

MANAGING PUBLIC
SECTOR RECORDS

A Training Programme

Managing Legal Records



INTERNATIONAL
COUNCIL ON ARCHIVES



INTERNATIONAL RECORDS
MANAGEMENT TRUST

MANAGING LEGAL RECORDS

MANAGING PUBLIC SECTOR RECORDS

A STUDY PROGRAMME

General Editor, Michael Roper; Managing Editor, Laura Millar

MANAGING LEGAL RECORDS

Managing Legal Records

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UK

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Inquiries concerning reproduction or rights and requests for
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International Records Management Trust

12 John Street
London WC1N 2EB
UK
Tel: +44 (0) 20 7831 4101
Fax: +44 (0) 20 7831 7404
E-mail: info@irmt.org
Website: <http://www.irmt.org>

MPSR Project Personnel

Project Director

Anne Thurston has been working to define international solutions for the management of public sector records for nearly three decades. Between 1970 and 1980 she lived in Kenya, initially conducting research and then as an employee of the Kenya National Archives. She joined the staff of the School of Library, Archive and Information Studies at University College London in 1980, where she developed the MA course in Records and Archives Management (International) and a post-graduate research programme. Between 1984 and 1988 she undertook an onsite survey of record-keeping systems in the Commonwealth. This study led to the foundation of the International Records Management Trust to support the development of records management through technical and capacity-building projects and through research and education projects.

General Editor

Michael Roper has had a wide range of experience in the management of records and archives. He served for thirty-three years in the Public Record Office of the United Kingdom, from which he retired as Keeper of Public Records in 1992. He has also taught on the archives courses at University College London and the University of British Columbia, Canada. From 1988 to 1992 he was Secretary General of the International Council on Archives and since 1996 he has been Honorary Secretary of the Association of Commonwealth Archivists and Records Managers (ACARM). He has undertaken consultancy missions and participated in the delivery of training programmes in many countries and has written extensively on all aspects of records and archives management.

Managing Editor

Laura Millar has worked extensively not only as a records and archives management consultant but also in publishing and distance education, as an editor, production manager and instructional designer. She received her MAS degree in archival studies from the University of British Columbia, Canada, in 1984 and her PhD in archival studies from the University of London in 1996. She has developed and taught archival education courses both in Canada and internationally, including at the University of British Columbia, Simon Fraser University and the University of Alberta. She is the author of a number of books and articles on various aspects of archival management, including *A Manual for Small Archives* (1988), *Archival Gold: Managing and Preserving Publishers' Records* (1989) and *A Handbook for Records Management and College Archives in British Columbia* (1989).

Project Steering Group

Additional members of the Project Steering Group include

Association of Records Managers and Administrators (ARMA International):	Hella Jean Bartolo
International Council on Archives:	George MacKenzie
Project Management Consultant:	Tony Williams
University College London:	Elizabeth Shepherd
Video Production Co-ordinator:	Janet Rogers

Educational Advisers

Moi University:	Justus Wamukoya
Universiti Teknologi Mara:	Rusnah Johare
University of Botswana:	Nathan Mnjama
University of Ghana:	Harry Akussah, Pino Akotia
University of New South Wales:	Ann Pederson
University of West Indies:	Victoria Lemieux

Project Managers

Lynn Coleman (1994-6)
Laura Millar (1996-7)
Elizabeth Box (1997-8)
Dawn Routledge (1999)

Production Team

Additional members of the production team include

Jane Cowan
Nicki Hall
Greg Holoboff
Barbara Lange
Jennifer Leijten
Leanne Nash

Donors

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Organisation of American States

Royal Bank of Scotland

United Nations Development Program

Managing Legal Records

Principal Author

STUART ORR

Stuart Orr has been involved in the management of records since 1983. He is currently head of records management in the Department of Trade and Industry in London. Formerly he headed the records management units in the Crown Prosecution Service of England and Wales and the Director of Public Prosecutions Department. Since 1997, he has been chair of the Association of Departmental Record Officers in the United Kingdom. He is a member of the Public Record Office Advisory Group on Records Management and of the British Standards Institute Committee, assisting in the development of an international standard in records management. He has undertaken consultancy work on public sector legal records in Ghana, The Gambia, Tanzania and Zimbabwe.

Contributor

Livia Iacovino

Reviewers

Rick Klumpenhauer, Calgary Regional Health Authority, Canada, (formerly)
Legal Archives Society of Alberta

William Twining, University College London Law Faculty; Commonwealth
Legal Education Association

Testers

University of Legon, Ghana

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INTRODUCTION TO *MANAGING LEGAL RECORDS*

Managing Legal Records builds on the general principles outlined in the core modules of the Management of Public Sector Records Study Programme and addresses the specific issues involved in managing legal records created by public institutions. Particular consideration is given to the care of records created by courts of law, police forces and public prosecutors. This module indicates where different approaches are needed to meet the particular requirements of a records service within a legal or judicial environment. Students are strongly urged to ensure they have completed work on all core modules in the MPSR Study Programme or be otherwise comfortable with the concepts and practices outlined in those modules before commencing work on this specialist module. At the very least, people are encouraged to study the first module in this study programme, *The Management of Public Sector Records: Principles and Context*, before proceeding with *Managing Legal Records*.

This module is primarily concerned with legal records in countries whose legal system is based, in whole or in part, on the English model. The English legal system is often called the ‘common law’ system. A list of countries that use common law systems to a greater or lesser degree appears in Appendix 1 to this module, at the end of Lesson 1. Other appendices provide information about court structures (Appendix 2) and keywords (Appendix 3). At the end of the module, in Appendix 4, is a sample retention schedule for legal records.

While *Managing Legal Records* is primarily concerned with the operational records of three specific aspects of the legal service — courts of law, police forces and public prosecutors — much of its content is also applicable to the management of records in other legal environments. This module does not cover records of legal institutions that arise from customary law (sometimes called traditional or tribal) law. However, the recognition of pluralist legal systems in many Commonwealth countries has led in some cases to the acceptance of non-print records, such as oral traditions, as evidence in a court of law. The information in this module, together with general records management principles, can normally be modified and applied to the care of all types of records in order to ensure their legal authenticity and admissibility. It is also important to note that administrative records are not discussed in this module in any detail; students are directed to the principles outlined in the core modules on the care of administrative records.

This module is written particularly for those already working in, or recently appointed to, law courts, police forces or offices of public prosecutors. It is assumed that the

primary audience for the modules will be people with managerial or day-to-day responsibility for records; however, the information provided here will also be valuable to records managers and others not working within the legal environment who seek a broader perspective. Activities are designed on the assumption that students are working in a legal record-keeping environment or have access to legal records; those students who do not have access to legal records may choose to adapt the activities to suit hypothetical situations.

AIMS AND OUTCOMES

Aims

This module has eight primary aims. These are to

1. introduce the concept of legal records management for courts of law, police forces and public prosecutors in a common law legal system
2. identify the importance of legal records management, in particular how and why legal records support the political system and contribute to overall government accountability
3. understand basic legal principles and terminology relevant to a common law legal system
4. locate both general and specific regulatory controls for legal records
5. explain the management of records of courts of law, police forces and public prosecutors, including discussion of filing and numbering systems, arrangement of records and management of indexes
6. apply the processes involved with appraisal and preservation of and access to legal records
7. gain management support for legal records management programs and promote the record-keeping responsibilities of all those involved in judicial processes
8. understand where to go to obtain more information about legal records management issues.

Outcomes

When you have completed this module, you will be able to

1. understand the concept of legal records management for courts of law, police forces and public prosecutors in a common law legal system
2. identify the importance of legal records management, in particular how and why legal records support the political system and contribute to overall government accountability
3. understand basic legal principles and terminology relevant to a common law legal system
4. locate both general and specific regulatory controls for legal records
5. explain the management of records of courts of law, police forces and public prosecutors, including discussion of filing and numbering systems, arrangement of records and management of indexes
6. apply the processes involved with appraisal and preservation of and access to legal records
7. gain management support for legal records management programs and promote the record-keeping responsibilities of all those involved in judicial processes
8. know how to obtain more information or conduct research into legal records management topics.

METHOD OF STUDY AND ASSESSMENT

Managing Legal Records consists of eight lessons:

- Lesson 1: The Context of Legal Records Management
- Lesson 2: Managing Legal Records: An Overview
- Lesson 3: Court Records
- Lesson 4: Police Records
- Lesson 5: Prosecution Records
- Lesson 6: Automation and Legal Records Management
- Lesson 7: Policy Issues
- Lesson 8: What to Do Next?

This module of eight lessons should occupy about 60 hours of your time. You should plan to spend about:

10	hours on Lesson 1
9	hours on Lesson 2
8	hours on Lesson 3
8	hours on Lesson 4
8	hours on Lesson 5
6	hours on Lesson 6
6	hours on Lesson 7
5	hours on Lesson 8.

This includes time spent doing the reading and considering the study questions.

At the end of each lesson there is a summary of the major points. Sources for additional information are provided in Lesson 8.

Throughout each lesson, activities have been included to help you think about the information provided. Each activity is a 'self-assessed' project; there is no 'right' or 'wrong' answer. Rather, the activity is designed to encourage you to explore the ideas presented and relate them to the environment in which you are studying or working. If you are studying these modules independently and are not part of a records or archives management organisation or not involved with electronic records, you should try to complete the activities with a hypothetical situation if possible. If the activity suggests writing something, you should keep this brief and to the point; this is not a marked or graded exercise and you should only spend as much time on the activity as you feel necessary to understand the information being taught. You are encouraged to write down your answers for all of the activities and keep the answers together in a booklet or file; you may want to refer back to your answers as you work through this module or through other modules in this study programme. At the end of each lesson are comments on the activities that will help you assess your work.

Following the summary at the end of each lesson are a number of self-study questions. Note that these self-study questions are designed to help you review the material in this module. They are not intended to be graded or marked exercises. You should complete as many of the questions as you feel will help you to understand the concepts presented. External assessments, such as assignments or exams, will be included separately when this module becomes part of a graded educational programme.

ADDITIONAL RESOURCES

Students working through this module should have access to legal records if possible. Does your archival institution care for legal records? Does your records office or records centre have close links with the national, regional, or local courts of law, with police forces or with public prosecutors' offices? Whenever possible, it is ideal to draw on real examples, particularly in a module such as this one, which focuses specifically on the care of legal records.

Case Studies

The following case studies relate directly to the issues addressed in this module.

Case Study:

- 22: Musila Musembi, Kenya. 'The Management of Legal Records in the Commonwealth: A Case Study'
- 32: Livia Iacovino, Australia. 'Legal Records: A Case Study'

THE CONTEXT OF LEGAL RECORDS MANAGEMENT

While all records can be used as evidence, and so have a legal value, some records are generated specifically from the legal process: from the work of the courts, the police and public prosecutors. This module outlines the care of those records created by the institutions of the judiciary, police and public prosecutors.

Lesson 1 introduces the concept of legal records and discusses the importance of efficient and careful management of these records throughout their life. It considers the following issues:

- the importance of caring for legal records
- challenges in managing legal records
- the nature of legal records
- the nature of the common law system
- key legal terminology.

THE IMPORTANCE OF CARING FOR LEGAL RECORDS

The word 'record' has a legal origin, as noted by the author Ole Kolsrud, who wrote that 'in medieval Latin *recordum* meant the testimony of a witness, and thus a record came to mean a text of evidential weight'.¹ Records by their very nature provide proof of the activities of organisations or persons within a society. Thus records serve as evidence of the rights and obligations of individuals, organisations and governments. Records enforce and support the agency's laws or binding rules. Thus it can be argued that the law is a fundamental part of all record-keeping activities. Regardless of the specific legal system in place, records document activities and so may serve as admissible evidence in a court of law.

¹Ole Kolsrud, 'Developments in Archival Theory', *Encyclopedia of Library and Information Science*, 61, Supplement 24, 1998, p. 92.

Within a legal context, records serve several functions.

- They support legal rights and obligations within the legal system.
- They provides evidence or proof that a particular activity took place.
- They contribute to accountability in organisations and in government.

Records are fundamental to the efficient and effective operation of the legal system of a country and perhaps are even more crucial to the administration of law than to any other function of the public sector. Not only are current records in daily use for legal reasons, but records of previous actions are also routinely retrieved and used by a range of legal agencies. If the police force cannot find the previous records of a habitual criminal before he or she is brought to trial, the criminal may be sentenced as a first-time offender, possibly endangering the public in future when he or she is free to reoffend. Similarly, if court staff cannot locate the case papers relating to a trial, an appeal against conviction may be delayed, even indefinitely, and justice may not be done to a citizen who was wrongly convicted.

Within a legal context, records support legal rights and obligations, provide evidence and contribute to accountability.

If legal records are not created, maintained and made accessible, governments and citizens may be unable to enforce their rights. Consider the following examples.

- A prosecution case may not be able to proceed because the records have been kept in the office of an employee of the prosecutor and were inadvertently not linked into the process of issuing summonses.
- The judicial system may fail to bring justice in criminal actions if evidence is not presented that is reliable and authentic.
- Citizens enquiring about the status of their case may have difficulties finding out the truth.
- The public will not have faith in its government if reliable records are not maintained.

In many countries, the public is more and more concerned that government be honest and accountable; good record keeping within the legal system can help maintain a high level of accountability. Business and international aid agencies are also concerned that their investments go to countries with sound governments. An accountable and transparent legal system is good evidence of a strong and honest government. Thus the need to built a trustworthy record-keeping system for the judicial system is essential in any country, regardless of the legal system it follows. It is important, however, not to forget that the 'evidential' characteristic of all records, that is the authenticity of records over time, also supports their legal use as documentary evidence. This principle is relevant to all record keeping, not just legal records as defined in this module.

Public sector legal records are best understood within the constitutional framework of the country in question, whether that framework has been codified or operates by convention or tradition. The constitutional framework of most countries provides for an independent judiciary and for the principle of separation of powers: the parliament, the legislature and the judiciary are legally separate so that each does not have the opportunity to exceed its given power. These principles provide an added impetus for record keepers to ensure legal records are accurate and authentic; not only do the records provide evidence of the functioning of legal institutions, but they also document the responsibilities of the parliament, government and, ultimately, the citizenry of the country.

The trustworthiness of legal institutions depends on the good care of their records, which results in part from the high ethical standards of all players involved in the judicial process. In many countries, high ethical standards are closely tied to the ideals of professionalism. Professionals will be bound by their profession's code of ethics to perform their duties with propriety and honesty. Within professions such as the law, police enforcement and so on there is often a written requirement, such as codes of ethics, standards or acts, that ensures the ethical behaviour of practitioners. For example, in many countries, legal practitioners may have to abide by acts or regulations of the jurisdiction in which they are registered; they may also be required to follow written rules of conduct that guide their ethical behaviour and impose penalties for non-conformity. Good record keeping is often a prerequisite or requirement of good conduct within the profession.

Activity 1

Think of three situations where public records would be needed to prove a legal claim in your country. For each situation, write a brief explanation of where the record might be found within the government's record-keeping system.

KEY PRINCIPLES OF LEGAL RECORDS CARE

In general, all public sector records result from interactions between private citizens and official authorities. In particular, legal records created or used by public sector agencies can affect the rights and obligations of all parties involved. Thus the following principles must be recognised when caring for legal records.

All public records can affect the rights and obligations of the government and citizens.

