup>rd</sup> May 2011;

Pp – 2 – 4 Per Ikpala J. in **The State Vs. Joseph Okeke and 6 others** in (Criminal case No. HC/222/09/CR/050/AO).

**“No Case Submission”** – Procedure at the Subordinate Court governed by S. 166 of the CPC while S. 238 of CPC applies to the High Court – When a “No Case Submission” may be properly made and upheld.

Per Ikpala J, in **The I.G.P Vs. Ebrima John** (Criminal case No. B48/09) Ruling.

## **Criminal Procedure –**

**Rape** – S. 121 Criminal Code – Elements of the Offence – Requirement of Corroboration – what amounts to corroboration in law.

**Evidence** – Accused evidence in court contradictory to his extra – judicial statement – extra judicial statement admitted in evidence as confession of crime – retraction thereof in court -

Per Ikpala J. in the **State Vs. Pap Saine** (Criminal Case HC/240/10/CR/014/AO) delivered on 13<sup>th</sup> May 2011.

## **Criminal Procedure –**



Extra- judicial statement inconsistent with accused's evidence in court – and after thought to be disregarded.

Per Ikpala J. in **The State Vs. Landing Mboob and others** in (Criminal case No. HC/111/09/CR/016/AO) delivered on 12<sup>th</sup> July, 2010.

### **Criminal Procedure –**

**Child Accused** – A “child” in law defined - S. 2 of the Children’s Act – When does trial process commence.

Pp 3 - Per Ikpala J. in **The State Vs. Dodou Secka** in (Criminal case No. HC/429/09/CR/137/AO) Ruling delivered on 19<sup>th</sup> October, 2011.

### **Criminal Procedure –**

**Nolle Prosequi** – S. 85 of the Constitution; S. 64 of the CPC – Power of the AG exercised under S. 85 of the Constitution to discontinue any prosecution is not to be questioned by any Court.

Per Ikpala J. in **The State Vs. Abdul Aziz Mboge and another** in (Criminal case No. HC/260/10/CR/016/AO) Ruling delivered on 2<sup>nd</sup> November, 2011.

### **Criminal Procedure –**

**Bail –Application For** – Grant or refusal purely a matter of Court’s discretion to be exercised judicially and judiciously – Guiding principles on the exercise of the jurisdiction- materials upon which the Court exercises its discretion – Onus on the applicant to place before the court sufficient relevant materials vide his affidavit – Absence of an affidavit in opposition does not relieve applicant of the onus on him.

Per Ikpala J. in **Pius Patrick and 6 others Vs. The State** (Criminal case No HC/222/09/050/AO) Ruling on application for Bail by 6<sup>th</sup> accused/applicant delivered on 8<sup>th</sup> November, 2010.

### **Criminal Procedure –**

Extra judicial statement objected to as being involuntarily obtained – Confessional – Voir dire trial – Accused retracts the statement at trial – effect – defeats the whole essence of trial within a trial.

Pp – 2 – 4 Per Ikpala J. in **The State Vs. Joseph Okeke and 6 others** in (Criminal case No. HC/222/09/CR/050/AO) Ruling delivered on 27<sup>th</sup> January, 2011.

### **Criminal Procedure –**

**Presumption of facts not established by evidence** –

In criminal trial, the law is settled that the Courts will not presume the existence of facts which are central to an offence.

P. 8 - Per Ikpala J, in **I.G.P Vs. Mariama Singhateh** (Criminal Case No. (HC/28/2000) delivered on 27<sup>th</sup> November 2010.

### **Court –**

Cadi Court – The High Court has no jurisdiction to set aside the decision of a Cadi Court or declare same null and void – S. 132(2) of the 1997 Constitution.

P.3 Per Singhateh J, in **Babou Lowe Vs. Babou Lowe & others** (Misc. App. HC/401/08 delivered on 3<sup>rd</sup> March 2010.

### **Court – District Tribunal – Line of Appeal -**

By combined effect of S.120 (1)(b) of the Constitution, and S. 26 of District Tribunal Act Cap. 603, appeals from District Tribunal lie to the High Court and governed by Order 53 of the High Court Rules.

Pp 3 – 4 Per Singhateh J, in **Faye Drammeh Vs. Lamin Baldeh** (Suit No HC 221/08/CL?056?CO) delivered on 15<sup>th</sup> March 2010.

## Court –

### Inherent Powers – Definition and Source – When and How Exercised –

Distinction between Court's inherent powers and Court's jurisdiction to review its Orders under Order 41 Rule 1 of the Rules of the High Court as amended.

Pp. 2 -6 Per Singhateh J, in **Fanta Bai Secka Vs. Abdoulie N'Dimbalan & 2 others** (Suit NO. HC 318/09/CL/A0) delivered on 14<sup>th</sup> June 2011.

### Court – Jurisdiction – S. 27 of Rent Decree (1996) (Decree 67) -

In consistent with S.132 of the 1997 Constitution, and, to that extent, S. 27 of the Rent Decree is void.

Per Singhateh J, in **Catherina Zwart Vs. Musa Jatta** (Suit No HC 163/07/CO/033/D2) delivered on 11<sup>th</sup> March 2010.

## Director - Defined

### Chairman and Managing Director –

Can be removed by the Company at its general or any other special meeting of which notice is given as provided in the Articles or according to the terms of the contract by which he was appointed.

P.8 per Fagbenle J, in **Jamil Farage Vs. Afro Kong Industrial (Gambia) Ltd & another (Civil Suit No. CS/376/93/F NO. 5)** delivered on 10<sup>th</sup> June 2010.

## Estoppel:

### Estoppel Per Rem Judieatam –

By this doctrine, a party is precluded from bringing a fresh action on the same cause of action or issues already decided by a Court of competent jurisdiction between same parties in a previous litigation. The rationale of this rule is that there should be an end to litigation between same parties over the same subject matter

Per Mahoney J. in **Alhaji Jallow Vs. Guaranty Trust Bank and 2 others** (Civil Suit No. HC/262/09/CO/080/D2) delivered on 17<sup>th</sup> May, 2010.

## Estoppel

### Estoppel Per Rem Judicatam –

A party is precluded from re-litigating the same issue and subject matter previously decided by a Court of competent jurisdiction between same parties – option open to the aggrieved party is to appeal against the existing/subsisting Judgment.

Per MBai J, in **Sidi Braham Alami Vs. Continent Bank Ltd.** (Suit No HC 127/01/BK/09/ on delivered on 2<sup>nd</sup> July 2010.

## Evidence –

### Incidence of burden of proof – Negligence – Res ipsa liquitur –

On whom lies? It is only when the plaintiff has established negligence on the part of the defendant does the burden shift on the defendant to prove that he was not negligent or explains how the cause of the accident does not connote negligence on his part.

Pp 6 Per Singhateh J, in Dr **Lamin Sidibeh and others Vs. Susanna Boedeka and others** ( Suit No. CS/164/96) dated 29<sup>th</sup> November 2010.

## Evidence

### Stamp duty – S. 18(1) of Stamp Act -

Admissibility of unstamped document – could be admitted in evidence and the Court will countenance it as long as the requisite stamp duty is paid anytime before Judgment.

Pp. 5 Per Singhateh J, in **Nelisa Mendy Vs. Abdoulie Ceesay** (Civil Suit No. HC/153/05/CL/17/(A) delivered on 23<sup>rd</sup> June 2011.

## Evidence

### Confession –

#### Weight to Attach to a Confessional Statement –

What questions the Court should ask itself and resolve in considering confessional statement.

Pp 17 – 18 - Per Ikpala J, in **The State Vs. Amadou Jarra** (Criminal Case No. (HC/193/09/CR/041/AO).

## Evidence

### Confession – S. 179 Evidence Act –

Admissibility – S.31 (1) Evidence Act – Test of Confessional statement – Retraction thereafter in Court – effect.

Pp 9, 13, 17 - Per Ikpala J, in **The State Vs. Terrick Bright and another** (Criminal Case No. (HC/017/10/CR/009/AO) delivered on 7th April 2011.

### Evidence – An Expert – Who is an Expert Witness? –

Probative value of evidence of an expert.

Pp 11 – 13 – Per Ikpala J, in **The State Vs. Serah Gomez** ( Criminal Case No. HC/396/09/CR/104/AO ) delivered on 22<sup>nd</sup> November 2010.

## Evidence

Appellant's reliance on contradictions and inconsistencies in the evidence of prosecution witness – What will amount to contradiction or inconsistency on material point as distinct from minor discrepancies.

P.7 – Per Ikpala J, in **Dawda Bojang Vs. The State** (Criminal case No. HC/332/07/CR/081/B0) delivered on 30<sup>th</sup> July, 2010.

