



Worksheet 1.15 - Answers

Referring to *Tatupu v Police* [2013] NZHC 2369 [11 September 2013] which you have already found in www.nzlii.org. You will have noticed that it has been named differently in that website as 'Taiupu' instead of 'Tatupu' which is the correct name.

1. In which court was this case heard?

The case was heard in the High Court in Auckland. The High Court is one national body with separate registries; this is why the case says at the top of the front page: IN THE HIGH COURT OF NEW ZEALAND AUCKLAND REGISTRY.

The District Courts have recently been altered by the Judicature Modernisation Bill to reflect the Senior Courts' composition. Under section 7(4) of the District Court Act 2016 the District Court is now a single court. Previously, the District Courts were separate 'courts of record'.

You can also tell that it is a High Court case because its citation is NZHC which stands for New Zealand High Court.

2. Who was the Judge in this case?

On the front page it says Rodney Hansen J. This stands for Justice Rodney Hansen, a Judge of the High Court. You can read about all Judges on the Courts of New Zealand website www.courtsofnz.govt.nz

Judges of the High Court are known as Justice ____, whereas Judges of the District Court are known as Judge ____.

3. Why is this case *Tutapu v Police*, not *Police v Tutapu*?

This was an appeal from a decision of two Justices of the Peace convicting Tutapu. Because Tutapu is appealing the initial decision, Tutapu is named first as the appellant. The Police are named second as the respondent.

Note, because the original case took place before the Criminal Procedure Act came into force on 1 July 2013, the appeal was heard in the High Court. Appeals from decisions made by Justices of the Peace since the Criminal Procedure Act came into force are heard in the District Court. An appellant can appeal again to the High Court but a JP case cannot be appealed further than that - i.e. a case originally heard by JPs will not be appealed to the Court of Appeal or Supreme Court.

The initial hearing

4. What offence was Tutapu charged with at the initial hearing before the Justices of the Peace?

Tutapu was charged and convicted of failing to stop at a yellow traffic signal, contrary to s 40 of the Land Transport Act 1998, r 4 of the Land Transport (Offences and Penalties) Regulations 1999 and r 3.1(1) and specifically r 3.2(4) of the Land Transport (Road User) Rules 2004.

5. What were the elements that the prosecution had to prove beyond reasonable doubt for Tutapu to be convicted at the initial hearing?

R 3.1

- Being a person using the road
- at a place where traffic is controlled by a traffic control device,
- did not comply with the instructions given by that traffic control device that apply to them.

R 3.2(4)(a)

- While a steady yellow signal in the form of a disc is displayed,—
- a driver
- facing the signal
- entered the controlled area
- while the signal was displayed
- while the driver's vehicle was, when the signal first appears, not so close to the controlled area that it cannot safely be stopped before entering the area:
- Also, the general elements of date/time, location and identity.

6. Were there any elements not in dispute? In other words, what elements did both parties agree were satisfied?

- The identity of the driver, the location and time of the alleged offence are all in agreement.
- The defendant agrees that he was driving at a place controlled by a traffic control device.
- The defendant describes entering the area controlled by a traffic control device and that a yellow signal was displayed.

7. What was the issue at the initial hearing and what element did this issue relate to? In other words, what was the primary dispute between the parties that the Justices needed to resolve?

The parties disagreed about whether there was sufficient time and space for the defendant to have stopped at the intersection safely, once the yellow signal was displayed.

This relates to the element– was the driver's vehicle, when the signal first appears, so close to the controlled area that it could not safely be stopped before entering the area:

The Appeal

8. Why are the Justices of the Peace not named in this appeal case?

Because when a decision is made it is technically made by the court and not the individuals. It is the **decision of the court** being appealed, not the people who made it.

Justices and judges are not held personally responsible for their decisions even if they have made a mistake and even if the decision is overturned.

It is as well to develop a 'thick skin' when it comes to appeals. Some defendants are just litigious people who want to ensure they put the system to the greatest test. Some have a genuine grievance - but it is against the court and not you personally. Remember, all Judges are liable to be appealed, right up to the Court of Appeal! Making decisions in court is about applying the evidence the elements of the offence to the best of your ability, not about trying to be 'right'. Even in the Supreme Court there may be a minority of the bench who disagree with the majority and who therefore have to accept the majority view. It is not that any individual Judge is 'right' or 'wrong'.

Note that in some cases the Judge may refer to the original decision maker by name, but this is not the common practice nor is it a requirement.

9. In paragraph 9, who is Ms Stokes and what is her role in the case?

Ms Stokes is the appellant's lawyer. Her role is to present the arguments of the defendant. She is in effect the defendant's mouthpiece. A lawyer does not give his or her own opinion, nor does he or she 'know' whether or not the defendant is 'guilty' or not. The lawyer is there to present the argument to the bench. Lawyers' primary duty is to the court, even before their duty to their clients.

10. What were the grounds of appeal in this case and how were they dealt with by the Judge?

The arguments put forward against the decision of the Justices were:

- That the JPs made a mistake in their estimation of how far the appellant was from the lights when they turned yellow.
 - the Judge said he agreed with the Justices' estimation, based on his own study of the photographs and evidence that were given in the original case, so he decided that no, the Justices had not made a mistake [paragraphs 10-12].
- That the JPs gave insufficient weight to Mr Tatupu's reasons for deciding not to stop; and
- That the legal test for whether or not to stop at a yellow light is a subjective one and the JPs gave insufficient weight to his belief that he could not stop in time.
 - The Judge dealt with these arguments together, and found (decided) that the legal test is not a subjective one but an objective one, "taking into account all of the circumstances bearing on the decision at the time it had to be made" [paragraph 17].
 - The Judge found that the Justices had given weight to Mr Tatupu's belief, but because it is an objective assessment the police's assessment that there would have been time to stop was found to hold more weight.

11. What was the outcome of the appeal?

The outcome was that the appeal failed. The Judge decided that the Justices made a lawful and reasoned decision on the evidence that was presented to them. This means that Mr Tatupu is still convicted for failing to stop at a yellow light, and still has to pay the fine.