Legal Rights and Record Keeping

One of the most important legal concepts in a society is that of rights and duties. All people have rights and obligations. All organisations, agencies and governments also have rights and duties. All areas of law can be interpreted in the light of rights and duties. Legal records – and indeed all records – should be cared for in order to protect a legally authentic and usable record.

For more information on the importance of record keeping for evidence and accountability in government, see the core modules in the MPSR Study Programme.

Privacy, Access and Record Keeping

The right of the public to access records is closely tied to the legal and political notions of the sovereignty of the people. Another ‘right’ that has emerged is that of *privacy*. A record-keeping system within a legal environment should ensure information about individuals is maintained in a secure environment, so their privacy is not violated. At the same time, provision must be made to ensure that some personal information can be retained for evidential, informational or research reasons once it has served its original purpose.

Ownership, Property Rights and Record Keeping

It is basic to most legal systems that ownership and property rights may be given away, sold or assigned. The concept of the sanctity of private property has evolved in Western legal systems; record-keeping systems need to protect that information required to prove property rights, not only for physical property but also for intellectual property and copyright.

Negligence and Record Keeping

Record-keeping systems that provide evidence of consistent and routine procedures may protect a party in a negligence claim, by showing that proper procedures were followed throughout any particular process. It may be legal for a public body to destroy records that are beyond their statutory retention period, but a good record-keeping system will ensure that evidence is retained as required to prove the organisation has acted appropriately.

Rules of Evidence and Record Keeping

Records are not created for the express purpose of being used in potential legal proceedings. However, the reliability and authenticity of records generated from business processes support and are supported by the rules of evidence: the

requirements for admissibility of information in a court of law. The rules of evidence provide one of the strongest general legal mandates for record keeping because the rules require that information be managed appropriately.

CHALLENGES IN MANAGING LEGAL RECORDS

The main challenges likely to be encountered when caring for legal records can be considered under three headings:

1. the large quantity of records
2. pressures of work
3. the attitude of legal practitioners to 'lay' records managers.

Because records are basic to legal systems large volumes of records tend to accumulate after a relatively short period. The first United Kingdom Act of Parliament to deal with public records, the Public Record Office Act of 1838, was concerned with managing the enormous volumes of legal records that had accumulated over time.

Practitioners within public sector legal institutions are generally well aware of the value of their records. However, they tend to work under constant pressure and often feel they can do little concrete to care for their records. The courts usually have a backlog of cases waiting to be heard; the police and public prosecutors will be dealing with an ongoing caseload of crimes. Each of these activities will result in records. And these records need to be cared for properly.

Legal records must be cared for in a professional fashion by individuals well trained to manage the responsibilities involved.

Unfortunately, legal professionals, like medical and other professionals, often believe that only someone who works in the profession can advise them about any matter relating to their area of work. Therefore, although many of the general principles and practices of records management can be applied to legal records, there may be a reluctance on the behalf of clients to accept this advice from 'lay' records managers. Because of this common difficulty, one of the aims of this module is to provide you with a basic introduction to legal systems and terms so that you can, at least in part, speak a common language with your clients in the legal system.

Activity 2

Write a brief description of challenges you think might affect the care of legal records in your organisation. See if you can speak with a records manager who works in a legal environment and discuss the issues raised in this section with him or her.

THE NATURE OF LEGAL RECORDS

The institutions of law perform essential functions in society, including dispute prevention and dispute resolution, by enforcing laws and ensuring breaches of the law are minimised. Legal records are important to the practice of law itself. The common law system depends on precedent and continuity, which requires past decisions to be understood and applied in similar circumstances. The law determines the content and form of formal legal records such as contracts. Many procedural documents are prescribed by the legal system, such as affidavits. Form and procedure are features of judicial record keeping.

Court records have been defined as follows by C.J. Shepard.

Court records are not simply one particular type of legal record. They are not simply the public legal record as opposed to the private legal record: court records also represent the official legal records of a judicial system. This fundamental difference sets court records apart from legal records which have no official status. Essentially, the characteristics of the court record are determined by its status as an official legal record. First the apparent complexity of the record arises from the use of unfamiliar legal language and from the complexity of the judicial system itself. Unlike private legal records, court records are created to suit the official requirements of the judicial system: this determines their language, form, and organisation. As well as the potential sensitivity of court files, or documents with a court files series, comes under a different set of conditions than those of private legal records which are governed by solicitor-client privilege.²

In order to understand how to care for legal records, it is important first to clarify some basic concepts concerning the legal system. This information is intended to offer an overview only and discusses legal systems only within the context of record keeping; it is assumed that the student reading this information either has a sufficient working knowledge of the law already, gleaned from his or her work with legal

² CJ Shepard, 'Court Records as Archival Records', *Archivaria*, 18 (Summer 1984): 124.

records, or has access to more detailed information about the law in order to understand key principles and practices within his or her own jurisdiction.

What Is a Legal System?

It is more logical to commence with an understanding of a legal system than a definition of law. Law has a range of meanings, while defining a legal system helps one to focus on how the law evolves and reflects a given society's values and norms and then becomes codified and applied. However, in order to create a sound and uniform basis for our discussions of the legal system, let us offer a short definition of the concept of the 'law'. The law has been defined by the Oxford English Dictionary as

the body of rules, whether formally enacted or customary, which a state or community recognises as binding on its members or subjects; a system of such rules, often defined by its source such as statute law or customary law. In English law it refers to statute and common law.

The first, most basic type of law, is 'natural law': a product of reason, principles and rules to promote peace in society. *Osborn's Concise Law Dictionary* provides a range of definitions for the concept of 'law', emanating from different philosophic standpoints, each of which distinguishes *a law*, an obligatory rule of conduct, from *the law*, a body of principles recognised and applied by the state in the administration of justice.

Natural law is what is considered reasonable and fair. For example you might be booked for speeding because you exceeded the speed limit, but you were driving your sick mother to hospital and you wanted to arrive as fast as possible. If the law is strictly applied you have breached it. If natural law is applied your action was right and just.

The law is the body of rules that govern a society.

At its simplest, the law has been defined as 'the enforceable body of rules that govern any society'. For the law to function, there must be

- a number of rules (laws)
- a system to enforce obedience to these rules.

The rules, imposed and enforced by society, can identify who has power over persons and things and how much power he or she has. When the state has developed a defined and consistent series of rules of conduct, then it has achieved 'positive law'. Positive law, also called 'black-letter law', refers to the 'rules in force in an actual legal system.' Positive law is the law proper – the rules such as legislation, the law formalised into codes and so on – as opposed to *moral law*.

Moral law plays an essential part in all societies. It depends on norms of a given society so that some actions are considered ‘immoral’ or unacceptable and others are considered ‘moral’ or correct. For example, to steal from a helpless person is considered in many societies as both immoral and a breach of the law. Conflicts between natural, moral and positive law are likely to arise frequently and will influence whether records are kept only because the law says they must be kept or because the records document relationships between members of a community and so should be accessible over time.

Activity 3

Think about a judicial organisation you are familiar with and write a brief description of how its organisational culture might create an atmosphere of adherence to rules of law.

Types of Legal System

The law is administered through a ‘legal system’: a particular set of rules, principles, standards and concepts used to guide legal decisions and actions within a specific jurisdiction. The term ‘legal system’ is also used to refer to a particular legal structure, such as the British legal system, the American legal system and so forth.

Legal systems have different ‘rule systems’ operating in different geographical and political areas. Specific legal systems operate on the basis of rules that apply only within a particular geographic area. The legal system in the United Kingdom does not apply directly to legal decisions in Ghana, and the legal system in Malaysia has no direct bearing on the legal system in Fiji.

Legal systems will differ from country to country and region to region depending on the realities of that geographic area.

However, it is important to note that legislation in many common law countries is modelled on other common law countries. For example, Australia has adopted the UK evidence and copyright legislation. Legal precedents from different common law countries are not binding on judges making decisions in other countries; however it is common in Australia and New Zealand to cite UK, American and Canadian decisions, and to be influenced by them. Although the rules may be different, case law is affected by decisions from other jurisdictions. But for the purposes of this module, it is necessary to understand that entire legal systems develop to suit the needs of one particular country and are not adopted in whole from other jurisdictions.

The various legal institutions within a particular legal system each exercise, transmit or interpret authority. They are bound together into one system by their common characteristics as the ultimate sources of authority for that jurisdiction. This authority is based on the rules of law, which each institution, and the society as a whole, accept as binding. The collective rules of law are usually described as the 'constitution' of that system and that country. A formal constitution is not necessary (indeed Britain does not have one); a legal system can be formalised without such a document.

In a formalised legal system, the society recognises legal rules that are binding in the acts of the government (usually through the parliament) or through the institutions that make and enforce the laws. Disputes about how to interpret the laws are resolved by the judiciary, also known as the courts or court system. In some legal and political systems the absolute binding nature of the law dominates all legal decisions. In other systems a less rigid approach is followed, perhaps allowing more interpretation of the law. The principles that bind the legal system, whether 'positivist' or not, can affect the way in which records are kept, particularly those records needed for legal purposes. Generally you will find that in societies with more highly developed laws, record-keeping systems are more highly regulated. Societies that follow customs or traditions outside of a rigid legal system will often have less stringent record-keeping systems.

Each country will have its own legal system. Some countries, including many of the countries listed in Appendix 1, combine several systems of law; these are known as 'pluralist' systems. The main systems of law found in countries around the world are

1. common law
2. civil law³
3. Islamic (Sharia) law
4. traditional, customary or tribal law.

Common law systems are based on the system that developed in England from the eleventh century onwards, a system originally based on traditional customs. The system developed as judges based their decisions on decisions taken in earlier cases on similar topics (known as 'precedents'). This process of basing decisions on previous cases is known as 'case law' or 'judge-made law'; case law is different from the law written down in acts or statutes. Countries that use common law systems usually also develop written statutes, but these statutes are only introduced as the government sees a need for such legislation.

³ The use of the term 'civil law' when it relates to a system of law must be distinguished from the use of the term within a primarily common law system when it relates to actions settled between individuals and those considered as 'crimes'. This is discussed later in the section on civil law and criminal law.

Common law systems are originally based on traditional customs.

Unlike common law systems, civil law systems are based on a formalised code of law: a written collection of statutes that define the legal processes of the jurisdiction. In civil law systems, judges base their decisions on statute and not on precedent alone. Roman law and Roman-Dutch law are examples of civil law systems.

Civil law systems are based on formalised codes of law.

Islamic (Sharia) law is a system of law wherein Islamic (or Cadi's) courts have jurisdiction to deal with such matters as family and inheritance law where the parties are Muslims. The Cadi (or Quadi) is the judge in the Islamic court.

Traditional, customary or tribal laws are, as the names suggest, systems that have developed during the earlier history of a country before there was any Western European influence on the system of law. These types of laws are often enforced in traditional courts. In pluralist systems, where more than one system of law is in place, it is common to find that minor civil and criminal matters are dealt with by the traditional courts, and the person tried may have a right of appeal to common or civil law courts.

While the legitimacy of civil, Islamic and traditional laws is recognised, it is not possible to outline record-keeping requirements for such diverse legal systems. Thus, this module addresses record keeping specifically in the context of the common law system.

Activity 4

Briefly discuss features of the common law that may have bearing on the nature and use of legal records.

Activity 5

Briefly discuss how customary law may operate within the dominant legal system of a country.

The Common Law System and Documentary Evidence

Before a common law system was formalised, a person would provide ‘evidence’ of his or her legal obligations to another by making an oral testimony in front of witnesses, rather than writing a document. As a centralised system of justice developed in England towards the end of the thirteenth century, written documents began to be used for legal purposes. For example, sealed writs were issued as title deeds, becoming one of the earliest forms of written legal records in that country.

Documentary evidence is only one form of evidence presented in a court of law.

However, written documents continued to be witnessed, verbally and visually; as well, laws were ‘proclaimed’ orally and summonses were delivered in person. As both oral and written evidence continued to be accepted in court, documents served more as symbolic objects than as documentary proof. A court record would memorialise an event in a ‘memory retaining object’ such as a document, written *after* the event. The record was not created as a natural part of the action in question.

The generic definition below is followed by two definitions from legal sources, to illustrate differences in interpretation.

Evidence: Information or proof admitted into judicial proceedings and relevant to a specific case to establish an alleged or disputed fact.

Evidence is defined as data or proof to establish an alleged or disputed fact, admitted into judicial proceedings and relevant to a specific case. RA Brown, *Documentary Evidence in Australia*, 2d ed (North Ryde, NSW, AUS: LBC Information Services, 1996), p. 8.

Evidence consists of the testimony, hearsay, documents, things and fact which a court will accept as evidence of the facts in issue in a given case. JD Heydon, *Cross on Evidence*, 5th ed (Sydney, AUS: Butterworths, 1996), p. 13.

The courts sought to find the truth of a matter by calling witnesses to establish something in court. One needed a friend or neighbour to witness the truth of what you wanted to establish, and contending parties each brought witnesses to swear to opposite things. This is the basis of the ‘rules of evidence’. Rules of evidence

defined what was *not* admissible rather than what *was* admissible. For example, evidence that could not be cross-examined was ruled inadmissible. Thus a witness's account of a statement made by someone else is ruled inadmissible because the person who actually makes the statement cannot be cross-examined about it. This is 'hearsay'.

Hearsay: A statement from a source other than the live witness.

The English legal system considered direct evidence as the most reliable evidence. Direct evidence was defined as live oral testimony of the witness as opposed to hearsay evidence, whether oral or written. Documents were considered hearsay, which is why the courts traditionally excluded documentary records as evidence as it was not possible to subject documents to cross-examination. Exceptions to the hearsay rule allowed documents to be accepted as judicial evidence if certain requirements were met.

Documents relevant to a case could be admitted into court by the following means.

1. Parties to a case could tender, or present, documents to the court.
2. A subpoena could be issued either to the adverse party or to a third party to produce documents relating to the case.

Subpoena: A court order requiring the giving of evidence or the production to the court of documents or both.

3. Search warrants could be issued or witnesses interrogated.
4. An order for discovery could be issued to one or both parties to produce documents; an order for discovery may also be made against a person or body who is not a party to the proceedings.

Discovery: The process whereby parties to court proceedings identify and disclose to each other *documents* relevant to the issues in the proceedings.

Through the process of discovery, both parties to a legal proceeding are able to obtain from each other a written list of documents that may be relevant to the case. Documents produced from discovery may be admitted as evidence. It should be noted that one may be in contempt of court if a document is destroyed before a subpoena is issued if it is clearly relevant to proceedings that have commenced.

Activity 6

Briefly summarise the various ways records may be introduced into legal proceedings and how this can affect records management.

The Classification of Law

The law can be classified into various categories.

The major classifications are public and private law; criminal and civil law; substantive and procedural law; common law and equity law; and international and domestic law. This module focuses mostly on criminal law but also offers an explanation of the other major type of law: civil law.

It is important to note that the distinctions between criminal law and civil law are not rigid, and the two types of law do overlap. Generally, civil law is more commonly used in common law countries to encompass private law rather than the term 'private law', which is more commonly used in civil law countries.

It has been convenient to sometimes use public law as an umbrella term for administrative and constitutional law, including freedom of information legislation, and the laws that are relevant to controls on government bodies. In the same way, civil law is a convenient way of contrasting it with criminal law, where the state imposes harsh penalties for particular activities.