**Evidence – Corroboration – Sworn Evidence of a Child Witness –** Need for corroboration. Evidence – an accused telling lies – prosecution not relieved thereby of its burden to prove the charge against the accused beyond reasonable doubt

Pp. 5 – 6 Per Ikpala J, in **The State Vs. Alieu Faal** (Criminal case No. HC/120/09/CR/024/AO) delivered on 29<sup>th</sup> June, 2010.

### Evidence –

**Circumstantial Evidence –** as good as direct evidence in establishing the guilt of an accused – but circumstantial evidence to achieve that feat, “must be cogent and compelling as to convince the court that no rational hypothesis other than the commission of the offence charged can the facts be accounted for”

Pp. 5 – 6 Per Ikpala J, in **The State Vs. Alieu Faal** (Criminal case No. HC/120/09/CR/024/AO) delivered on 29<sup>th</sup> June, 2010.

### Evidence – Competency of witness

A prisoner or a person convicted of criminal offence can be a competent witness in a criminal trial.

Pp 24 – Per Ikpala J, in **The State Vs. Lt. Gen. Lang Tombong Tamba and another** (Criminal case No. HC/333/10/CR/072/AO) delivered on 23<sup>rd</sup> May 2011.

## **An Accomplice –**

**Uncorroborated evidence of an accomplice** – Court to warn itself that it is unsafe to convict on the uncorroborated testimony of an accomplice.

P- 9 Per Ikpala J. in **The State Vs. Ensa Badjie and 3 others** in (Criminal case No. HC/272/09/CR/063/AO) delivered on 29<sup>th</sup> July, 2011.

## **Evidence –**

Where a witness had made previous statement which is inconsistent with the evidence given by that witness at the trial, the evidence of such witness should be considered as unreliable and rejected

Pp – 18, 11 – 13 Per Ikpala J. in **The State Vs. Ansumana Camara and 5 other** in (Criminal case No. HC/034/10/CR/1016/AO) delivered on 11<sup>th</sup> July, 2011.

## **Evidence – Judicial Notice -**

Not at large – Restricted as provided under sections 73 and 74 of the Evidence Act.- Counsel's address – No matter how brilliant does not go for evidence.

Per Ikpala J. in **The State Vs. Abdul Aziz Mboge and another** in (Criminal case No. HC/260/10/CR/016/AO) Ruling delivered on 2<sup>nd</sup> November, 2011.

## **Evidence -.**

**Evidence** – Suspicion no matter how strong had never gone in for evidence.

Pp – 3 – 4 Per Ikpala J. in **The State Vs. JAbdul Kadir Sillah and 5 others** in (Criminal case No. HC/420/09/CR/117/AO) Ruling on “No case submission” delivered on 6<sup>th</sup> May, 2011.

## **Land**

### **Acts of possession of land –**

Plaintiff relying on acts of possession must plead and prove by evidence the acts of ownership or possession relied upon.

Pp. 5 Per Singhateh J, in **Nelisa Mendy Vs. Abdoulie Ceesay** (Civil Suit No. HC/153/05/CL/17/(A) delivered on 23<sup>rd</sup> June 2011.

## **LAND**

### **Claim for Declaration of Title to Land -**

Plaintiff bears the onus to accurately identify the suit land in his statement of claim and evidence; and show satisfactorily that his plan corresponds with the land to which he claims.

Pp 4 – 6 Per Singhateh J, in **Duwa Jatta Vs. Driss Bensouda and 3 others** (Suit No HC 159/203) delivered on 15<sup>th</sup> June 2010.

## **Land –**

### **Declaration of Title to –**

Onus on the plaintiff to prove his claim by the strength of his own case and not on the weakness of the defence.

Per MBai J, in **Afang Karamo Bojang Vs. Samba Jallow & 4 others** (Suit No HC 161/06) delivered on 18<sup>th</sup> March 2011.

## **Land –**

Declaration of Title – State Land – Onus on the claimant to accurately prove the identity of the suit land in his pleading and evidence together with an accurate sketch plan showing features thereon – Acts of ownership and evidence of registration of title – Effect of registration.

Per Singhateh J, in **Dulab Real Estate Afric Ltd. Vs. Mahmoud Hakim** HC/381/07/88/AO) delivered on 18<sup>th</sup> January 2010.

## LAND

**Declaration of title to land** – duty of plaintiff – A plaintiff in an action for declaration of title must rely on the strength of his own case and not on the weakness of the defendant's.

Page 6 Per Singhateh J. in **Abdoulie Njie Vs. The Administrators of the Estate of Abdoulie Sallah** (Suit No. HC/189/07/040/AO) delivered on 9<sup>th</sup> June. 2010.

## Land –

### **Pleading – The Plea of Res Judicata – Res Judicata Defined –**

Plea to be raised in the defendant's statement of defence – effect of a successful plea of res judicata.

Pp. 3 – 7 Per Singhateh J, in **Banyuma Sillah Vs. Momodou Jagne** (Suit No. HC 039/10/CL/004/AO) delivered on 20<sup>th</sup> June, 2011.

## Land –

### **Proof of Title to Land – 5 Ways to Prove Title to Land**

Declaration of title to land – Identity of the suit land – Duty of plaintiff to accurately prove the identity of the land claimed – Plaintiff to prove title and establish ownership of the suit land on the strength of his case, not on the weakness of the defendant's case.

Pp 5 – 6 Per Singhateh J, in **Demba Sillah Vs. Mbemba Bojang & others** (suit No. HC/010/09/B19/003/AO) delivered on 17<sup>th</sup> February 2011; **Nelisa Mendy Vs. Abdoulie Ceesay** ( Civil Suit No. HC/153/05/CL/17/(A) delivered on 23<sup>rd</sup> June 2011.

## Land –

### **Proof of Title to Land –**

Declaration of title to land – Onus on the plaintiff to prove root of title and ownership of the suit land including location, identity and size of the land claim – need for a sketch plan -

Pp. 5 Per Singhateh J, in **Nelisa Mendy Vs. Abdoulie Ceesay** (Civil Suit No. HC/153/05/CL/17/(A) delivered on 23<sup>rd</sup> June 2011.

### **Negligence - A Question of Fact Not of Law -**

Pp 4 Per Singhateh J, in **Dr Lamin Sidibeh and others Vs. Susanna Boedeka and others** ( Suit No. CS/164/96) dated 29<sup>th</sup> November 2010; **Fouad Mahmoud Vs. Zygot Oil Co. Ltd.** HC/237/11/CO/043/D2 delivered on 27<sup>th</sup> July 2011

**The Doctrine Of Res ipsa loquitur** – re-stated – “the thing speaks for itself” – a rebuttable presumption or inference that the defendant was negligent which arises upon proof that instrumentality causing injury was in the defendants' exclusive control and that the accident was one which ordinarily does not happen in the absence of negligence – Res ipsa loquitur – a rule of evidence.

Pp 3 – 4 Per Singhateh J, in **Dr Lamin Sidibeh and others Vs. Susanna Boedeka and others** ( Suit No. CS/164/96) dated 29<sup>th</sup> November 2010.

**Standard of Proof in Land Cases** – proof on the preponderance of possibilities.

Pp 3, 4 and 6 - Per Singhateh J. in **Abdoulie Njie Vs. The Administrators of the Estate of Abdoulie Sallah** (Suit No. HC/189/07/CL/040/AO) delivered on 9<sup>th</sup> June. 2010.

### **Tort – Negligence – Defined -**

The failure to use such care as a reasonably prudent and careful person would use under similar circumstances; the doctrine of negligence rests on duty of every person to exercise due care in his conduct towards others from which injury may result.



**GAMBIA HIGH COURT DIGEST –**  
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**INDEX OF SUBJECT MATTER**

**Administration of justice** – Delay in prosecuting cases in court – **Comment:**

“I will preface this Ruling with a brief comment. It was 4 years ago, precisely on 26<sup>th</sup> May, 2006 that the plaintiff instituted this action in court. Cases of this nature on business transactions belong to the class of cases that impact positively on the economy of this country and should be disposed of expeditiously. But, unfortunately, for those 4 years, hearing has not commenced in this case even after pleadings had long been settled. The parties in this case have engaged themselves on copious interlocutory applications of various types. Papers emanating from such endless interlocutory applications have already built up to 2 file volumes. In the process, the main dispute in the case has been relegated to the background with the res in the matter obviously deteriorating. To my mind, this is not a healthy development, but a clog in the wheel of speedy administration of justice.

It does appear to me that this could be part of the rationale for the recently introduced amendments to the High Court Rules. I therefore admonish that parties and their counsel should be concerned to end their cases speedily. This Ruling is in respect of yet another in the series of interlocutory applications in this case”.