Civil Law

Civil law is concerned with individual's legal rights and obligations in relation to other individuals. In other words, civil law is concerned with disputes or issues that arise between private individuals and in which the state has no interest. Civil law can also be considered 'private law', and it can be divided into a number of branches, including the following.

1. Tort Law: Torts are wrongs done by one person to another that can result in the injured person receiving compensation for his or her loss or injury. This is different from a 'crime', defined below. Tort law deals with private disputes between individuals concerning injuries.
2. Contract Law: Contract law relates to legally binding agreements between people.
3. Property Law: Property law relates to the ownership and use of land.

4. Family Law: Family law relates to marriage, divorce, adoption and so on.
5. Inheritance Law: Inheritance law relates to the transfer of property on the death of the owner.

Civil law is enforced in the civil courts; the court system is discussed in more detail in Lesson 3.

Criminal Law

Criminal law is concerned with the state's decision to punish the wrongful actions of an individual. If a crime harms society as well as the person who has suffered loss or injury, the state considers this a crime. Such criminal wrongs are enforced by public officials, including the police and public prosecutors. Some crimes are also torts; that is, they injure the individual and can be prosecuted in a civil court. The person who commits a wrongful act may be punished by the State in a criminal court and may also be made to pay compensation to the victim in a civil court.

Three public-sector institutions can become involved in the administration of criminal law: the criminal court, the police and the public prosecutor. The responsibilities these institutions have in the enforcement of law are summarised in the table below.

Institution	Main Responsibilities
Criminal Court	<ul style="list-style-type: none"> • decide if a person has committed a criminal wrong (civil wrongs are handled in civil court) • decide the legal penalty if a person has committed a wrong • rule on matters of law in relation to judicial proceedings
Police	<ul style="list-style-type: none"> • investigate reported crimes • arrest suspected offenders • gather evidence • conduct the prosecution of minor offences
Public Prosecutors	<ul style="list-style-type: none"> • conduct the prosecution of major offences • advise law officers, police and government departments about criminal law matters

Courts, police and prosecutors operate within a particular 'jurisdiction'. The term 'jurisdiction' refers to the power of a particular court to hear a case; the term may also be used to identify those courts with authority in particular matters. Jurisdiction is determined by factors such as the type of case (whether civil or criminal), the amount of money involved, the location of dispute, the offence in question, and so on. In

Australia, for example, there are Commonwealth and State courts. Commonwealth statutory law is vested in the High Court and in those federal courts created by the Commonwealth Parliament, such as the Federal Court and the Family Court. In the same way that state law does not cross state boundaries, neither does judicial precedent, except for High Court rulings. An offence in one jurisdiction cannot necessarily serve as a precedent for action in another jurisdiction.

The jurisdiction of a legal institution will affect the record-keeping systems that institution develops. Specific courts will have their own legislation, rules and codes, each of which will regulate how the court must proceed, what information must be recorded and how, and what documents can be admitted as evidence. These rules are central to the creation, maintenance and disposition of the courts' records.

Court record-keeping systems are considered in Lesson 3.

Activity 7

Consider the responsibilities of the courts, police and public prosecutors listed above. Write a list of as many records as you can think of that are likely to be created as a result of those responsibilities.

KEY LEGAL TERMINOLOGY

A number of key legal terms are important to record keepers interested in legal records care.

On the following page are a number of key terms relating to legal principles and practices. Specific terms may also be introduced in later lessons as the need arises.

Admissibility: The quality of evidence that makes it relevant and acceptable to an issue before the court and does not infringe any exclusionary rule (a matter of law).

Best evidence rule: The legal rule that identifies two types of evidence: primary evidence, or that evidence that by its very nature is the best available, and secondary evidence, or that evidence that by its very nature suggests that better evidence may be available.

Documentary evidence: Documents admitted as evidence under special rules of law.

Privilege: Exclusionary rules (such as professional privilege) that allow a party to refuse to reveal certain confidential communication to a court or person.

Real evidence: Material objects (things) produced for the inspection of the court.

Relevance: The quality of evidence that makes it sufficiently relevant to the issue before the court to be considered acceptable. *Note:* Not all relevant evidence is admissible.

Testimony: The evidence of facts provided by a witness, when the witness has personal knowledge of the facts or events.

Weight: The degree of relevance or importance of evidence.

SUMMARY

Lesson 1 has introduced the concepts involved with the law. It has noted that, while all records can be used as evidence and so have a legal value, some records are generated specifically from the legal process: from the work of the courts, the police and public prosecutors.

Lesson 1 has introduced the concept of legal records and discussed the importance of efficient and careful management of these records throughout their life. It considered the following issues:

- the importance of caring for legal records
- key principles of legal records care
- challenges in managing legal records
- the nature of legal records
- the nature of the common law system
- key legal terminology.

STUDY QUESTIONS

1. How do records support the law?
2. Why are records of the administration of law of particular importance to the operation of the legal system?
3. What are the advantages internationally for having good legal records?
4. How do legal records support overall government accountability?
5. How does the care of legal records relate to the protection of people's rights and obligations?
6. How does record keeping relate to the protection of privacy and provision of access to records?
7. How does the care of legal records relate to ownership and property rights?
8. What is the relationship between rules of evidence and record keeping?
9. What are the main practical challenges to managing legal records?
10. What are the main features of judicial record keeping?
11. Name and define the three types of 'law' introduced in this lesson.
12. What are some of the characteristics of a formalised legal system?
13. Name the chief characteristic of the common law system?
14. Name other legal systems apart from the common law.
15. Why did the common law courts traditionally exclude documentary evidence?
16. How can documents relevant to a case be admitted into court?
17. What are the primary concerns of civil law? What are the primary concerns of criminal law?
18. What is meant by a court's 'jurisdiction'?
19. What is meant by the following terms: testimony, best evidence rule, documentary evidence, real evidence, relevance, weight, admissibility and privilege.

ACTIVITIES: COMMENTS

Activity 1

Situations might include claiming medical benefits, transferring ownership of land or inheriting land or property from a parent or grandparent. The individual might have his or her own records, but the government is responsible for maintaining records to prove its obligation to provide medical benefits (insurance files, for example), document the ownership of land (deeds or land title records) or document the transfer of property (wills). Every action involving individuals and the government can rely on records, and the government has an obligation to maintain those records securely and ensure they are accessible for legal as well as administrative purposes.

Activity 2

This activity aims to start you thinking about management issues for legal records that arise in later lessons in specific contexts (Lesson 3, 4, 5 and 6).

Activity 3

This activity aims to show that adherence to rules depends on corporate culture as much as the rules themselves. Judges argue that they must be independent of the other branches of government. They are expected to have high ethical standards. The police in many countries have been shown to be corrupt. The records of these organisations will not be of high standard unless the legal personnel themselves obey the law.

Activity 4

The importance of precedent and continuity are relevant features of the common law.

Activity 5

This activity aims to provide an awareness of other legal systems, including customary laws, and their records requirements. Each system may approach the form of record differently; that is, written records may not have the same status in an oral culture as a literate one.

Activity 6

The various ways documents are used in legal proceedings are particularly important to legal records. The records the courts produce will incorporate legal briefings, depositions, and police statements, that were presented initially as part of a court action. It is useful to study the legal methods used to introduce these records.

Activity 7

This activity helps you start to think about the processes and responsibilities of the players involved in judicial record keeping and the resulting records. Without first understanding how and why legal records are produced, that is to run the 'business' of these public bodies, you cannot make any judgement on the most suitable records management system for them nor their long-term value.

COUNTRIES WITH COMMON LAW SYSTEMS⁴

Anguilla
Antigua
Australia
Bahamas
Bangladesh
Barbados
Belize
Bermuda
British Virgin Islands
Cameroon (French civil law with common law influences)
Canada (except Quebec)
Cayman Islands
Cyprus (with civil law modifications)
Dominica
The Gambia (composite of common law, Koranic law and customary law)
Ghana (with customary law)
Grenada
Guyana (with certain elements of Roman-Dutch law)
Honduras (rooted in Roman and Spanish civil law. Some common law influences)
Hong Kong
India
Ireland (substantially modified)
Jamaica
Kenya (with Islamic law and Tribal law)
Lesotho (with Roman-Dutch law)
Liberia (dual system of common law and customary law)
Malawi (and customary law)
Malaysia

⁴ *World Factbook 1997*: <http://www.odci.gov/cia/publications/factbook/index.html>

Malta (and Roman civil law)
Mauritius
Montserrat (and statute law)
New Zealand (special land laws and courts for Maoris)
Nigeria (with Islamic law and tribal law)
Papua New Guinea
St Kitts and Nevis
St Lucia
St Vincent & the Grenadines
Seychelles (with French civil law and customary law)
Sierra Leone (and customary law)
Singapore
Solomon Islands
South Africa (with Roman-Dutch Law)
Sri Lanka (highly complex mixture of common law, Roman-Dutch Law, Islamic Law,
Sinhalese Law and customary law)
Sudan (Islamic Law in northern states)
Tanzania
Tonga
Trinidad and Tobago
Turks and Cocos Islands
Uganda (and customary law)
United Kingdom
United States of America
Zambia (and customary law)
Zimbabwe (and Roman-Dutch Law).

MANAGING LEGAL RECORDS: AN OVERVIEW

Lesson 2 provides a brief overview of the key issues involved with the care of legal records in general; the lesson serves as an introduction to the more specific information presented in Lessons 3, 4 and 5. In particular, this lesson examines

1. legislative and regulatory controls on the care of legal records
2. establishing record-keeping standards
3. determining retention periods for legal records
4. ensuring appropriate preservation of and access to legal records.

LEGISLATIVE AND REGULATORY CONTROLS OVER THE CARE OF LEGAL RECORDS

Lesson 1 established that the records of legal institutions will depend on specific requirements of the legal system. The records are in fact the product of the legislative and regulatory environment.

All organisations operating within a legal system must comply with legal requirements and obligations.

The legislation may give an organisation or individual the power to carry out their duties; the legislation will also place duties on them that may affect record keeping.

For example, in Australia the *Special Prosecutors Act* outlines the powers of the Special Prosecutor as follows.

For the purposes of the performance of his functions, a Special Prosecutor is entitled to prosecute by indictment in his own name indictable offences against the laws of the Commonwealth or of the Territories but nothing in this subsection prevents a Special Prosecutor from prosecuting an offence against the laws of the Commonwealth or of the Territories in any other manner.

In order to ensure legal records are managed appropriately, it is necessary to identify any legislation or regulations affecting records care, including the following.

- Legislation that is specific to a particular organisation. Legislation will exist that establishes the mandate of the court, the police and public prosecutor's office. For example, each type of court will usually have specific rules and legislation relating to its activities. Special courts, such as the Family Court, will also have their own legislation, such as a Family Law Act mandating specific functions. The public prosecutor's office and the various police units will usually have legislative powers also in other acts, such as acts relating to criminal behaviour or the provision of bail.
- Legislation that sets standards. Archival and record-keeping legislation will often provide the archival authority with powers and sanctions to impose controls over the record-keeping obligations of organisations. This legislation may also define a public record, identify which records cannot be destroyed without archival authorisation and provide the means of retaining evidence of government actions over time. In addition, freedom of information and privacy laws, where they exist, will establish standards for record keeping, and legislation about evidence will identify how records must be retained in order to ensure their admissibility in a court of law.
- Common law or precedents. The creation of records will not always be specified in legislation. Common law or case law will also provide guidance on how records should be managed. For example, a police officer could be charged with negligence if he does not investigate a case thoroughly; subsequently, it may be necessary to improve record-keeping procedures in order to ensure there are no similar charges in future.
- Codes of ethics. Legal practice codes, police ethics codes and public service codes may also affect how records are managed. For example the police ethics codes may have provisions on confidentiality requirements for record keeping.

When undertaking an analysis of legislative and regulatory controls, it is important to consider both the ambit and application of the legislation.

Ambit: The extent of coverage of legislation; in effect, which organisations are subject to an act.

Application: The records of those organisations that are covered by the provisions of an act.

For example, if the police are considered public bodies in a piece of legislation, then they are included within its ambit. If the Act says that it applies to police notebooks then this is an example of application.⁵

Taken together, the ambit and application of a piece of legislation is referred to as its *jurisdiction* (not to be confused with the jurisdiction of a court as discussed in Lesson 1). Where the jurisdiction of a particular Act is not clear this can create difficulties for record managers and archivists. For example, in Australia there has been uncertainty about the jurisdiction of archival legislation over the records of the courts. Because the legislation does not explicitly cover case files and transcripts of the courts they may not be affected by the legislation. By contrast, in Namibia, the Archives Act 1992 explicitly states the legal records to which it applies.

How to Identify Applicable Legislation

When researching legal issues, it is necessary to understand that law sources are divided into primary and secondary sources. Primary sources are the actual laws and cases, including statutes, delegated legislation and common law. Secondary sources analyse the law and include books, journals and encyclopaedias.

Identifying legislation or regulations requires identifying appropriate primary and secondary legal sources and then interpreting them. This is not an easy task. The best method is to begin with secondary sources to find material in a particular subject area that has already been analysed or interpreted. Then, primary sources may be consulted.

It is necessary to conduct research to identify legislation or regulations affecting the care of legal records.

Many countries have begun to maintain their legislation in electronic format, often for free through the Internet. However there is still much commentary on the law that is only available commercially. Printed legal sources are still compiled and found only in law libraries. Many superior courts will have their own legal library.

The best approach to finding legislation and regulations is to use standard library tools, such as

- library catalogues
- the holdings of specialist libraries, such as a law library
- library subject guides

⁵ Derived from Chris Hurley, 'From Dust Bins to Disk-Drives: A Survey of Archives Legislation in Australia', in Sue McKemmish and Michael Piggott, eds., *The Records Continuum: Ian Maclean and Australian Archives First Fifty Years* (Melbourne, AUS: Ancora Press in association with Australian Archives, 1994), p. 213.

- CD-ROMS relevant to the subject area
- Internet sites, particularly home pages of industry groups or relevant institutions
- publications produced by professional or industry groups
- government publications.

Activity 8

Visit a law library or a law collection. Have a look at the primary legal sources and search for a statute that operates one of the courts in your country. What is the function of the court as set out in the legislation? Are records mentioned? Check if your archives or records legislation includes control over records of the judiciary. Look for any other general access laws that may affect access to court records.

ESTABLISHING RECORD-KEEPING STANDARDS

In order to ensure that legal records are well managed, many governments and organisations are implementing records management standards. These standards ensure that records are cared for in a systematic and planned fashion, according to the legal and administrative requirements of the organisation or the government.

Record-keeping standards can improve the level of protection of legal records.

Record-keeping standards can be applied to all areas of records care, but they can be especially valuable when caring for records within a legal system. Regardless of the kinds of records being managed, an organisation should ensure the following general standards are met.

- Is the record usable? That is, is it understandable, connected to a business transaction, and created in such a way that its authenticity can be verified? Is it retrievable?
- Is the record reliable? Is the system used to create and keep the record capable of continuous and reliable operation in accordance with responsible strategies for its implementation? If records are converted from one format to another, do they remain reliable?
- Are the essential business activities of the organisation documented in records?

- Are the records full and accurate, so that they can facilitate action by employees and their successors, allow a proper scrutiny of the organisation and protect the financial, legal and other rights of the organisation, its clients and any other people affected by its actions and decisions?

To be full and accurate, records must be

1. compliant: records must comply with regulatory and accountability environment
2. adequate: records must provide good coverage of the activity
3. complete: records must include not only content information but also structural and contextual information to identify how the record came to be, who was responsible and why the record was created
4. meaningful: records must include all information necessary to understand correctly the event or transaction being documented and to identify the record in the context of its broader functions and activities (for example, the date of a transaction should always be part of a record)
5. comprehensive: the totality of records must document the complete range of the organisation's businesses
6. accurate: records must accurately reflect the transactions they document
7. authentic: it must be possible to prove that records are what they purport to be and that their purported creators indeed did create them
8. inviolate: records must be securely maintained to prevent unauthorised access, alteration or removal; changes or additions should be documented so that the integrity of electronic records is maintained.

Activity 9

How do you think a system of case files of suspected criminals would need to be set up and maintained to ensure the general record-keeping standards listed above are met and that the records are 'full and accurate'? Write a brief description of your ideas.

DETERMINING RETENTION PERIODS FOR LEGAL RECORDS

Retention periods must reflect not only the immediate administrative needs of the organisation but also the wider needs of society for evidence and information about the organisation and its activities. Retention periods will be established by analysis of the following:

- the general requirements of legislation, regulations and other statutory provisions
- statutes of limitation or other time limits on the pursuit of legal charges or appeal of those charges
- the organisation's policies and strategies for the acquisition and preservation of records
- the needs of stakeholders, including judges, lawyers, police commissioners, professional records managers, archivists and future users.

For more information on establishing retention periods, see Building Records Appraisal Systems and Organising and Controlling Current Records.

Retention of Case Files

Case files are a core type of record in the legal system.

Case papers/files: Papers or files relating to a specific action, event, person, place, project, or other subject. Also known as dossiers, dockets, particular instance papers, project files or transactional files.

Case files may be created by the police, courts or prosecutors. Decisions about the retention of case files depend on a number of factors. Case files document the interaction between the accused and judicial authority and provide the evidence of the decision in the case. They need to be retained for as long as the accused has appeal rights and for as long as the court needs a precedent. In addition, long-term retention depends on the functions the records perform, including evolution of the judicial institutions and the needs of other members of the community. On a practical level this is implemented through retention schedules that have been drawn up the basis of a number of appraisal criteria including the records initial use and other uses in its context of creation and the wider needs of collective memory. There should be appropriate triggers for disposal built into the record-keeping system. For example:

‘Destroy x years after warrant for arrest or completion of sentence’.

Lessons 3, 4 and 5 provide detailed retention criteria for the records of courts, police and public prosecutors that have been adopted in the United Kingdom. See Appendix 4 at the end of this module for a sample retention schedule. For more information on case files in general, see Building Records Appraisal Systems.

Activity 10

Why should case files be singled out in the appraisal process? Write a brief description of how you would manage the appraisal of case files.

ENSURING APPROPRIATE PRESERVATION OF AND ACCESS TO LEGAL RECORDS

Preservation

Legal records must be protected physically to ensure they are available for administrative and legal purposes and also for informational and research purposes. Preservation involves ensuring records are safe from loss, damage or corruption. In particular, records must be protected from damage by

- acidity
- fluctuating or excessively high or low temperature and relative humidity
- excessive exposure to light
- air pollution
- fire and water damage
- biological agents such as mould, mildew, insects or rodents
- abuse and mishandling
- disasters.

Various general measures to protect legal records, and all records, include

- monitoring and controlling temperature and relative humidity
- limiting light

- filtering air to reduce air pollution and removing pollutants from archives storage areas
- protecting archives from water damage
- inhibiting mould growth
- reducing attractions for insects or rodents
- protecting records from mishandling or abuse.

For more information on preservation issues, see Preserving Records. See also Emergency Planning for Records and Archives Services.

Because legal records, particularly case files, can be voluminous, organisations often look for ways to reduce the quantity of materials in hand. It is also true that in many countries case files of the courts have not been kept beyond their official use, often because of their great volume. Sometimes only small samples have been preserved.

Microfilming has often been considered a valuable way to preserve information while saving space. However, microfilming can be expensive, as can newer processes such as digital imaging. Costs can be particularly high when preserving legal records by filming or digitising, because stringent processes must be in place to ensure the records maintain their authenticity over time, in order to remain admissible as evidence in a court of law.

When considering microfilming or digitising legal records, it is essential to ensure that the records remain authentic and reliable.

Therefore, when considering microfilming or digitising records, it is critical to ensure that the records remain trustworthy. Even though computer storage can seem inexpensive compared with the storage of paper records, considerable time and effort will be required to convert paper records to digital format and preserve them so that they remain accessible and trustworthy.

It is wise to investigate all options for storage and preservation before considering digital technologies. Preservation must be linked to a carefully developed retention policy.

Activity 11

Identify three issues that might affect how you would develop a preservation policy in your organisation for the protection of legal records. For example, do temperatures fluctuate considerably in your geographic area? Are records stored in adequate facilities?

Developing an Access Policy

Access refers to the terms and conditions that allow a user to view records. An access policy should be set by the organisation; this policy will be affected by the legislative or regulatory requirements in place in that jurisdiction.

Most countries have developed statutory schemes within government to allow public access to records. For example, older records may be accessible under the terms of the country's archival legislation. In many countries a thirty-year rule is in effect, which means that records over thirty years old are usually publicly accessible. In many countries, records that are less than thirty years old are accessible according to the terms of such legislation as freedom of information and privacy laws.

Legal records often contain highly sensitive personal information, and access to the records may have to be closely monitored.

Legal records are particularly sensitive and so are often managed in order to protect confidentiality and legal professional privilege. In common law and in the codes of ethics of lawyers, the communications between the lawyer and client are considered confidential; this 'solicitor-client privilege' is a principle in English common law formally recognised by the courts since the sixteenth century. Because of such confidentiality conditions, many legal records are often considered privileged information under freedom of information legislation and so not generally accessible to the public.

Activity 12

What is the policy of lawyers in your country concerning solicitor-client privilege? Write a brief description of this and determine how it may affect access to legal records.

Protecting Personal Information

Whether or not they are governed by solicitor-client privilege, many legal records contain a great deal of personal information. The protection of personal information has become important both within a country and internationally as more and more personal data is exchanged within organisations, around a city or country and across borders.

The right to privacy in relation to personal information principally involves controlling information others hold about an identifiable individual. An individual should have a right to know how personal data is collected, handled, stored, and

reused, whether held in a database, a record-keeping system or a network server. The individual should also have a right to access and correct inaccurate personal information.

In order to protect personal information, an organisation may establish systems that maintain records of who has seen or has had access to personal information. An organisation may also design record-keeping features to include rules on access exemptions and privacy protection.

Activity 13

Is there a privacy policy or legislation in your country? Write a brief description of how that policy is applied to legal records in general. If there is no such policy, explain how personal information is protected from misuse.

SUMMARY

Lesson 2 has provided a brief introduction to the major record-keeping issues involved with the care of legal records. Specific issues included

- legislative and regulatory controls on the care of legal records
- establishing record-keeping standards
- determining retention periods for legal records
- ensuring appropriate preservation of and access to legal records.

STUDY QUESTIONS

1. How do you identify the legislation or regulatory controls governing the care of legal records?
2. Explain the two elements that make up the jurisdiction of legislation.
3. Where is information about laws and regulations found?
4. What is the difference between primary and secondary legal sources?
5. Which general record-keeping standards should be followed to protect legal records?
6. What factors must be considered when appraising legal records?
7. What factors need to be taken into account when appraising case files?
8. What preservation concerns must be addressed when determining how to protect legal records?
9. What issues must be considered when developing an access policy for legal records?
10. Why is the protection of personal information important to legal records management?

ACTIVITIES: COMMENTS

Activities 8-13

Each of these activities allows you to examine the principles discussed in this lesson and apply these ideas in a situation relevant to your own jurisdiction. Review your answers against the information provided here.

COURT RECORDS

The lesson deals with the records of the courts of law. It provides background information on court systems and then describes typical procedures and the related records. A section on control systems (the first part of which can also be applied to police and prosecution records) is followed by some suggestions for improving inefficient paper-based systems. The final section deals with retention.

Records produced by courts of law are among the most important and valuable public records of any country. They are of value to the courts themselves, the parties to cases heard in the court and to researchers and historians. The records relating to individual cases or matters containing evidence of action on the case, in a continuous line from the beginning to the final judgement or termination of the matter.

COURT SYSTEMS

The court system of a country will be made up of a number of different types of court. The names used for these courts may vary from country to country. Common names for courts of law include

- Supreme Court
- Court of Appeal
- High Court
- Magistrate's Court.

The courts will be arranged in a hierarchical structure based on the types of matter they deal with and whether, and to which court, their decisions can be questioned and overturned (this process is known as 'appeal'). In the example above, the lowest level (or 'tier') of court is the magistrate's court. Decisions from this court can be appealed to the high court. Decisions in the high court can be appealed to the court of appeal and decisions from the court of appeal can be appealed to the supreme court. When considering any court in such a hierarchy, those above it are referred to as 'higher courts' and those below as 'lower courts'.

A court of law can be described by its jurisdiction and its constitution and composition. The term jurisdiction is also applied to the geographical area over which

the courts can exercise their powers. The jurisdiction and composition will normally be defined in the constitution of the country.

The jurisdiction of the court may be

1. Original: It has a right to consider ('hear') and take a decision about the evidence in cases, such as criminal trials.
2. Appellate: It can hear appeals from the decisions or actions of a lower court
3. Supervisory: The court exercises supervision over lower courts. To enforce its supervisory powers the court may issue directions, orders (four important examples of these that you may hear referred to are: certiorari, mandamus, prohibition and habeas corpus).

A single court may have more than one of these powers.

The composition of a court is a description of the types of judge entitled to sit in judgement in that court. The constitution of the court describes the number and type of judge or judges who have to preside at a hearing of the court in order to make it a valid hearing.

By way of example, the constitution, composition and jurisdiction of the superior courts of The Gambia are shown in Appendix 2 at the end of this lesson.

It is useful to establish the structure of the court system at an early stage of any records management project. It provides a useful framework when interviewing judges and officials during the course of the project. It is good practice to discover this structure, ideally from primary sources such as statutes or the constitution, rather than by through interviews.

The constitution will usually define the structure of the courts and their powers, in particular the separation of judicial from non-judicial power. Depending on a country's system of government, jurisdiction may be further complicated by cross-vesting jurisdiction across several courts. For example, in a federal system state courts may have federal jurisdiction under certain conditions. Under common law there is no state or federal law as such. The source of federal power is decided by the constitution. Again each individual country's constitutional framework would determine the powers of individual courts.

In some countries, such as England, the criminal and civil courts are for the most part separate from each other. The simplified diagram below shows the structure in England: the courts in the left-hand column deal with criminal matters and those in the right-hand column deal with civil matters. The House of Lords is the final court of appeal for both criminal and civil cases. In other systems, one type of court will hear both criminal and civil cases and/or criminal and civil appeals.

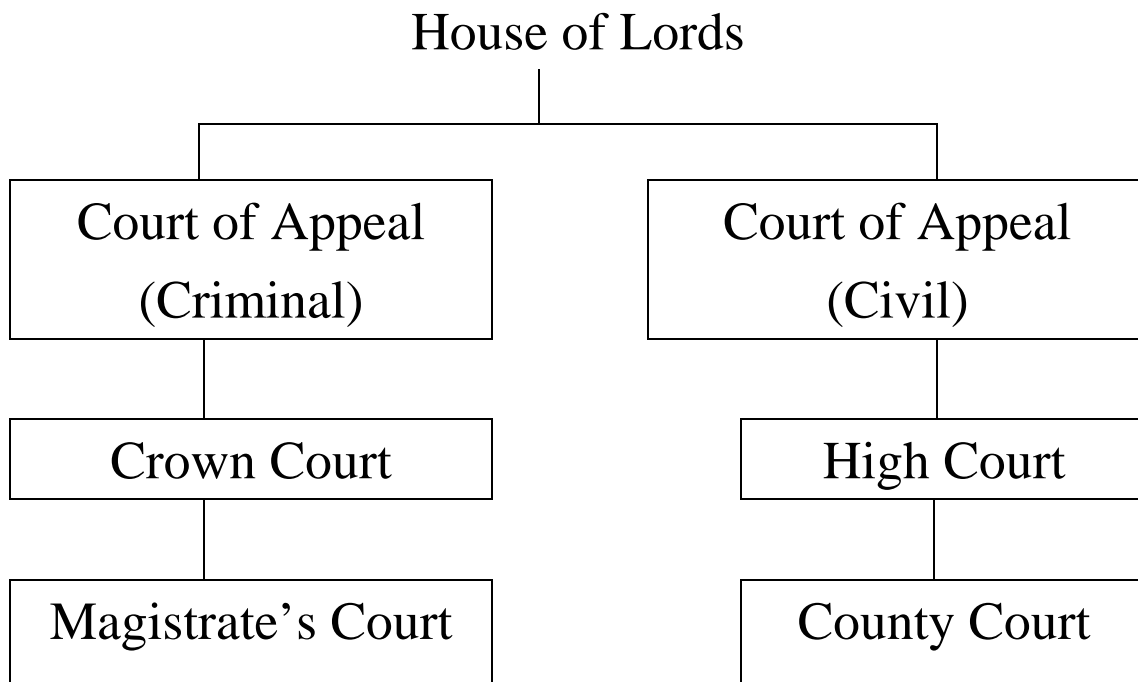


Figure 1: Court Structure in The United Kingdom

Activity 14

Using (wherever possible) primary sources, such as the constitution and Acts of Parliament, name all the courts in your country. Note the composition, composition and jurisdiction of each type of court. Sketch a diagram ranking the courts and showing the relationship between them as in the illustration of the English Courts above.

The court structure in The Gambia, shown below, provides another example.

See also Appendix 2, which illustrates the court structure in The Gambia in more detail.

Court Structure in The Gambia

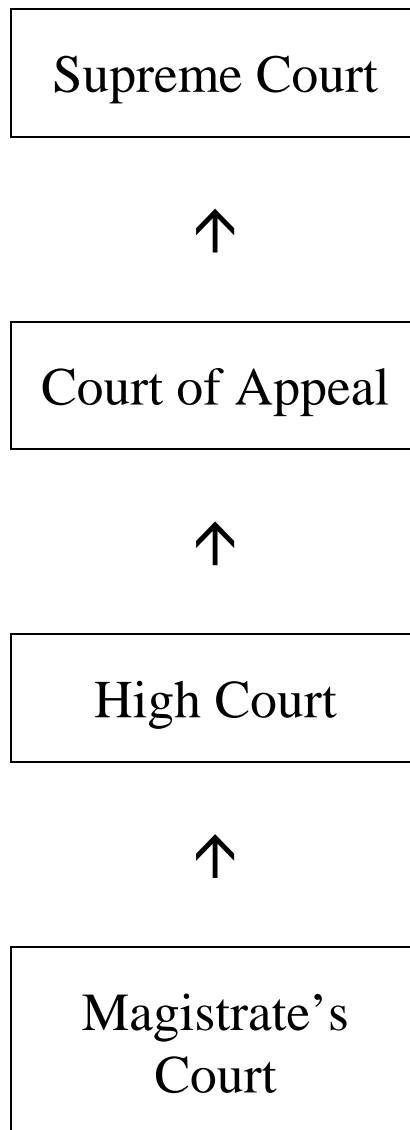


Figure 2: Court Structure in The Gambia, showing Direction of Appeals Procedure

In criminal court systems, there are commonly two types of courts:

- courts where cases are started (the defendant charged with a very serious case may have to make their first court appearance in the lower court before a full trial in the higher court) and where minor cases are tried (typically the magistrate's court)
- cases where the more serious cases are tried (commonly the high court. In England and Wales this is the crown court).