Per Amadi J in **Abdou Kolley v Fernando George Kroonder & Ors** (HC/186/06/CO/031/D1 ruling of 13<sup>th</sup> May 2010 Pp 1-9

**Agency** – when agency relationship arises - where one person has the authority or capacity to create legal relation between a person occupying the position of principal and third parties or when one person called the agent has the authority to act on behalf of another called the principal and consents, expressly or by implication, so to act – In determining whether or not a true agency relationship exists, the court will have regard to the circumstances and intention of the parties at the time the agency contract was entered – Authority of agent to enter into a contract on behalf of the principal can be inferred from the circumstances of the case.

**Liability of Agent** – Agent not personally liable where he discloses his principal.

Pp 6, 7 and 9 – Per Sillah-Camara J. in **Elsly Williams Vs. Mustapha Bittaye & another** (Civil Appeal No. HC. 433/08/CL/097/B0) delivered on 9<sup>th</sup> November, 2010.

**APPEAL**

**Civil Appeal** –

When an appellate court can interfere with the exercise of discretion by a Lower Court-

**“It is settled that an appellate court, under some stated conditions, will not interfere with a discretion properly exercised or a finding of fact by the trial court. It is only when a trial court did not exercise its discretion judiciously, or upon wrong principle or mistake of law or under a misapprehension of facts or took into account irrelevant or extraneous matters or excluded relevant matters or no weight or no sufficient weight has been given to relevant considerations or the finding of fact was perverse or not supported by evidence that the appellate court would interfere”**

Pp 11 Per. Bah J. in **Baboucarr Mareneh Vs. William Forster** (Civil Appeal No. HC/248/10/BK/025/D2) delivered on August, 2010.

**APPEAL**

**Grounds of appeal and issues for determination and arguments** – It is settled law and practice that courts consider only issues and not the grounds of appeal. However in this jurisdiction it is not strictly a must that issues must be formulated for the ground to stand. But certainly, where a ground of appeal does not have any argument to support it, it is deemed abandoned and the appropriate order the court should make in such circumstances is to strike out same.

P2 – Per Bah J in **Abdoulie Camara Vs. N.D.E.A.** (HC/003/08/BK/003/BO) delivered on 26<sup>th</sup> July, 2010.

**Appeal** –

**Grounds of Appeal** – Purpose – A ground of appeal must relate to matters decided in the judgment appealed against – A general and vague ground of appeal without particulars is incompetent and should be struck out.



Particulars to the ground of appeal – Purpose – to dilate and support the ground of appeal; amplify or clarify the complaint raised in the ground. They do not constitute the ground of appeal from which they derive their competence.

Subordinate Courts (Civil proceedings) Act Cap. 8:02 Vol II. Laws of The Gambia 1990:

Pp 3, 4, 5, and 8 – Per Bah J. in **Eugene Thomson and others Vs. Madelene Camara** (Suit No. HC/182/10/CL/020/AO) delivered on 31<sup>st</sup> October 2011.

### **APPEAL**

**Procedure on Appeal** - When can a party who obtained the Judgment of the lower court in his favour appeal against the same judgment?

**Ground of Appeal** – Ground of appeal which complains of error in law but accompanying particulars state error of fact – ground incompetent.

P.4 – Per Sillah-Camara J. in **Momodou Karka Jallow and another vs. A.M.R.C.** (Civil Appeal No. HC/060/10/CL/008/BO/ delivered on 10<sup>th</sup> December, 2010.

### **Appeal**

**Grounds of Appeal – Purpose** – A ground of appeal not based on what transpired in court on the record of proceedings is incompetent and ought to be struck out.

Pp 3 – 7 – Per Sillah-Camara J. in **Abdoulie Sowe vs. Alimou Bah** (Civil Appeal No. HC.400/10/CL/049/(BO) delivered on 11<sup>th</sup> March 2011.

**Omnibus ground of appeal - is an attack on the findings of facts:-** it is an invitation to the appellate court to examine record and determine whether the facts of the case support the conclusions and findings upon which the Judgment is based.

Pp 3 – 7 – Per Sillah-Camara J. in **Abdoulie Sowe vs. Alimou Bah** (Civil Appeal No. HC.400/10/CL/049/(BO) delivered on 11<sup>th</sup> March 2011.

**Findings of fact not appealed against** - A specific finding of fact by the trial court not appealed against remain binding.

Pp 3 – 7 – Per Sillah-Camara J. in **Abdoulie Sowe vs. Alimou Bah** (Civil Appeal No. HC.400/10/CL/049/(BO) delivered on 11<sup>th</sup> March 2011.

### **Procedure – Service of Process of**

**Civil – Industrial Tribunal** – Rule 10 of the Industrial Tribunal Rules – Service of process – condition precedent to the exercise of jurisdiction of the Tribunal- Service on a company – how effected.

Pp 5 – 7 Per. Sillah-Camara J. in **Sheraton Gambia Hotel Resort & SPA Vs. Ahmed Frayeh** (Civil Appeal No. HC/206/09/CC/042/CO) delivered on 10<sup>th</sup> December, 2010

### **APPEAL**

**Ground of appeal** – If not argued at the appeal is deemed abandoned and ought to be struck out.

Pp 3, 6 ,9 – 10 – Per Amadi J. in **Edwin Nebolisa Nwakaeme Vs. Inspector-General of Police** (HC/464/10/CR/120/BO) delivered on 4<sup>th</sup> October, 2010.

### **APPEAL**

**Ground of Appeal** – Complaint that trial court has erred in law or in fact without accompanying particulars of the error - Effect - Section 275 of the Criminal Procedure Court.

Pp 3, 6 ,9 – 10 – Per Amadi J. in **Edwin Nebolisa Nwakaeme Vs. Inspector-General of Police** (HC/464/10/CR/120/BO) delivered on 4<sup>th</sup> October, 2010.

**Appeal Against Sentence** – Section 279 (1), (2), and (3) of the CPC – What the appellant must show in the ground of appeal – general allegations in the ground of appeal. – discretion of the trial court – how exercised – When an appeal court can interfere.

Pp 4 – 11 – Per Amadi J. in **Alfredo Picco Vs. National Drug Enforcement Agency** (Criminal Appeal No. HC/425/10/CR/107/BO) delivered on 4<sup>th</sup> October, 2010.

### **APPEAL**

#### **Criminal Appeal -**

Extension of time to appeal to the High Court from a Subordinate Court –

Order 53 Rules 5 and 19 of the High Court Rules – Guidelines in considering the application – Prospective appellant to the High Court has 28 days within which to file his appeal without leave. Thereafter he must apply for extension of time before the expiration of 3 months from the date of the decision appealed against

Affidavit in support must state facts such as date of judgment appealed against; why he could not appeal within time; exceptional reasons why the appeal must be heard; and attaching copy of the judgment, and the Notice of Appeal.

Per Amadi J. in **Yunusa Jallow Vs. Abdouraham Jallow and another** (HC/435/10/CL/061/BO) Ruling delivered on 2<sup>nd</sup> December, 2010.

### **APPEAL**

#### **Criminal Appeal –**

Appeal against interlocutory and final decision both covered under S. 274 of the Criminal Procedure Code

–  
An appellant could challenge an interlocutory decision in an appeal against the final decision in the case. But to do so, the appellant must apply for extension of time if, the time to appeal against the interlocutory decision had expired, otherwise the appeal against the interlocutory decision will be incompetent and liable to be struck out.

**Re-call of a witness** vide S. 297 (2) a of the Criminal Procedure Code – whether the trial court has discretion in the matter or at the discretion of the witness – a party wanting to re-call a witness who has fully testified and discharged, must apply stating reason for the re-call.

**Application for Adjournment** - At the discretion of the court based on the circumstances of the case. Pp 5, 6; 8 – 10; - 16: Per Amadi J. in **Femi Peters Vs The State** (HC/195/10/CR/075/BO) delivered on 5<sup>th</sup> August, 2010.

### **APPEAL**

#### **Criminal Appeal –**

**Grounds of Appeal** – issues formulated therefrom – Neither the appellant nor the Respondent is allowed to formulate more issues than the grounds of appeal – one issue can encompass more than one ground of appeal.

Per Amadi J. in **Samba Sanneh Vs. The State** (No. HC/037/10/CR/019/BO) delivered on 15<sup>th</sup> December, 2010.

**Ground of appeal alleging misdirection of law or of fact** – particulars of the error must specify the error of law or of fact on which the trial court misdirected itself – S. 275 of the Criminal Procedure Code – vague or general grounds of appeal, except the omnibus ground, is unarguable and therefore incompetent – counsel cannot, in his argument, raise facts not contained in the ground of appeal.

Per Amadi J. in **Samba Sanneh Vs. The State** (No. HC/037/10/CR/019/BO) delivered on 15<sup>th</sup> December, 2010.