Judges and Court Officials

A judge is a public official appointed to hear and try cases in a court of law. Normally judges will be lawyers with a minimum number of years practical experience. Judges of the high court may be referred to as high court or puisne (pronounced 'puny') judges. Judges as a group are known as the judiciary. The head of the judiciary, the most senior judge, is often called the chief justice.

Magistrates may be lawyers or non-lawyers. They act as judges in the lowest courts. There may be a system of ranking such as principal magistrate, senior magistrates, first class magistrates and second class magistrates. A master is an officer of the higher courts ranked below a judge. The master is a legally qualified official. Masters adjudicate on matters preliminary to a trial ('interlocutory matters'). A master may have other roles, such as being head of court administration. Registrars may have variety of roles including minor judicial roles, managing the case list of the court and administrative responsibilities.

Activity 15

Write a brief description of the naming and hierarchy of judges in the country in which you live or work.

FUNCTIONS, SYSTEMS AND RECORDS

Below is a discussion of the functions and systems of the court and the resulting records. Note that records resulting from various functions or activities are identified in *italics* in the text.

Court Proceedings: Civil Cases

Proceedings in civil courts of trial are divided into two types: actions and matters. Actions are started by a written statement describing the details of the situation. This written statement is frequently called a *plaint*. One person (the plaintiff) brings an action against another (the defendant). Matters are started by petitions or 'originating applications'. In these cases the person initiating the case is the 'petitioner' and the person against whom the matter is brought is the 'respondent'. A typical civil action is described below.

A Typical Civil Action

A Mr Danquah claims that a Mrs Mensah hit his van with her car and caused severe damage. He decides to take Mrs Mensah to court to obtain compensation (known as 'damages'). In the court action, Mr Danquah is the plaintiff and Mrs Mensah is the defendant.

Mr Danquah completes a formal court document, the *request* setting out the names of the parties (in other words, himself and Mrs Mensah) the nature of the claim and the amount of money ('damages') that he claims from Mrs Mensah.

Mr Danquah then takes the *request* to the high court, together with the *particulars of claim*. This sets out the details of the claim. After paying the appropriate fee he files the documents with the court.

A court official will enter the details of the action in the 'civil suits' register.

The registrar of the high court then prepares a *writ* or *summons*. This is an official order of the court for someone to appear in court on a set date. The case is given a unique reference number (suit number) and a date is set for the first hearing. The summons is handed to ('served on') Mrs Mensah by a bailiff. Attached to the *summons* is the *particulars of claim* and a number of blank forms.

If the Mrs Mensah admits that she owes Mr Danquah the money she can pay the sum claimed into the court and the court will enter a final *judgement*.

In this example, Mrs Mensah disputes the claim. Within a fixed period, she must file a *defence* with the court. This sets out her side of the case.

A copy of the defence is sent by the court to Mr Danquah.

Eventually the case is heard before a judge. Mr Danquah gives evidence and calls a witness. The judge makes a record of the key elements of the proceedings in a *record book*. Mrs Mensah then gives her case. The judge then makes a final decision about the case and gives this as a *judgement* that is recorded. Mr Danquah is awarded a sum of money in damages.

Mrs Mensah does not pay the damages and Mr Danquah returns to court to request that the judgement is enforced. The order, or 'writ', used to enforce the judgement by taking some of Mrs Mensah's property, is known as a *feri facias*, often abbreviated to *fi.fa.* (pronounced fee far).

Figure 3: A Typical Civil Action

Court Proceedings: Criminal Cases

Once the police have arrested and charged a person with a criminal offence, the accused person is usually brought before a magistrate or judge as soon as possible. The case may be commenced by a police officer taking to the court the *charge sheet* (containing information about the offence). Alternatively the police, or prosecuting lawyer may ask the court to issue a *criminal summons*.

If the accused person does not appear in court on the set date the court may issue an *arrest warrant*.

Less serious cases are usually tried in a lower court, such as a magistrate's court. More serious cases, such as treason, murder, rape and robbery, will be tried in one of the higher courts such as the high court.

In more serious cases the offences are listed on a legal document named an *indictment*. The indictment is one of the important records of the criminal case. As shown in the example below, the indictment normally includes the name of the court, the names of the parties, the offence(s) and the particulars of the offence(s).

In the High Court at xxxxx

The State

-against-

Gidon Jallow

Statement of Offence

Murder

Particulars of Offence

Gidon Jallow is charged that on the 3rd day of June he did murder James Brown at [place].

Figure 4: An Indictment

Other records are the details of the evidence of prosecution witnesses, set out in signed *statements* or *depositions*. These two terms are sometimes used interchangeably. Strictly speaking, a deposition is a sworn statement made on oath.

If the accused person (sometimes referred to as the defendant) admits having committed the offence, he or she pleads 'guilty' in front of the judge. He or she will be sentenced and that is the end of the case. It is, however, open to the accused person to try to appeal, to an appeal court, against the severity of the sentence.

If the accused person disputes that they committed the offence and pleads 'not guilty', he or she will be tried by one of the following:

- a magistrate or group ('bench') of magistrates
- a single judge
- a judge and jury
- a group of judges.

The prosecuting attorney will bring into court ('call') some or all of the witnesses who provided the evidence on which the prosecution is based and ask them to repeat that evidence in front of the accused person, the lawyers, the judge and, possibly, the jury. This is referred to as being in 'open court'. Their evidence may be questioned (cross-examined) by the accused or by a lawyer acting on his or her behalf. A record will be made of the evidence – either by the Judge, in summary, or by a court official such as a stenographer (when it may be a complete record of the proceedings).

The accused person may then call witnesses to give evidence on their behalf. These could include alibi witnesses. 'Alibi' means 'other place' and is a form of defence claiming that the accused was not present when the crime was committed. Warning of this is normally provided to the court and prosecution in a *notice of alibi*.

The magistrate, jury or judge will then deliver their decision ('verdict') stating whether the accused is guilty or not guilty. If found guilty, sentence will then be passed.

An official record will be kept of plea, verdict and sentence.

Following a trial in which the accused person is convicted, they may try to appeal against either the conviction itself, the sentence or both conviction and sentence. They must give a formal *notice of appeal* setting out the reasons. The trial court will then send the record of the case to the appeal court. This will normally include a typed version of the record of proceedings in the trial.

Court Proceedings: Probate

Probate is the branch of law dealing with wills and inheritance. When a deceased person has left a will saying how his or her property is to be dealt with he or she is said to have died 'testate'. The person who wrote and signed the will is known as the 'testator'. The will may have been registered with a public official (commonly the Registrar General who is often an official in the Ministry of Justice) in the testator's lifetime. If a will was not left he or she is said to have died 'intestate'. The things (land, goods or money) that a person leaves when he or she dies is called the 'estate'.

If someone dies testate, they usually name someone as their 'executor'. The executor is responsible for sorting out (administering) the estate of the testator. The executor must first go to the appropriate Court (usually part of the High Court) taking the original *will*, proof that the testator has died and possibly other documents. If the relevant Court official is satisfied that the will is genuine and that the executor is authorised to administer the estate, they will issue a certificate of probate (a *grant of probate*). Sometimes there is a hearing before a judge before grant of probate is issued.

If a person died intestate, or if the named executor is unable or declines to act, one or more persons are appointed by the Court to administer the estate. They are normally close relatives of the deceased. The appointment is made by the Court granting *letters of administration* (sometimes abbreviated to *admons.*) to that individual or those individuals.

CONTROLS AND CONTROL SYSTEMS

This information below also applies to Lessons 4 and 5.

A control mechanism is something one uses to identify where and when something goes wrong with a business process. A system of controls allows a relevant officer to take corrective action when something goes wrong or even prevents the error occurring. In simple terms a control compares what is happening in a process with what should be happening (standards) and corrects any deviation from the standards soon after they occur (refer back to Lesson 2). It also allows them to make any necessary changes to the process to ensure that the deviation is unlikely to recur (see diagram below). Some controls may be automated (a simple example is an automatic spelling checker in a word-processing application) while others will be manual.

As set out in the following section, when you analyse the activities, tasks and information flows that make up any of the business functions of the court service, you should prepare a flow chart to show these graphically.

Process flow charts are extremely valuable tools when assessing the need for controls. At each stage in the process consider, under the following three headings, what could possible go wrong.

- **Completeness:** For example, have all details about a case been entered in the court register?
- **Accuracy:** For example, could a file reference number be entered incorrectly on a file cover?
- **Validity:** For example, could a vital document be improperly removed from a file or could a bailiff endorse a summons to show it has been served when it has not?

Control Systems

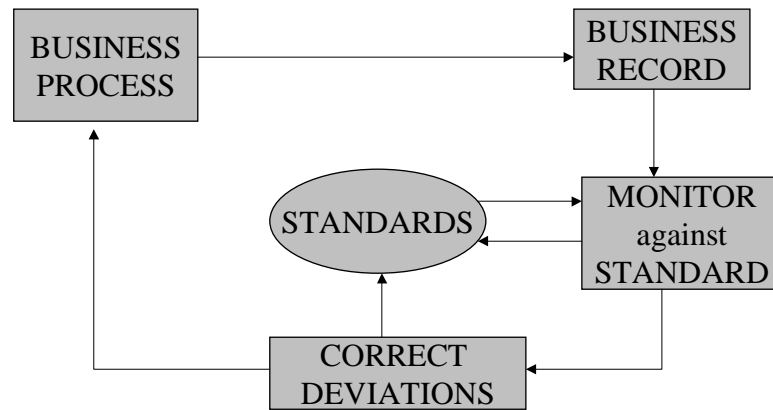


Figure 5: Control Systems

Each of the risks that have been identified in this way should then be assessed.

- Is there any real likelihood that the identified risk could actually happen (for example, how likely is it that a file could go missing)?
- Are there any real threats that make the risk seem more likely (for example individuals who would want to steal a case file)?
- If there are significant threats, opportunities or weaknesses that make it likely the threat would be realised (for example, the storage equipment has a broken lock)?
- Would the consequences for the effective operation of the courts be serious or trivial?

If, as a result of this analysis, it is considered that there is a significant risk with serious consequences then an appropriate control should be devised.

It is important not only to identify and assess controls that would prevent or detect errors but also to detect any weaknesses that might detract from the effective operation of the controls.

General controls that should be considered include

- clear agreement over responsibilities and reporting lines
- adequate and effective supervision
- clear documentation of all procedures

Compliance testing should be included. A sample of records should be regularly selected by a record manager to check that controls have been applied effectively.

In the final instance it is the responsibility of senior management in the court service to decide on the extent of the control system and, more importantly, to ensure that controls are operated and followed up.

Civil Cases

When a case is started in court a court official will create a record of the existence of the case. This is known as registration. In manual systems, the record is made in a bound *register*, *cause* or *suit book*. Each case is assigned a unique control number, the 'suit number'.

As the court receives each of the main documents (such as the statement of claim), this fact is recorded in the register. The register is more than a simple index of cases. It is an independent record of the existence of a document.

The documents relating to a case are normally held together in a file or 'docket'. A record of the movement of this file between court officials and judges is normally recorded for control purposes. In certain countries the record of file movements is recorded in a book known as a 'things book' or 'way book'.

Activity 16

Investigate and create a flow chart of the movement of a civil case file through the court processes. Suggest improvements including appropriate controls.

The task of examining work processes is discussed in more detail in Analysing Business Systems.

Criminal Cases

Similar control mechanisms exist in relation to criminal cases.

Probate

Once more indexing and tracking controls should be in place. Original wills are often irreplaceable and should be protected accordingly. They are at risk from all the usual risks (water, fire, theft and insect damage) and should be protected accordingly. There are frequently statutory obligations to protect these records.

MANAGEMENT ISSUES

When you start to look at the records of the court (or police or prosecutions department) it is good practice to create a flow chart of all the processes. In legal systems the records tend to be physically moved between locations on a more frequent basis than in many other record-keeping situations. These information flows can become quite convoluted. There is no one system of flow charting that is perfect for recording a record system. It is recommended that you use several different systems to obtain a full picture of the system. Possible systems include

- following the movement of a document around the system
- charting a process from beginning to end
- charting the movement of a file/document between locations.

When you have flow-charted an activity or a record movement it is good practice to follow it through with one of the actual users to see if you have got it right. Because the legal processes can be very complex, looking at procedures in this detail will give you very good knowledge of the system and should give confidence to court staff that you understand what they are doing. More importantly it will show you if the record management system is efficient or not, where the weaknesses occur and where controls should be placed.

In order to assess records management systems, it is useful to prepare flow charts of information flows.

Filing Practices

In countries with limited resources, there may be a problem in getting regular and consistent supplies of stationery such as file covers. This problem is usually greatest in the lower courts. Some of the following recommendations may therefore be seen as a counsel of perfection; you are encouraged to consider these recommendations and then relate them to the reality of your own situation.

Ideally the records relating to each case should be kept together in a file cover or 'docket'. The records should be secured in the file, for example by attaching them to the file cover by means of a treasury tag. The most convenient arrangement is normally to have the newest document face up on top. If any document cannot be physically tagged to the file it should be placed in an envelope, which should be tagged in the file. Case files are regularly moved into and out of court and are frequently passed between the judiciary and clerk or other administrative staff member. If documents are not kept in a file cover they will soon become damaged. If papers are not secured inside the file cover they are likely at some stage to fall out and become disordered if not lost.

If it is not possible to obtain regular supplies of file covers, efforts should be made to use covers for contested cases and not-guilty pleas.

Consistent colour-coding of file covers can assist retrieval. Different colours could be used to distinguish civil and criminal cases or even sub-divisions of these two broad classes. If colour coding cannot be used consistently (for example, where supplies of coloured file covers may be erratic) it is better not to introduce the system in the first case.

Storage of current case files may be centralised or decentralised. General records management principles may be applied to determine which is most suitable to the local circumstances.

When a new case is commenced it should be given a unique identifier, the case or suit number. A suitable system could be a three-part reference.

1. An element would indicate the year in which the case was registered (99 or 1999).
2. A code would indicate the type of case (for example: CC – Criminal Case; CS – Civil Suit).
3. A sequential number would start at ‘1’ each year for each code.

For example, the twenty-fourth civil suit registered in 1999 would have the reference

99 (CS) 24.

If necessary, a prefix could consist of a code identifying the court or alternatively the name of the court could be endorsed or printed on the file cover. This can be of great assistance if files from several court centres are stored together at any stage.

Managing Records of Civil Cases

Full details of the case should be recorded in a register. The register is a vital control document and should be kept centrally within the court and given appropriate protection against theft, loss or damage. Minimum details for a civil case should include

- case number
- plaintiff’s name
- defendants name
- brief details of action
- date registered
- member of the judiciary to whom case has been allocated.

It is good practice to create an index of both plaintiffs and defendants. Although the case number is given to both parties, it is not unknown for defendants to claim that they have lost the case number. This may result in delays to the hearing.

It is also good practice to create a 'record card' containing similar details to the register and in addition:

- a record of when key documents were sent or received and the relevant dates
- dates of hearings
- a transit record of when a file was issued/returned and to whom.

The record card is a control document.