**Finding of facts** – Finding of facts not appealed against stand.

Per Amadi J. in **Samba Sanneh Vs. The State** (No. HC/037/10/CR/019/BO) delivered on 15<sup>th</sup> December, 2010.

#### **Appeal –**

**Ground of appeal** – allegation of error of law or of facts without stating the nature of the error – effect – purpose of ground of appeal -: “to isolate and accentuate for attack the basis of the reasoning of the decision challenged, and that must be fixed and circumscribed within the issue in controversy (See **Haro Co. Ltd. Vs. Ousman Jallow (2002 – 2008)** 1GLR 128 at 145)” See S.275 of the Criminal Procedure Code

Ground of Appeal, to be competent, must challenge the actual decision in the judgment.

Pp 6, 8, 15; 16 -17: Per Amadi J. in **Henny Mousa Vs. The State** (No. HC/070/11/CO/084/BO) delivered on 10<sup>th</sup> May, 2010.

### **APPEAL**

#### **Civil Appeal –**

**Record of Proceedings** – Whose responsibility in law to transmit the Record of Proceedings to the High Court – Subordinate Courts (Civil Proceedings) Act Cap 8.02 Section 26.

**Stay of Proceedings** – Principles guiding court’s exercise of discretion to grant or refuse.

Pp 3-4, 5-6; Per Mahoney J. in **Omar D. Mbye Vs. Musa Joof** (Civil appeal No. HC/048/06/CL/007/B2) Ruling delivered on 15<sup>th</sup> November 2010.

Notice of Appeal - Struck out Relist – What applicant must show to succeed? Relisting a Notice of appeal struck out – What applicant must show?

Per Joof J in **Rosamond Trade v Mustapha Gaye**

**Civil Procedure -**

Order 23 Rule 16 (3) and (4) of the High Court Rules as amended. –

Failure of defendant to file a defence, affidavits of witnesses and documents within the statutory period of 30 days and the 14 days extension of time to do so, the defendant will be deemed to have no defence to the plaintiff's claim and the court shall proceed to determine the case.

Per Bah J. in **Momodou Lamin Jarjue Vs. Nfally Sanyang and 2 others** (Suit No. 432,10.BK/030/A0) delivered on 23<sup>rd</sup> November, 2010.

**Civil Procedure**

**Pleading – Allegation of negligence** to be particularized and proved in evidence

Pp 4 – 5 - Per Sillah-Camara J. in **Malamin Badjie vs. Alhaji Sankung Sillah & Sons (Gambia) Ltd.** (Civil Suit No/ 177/97) delivered on 12<sup>th</sup> November, 2010.

**Civil Procedure –**

**Fair Hearing** – The courts have interpreted fair hearing to be synonymous with fair trial as implying that every reasonable and fair minded observer who watches the proceedings should be able to come to the conclusion that the court or tribunal has been fair to all concerned - A determining factor is whether the parties were given opportunities to be heard.

**“A defendant (and counsel) who deem to hold the court to ransom by his repeated absence from court without reason is certainly to be not entitled to any indulgence”**

Pp 5 – 8 Per Bah J. in **John Deriviere Vs. Abdou Magid Mayan** (Suit No. HC/355/08/BK/043/CO) delivered on 8<sup>th</sup> February 2011.

**Counter- Claim** – Defendant filed a Counter claim but led no evidence in proof thereof – Result – Counter Claim deemed abandoned, as pleadings cannot constitute evidence.

Pp 5 – 8 Per Bah J. in **John Deriviere Vs. Abdou Magid Mayan** (Suit No. HC/355/08/BK/043/CO) delivered on 8<sup>th</sup> February 2011.

**Civil Procedure –**

Order 23 Rule 16 of the Rules of the High Court as amended - When provision of statute clear and unambiguous - the courts have no option but to give effect to it – Order 23 Rule 16 (7) and (8) provide that it is only after the Defendant had filed a statement of defence and accompanying documents that a date is appointed for a pre-trial conference. The Rule provides that at the pre-trial conference, the Judge shall, among other things, hear and determine any objection to the suit on such grounds as lack of jurisdiction, illegality, incompetence, non-disclosure of cause of action, abuse of process or action being frivolous. Therefore, even if there was a demurrer application by the defendant, that did not preclude him from complying with the requirements of Order 23 Rule 16 from filing a defence within the limited period stated therein; and no application for extension of time to file a defence will be entertained after 30 days and 14 days had expired.

P.5 – Per Mahoney J. in **Habib B. Semega Janneh and others Vs. Mohamed Sillah and another** (Civil Suit No. HC/172/11/MF/029/DO) delivered on 14<sup>th</sup> November, 2011.

**Locus Standi in Suits against administrators of an estate –**

By virtue of Order 49 Rule 39 of the Rules of High Court, beneficiaries have locus standi and cause of action to bring an action against administrators who fail to account for their administration of deceased estate and to ask for the distribution of such estate. But beneficiaries have no such locus standi in respect of the finance of company or its share holding. The company is a separate legal entity and until such a time the beneficiaries become members of the company, they have no locus standi to interfere in the operation of the company. By virtue of their appointment, the administrators represent the interest of beneficiaries in the company.

Pp. 11 – 13 Per Mahoney J. in **Habib B. Semega Janneh and others Vs. Mohamed Sillah and another** (Civil Suit No. HC/172/11/MF/029/DO) delivered on 14<sup>th</sup> November, 2011.

**Civil Procedure –**

Service of originating process in the Magistrate's Court – Order IV. Rule 8 of the Subordinate Courts (Civil Proceedings) Rules govern service of processes in that court – where the affidavit of service conform to with the provision of the Rules, and appellant fails to rebut the affidavit of service, his complaint later that he was out of the jurisdiction of the court cannot be entertained.

Pp 3 – 6 Per **Sillah-Camara J. in Saran Sillah Vs. Faye Fofana** (Civil Appeal No. HC/249/09/CL/052/BO) delivered on 25<sup>th</sup> January, 2011.

**Default Judgment** – Section 7(1) of the Subordinate Courts (Civil Proceedings) Act Cap 8:02 (Similar to Order 34 Rule 3 of the Rules of the High Court Cap. 6:01) – Defendant not to be allowed to dictate the pace at which a civil trial is to be conducted by failure to come to court and fails to excuse his absence.

Pp 3 – 6 Per **Sillah-Camara J. in Saran Sillah Vs. Faye Fofana** (Civil Appeal No. HC/249/09/CL/052/BO) delivered on 25<sup>th</sup> January, 2011.

#### **Civil Procedure**

**Pleading** – The particulars of negligence must be specifically pleaded and proved.

Pp 3 – 4 – Per Sillah-Camara J; in **Pa Abdoulie Manneh Vs. Slok air International** (Civil Suit No. HC/078/08/021/CI) dated 19<sup>th</sup> November, 2010.

#### **Civil Procedure**

**Pleadings** – Defendant's failure to file a defence – implication – acceptance of the facts in the Statement of Claim. – and that he has not defence thereto.

P.5 – Per Joof J. in the **Abdou Jassey Vs. Lamin Sillah & others** (Civil Suit No. 75/2002) delivered on 28<sup>th</sup> January 2011.

#### **Civil procedure**

Burden of proof – on him who asserts –

Standard of proof in civil cases is on the balance of probabilities.

**Pleadings** – Pleadings contain averments which must be proved by evidence – The defendant having failed to give evidence in support of his pleadings will be deemed to have abandoned his pleadings.

Pp 3, 4 & 5 – Per Joof J. in the **Abdou Jassey Vs. Lamin Sillah & others** (Civil Suit No. 75/2002) delivered on 28<sup>th</sup> January 2011.

**Statement of Defence** - By Order 23, Rule 8 of the Rules of the High Court, the defendant must deal specifically with allegations in the Statement of Claim by either admitting or denying them seriatim – Bare denial is unworthy of consideration-

Pp 3, 4 & 5 – Per Joof J. in the **Abdou Jassey Vs. Lamin Sillah & others** (Civil Suit No. 75/2002) delivered on 28<sup>th</sup> January 2011.

**Effect of non-appearance of defendant** – Order 34 Rule 3 of the High Court Rules - court may proceed to judgment on the evidence of the plaintiff if satisfied that the defendant had been served and there is no reasonable excuse for absence.

Pp 3, 4 & 5 – Per Joof J. in the **Abdou Jassey Vs. Lamin Sillah & others** (Civil Suit No. 75/2002) delivered on 28<sup>th</sup> January 2011.

#### **Civil Procedure**

**Pleadings** – Evidence on fact not pleaded or facts pleaded without evidence to support such facts go to no issue.

Pp 7 – 8 Per Joof J. in **Abdoul Aziz Willan and 2 others Vs. New Type Press** (Civil Suit No. 49/98) delivered on 21<sup>st</sup> January 2011.

#### **Civil Procedure**

**Pleadings** – defendant failing to file a defence – also failed to cross-examine the plaintiff. – effect – plaintiff's evidence stood unchallenged and un-contradicted – By virtue of Order 34 Rule 3 of the Rules of the High Court, the court, upon proof of service of summons, and no reasonable excuse for his absence, could proceed with the plaintiff's evidence on his statement of claim and enter judgment.

**Written Brief of argument** filed in court but not formally adopted by party or parties – Attitude of court thereto – The court will countenance same in the interest of justice.

**Tort of Conversion – Defined** – Elements contained in the definition: – (1) deliberately dealing with the chattel in a manner inconsistent with the right of the person entitled to it, and (2) an intention in so doing to deny that person's right – when is the tort of conversion committed?

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**Counter Claim** - Plaintiff fails to reply or defend same – defendant entitled to judgment accordingly on his counter claim, not automatically though; but upon his proof thereof especially on land matters.

Pp 4 – 5 Per Joof j. in **Karafanding Badjie & another Vs. Chief Balamusa Sanyang & 3 others** (HC/395/05/BK/60A) delivered on 10<sup>th</sup> December, 2010

### **Civil Procedure –**

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### **Civil Procedure**

**Abuse of Court Process** – What amounts to abuse of court process – what is the consequence of abuse of court process.

Pp 6. 11 – 14' 15 – 17 Per Amadi J. in **Jamal Akar Vs. Hassan Akar Civil Suit** No. HC/154/10/MF/032/A2) October 2010.

### **Civil Procedure**

**Writ of Possession** – derives its validity in the title to the land expressed in the Writ of Possession.

P 9 – Per Amadi J. in **Edward Graham Vs. Ruth Sowe** (Suit No. HC/ 076/10/CL/014/AO) delivered on 27<sup>th</sup> July, 2010

**Originating Summon** – Order 27 Rules of the High Court – Purpose – Plaintiff to formulate a question or questions for construction arising from a deed or will or instrument and then state or claim a declaration of his right arising therefrom.

P.12 – Per Amadi J. in **Edward Graham Vs. Ruth Sowe** (Suit No. HC/ 076/10/CL/014/AO) delivered on 27<sup>th</sup> July, 2010.

### **Civil Procedure**

**Pleadings** – Implied joinder of issue – when it arises – Where a plaintiff does not file a Reply to Defendant's Statement of Defence, there is an implied joinder of issues on the facts raised in the statement of defence.

**Pleadings – Statement of Defence** – When plaintiff makes specific allegations therein – effective traverse of the "diverse circumstances" otherwise denial is evasive and may amount to admission – Order 23 Rule 9 of the Rules of the High Court as amended.

Pp 5, 10, 18 - Per Amadi J. in **B.S.A. Belgium Supplies Afria BVBA Vs, Mamadou Fadia Jallow** (Civil Suit No. HC/355/06/CO/043/02) delivered on 30<sup>th</sup> April, 2010.

### **Civil Procedure -**

**Execution of judgment** – Summons for the Release of Property from attachment - (Civil Form 46 in the 3<sup>rd</sup> schedule to the Rules of the High Court)

**"Attachment of property"** – in the context of execution of judgment means the process which culminates in seizing debtor's property and sale of same to secure the judgment sum under a Writ of *faeri facis*.

**"Removal of attachment"** – Where a person thinks the property attached does not belong to the judgment debtor, therefore not liable to be sold, he may apply to the court to release the property from "attachment" – Order 44 Rule 5 Rules of the High Court.

- What the court is required by law to do in the circumstances of an application to remove attachment – investigate the title of the applicant.

Pp 3, 5 – 13 – Per Amadi J. in **International Finance Corp. Vs. Dr. Mbye Faal** (HC/414/07/MF/088/F1) delivered on 29<sup>th</sup> June. 2010.

### **Civil Procedure –**

**Stay of execution pending appeal** – Order 43 Rule 18 of Rules of the High Court. - Stay of execution not granted as a matter of course – Applicant to state special or exceptional circumstances in his supporting affidavit – Bare assertions not enough – Court has discretion exercised judicially and judiciously to grant or refused an application for stay – exercise of discretion guided by principles/factors recognized by law. – Poverty is not an exceptional circumstance.

Per Amadi J. in **BSA Belgium Supplies Africa BVBA Vs, Mamadou Fadia Jallow and another** (HC/355/06/CO/043/D2) ruling delivered on 6<sup>th</sup> October, 2010.

### **Civil Procedure –**

**Demurrer** – Order 17 of the High Court Rules – when and how it is invoked – What does the court do? –

**Pleadings** – Amendment of – when amended, court not to look at the pleading as it was before amended – the amended pleading completely supersedes the earlier pleading.

Pleading – where no evidence is led on a fact pleaded – effect.

**Pleadings – When Deemed Abandoned** -Parties filed pleadings, plaintiff testified and defendant fails to testify but he or his counsel fully cross examined the plaintiff and/or his witnesses, putting to such witnesses aspects of the defendant’s statement of defence in cross-examination – result – defendant cannot be said to have abandoned his pleading – the said pleading is abandoned where the defendant, does not participate at all in the proceedings.

### **CIVIL PROCEDURE**

**Locus Standi in suits by beneficiaries of the estate of a deceased intestate** – Beneficiaries of a deceased estate vis-a-viz the holder of Letters of Administration of the said estate – who hold the legal title – Rights of the beneficiaries – No equitable interest on any item of the estate until distributed – any grievance they may have is only against the personal representative at the suit of the beneficiaries.

P. 19 – 20 Per Amadi J. in **Sparan (Gambia) Ltd. Vs. Musa Batchilly and others** (Civil Suit No. HC/003/06/10/001/D1) delivered on 21<sup>st</sup> March, 2011.

#### **Civil Procedure -**

**Interlocutory Injunction** – Principles governing.

**Appointment of Receiver/Manager** – Principles governing.

**Equity** - intervention of equity to do justice.

Pp 9 -10; 11 -15: Per Amadi J. in **Bakary Jack M. Sanneh Vs. Sadane Gitteh and another** (Civil suit No. HC/395/10/CO/123/(1) Ruling delivered on 26<sup>th</sup> August, 2010.

### **CIVIL PROCEDURE**

**Application of extension of time** - Order 23 Rule 16 (4) – Purport – Mandatory – A bar to a defendant bringing an application for extension of time to file defence – Court has no jurisdiction to entertain same.

Pp 4 – 6 Per Amadi J. in **Karim Jeng Vs. Sait Mboob** (HC/194/10/CL/026/AD) Ruling delivered on 20<sup>th</sup> January, 2011.

### **CIVIL PROCEDURE**

**Attempts at settlement of disputes out of court** – communications made in the process – whether or not marked “without prejudice” – inadmissible in evidence.

Per Mahoney J. in **Freyale Ghanim Hydera and another Vs. Eco bank Gambia Ltd.** Ruling delivered on 27<sup>th</sup> May, 2010.

#### **Civil Procedure –**

**Undefended List Procedure** – Whether the filing of Statement of Claim a bar for hearing a suit under the Undefended List procedure – When can a suit for undefended list be transferred to the General Cause List.

Pp 3 – 6: Per Mahoney J. in **Badou S.M. Conteh Vs. Jarra Jatta** in (Civil Suit No. HC/270/10/CO/058/D2) Ruling delivered on 10<sup>th</sup> June, 2010.

**Further and Better Particulars** – Pleading must disclose all the relevant facts such as the date on which the words complained of were published, the names of persons to whom the words were published and the place of publication to enable the defendant know exactly the case he has to meet.

P.2 – Per Mahoney J. in **Alieu Jagne Vs. Joseph H. Joof** (Civil Suit No. HC/500/09/CO/126/C1) Ruling delivered on 25<sup>th</sup> February, 2010.

### **CIVIL PROCEDURE**

Order of payment by installment – court has no power to review its previous order for payment by installments – court is not entitled to alter the effect of its own ruling in the course of the same proceedings in favour of any party.

P.1 – Per Mahoney J. in **Standard Chartered Bank (Gambia) Ltd. Vs. Ousman Jasseh** (Civil suit No. HC/297/08/CO/070/D2) Ruling delivered on 9<sup>th</sup> March, 2010.

### **COMPANY LAW –**

**Compulsory liquidation** – petition therefore – when and under what conditions a petition for compulsory liquidation can be presented to court, publication of Notice of liquidation in the Official Gazette is Notice to the whole world - When court can make an order for compulsory liquidation?

Per Amadi J. in **The Central Bank of The Gambia Vs. Bayba Savings and Credit Company Ltd.** (Petition No. HC/252/09/MF/036/EZ) delivered on 10<sup>th</sup> November, 2010.