In instances where a file cover is used, the record card should be kept inside the file when the file is in its home location. When a file is taken out, for example when it is required in court, the record card should be removed and retained in the storage cabinet. The record card may then be used to answer basic queries about the case when the file itself is not immediately available.

Where a file cover is not used, the record card should be tagged to the front of the case papers. As above, it should be retained in the storage cabinet when the case papers are taken out for a court hearing.

There are two principal ways in which court records are kept (identified by the 1966 Report of the UK Committee on Legal Records).

- The 'dossier' system: 'In this system all the papers in one action or matter are kept together in one continuous file from beginning to end ... in County Court cases from the praecipe which starts the action to the judgement'.
- The 'type' system: 'In this system all the documents of a particular type are kept together in one continuous group ... judgements in the order in which they were entered and so forth ... For instance, an affidavit in *Smith v. Brown* could be filed next to one in *Taylor v. Green*, and it might be some hundreds more before you come to the next affidavit in *Taylor v. Green*'.

The committee concluded that 'it is obvious that for litigants and historians the 'dossier' system is the better. Anyone who is interested in a particular case can find all the documents in that case in one file at one time'. The 'type' system was seen as being useful in the central office in the high court. The main advantage here was seen to be for administrators who could easily weed out types of record that did not need to be kept for long periods.

In instances where all case papers are held centrally rather than with the court clerk, relevant papers should be retrieved from the system when a case is listed. Cases should be placed in a separate box or tray for each judge or magistrate. At the end of the hearing the papers should be returned to the filing system. If files cannot immediately be returned (for example if the judge is working on them) the record card should be used to remind staff to regularly seek its return.

Many orders and simple judgements use a set pattern of words. Wherever possible stock forms, with standard wording and blank spaces to enter details of individual cases, should be used. The use of stock forms can lead to a considerable saving in time and a reduction of delays in the legal process.

Many courts follow the practice of judges or magistrates recording proceedings in a *notebook* or *record book*. These books are a consecutive record of all cases the judge hears. This system can cause problems.

- Many civil cases have court hearings occurring at intervals rather than in a block the record of that case may be scattered throughout one or more such books. Although basic indexing is often used it is often a problem to reconstruct the full record of proceedings in a case.
- Magistrates or judges who are 'on loan' from another country may take a book when they leave the country in order to complete a judgement. It may be very difficult, or time-consuming to retrieve the book when required in relation to another case.
- If a file is lost the records relating to one case are lost. If a record book is lost important records relating to many cases have been lost.

It is often better practice for the magistrate's (or judge's) notes of the hearing to be recorded on sheets of minute paper each with clear details at the top of the sheet of

- case number
- parties
- date of hearing
- magistrate's (judge's) name.

The pages should be tagged on the left side of the file or attached to the case papers. (Local issues should be taken into account. For example, in Canada the judge's notebooks are considered the personal property of the judge and not part of the court record.)

A list of exhibits should be recorded on the inside front cover of the file (or on a sheet of paper if no file cover is used). The list should record

- exhibit number
- description of exhibit
- location of exhibit.

Exhibits should be labelled with

- case number
- exhibit number
- (optionally) case name.

Valuable documentary exhibits should be kept in a secure location. Other documentary exhibits should be held on file. Non-documentary exhibits should be held in a secure exhibit store.

When a case is finally disposed of in court the file should be clearly marked that it is closed. If files are held by court clerks whilst current, they should be retained for six months before being passed to the chief clerk for long-term storage.

Managing Records of Criminal Cases

Details of a new criminal case that should be recorded in the register are

- case number
- name of prosecutor (usually DPP or senior police officer)
- name(s) of defendant(s)
- brief details of offence(s)
- date of first hearing
- name of police officer in charge of investigation and police station
- name of magistrate or judge assigned the case.

A similar system to that recommended for civil cases can be used for criminal cases.

Managing Records of Probate

The court will normally keep a *register* recording grants of probate or of letters of administration. This usually contains at least the following details:

- reference number
- name of deceased person
- date of death and date of grant of probate/letters of administration
- name(s) of executors/administrators
- value of estate.

As stated above, the wills and copy grants of probate themselves are unique and valuable records which are normally kept permanently, or at least for a very long time. They must therefore be kept in secure conditions.

Where systems are manual it is unusual for there to be an alphabetical index to deceased persons. At the most one can expect to find an index at the back or front of each register. This can create great difficulties when a court official needs to locate an old will. It is good practice to introduce a nominal index cross-referencing the name of the deceased person to the reference number in the register (which is also usually the docket number). To make it more manageable, a separate index can be used to cover each decade (1970 to 1979, 1980 to 1989 and so on).

Activity 17

Find out the statutory rules that apply to probate records in the country in which you are working. Investigate what is happening in practice. Are the statutory requirements actually being applied to the records?

RETENTION OF RECORDS

Some court records have great value, not only to the courts and parties to the case but also to historians and researchers. Apart from their obvious value in relation to legal history, historians may use them for research topics other than the law. Social historians may uncover a great deal of incidental interest in the evidence of witnesses. Wills and evidence in matters of inheritance and family law may contain valuable evidence for demographers, social historians and genealogists.

There is often a tendency to keep all records, particularly in the higher courts. This can lead relatively quickly to problems caused by the sheer bulk of the records. Consideration should therefore be given to developing retention schedules wherever possible and weeding out at least the routine case files.

Some very valuable guidance, and actual examples of retention schedules from both developed and developing countries, may be found in Twining, W. and Quick, E.V. *Legal Records in the Commonwealth*, Aldershot, UK: Dartmouth, 1994. The *Report of the Committee on Legal Records* (London, UK: HMSO, 1966) contains very detailed guidance on retention of records in the courts of England and Wales. Some of this guidance has now been superseded. The following brief guidance draws on these two works.

Some records have a clear long-term value and should be automatically considered for permanent preservation. These include the principal records of the higher courts, such as

- record books
- order books (containing the orders made by the court)
- judgement books (signed judgements of the court)
- appeals books
- original wills
- registers of precedent, historical or research value.

The courts will also have civil or criminal case files, which come into one of the following categories:

- appeals to the court of appeal and supreme court
- precedents or records giving a level of detail of significant cases that may not be published in the law reports
- notable, or notorious cases
- cases involving notable persons
- cases that throw light on significant social and economic conditions and changes
- records that demonstrate new or revised legal procedures and the operation of important legislation.

The courts will have criminal case files relating to serious offences, including

- treason cases and other offences against the state
- terrorism
- genocide
- homicide
- offences punishable by death ('capital' offences)
- cases where a sentence of life imprisonment or indefinite detention for psychiatric reasons
- large scale/value frauds
- offences relating to large scale public disorder.

There will also be civil case files and registers containing certified copies or original material relating to

- cases involving immovable property
- cases involving the legal status of a person or group
- cases involving right of way, right to water and other easement
- custom or tradition of an ethnic group, community or locality.

There will also be other cases with records relating to matters of public concern.

The secondary value of other records should be assessed, in discussion with all interested parties including the National Archives or other archival institution.

In civil cases, items should be returned to their owners unless the court orders otherwise. This relieves the court of the need to provide safe custody of valuable items, such as title deeds, which are no longer in issue.

Criminal case files should not be destroyed before the expiry of a sentence or for at least three years after the expiry of the time in which an individual has a normal right of appeal.

Consideration should be given to retaining a statistically acceptable sample of classes of records that are generally to be destroyed after fixed periods. The basis on which the sample was taken should be clearly recorded to assist researchers who may consider using the sample.

The principal records of high courts, including record books, judgement books, appeals books and registers of precedent, as well as other records, have a clear long-term value.

MANAGING NOMINAL INDEXES

The information below also applies to the records discussed in Lessons 4 and 5.

Most court records – indeed most legal records – relate to the activities on specific individuals, agencies or groups. Therefore, personal or corporate names are an integral part of the record: in order to find the record it is necessary to know who it is about. Thus, another of the key issues involved with legal records care is the appropriate management of indexes, particularly nominal indexes, in order to gain access to records efficiently and effectively.

Nominal indexes are essential to good management and quick retrieval of legal records.

Filing and sorting is normally based first upon the family name. But naming conventions can depend upon religion or culture, and the family name may not appear at the end of a series of names (or even at all).

Most European and Jewish names are structured with one or more personal names followed by the family name (which may be hyphenated). Sometimes the name is preceded by a title (such as Mr or Mrs).

Muslims normally have a personal name followed by a religious name (for example, Muhammad, Ali or Sayed). They do not always have a family name. In this case, the second name should be used as the basis for indexing.

Hindus usually have a personal name, a complementary name and a family name.

Sikhs have a personal name, a title (Singh for men and Kaur for women) and a family name.

Chinese usually have a family name (common Anglicised names are Chang, Wong, Lee, Ho and Cheung) followed by personal names.

This module refers to nominal indexes to mean indexes of names. For example, indexes of accused persons, parties to a court case or persons who have made a will. Such indexes are extremely valuable finding aids for legal records.

A computer system is ideal for such an index. However, for various reasons you are more likely to be recommending manual systems in the first instance.

In manual systems, a card index or similar system that allows the individual index entries to be kept in alphabetical order are ideal. However, in some cases, resources do not permit the use of card indexes. If you have to recommend a system using a book or register there are two commonly used systems:

In the simplest system, the names are sorted by the initial letter of the family name only. Therefore all the names beginning with the letter 'A' are on one page, all the

names beginning with 'B' on another, and so on. If a telephone directory or directories are available you can examine these to get a rough idea of the proportions of names starting with the various letters and leave appropriate number of pages for each letter.

In a variation of (a) you can sort out the names firstly by the initial letter of the family names and then by the first vowel that appears after the first letter. An example using names beginning with the letter 'P' is shown below.

P				
<i>A</i>	<i>E</i>	<i>I</i>	<i>O</i>	<i>U</i>
Patel	Petros	Phillips	Proctor	Puri
Platia	Pyne	Prichard	Pollitt	Plunkett
Parr		Pringle		

This system is more useful when dealing with a large number of names. However it cannot be introduced in registries where the staff have only a low level of education.

SUMMARY

This lesson has dealt with the management of the records produced by the various courts of law. Context for these records was provided by

- a description of the structure of court systems
- a brief description of the personnel of the law.

An outline was provided of the procedures in typical civil, criminal and probate cases and the common forms of records that are by-products of these processes. Guidance followed on control systems and on possible improvements to paper-based systems. The lesson examined the retention of court records. The management of nominal indexes was also discussed.

STUDY QUESTIONS

1. What is the difference between the constitution and composition of a court?
2. Describe the difference between an 'action' and a 'matter'.
3. Name and describe the use of typical records created during a civil case.
4. Name and describe the use of typical records created during a criminal case.
5. Define the following terms: intestate; executor; estate; letters of administration.
6. What is the value of stock forms?
7. What is the difference between a judge and a magistrate?
8. When analysing the need for controls, name and describe the three main types of weakness you should be looking for.
9. What details of an exhibit should be recorded?
10. List ten types of court record that should be permanently preserved.
11. What issues must be taken into account when developing nominal indexes?
12. Why is it important to manage indexes of personal names adequately?

ACTIVITIES: COMMENTS

Activity 14

This activity will produce basic information that will be of value for your subsequent work in relation to court records. Validate your results by discussing them with a senior court official. Don't forget to keep a note of the sources that you have used.

Activity 15

This builds on the knowledge you have gained during the previous activity. Once again try to validate your results.

Activity 16

If you are unfamiliar with flow-charting you may find it useful to speak to a internal auditor or internal consultant who could describe the techniques. Once you have created the flow chart follow it through in the court to see that it is correct.

Activity 17

This activity allows you to examine the principles discussed in this lesson and apply these ideas in a situation relevant to your own jurisdiction.

COMPOSITION, CONSTITUTION AND JURISDICTION OF THE SUPERIOR COURTS OF THE GAMBIA

Supreme Court	
Composed of	<ul style="list-style-type: none"> • chief justice • not less than four other justices of the supreme court • any judge of the court of appeal appointed to act as a justice of the supreme court.
Constituted by	<ul style="list-style-type: none"> • An uneven number of not less than five judges
Original Jurisdiction	<ul style="list-style-type: none"> • interpretation of the constitution (except in relation to fundamental rights and freedoms) • questions about whether the legislature has made any laws <i>ultra vires</i> (beyond the limits of its powers)
Appellate Jurisdiction	<ul style="list-style-type: none"> • from any judgement of the court of appeal.
Court of Appeal	
Composed of	<ul style="list-style-type: none"> • president of the court of appeal • not less than three judges of the court of appeal • any judge of the high court who is appointed to act as a judge of the court of appeal
Constituted by	<ul style="list-style-type: none"> • three judges
Original Jurisdiction	<ul style="list-style-type: none"> • none
Appellate Jurisdiction	<ul style="list-style-type: none"> • appeals from judgements, decrees and orders of the high court • appeals from courts martial.

High Court	
Composed of	<ul style="list-style-type: none"> • chief justice • Not less than seven other judges of the high court • any other superior court judge whom the chief justice may request, in writing to sit as a judge of the high court
Constituted by	<ul style="list-style-type: none"> • a single judge • a single judge and a jury • a single judge with assessors • (for treason trials) three judges or, when the accused so elects, a single judge and jury
Original Jurisdiction	<ul style="list-style-type: none"> • to hear and determine all civil and criminal proceedings • to interpret and enforce the fundamental rights and freedoms provided by the constitution
Appellate Jurisdiction	<ul style="list-style-type: none"> • such jurisdiction as prescribed by an Act of the National Assembly
Supervisory Jurisdiction:	<ul style="list-style-type: none"> • over all lower courts and adjudicating authorities.

POLICE RECORDS

This lesson examines the management of police records. Topics discussed include

- responsibilities of the police
- Interpol
- case files
- criminal records
- fingerprint records
- retention of records.

Police forces generate extremely large volumes of records. If these records are not managed well it could undermine the effective administration of justice. For example, if criminal records are not located habitual criminals may be sentenced as first-time offenders and some criminals may escape justice altogether. As a result citizens may lose confidence in the police or even the whole criminal justice system of the country.

POLICE SYSTEMS

Every country has a police force. Some, like New Zealand, have a single national police force. Others have many. The United Kingdom, for example, has more than forty separate police forces.

Within a particular force, police officers can frequently be divided into three main categories:

- traffic police
- uniformed police (principally responsible for crime prevention)
- detectives (responsible for investigating crimes) working in the Criminal Investigation Department (CID) or branch (CIB)

Larger police forces may include specialist squads such as robbery squads or anti-terrorist squads.

Forces will normally be organised into divisions for operational and administrative purposes. These are frequently based on regions of the country or on the areas of a large city.

Police Ranks

The most senior officer may be known by a title such as the Commissioner, Chief Constable or Inspector General of Police (IGP). In descending order of seniority, ranks that frequently encountered are

- Deputy Commissioner
- Chief Superintendent
- Superintendent
- Chief Inspector
- Inspector
- Sergeant
- Constable or Police Officer.

Police forces will often employ large numbers of civilians, many of whom staff registries.

Activity 18

Research and describe the structure of the police force(s) in the country in which you work. Include the organisational structure and the hierarchy of ranks.

Interpol

Many countries are members of Interpol and will receive and manage records issued by this body. This is an international organisation that

- co-ordinates international co-operation between the member police forces
- collects or supplies information on internationally wanted criminals, missing persons and organised crime to member police forces
- holds operational meetings
- encourages member states to adopt a co-ordinated and uniform approach to combating crime.