**Contract** – 5 ingredients that must be present in a valid contract: offer, acceptance, consideration, intention to create legal relationship and capacity to contract.

Pp 6 : Per Joof J. in **Abdoul Aziz Willan and 2 others Vs. New Type Press** (Civil Suit No. 49/98) delivered on 21<sup>st</sup> January 2011

### **CRIMINAL LAW**

**Conspiracy - Definition** – When is the offence of conspiracy committed – the meeting of minds need not be physical – Proof of the offence of conspiracy- when proved.

Pp 6, 8, 15; 16 -17: Per Amadi J. in **Henny Mousa Vs. The State** (No. HC/070/11/CO/084/BO) delivered on 10<sup>th</sup> May, 2010.

### **Criminal Law –**

**Rape** Contrary to Section 122 Criminal Code – elements of the offence of rape -evidence of corroboration – when is the offence of Rape proved?

Pp. 8 – 12 Per Jobarteh J. in **The State Vs. Ousman Darry** in Crim. Case No. HC/325/10/CR/070/AO) 2011.

### **Criminal Law –**

**False information** contrary to S.114 (a) of the Criminal Code.

### **Criminal Law –**

**Rape** – S.121 of the Criminal Code – Elements of the offence of rape – When is the offence of rape completed?- Prosecution to prove both the **actus reus** and the **mens rea** of the offence to secure conviction –

Pp 12-19 Per Nkea J. in **The State Vs. Ousman Jallow** case No. HC/084/11/BK/007/D1) delivered at Basse on 28<sup>th</sup> June, 2011.

### **Criminal Procedure – Charge wrong in law:**

A charge can only be wrong in law if it discloses no offence known to the law.

Pp 5 – Per Bah J. in **Omar Ceesay Vs. IGP** in Suit No. HC/427/10/BK/027/02 delivered on 28<sup>th</sup> January, 2010.

### **Conviction on a plea of guilty –**

It is trite practice that before a court can convict on a plea of guilty, it must ensure that certain conditions are satisfied. They are:-

- a) The court must be satisfied that the accused understands the charge against him. Therefore, the charge must be read over and explained to the accused person (see the case of **Ahmed Vs. Commissioner of Police** (1971)INMLR 407).
- b) The court must hear facts alleged by the prosecution as constituting the offence charged, and the court should ask the accused if he admits all the facts as alleged. (See the case of **Osuji Vs. IGP** (1965) LLR 143 cited in O. Daherty's "Criminal Procedure in Nigeria: Law and Practice" at page 253.
- c) The court must be satisfied that the accused intended to admit the commission of the offence charged. The plea of the accused must therefore be an unequivocal plea of guilty.
- d) The facts stated by the prosecution and admitted by the accused must sustain the charge against the accused. Therefore, all the ingredients of the offence alleged must be contained in the facts stated (see the case of **Idan Vs Police** (1964)NMLR 103)
- e) It is the duty of the court to base its decision on the evidence before it and not on suspicion however strong (**See Saye Vs. The State** (1995/96) GR 222 at 225)

- f) It is a fundamental principle of criminal (law) administration that the court can and should only draw an inference that is adverse against an accused person if there are no other possibilities, consistent with absence of guilt and which is nothing to rebut (see **Rex Vs. Okereke Iregbu** (4 WACA 32))

Pp 6 – 9: Per: Bah J. in **Omar Ceesay Vs. IGP** in Suit No. HC/427/10/BK/027/02 delivered on 28<sup>th</sup> January, 2010.

### **An act or omission constituting an offence under two or more enactments –**

It is a settled rule of construction of statutes that when an act or omission constitutes an offence under two or more enactments the accused can be charged under both enactments (**See R. Vs. Thomas** (19490 2 ALL ER 662)). However, he cannot be punished twice for the same offence.

Pp 6 – 9: Per: Bah J. in **Omar Ceesay Vs. IGP** in Suit No. HC/427/10/BK/027/02 delivered on 28<sup>th</sup> January, 2010.

### **Criminal Procedure –**

When the court cannot entertain but will allow an appeal against conviction –

1. If it can be shown that an appellant did not appreciate or understand the charge and thus pleaded guilty by mistake;
2. If it can be shown that the appellant has pleaded guilty to a non-existent crime;
3. If the plea is so ambiguous that the appellant cannot be said to have unequivocally pleaded guilty;
4. If an applicant pleaded guilty but gave an explanation which practically amount to a defence or negative plea of guilty;
5. If the plea of guilty is such as in fact to be (no) plea at all;
6. If on the admitted facts upon which the prosecution is founded, no offence is disclosed upon which the appellant could legally be convicted on the charge preferred;
7. If there has been a miscarriage of justice by an apparent wrong acceptance of a plea of guilty.

Pp 6 – 9: Per: Bah J. in **Omar Ceesay Vs. IGP** in Suit No. HC/427/10/BK/027/02 delivered on 28<sup>th</sup> January, 2010.

### **Criminal Procedure –**

Submission of “No Case” to answer – when does the court uphold that submission

Pp. 7 – 13 Per Jobarteh J. in **The State Vs. Ousman Darry** in Crim. Case No. HC/325/10/CR/070/AO) 2011.

### **Criminal Procedure –**

**Charge – Bad for Duplicity –** At what stage objection thereto taken – not at the appeal stage but before accused takes his plea – S. 217 and S. 248 of Criminal Procedure Code.

**Charge – Bad for Duplicity –** If accused not misled or no injustice caused to the accused – court to resort to S. 169 (1) (b) of the CPC and order an alteration by way of amendment.

**Findings of fact by trial court –** Complaint that “finding is erroneous, perverse, and based on findings not supported by recorded evidence” – How resolved – Mere irregularities not enough to disturb judgment of trial court – but where findings of trial court no way derived from the evidence on record but on extraneous matters not supported by evidence, the High Court is entitled to intervene and reverse the decision by the trial court.

**Inconsistent evidence of prosecution witnesses –** Meaning of “inconsistency” of prosecution witnesses –

“Inconsistency to be relevant, it must affirm the opposite of what has been said”

The trial court’s decision will be set aside where the prosecution witnesses either:

- a) Give inconsistent testimonies on material facts; or
- b) Contradict each other on material facts; or
- c) Give no evidence touching the allegation in the charge.

Pp 5 – 11 – Per Amadi J. in **Emeka Wilson Vs. Inspector-General of Police** (HC.220/10/CR/084/BO) delivered on 24<sup>th</sup> June, 2010.

### **Criminal Procedure**



**Bail** – Application for applicant to be detained in his house - Absence of precedents or guidelines – “I am aware that courts could, and the Appellate courts do break into new grounds depending, however, on the peculiar facts and circumstances of the case. But what are the facts and circumstances peculiar to this application?”

Pp 7 – 8: Per Amadi J. in **The State Vs. Yousef Ezzedine (Alias Rambo)** (The 8<sup>th</sup> Accused/Applicant in **The State Vs. Lt-General Lang Tombong Tamba and 7 others** in Criminal Case) (No. HC/153/10/CR/058/AO) ruling delivered on 25<sup>th</sup> March, 2010.

### **Criminal Procedure –**

**Bail** – application for – whether Originating Summons procedure under Order 27 of the High Court Rules – proper?

Courts – Modern judicial trend – court to pay heed to substantial justice rather than form and technicalities.

### **EQUITY**

**Estoppel** – Res Judicata – Types – Estoppel per rem judicatam comprise two species: cause of action estoppel and issue estoppel – When and how each specie arises and the effect on cause of action

### **EVIDENCE**

**Burden of proof** – The Act requires that the burden of proof of any particular fact lies on that person who wishes the court to believe in the existence of such fact unless it is provided by law that proof of that fact shall lie on any particular person.

**Court – the role of a trial court** – hear evidence, evaluate same – believe or disbelieve witnesses – make findings of fact based on the credibility of witnesses who testified, and decide the merits of the case based on the findings.

### **EVIDENCE**

**Evidence** – The Rule in S. 138 of Evidence Act – No oral evidence is admissible to alter a written agreement – Exception to the Rule in S. 138 (1)(b). – How construed.

Pp 6, 7, 9; 15 – 17: Per Amadi J. in **Sparan (Gambia) Ltd. Vs. Musa Batchilly and others** (Civil Suit No. (HC.003/06//10/001/D1) delivered on 21<sup>st</sup> March, 2011; P3: **Hsu Yen Chiu Vs. Amadou Tijan Jallow** (Civil Suit No. HC/286/CO/068/D2) delivered on 24<sup>th</sup> February, 2011.

### **Evidence –**

Where evidence of material facts are not challenged by the opposite party, the facts so stated in evidence are deemed as true and admitted.

### **EVIDENCE**

#### **Affidavit –**

Essence of – “**The facts contained in such affidavits will sway the judge one way or the other in deciding where justice of the case demands his discretion to go. Thus, in deciding whether to relist a matter struck out, the court looks at the affidavit to see if there was justified delay, whether it is in the interest of justice to hear the substantive case and do justice by hearing both sides. In short, where the court is called upon by a party to the proceedings to exercise its discretion, it looks at the matter through its own peculiar circumstances by what are the facts disclosed in the affidavit to arrive at its discretion. This is essentially a matter of fact**”.

Pp 2-5 Per Joof J. in **Rosamond Trade Vs. Mustapha Gaye** (Civil Appeal No. PHC/478/07 Ruling delivered on 23<sup>rd</sup> December, 2010.

Application to reopen a case deemed closed by court – What the party seeking the indulgence can show – Attitude of the applicant in the circumstances.

Pp 4-5 Per Joof J. in **Foday Bojang Vs. Landing Jaiteh and 5 others**. (Civil suit No. 76/2004) Ruling delivered on 23<sup>rd</sup> December, 2010.

### **INTERPRETATION**

#### **Principles of statutory interpretation –**

S. 90 of the Drug Control Act. 2003 – Meaning of section 90 of the Act as amended – Courts have to ascertain the meaning of a statute before they can apply it (See **Edward Graham Vs. Lucy Mensah** (2002 -2008) 1GLR at 41) - Where the wordings of the statute to be interpreted are simple and devoid of complexities, they should be given their ordinary meanings and implications (See **Sallah Vs. Clerk of the National Assembly** (2002 – 2008) 1 GLR 229 – 233 –

The modern trend of statutory interpretation is that a statute is to be interpreted purposively.

## **INTERPRETATION**

**Construction of status including the Constitution – Labour Act, S. 3(1) – Civil Servant.** – Are all public servants civil servants - while all civil servants are public servants, all public servants are not strictly speaking civil servants – Staff of the University of the Gambia are not civil servants.

Per Amadi J. in **Dr. Boro Suso Vs. University of the Gambia** (No. HC /267/10/CR/ 39/ BO) delivered on 18<sup>th</sup> April, 2010.

## **INTERPRETATION**

Where the words in a statute are clear and unambiguous, they should be given their ordinary grammatical meaning.

Per Amadi J. in **Ebriam Camara Vs. AG** (No. HC/477/10/CR/123/CO) Ruling delivered on 19<sup>th</sup> November, 2010.

## **JURISDICTION**

### **Authority of The High Court – Scope of original jurisdiction**

Is the jurisdiction of the High Court really unlimited? – In the exercise of such jurisdiction, the court shall have all such powers and authority as may be conferred by the constitution or any other law. (**See AG Vs. P.C.O. Secka (2002 – 2005)** 2GLR, 73 at 98.

## **JURISDICTION**

**Jurisdiction of the trial judge** – a party who has appealed to the Court of Appeal against final decision may still bring a motion for the parties to maintain the status quo pending the determination of the appeal. Pp 3 – 4 Per Mahoney J. in **Jamal Akar and another Vs. Hassan Akar and another** (Civil suit No. HC/016/10/CO/002/B0) Ruling delivered on 26<sup>th</sup> March, 2010.

### **Land –**

**Evidence – Proof of ownership** - The plaintiff has the legal burden to prove his case on preponderance of evidence and can only succeed on the strength of his case and cannot rely on the weakness of the defendant's case. However, it is not a general rule that whenever the evidence tendered by the plaintiff is unchallenged and uncontroverted, the plaintiff is automatically entitled to judgment. The evidence adduced must bear relevance to the facts pleaded and issues joined.

**Declaration of Title** – “The requirement of oral evidence arises from the fact that the court has discretion to grant or refuse the declaration and the success of the claimant in such action depends entirely on the strength of his own case and not on the weakness of the defence”

Pp 2 – 3 Per Bah J. in **Ebrima Janko Camara Vs. Omar Colley** (Suit No. HC 052/09/BK/008/AO) delivered on 17<sup>th</sup> January 2011.

### **Land –**

#### **Title to Land –**

Originating Summon – declaration of title to ownership of the suitland – It is settled law that there are 5 ways to prove title to land namely:

“(1) By traditional evidence (2) By production of document of title duly authenticated and executed (3) By act of ownership extending over a sufficient length of time numerous and positive enough as to warrant an inference of true ownership (4) By act of long possession and enjoyment and (5) By proof of possession of connected and adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute”.

#### **Proof of Ownership –**

In an action for declaration of title, the plaintiff must succeed on the strength of his own title and not on the weakness of the defendant's. -

In this jurisdiction where no one holds “absolute title,” a claimant must show that he has a better title to the land than that of the defendant

Pp 2.3 Per Bah J. in **Musu Kebab Danso Vs. Secretary of State for Local Government and Lands** (Suit No. HC/455/08/CL/099/AO) delivered on 2<sup>nd</sup> March, 2011.

**Land – Transfer of ownership** – When does the process of transfer be complete – Cultivation of land for a long time after the customary grant cannot amount to ownership of the disputed land. - Ownership of land by traditional evidence must prove in chronological sequence or detail, the ownership of the suitland from the ancestor and without broken chain of connection to the claimant.

### **Designated Area –**

Section 7(1) of the State Land Act 1990 – recognizes the rights of customary rights of customary tenure holders – By S.7(2) of the Act such customary holder is “deemed lessee” under the Act. By S. 7(3) of the Act such a deemed lease does not confer title in itself; the deemed lessee must take necessary steps to acquire title by applying for a legal lease in accordance to the Act.

Pp. 6-7 Per Bah J, in **Musakubba Danso Vs. Secretary of State for Local Government and Lands** (Suit NO. HC/455/08/CL/099/AO) delivered on 2<sup>nd</sup> March, 2012.

**Land – Claim for declaration of title and other reliefs** – Defendant fails to file a statement of defences or cross examine plaintiff – Plaintiff’s allegations of fact deemed admitted.

**Evidence** – Where Plaintiff’s oral evidence stands un-contradicted, court can act thereon.

**Acts of ownership on the land** – Plaintiff’s proof that he fenced the land, built a house thereon and sunk a well amount to acts of ownership and possession.

**Trespass to Land** – Having establish title to the land, plaintiff can succeed in an action of trespass – if the defendant cannot show a better title – He became a trespasser from the moment the plaintiff requested the defendant to vacate and hand over the premises to him. Options open to a party who feels aggrieved by any judgment or decision of a court.

PP 3 -4 Per Bah J. in **Malick Ceesay Vs. Jaheh Camara** (Suit NO. HC/269/11/BK/021/BO) delivered on 5<sup>th</sup> October, 2011.

**Declaration of title** - onus of proving title is on him who asserts the positive and he will only succeed on the strength of his own case and not to rely on the weakness of the defence. However, if the case of the defendant when he testifies, amounted to creating weaknesses in his case and the same inures to supporting the plaintiff’s case, then in such a situation the plaintiff would be entitled to rely on such weaknesses to support his own case.

**Root of Title** – Production of documents alone is not sufficient to discharge the onus of proof. He must go further to trace his root of title to one whose ownership of the land has been established – Admitted facts need no further proof.

Pp 4 -6 Per Bah J. in **Uwe Enderlein and another Vs. Momodou Ceesay** in (Suit No. HC. 102/08/BK/008/AO) delivered on 31<sup>st</sup> October, 2011.

### **LAND**

**Sale of Land** - The maxim: *Nemo dat quod non habet* - when does it apply to avoid sale of land.

**Trespass to Land** – Trespass is actionable at the suit of the person in possession of land, and such a person can sue for trespass even if he is neither the owner nor privy of the owner. Exclusive possession gives the person in possession right to retain it and have undisturbed enjoyment of it against all except a person who establishes a better title.

**Land – Declaration of title/ownership** – Plaintiff to prove his claim on the strength of his case even if the defendant fails to testify.

**Pleadings** – Defendant’s failure to file a defence – implication – acceptance of the facts in the Statement of Claim. – and that he has not defence thereto.

P.5 – Per Joof J. in the **Abdou Jassey Vs. Lamin Sillah & others** (Civil Suit No. 75/2002) delivered on 28<sup>th</sup> January 2011.

**Trespass to Land** – A claim for damages for trespass to land presupposes that the plaintiff is in possession, actual or constructive, of the land in dispute at the time of the trespass by defendant.

Pp4, 5 and 6: Per Joof J. in **Abdou Bojang Vs. Ramou Sallah** (Civil Suit No. HC/062/09) delivered on 26<sup>th</sup> November, 2010.

**Land - Proof of ownership** – Plaintiff to prove his root of title and must depend on the strength of his own case and not on defendant’s – plaintiff to show the identity, location and boundaries of the suit land.