FUNCTIONS, SYSTEMS AND RECORDS

The main functions and activities of the police are set out in the following table.

Function	Activity
1. Crime prevention and reduction	<ul style="list-style-type: none">• providing advice to the public• carrying out patrols• maintaining and using information about criminals and their activities
2. Law enforcement	<ul style="list-style-type: none">• detecting crimes• investigating crimes• arresting suspected offenders• evidence gathering• (in many countries) prosecuting all or some offenders (see Lesson 5)• maintaining details of criminals, their activities and previous convictions and of particular crimes• routine enforcement of laws including traffic laws and regulations• providing an emergency response service
3. Maintaining public order	<ul style="list-style-type: none">• crowd control• riot control
4. Traffic duties	<ul style="list-style-type: none">• maintaining traffic flow

Figure 6: Functions of the Police

Records: General

This lesson is particularly concerned with records relating to law enforcement. Records created and received in relation to the other functions and activities in the above table can normally be managed according to the principles set out in the general modules.

The types of records and the ways in which they are maintained are likely to vary considerably, particularly in the detail, between police forces and between countries. However, in general terms there will usually be the three major groupings of record:

- case files
- criminal records
- fingerprint records.

Case files will be used to hold the documentary records relating to individual or closely related crimes.

There will usually be three types of police record: case files, criminal records and fingerprint records.

Criminal records are records of criminals, suspected criminals, criminal activities and other criminal intelligence. Individual records will normally be held about each criminal. Each record will normally hold the personal, and identification, details of the person including a photograph. There will also be a summary of previous convictions. When a person is arrested a check will be made in the criminal records to see if he or she has previously come to the attention of the police.

A collection of fingerprints of known criminals will be used to try and identify prints taken from the scene of a crime.

CONTROL SYSTEMS

The general guidance on controls discussed in Lesson 3 can be used to identify suitable controls for police records.

The collections of case files, criminal records and fingerprints are likely to be extremely large and a considerable number of references are likely to be made to the records every day. Management controls must therefore be in place to ensure that records are not misfiled when being returned to the system. The controls can include a constant 'creeping' check through the collections examining batches of index cards and other records to check for and correct misfiling.

MANAGEMENT ISSUES

In each case, a police force will need to operate a degree of consistency in its record keeping in order to use and exchange information effectively across the force and to provide the necessary documentation for the judicial system. This will normally involve the use of forms to ensure that the information recorded in each instance is both consistent and complete and that this can assist in the interchange of information between the police and other agencies.

Record-keeping systems should be designed to ensure the information contained in departmental files should be easily accessible on a 24-hour basis. Existing systems should be flowcharted to pinpoint inefficiencies and areas that cause any delay in the movement of records.

The following sections consider three types of record:

- case papers
- criminal records
- fingerprints.

Managing Case Files

Case files contain a documentary record of incidents (or groups of closely related incidents) that have resulted in a criminal investigation. They probably provide the greatest area for flexibility.

Location

Once action has been completed, case files can be retained locally or centrally. The decision will depend on a number of factors including

- the structure of the police force
- the size of the country
- the quality of communications (how quickly can files/information be moved from one location to another)
- the mobility of the population (do criminals always operate locally or do a significant proportion commit offences across the country).

The following questions should be answered.

- How is the information on the files to be used? Is it required only for the prosecution of the case or does it also have an intelligence value that should be made more widely available within the organisation?
- Is there, or should there be, a dedicated team to manage the records effectively?
- What are the needs of the judicial system? How quickly are cases likely to be needed in court?
- Is the prosecuting authority located centrally or locally?
- How long do the records need to be retained?
- Are there storage problems? What is the quality of storage facilities?
- Can the records be stored in another medium, and would such records be legally admissible?

- Are the records sent at any stage to the National Archives or other archival institution? If so, where are the archives located?

A suitable compromise in many situations is to store case files relating to serious or notable crimes centrally and those relating to minor offences locally.

Activity 19

Which police records are centralised and which types are held locally in the country where you work? Are locally held records moved to the centre at any stage in their life cycle? Develop arguments for changing these arrangements if you consider that they are not the most effective.

Forms

Forms are often used as part of police record keeping systems but need to be carefully controlled. In a large organisation with many devolved units there is a tendency for such units to create or modify forms for their own purposes. This can result in a lack of consistency. Forms control should be centralised and made the responsibility of a named senior officer or a small committee under the chairmanship of a senior officer. No new form should be introduced without the approval of this person or group.

Files

The file cover should contain brief, accurate details of the case including

- name(s) of accused persons/suspects
- date(s) of birth, if known
- criminal record office (CRO) number(s), if any (see below)
- offences
- date(s) of offence(s)
- location of offence
- victim's name.

If the case concerns more than one accused or more than one offence and they cannot all be recorded on the file cover the title needs to clearly record this by the use of terms such as 'and three others' or 'and other offences'. The title should set out the most serious offence in full. Offences should be ranked in order of seriousness for record keeping purposes and a consistent approach taken. For example, robbery should be listed before theft. Although an index should direct an enquirer to the appropriate case file there is a danger, if all offences are not listed, that the file will be overlooked simply because it does not appear to relate to the offence in which the police officer is interested.

The family name should be written in capital letters, followed by the date of birth in brackets and the CRO number, for example

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Each file should have a unique identifier. One common system includes four elements:

- a prefix to indicate the police station or HQ Division
- 'CR' to indicate that this is a criminal case file
- a sequential number
- the last two letters of the year of arrest.

All the above information should be indexed using a card index.

Documents should be tagged in the file. Documents or exhibits that cannot have holes punched in them should be placed in an envelope that should be tagged in the file. A description of the document or exhibit should be written on the envelope.

Filing System

An appropriate type of filing system should be used to enable rapid identification and retrieval of papers. The simplest system would be to store files by year and then by sequential number within each year.

Case papers normally have a limited life and are usually closed

- when the suspected offender has been convicted
- if no one has been arrested after a fixed period of time; certain cases such as unsolved murders will normally remain open indefinitely.

The closed or cleared files should be archived after a fixed period.

'Closing' a case occurs when all action has been completed but there may not have been a charge or conviction; that is, there may be outstanding action. 'Clearing' a case will usually mean the case has been solved and persons have been charged and tried at court. A 'bring forward' system should be used to ensure that regular checks or updates are made to files where necessary.

Indexes

The main index system for case files should be a nominal system. The management of nominal indexes was discussed in Lesson 3. The index should contain cards for offenders, victims, alibi witnesses and so on.

Aliases should be indexed and cross-referred to the real name. Maiden names should be cross-referred to married names. Other indexes can also be created for

- addresses (for example, scenes of crime)
- motor vehicles (for example, ones used for drug trafficking or other offences).

Managing Criminal Records

Criminal records are normally maintained in a criminal record office (CRO). The CRO should be used to hold records of people who have been convicted of crime.

The criminal record is useful for

- the detection of crime
- appropriate sentencing by the courts
- prevention of crime.

The CRO should normally be used to hold national records even if case files are retained locally. Populations are becoming increasingly mobile and professional criminals may commit offences anywhere in a country. If the volume of records is extremely large, the CRO may be used only to hold records of persons convicted of serious crimes. Where the criminal records are held nationally (whether there is one national police force or many) there must be a clear system for notifying convictions to the CRO without delay. The CRO must be in a position to supply accurate and up-to-date information as this may affect the sentencing actions of a court.

The criminal record should be based on a card index or similar system. Each individual should be assigned a unique CRO number, which should be recorded on the criminal record and on any information copied from the record. The number could consist of the year first registered in the system, followed by a sequential number starting from zero each year. For example, 75/123. The main record should contain personal details of any individual who has committed an offence. These should include

- full name
- aliases
- personal description, including distinguishing marks such as tattoos
- a photograph
- a full list of offences and sentences together with relevant dates and the case file reference (to allow the file to be retrieved when necessary).

Separate cards should be created for each alias, cross-referred to the main criminal record for that individual. A number of useful supplementary indexes may be kept in the CRO, such as:

- stolen property index
- method (modus operandi) index (the methods used by criminals are kept in alphabetical order, such as arson, drug smuggling and so on, and a card for each offender is filed behind the 'method' card in order of date of birth and height)
- drugs intelligence
- Interpol information
- counterfeit currency.

Appraisal

To keep CRO indexes manageable they should be appraised regularly, with obsolete records destroyed and valuable records retained. Current policy in the United Kingdom is to remove the cards twenty years after last offence or when the person reaches the age of 70. There will always be exceptions to this general rule depending on the seriousness of the offence. Records identified as having ongoing value could be archived if the content warrants preservation.

Activity 20

Examine and evaluate the records management processes and activities associated with police criminal records in your jurisdiction.

Managing Fingerprint Records

Fingerprint records is a specialist subject and specialist help should be sought when establishing a system. A few general points can be made.

Fingerprints are an almost unique identifier. They can be used to identify a criminal and to link the offender with his or her criminal record. They are also used to confirm that individuals do not have a criminal record (for example, persons seeking to become naturalised citizens) or to identify dead bodies.

Fingerprints are usually taken from persons accused or convicted of crime. The prints are then classified using a code based on the patterns created by the fingerprint. They can be filed using this code. When a fingerprint is found at the scene of a crime a search can be made for an identical print. In some countries an automated fingerprint identification system (AFIS) is used to code the prints digitally.

Fingerprint records, like criminal records, should be kept centrally to provide a national database. The prints should be kept in secure, fire-resistant, cabinets and filed according to the classification of the fingerprint.

The records should be regularly weeded to remove the cards relating to people who have died. It may not always be possible to obtain information that a person has died. Therefore, consideration should be given to removing the cards of people who have reached the age of 85 (at this age it is highly unlikely that an individual, even if still alive, remains an active criminal).

If a collection grows too large it becomes an increasingly lengthy process to search the fingerprint collection. The time taken for staff to locate a record should therefore be monitored. If it gets too long, consideration should be given to weeding out the prints of people who have not offended for twenty to thirty years.

RETENTION OF POLICE RECORDS

General principles (see Lesson 2) should be applied when appraising the value of police records when making recommendations about their ultimate disposition. The guidance in Lesson 3 relating to criminal case files worth keeping permanently is also applicable to police case files.

For assistance in relation to other case records, below are details of the policy applied by the Metropolitan Police in the United Kingdom for other case papers.

Case files relating to petty crimes such as ‘minor’ thefts, burglary, criminal damage and so on are held in local police stations. These are retained for the following periods.

TYPE	PAPERS	REPORT BOOKS	COMMENTS
Crime	6 years	6 years	
Non-crime	3 years	3 years	
Traffic	3 years	3 years	where disqualification is imposed papers should be retained for six months beyond the end of the disqualification

More serious crimes are centrally registered and are normally retained for at least ten years. After that time they undergo a review to assess their continuing value.

The following types of file are retained for at least twenty-five years in the Metropolitan Police. They are then reviewed and may be retained permanently in the National Archives or other archival institution. These files relate to

- the history of the organisation and procedures of the force
- the formulation of policy
- the introduction of new legislation
- planning arrangements for notable events
- cases involving notable persons
- details of new types of equipment
- precedents
- reports of major events
- unsolved serious criminal cases
- murder cases

- detentions under the Mental Health Act when crime was involved
- lifetime bans of drivers.

Child abuse cases are an example of the type of case where a specific time criterion is set for their retention. These files are retained until the youngest child in the family reaches the age of majority (18 in the UK). Such files are subject to periodic review as more children may be born after the matter was first brought to the attention of the police.

Fingerprints and criminal records should be maintained for at least the real or notional life of the individual concerned. A retention period of between eighty and ninety years from date of birth is normally sufficient.

Many police records are kept up to eighty or ninety years from the date of birth of the person identified in the records.

Activity 21

Is there a retention policy for police records in the country in which you work? If there is, compare it with the policies detailed in this lesson and evaluate the differences. If there is no policy develop a theoretical case to senior police management for introducing such a policy.

SUMMARY

This lesson has given an overview of police records. Following a brief section on the context, the main functions and activities of the police were discussed. A description was given of records relating to law enforcement together with guidance on management issues and suggestions for improving the management of case files, criminal records and fingerprint records. The final section related to retention of records and included the guidance used by the Metropolitan Police in the United Kingdom.

STUDY QUESTIONS

1. What are the four main functions of the police?
2. What are the typical activities of the police in relation to law enforcement?
3. What is the difference between a case file and a criminal record?
4. Why is it important to have management controls in place in relation to criminal records?
5. Describe a harmful effect of the police being unable to find the criminal record of a regular offender who has been rearrested for a serious crime.
6. What factors should be taken into account in deciding whether case files should be held centrally or locally?
7. In what order should the following crimes be listed on a file cover or index if they were related to one case: robbery, theft, murder?
8. When should a case file normally be closed?
9. Describe the difference between 'closing' a case and 'clearing' a case?
10. How might criminal records be used?
11. Should criminal records be held centrally or locally? Give reasons for your answer.
12. List five supplementary criminal record indexes that may be kept by police.
13. What is AFIS?
14. On what basis should fingerprint records be 'weeded' out of the system? Give three possibilities.
15. How long should fingerprint records be retained?

ACTIVITIES: COMMENTS

Activities 18-21

Each of these activities allows you to examine the principles discussed in this lesson and apply these ideas in a situation relevant to your own jurisdiction. Review your answers against the information provided here. Use any published sources and speak to senior police officers to complete this activity.

PROSECUTION RECORDS

Lesson 5 examines the management of records relating to criminal prosecutions. Topics discussed include

- responsibility for prosecutions
- the role of the director of public prosecutions
- use of case files
- indexing case files
- retention of files.

In this lesson, persons accused of criminal offences are referred to as defendants. Different terms (such as ‘accused persons’) may be used in different countries.

The prosecutions department is likely to be self-contained and considerably smaller and the procedures less complex than the courts and police whose records were discussed in the previous two lessons. It may therefore be easier to apply common standards and procedures. For this reason this lesson includes slightly more detailed advice on records and records-related activities.

RESPONSIBILITY OF THE PROSECUTIONS DEPARTMENT

In most common law countries, once a crime has been committed, public officials have a responsibility to

- find the proof that a particular person has committed the crime
- conduct any subsequent criminal prosecution in the courts.

The former is the responsibility of the police and is dealt with in Lesson 4. Conduct of the prosecution may be the responsibility of the police and/or the law officers, namely the Attorney General (AG) and the director of public prosecutions (DPP).

The DPP is usually only responsible for prosecuting the most serious offences. These will normally include homicide and treason. Other cases are prosecuted by the police.

In certain countries, the DPP is responsible for prosecuting the overwhelming majority of criminal cases.

This lesson focuses primarily on the records of the DPP. However, the material can also be applied, with slight modifications, to the records of police prosecutions.

The responsibilities of the DPP, including a list of offences will be set out in a statute (such as a Prosecution of Offences Act) or possibly in the constitution. This will typically provide details such as

- responsibilities
- the position of the DPP in the criminal justice system (for example does the DPP work under the minister of justice or the law officers)
- offences handled by the DPP
- other duties.

The DPP will almost certainly be responsible for advising the Attorney General or minister of justice on all matters relating to the criminal law, including the drafting of new legislation. In certain countries, legally qualified staff in the DPP's office will be responsible for interviewing witnesses, including alibi witnesses.