Pp 1-4 Per Joof J. in **Lamin Neno Sanneh Vs. Buruwa Sanneh** (Civil Suit No. HC/197/07/BK/015/AO) delivered on 10<sup>th</sup> December, 2010.

### **LEGAL PRACTITIONER**

**Authority of Counsel** – An admission by counsel binds his client in the counsel’s action within the scope of his implied authority.

Pp- 1- 9 Per Amadi J. in **Abou Kalley Vs. Fernando George Kroonder and 2 others** (HC/186/06/CO/031/D1) Ruling delivered on 13<sup>th</sup> May, 2010.

### **MORTGAGES –**

**Format** – S. 5 of the Act does not place emphasis on the use of any particular format or word or phrase if the document as defined in S.3 conforms to the provisions of S.5(1)(a) of the Act.

### **Power of Attorney –**

An instrument by which a principal authorizes an agent to act for him in a certain capacity – can only be admissible and used if it complies to law of, and applicable in, The Gambia.

Pp 8; 15 – 16, and 17: Per Amadi J. in **Bakary Jack , M. Sanneh Vs. Sadane Gitteh & another** (Civil Suit No. HC/395/10/CO/123/C1) Ruling delivered on 20<sup>th</sup> August, 2012.

### **REMEDIES**

**Damages – Special and General Damages** – Special damages must be specifically pleaded and strictly proved.

Pp 11 – 18 - Per Sillah-Camara J. in **Malamin Badjie vs. Alhaji Sankung Sillah & Sons (Gambia) Ltd.** (Civil Suit No/ 177/97) delivered on 12<sup>th</sup> November, 2010.

**General Damages** – Injury cases – pecuniary claim for pain and sufferings; loss of amenities – principles and parameter guiding courts in the assessment of damages payable to a successful plaintiff.

Pp 11 – 18 - Per Sillah-Camara J. in **Malamin Badjie vs. Alhaji Sankung Sillah & Sons (Gambia) Ltd.** (Civil Suit No/ 177/97) delivered on 12<sup>th</sup> November, 2010.

### **REMEDIES**

**Award of Damages– Quantum of damage in Motor Accident Cases** - The award to be given should be the sum of money which will put the party who has been injured or who has suffered, in the same position as he would have been if he had not sustained the wrong for which he is now being compensated – The guiding principle is what is fair and reasonable in the circumstances.

Pp 9 – Per Joof J. in the **Abdou Jassey Vs. Lamin Sillah & others** (Civil Suit No. 75/2002) delivered on 28<sup>th</sup> January 2011;

### **REMEDY**

**Award of interest** – guiding principles.

Pp 2 -3 Per Mahoney J in **Galp Gambia Ltd. Vs. Bell view Airlines Ltd.** (Civil suit No. HC/580/09/CO/139/02) Ruling delivered on 11<sup>th</sup> February, 2010.

### **TORT**

**Negligence** – Duty of Care – Breach- Liability –

To show liability for negligence, plaintiff must prove that defendant owed him a duty of care and that the defendant breached that duty which breach resulted in damage/injury to the plaintiff.

Pp 4 – 5 - Per Sillah-Camara J. in **Malamin Badjie vs. Alhaji Sankung Sillah & Sons (Gambia) Ltd.** (Civil Suit No/ 177/97) delivered on 12<sup>th</sup> November, 2010.

**Industrial accident cases** – where an employee claims damages for injuries sustained in the cause of employment, question of employer’s duty of care arises – that the duty entails on the part of an employer.

Pp 4 – 5 - Per Sillah-Camara J. in **Malamin Badjie vs. Alhaji Sankung Sillah & Sons (Gambia) Ltd.** (Civil Suit No/ 177/97) delivered on 12<sup>th</sup> November, 2010.

### **TORT**

**Negligence** – duty of care- damages arising therefrom – in order to show liability for negligence, a plaintiff must prove that the defendant owed him a duty of care and that the defendant breached that duty of care and that he suffered damages as a result.

P.4 – Per Sillah-Camara J. in **Momodou Karka Jallow and another vs. A.M.R.C.** (Civil Appeal No. HC/060/10/CL/008/BO/ delivered on 10<sup>th</sup> December, 2010.

### **TORT**

**Tort of Negligence – defined:** - “Omission or failure to do something which a reasonable man under similar circumstances would do, or the doing of something which a reasonable man not do”.

**Proof of Negligence** – The plaintiff must plead and prove (a) The existence of a duty of care owed him by the defendant, (b) Breach of the duty of care (c) Causal connection between the defendant’s careless conduct and the damage done, (d) that the damage or injury done to the plaintiff is not so unforeseeable as to be too remote – Proof of occurrence of accident alone is not enough; plaintiff must prove that.

- 1) The accident was as a result of defendant’s negligence.
- 2) The circumstances, nature and extent of the accident must be pleaded and proved by evidence.

Pp 9 – Per Joof J. in the **Abdou Jassey Vs. Lamin Sillah & others** (Civil Suit No. 75/2002) delivered on 28<sup>th</sup> January 2011; **Ansumana Fadera Vs. Owners and Masters of MV. CLIO** (by their Agents Interstate Shipping Agent Co. Ltd) Civil Suit No. 0026/07/003/01) delivered on 17<sup>th</sup> December, 2010

**Vicarious Liability** – In motor vehicle accident cases, plaintiff must plead and prove by evidence that the driver of the vehicle was either the agent or servant of the owner thereof and that the accident occurred in the course of his employment.

Pp. 7 – Per Joof J. in **Abdou Jassey Vs. Lamin Sillah & others** (Civil Suit No. 75/2002) delivered on 28<sup>th</sup> January 2011.

#### **TORT**

**Tort of Negligence – defined:** - “Omission or failure to do something which a reasonable man under similar circumstances would do, or the doing of something which a reasonable man not do”.

**Proof of Negligence** – The plaintiff must plead and prove (a) The existence of a duty of care owed him by the defendant, (b) Breach of the duty of care (c) Causal connection between the defendant’s careless conduct and the damage done, (d) that the damage or injury done to the plaintiff is not so unforeseeable as to be too remote – Proof of occurrence of accident alone is not enough; plaintiff must prove that.

1) The accident was as a result of defendant’s negligence.

2) The circumstances, nature and extent of the accident must be pleaded and proved by evidence.

Pp 9 – Per Joof J. in the **Abdou Jassey Vs. Lamin Sillah & others** (Civil Suit No. 75/2002) delivered on 28<sup>th</sup> January 2011; **Ansumana Fadera Vs. Owners and Masters of MV. CLIO** (by their Agents Interstate Shipping Agent Co. Ltd) Civil Suit No. 0026/07/003/01) delivered on 17<sup>th</sup> December, 2010

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#### **TORT**

**Tort of Negligence** – Vicarious liability - What plaintiff must show – A plaintiff in action for negligence must, in order to succeed, establish the liability of the wrong doer and prove that the wrong doer is a servant of the master and that the wrong doer acted in the course of his employment. For a master to be successfully sued vicariously, in respect of the tortuous act of the servant, the master must be (joined) as a party to the action.

#### **TORT**

**Tort of Negligence – Meaning** - It means more than needless or careless conduct, whether in omission or commission. It properly connotes the complex concept of duty of care, breach, damage thereby suffered by the person to whom the duty is owed. The plaintiff is required to plead and given evidence on the above facts to succeed.

Pp 6 – 8 Per Joof J. in **Ansumana Fadera Vs. Ownors Aina Masters of MV. CLIO (By their Agents Interstatt Shipping Agency Company Ltd.** (Civil Suit No. 0026/07/003/01) delivered on 17<sup>th</sup> December, 2010.

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**Evidence** – What is admitted need no further proof?

Pp 2 – 6 Per Joof J. in **Marinus Petrus Dieke and others Vs. Momodou Camara** (Civil Suit No. HC/85/2002 DNO 4) delivered on 3<sup>rd</sup> December, 2010.

Pp – 1 – 4 Per Joof J. in **Lamin Neno Sanneh Vs. Buruwa Sanneh** (Civil Suit No. HC/197/07/BK/015/AO) delivered on 10<sup>th</sup> December, 2010

## WORDS AND PHRASES DEFINED

### **Cause action – Meaning –**

“It is trite law that the phrase ‘cause of action’ constitutes the fact or combination of facts which give rise to a right to sue. It consists of the wrongful act of the defendant which gives the plaintiff his cause of complaint and consequent damage when facts establishing a civil right or obligation and facts establishing infraction or trespass on the right and obligation exist side by side, a cause of action is said to have accrued or every fact that would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment of the court”

Pp 8 – 9 Per. Bah J, in **Ousman Joof Vs. The Director of Forestry** (Civil appeal No. HC/246/07/BK/04/CO) delivered on 20<sup>th</sup> November, 2010