Activity 22

Examine the constitution of the country in which you work and any relevant statutes or statutory instruments to discover

titles of officials in the DPP's department

their responsibilities

the position of the DPP in the criminal justice system (for example does the DPP work under the Minister of Justice or the law officers? Is the Attorney General the minister of justice?)

offences handled by the DPP

any other duties of the DPP.

FUNCTIONS, SYSTEMS AND RECORDS

Below is a discussion of the functions and systems of the prosecution department and the resulting records.

The public prosecutor will normally have four main functions:

1. considering whether there is sufficient evidence to continue to prosecute a case initiated by the police

2. preparing appropriate cases for prosecution in the courts
3. conducting the prosecution of a case and any subsequent appeals
4. advising the police and other government departments on matters relating to the criminal law.

Systems

In summary, the typical route of a criminal case through the DPP's office is as follows.

1. A new case is received, registered, indexed and sent to DPP.
2. DPP allocates the case to a prosecuting lawyer.
3. The prosecuting lawyer reviews the evidence and, in some countries, interviews witnesses.
4. The prosecuting lawyer recommends whether the case should be prosecuted.
5. If the case is prosecuted, the papers are prepared for the trial.
6. The trial is conducted.
7. The verdict is delivered.
8. There is possibly an appeal to a higher court.

Records

The majority of the records handled in the prosecutor's department are those created by the police, of which the most common are

- written statements or depositions made by the witnesses (including police officers)
- exhibits produced by those witnesses (these may be documents or artefacts. The latter are usually retained by the police, particularly if they are bulky)
- (possibly) a written statement by the accused person
- a report about the case written by a police officer
- previous convictions (if any) of, and background information ('antecedents') about the accused

- previous convictions (if any) of witnesses.

Records created within the prosecutor's department will normally include

- correspondence (with police, courts and defence officials)
- minutes analysing the evidence in a case
- written advice on evidence
- reports on the court proceedings in which the prosecuting authority was involved.

Records relating to each case will normally be held together on a case file (sometimes referred to as a 'docket').

CONTROLS AND CONTROL SYSTEMS

The control systems used in a prosecuting department are similar to those used in the courts. Case files will have a unique reference number. There will normally be one or more case indexes capturing details of cases that have been referred to the department. The movement of files will be tracked using systems applicable to any type of file-based system.

The general guidance in Lesson 3 should be applied to prosecution records to identify appropriate controls.

Activity 23

Examine the movement of a typical case file within the DPP's department. Identify any weaknesses and suggest improvements, including appropriate controls.

MANAGEMENT ISSUES

The prosecution department exists within the context of the overall criminal justice system. As stated above, it is a body that has usually been created by statute. In order to analyse the system, identify weaknesses and recommend improvements it is important to research this framework at an early stage of any project.

If record-keeping problems exist within a prosecution department these are likely to relate to the sheer volume of cases being handled. The pressure of work may mean

that staff give priority to current cases to the detriment of systematic management of completed cases. This creates problems for the efficient retrieval of earlier material that may

- be related to a current case
- be required for an appeal
- have precedent value.

It will also mean that records may not be able to be systematically moved to offsite storage or to the National Archives or other archival institution.

Managing Case Files

A file should be opened for each separate case referred to the DPP. Each case file contains papers relating to all persons charged with, or suspected of, a particular offence or series of closely related offences that could be tried together.

Each file relating to a new case should be given a unique reference number. The file should only be used to hold papers relating to the case from receipt until either the case is discontinued or the original trial is concluded.

If a case is retried, the papers should also be kept on this trial file. If the case goes to appeal, the papers relating to the appeal (including grounds of appeal and transcripts of the trial) should be placed on an appeal subfile. If there is a further appeal to a higher court a new subfile should be opened.

The subfiles should be distinguished from the main file. One commonly used method is to use the same reference number for all files and subfiles relating to the same case and to distinguish them by means of a suffix, prefix or other additional reference item.

For example:

- 1234/98 – Trial File
- 1234 (CA)/98 – Court of Appeal file
- 1234 (SC)/98 – Supreme Court Appeal file.

If possible the different types of subfile should be colour-coded to facilitate retrieval.

Trial File Contents

A trial file will typically contain five broad types of record:

1. incoming, and copies of outgoing, letters
2. internal minutes and notes (for example an analysis of the evidence)
3. statements, exhibits and other documents that will be provided to the court and defence for use during the trial

4. documents that are not disclosed to the court or defence
5. drafts and spare copies of documents.

If resources permit, it is good practice to place these different classes of record in separate subfolders (the minutes and notes could be tagged to the front of the correspondence folder). The subfolders should be placed inside the trial file cover. Ideally the subfolders should be colour-coded.

To be fully effective, use of colours should be consistent for all files. If obtaining consistent supplies of coloured file covers is a problem, colour coding should not be attempted.

Indexing

To ensure efficient retrieval of files, it is essential that they are indexed by reference to the names of all defendants. The indexing system should permit record office staff to keep the names in alphabetical order. The nominal index is the single most important finding aid for prosecution case files.

See Lesson 3 for a discussion of indexing practices.

A model card indexing system is outlined below.

A main, nominal index card should be created for each case file. This should have space to contain the following details:

1. file reference number
2. name(s) and aliases of defendant(s)
3. date(s) of birth of defendants (if available; used to confirm identity when cross-referencing cases)
4. offence(s) charged
5. date of initial correspondence
6. reference numbers of related files (abbreviated to x-ref.)
7. name of prosecutor assigned to the case
8. date file closed
9. ideally, the cards should be preprinted to ensure that the items are always recorded in the same relative location.

An example of a main card is shown below.

124/98 12 May 1998 CEESAY, Mbye (24.2.73) @ 'General' JOBE, Ebrima (12.5.68) Murder (1. only) Disposing of body (both) Attempt to pervert course of justice (2. only) x-ref. 73/95; 241/97 Attorney: Mrs Adjei Date file closed:

(note: @ indicates that 'General' is an alias)

Figure 7: Sample Main Card

If more than one defendant is involved, the first-named defendant is referred to as the 'lead (or main) defendant', the others as co-defendants. A 'runner' card should be created for each co-defendant and for each alias. This card should contain

- reference number
- name or alias
- 'see' reference to name of first accused.

An example of a runner card is given below.

124/98 JOBE, Ebrima (12.5.68) <i>see</i> CEESAY, Mbye and others
--

Figure 8: Sample Runner Card

A coloured line should be printed or drawn along the top front edge of each main card. A different colour should be used each decade. This will allow all cards created within a ten year period to be removed from the index. The files can then be retrieved and, for example, moved to a record centre.

Whilst a case is active it should be kept in a card index for 'current files'. When the file is closed and marked-off in the registry all cards for that case should be removed and refiled in a card index for 'non-current' files.

In order to simplify the tracing of files a number of other indexes may be maintained. Following are typical indexes.

- Numerical index: A sequential list of all file numbers and lead defendant's names. This can be kept in a book or in a card index:

1/98 MENSAH, James & others
2/98 JOOF, Solo
3/98 ROBERTS, Thomas & others

Figure 9: Numerical Index

- Offences index: To identify how similar offences were handled in the past or to identify a case when only the offence is known. This index could be used to provide statistics on types of offence. A new page or card should be used for each offence (kept in alphabetical order of offence). Only the reference number of the file is recorded.

MURDER
2/94
8/94
27/94
45/94

Figure 10: Offences Index

- Notable cases: In large indexing systems a separate index of particularly notable or notorious cases should be maintained. This can simplify finding the type of case that may be searched for more frequently than others. If a case was popularly referred to by a name other than the name of the defendants (for example, ‘The Beach Murder’) this index can be used to record that name.
- Weapons index: If required, this index can be created in a similar fashion to the offences index for weapons used in homicides.

Incoming Mail

All mail that does not have a DPP reference should be read and the names of (potential) defendants underlined. These names should be checked against the index of current cases. If the names appear in the index in relation to a current case, and it is obviously the same case, the reference number should be recorded on the document. If necessary, the case file should be retrieved to confirm that this is the correct case.

New Cases

New cases should be read to identify the names of potential accused persons. These should be underlined. It is common for these names to appear prominently on the first page of the documents. The names should be checked against both the current and non-current index to check for possible cross-references.

If possible cross-references are found, the files should be retrieved to check whether they do in fact relate to the same individual.

The papers in the new case should then be read to identify the information required for registration and indexing, namely

- date of initial correspondence
- police reference number
- name(s) and aliases of accused
- dates of birth of accused (if available)
- offences committed
- date and place of next hearing (if given).

The case should then be given a unique reference number using the next available number from the numerical index. The details of the case should be added to the numerical index (see above).

These details should be entered on the file cover. The details on the file cover should be duplicated on the main index card.

The main card should then be temporarily attached to the front of the file cover and passed to the head of the record office. The latter should check the card and file cover for accuracy and add the next available file reference number to both.

The main cards should be filed in alphabetical order of the family name of the first accused. Within each collection of surnames, the cards should be filed in alphabetical order of first personal name. Guide cards should be inserted to show where each new letter of the alphabet starts. If a family name is particularly common (for example 'Smith' in the United Kingdom and United States) a guide card, marked with the name on a tab, should be inserted just before the first card with that name.

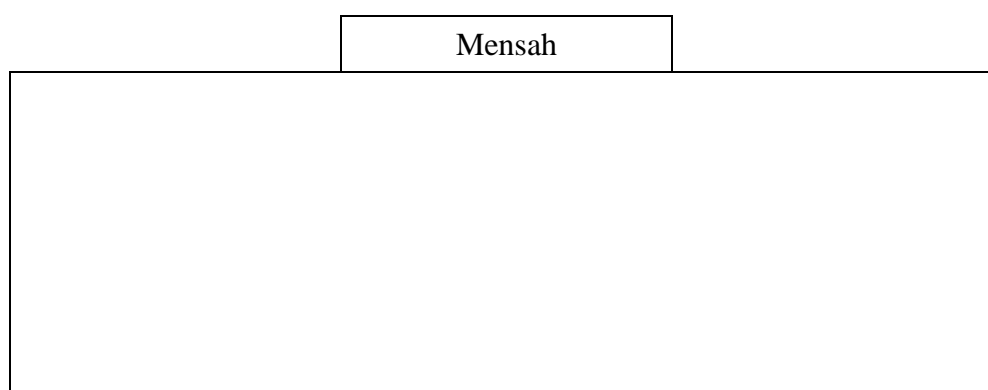


Figure 11: Guide Card

Runner cards should be filed with the main card. Other indexes should be created using the main card to avoid any delay in sending the file to the DPP. When the DPP has allocated the case to a prosecutor, this name should be added to the main card and the file cover.

Using Current Cases

Whilst a case is current it will normally be retained by the prosecutor to whom the case has been assigned.

It is the responsibility of the prosecutor to keep a record if the file is physically transferred to another location (for example, sent to the DPP).

The prosecutor must inform the head of the record office without delay if a new defendant has been added to a case. The indexes must then be updated.

Cases should be maintained in such a way that any prosecutor who needs to take over the case is immediately aware of the status of the case and of any action that has been taken or needs to be taken.

Closing a Case File

It is important that cases that have been completed are sent to the record office as soon as possible to allow the staff to 'mark-off' the case and bring the records up to date.

The prosecutor who conducted the prosecution in court should record full details of the outcome of the case against each accused for each offence. This can be done on the inside of the back of the file cover. This could use a preprinted table as shown below.

Judge: Obaya J. Court: High Court, Anytown Date of sentencing: 12/12/97				
Name(s)	Offence(s)	Plea	Verdict	Sentence
John Danquah	Murder	NG	G Manslaughter	15 yrs
	Robbery	NG	G	10 years
	Possessing a weapon	G	-	7 years
Mohinder Singh	Robbery	NG	NG	(all concurrent) -

Figure 12: Preprinted File Cover

When the file is received in the record office, the main card and all runner cards should be removed from the 'current file' indexing system. The date the file was closed (that date sentence was passed or the case was continued) should be written on the main card and the file cover. If necessary the result can be recorded. The index card is then a record of key facts if the case file cannot be located.

The main and runner cards should then be filed in a separate index drawer reserved for non-current cases.

If a subfolder system is used, the contents of the 'spares & drafts' folder should be removed and destroyed and the folder reused.

Appeal Cases

If a case goes to appeal, an appeal subfile should be opened and numbered as described above. The main and any runner cards should be retrieved and filed in a card index drawer reserved for appeal cases. The main card should be annotated to show that an appeal file has been opened and the date that the file was opened.

Activity 24

Examine a sample of prosecution case files and suggest improvements to the way that the file contents could be managed. Discuss your proposals with members of the prosecution department and evaluate their comments and criticisms.

RETENTION

The principles set out in Lesson 3 in relation to criminal case files can be applied to prosecution case files. See also Lesson 2 for a general discussion of retention issues.

In countries where the DPP handles all serious cases it is likely that all cases will be retained permanently. In instances where case files are retained selectively, account should be taken of the fact that the prosecution file frequently contains a more complete 'picture' of a criminal case from the beginning to the end of the legal process. This was clearly illustrated at a workshop at the UK Public Record Office in 1984, attended by one of the authors of this module, where a comparison was made between a sample of files relating to the same cases from the different legal bodies. In particular, court files will not normally have details of inadmissible evidence and, in cases that are not the subject of a full trial, will contain limited details of the case.

Prosecution files usually contain highly sensitive material.

Prosecution files are likely to contain highly sensitive material (including possibly the names of informants). Closed files should therefore be kept in secure conditions.

After ten years it is likely that the degree of sensitivity will have decreased. If there are pressures on storage space, files could be moved to an offsite record centre at this stage. They will still need to be kept in secure conditions. The practice of marking coloured bars on the main cards will facilitate this process by allowing cards for a ten-year period to be retrieved and hence the files to be retrieved.

Activity 25

Investigate the record retention/disposition policies, if any, of the DPP's department, and suggest improvements if you think that they are needed.

Internal Precedents

Some decisions, actions, judicial comments and judgements may create a formal or internal precedent (be careful to distinguish this use of the word 'precedent' from 'judicial precedent' as described in Lesson 1.). Internal precedent may simply provide guidance to prosecutors in similar cases, for example how an unusual offence was handled. A simple system should be introduced to record and index precedents. This could be particularly useful if a case does not appear in the law reports.

A basic system is set out below.

If a prosecutor considers that a precedent has been set, he or she should summarise the main points and the reference number of the case and submit it to the DPP.

If the DPP considers that it is an appropriate precedent he or she should annotate the note with up to three relevant keywords from a keyword list, sign the form and send it to the head of the record office.

The head of the record office should, if necessary, create a copy or copies of the note. There should be as many copies as keywords. Each should be marked in the top right-hand corner with one of the keywords.

A folder should be created for each keyword and the notes filed in the relevant folder.

A list of possible keywords appears in Appendix 3.

KEYWORD LIST

ABUSE OF PROCEDURE
ABORTION
ACCIDENT
ACCOMPLICES
ACTUS REUS
ADMISSIBILITY
ADVICE ON EVIDENCE
AFFIDAVITS
ALIENS (NON-NATIONALS)
APPEALS
ACQUIRED ASSETS
ARBITRATION
ARREST
ASSAULT
ATTORNEY-GENERAL
BAIL
BAILMENT
BAILIFF
BANKRUPTCY
BILLS
BOUNDARIES
BUSINESSES
BYE-LAWS
CASE STATED
CAUSE OF ACTION
CERTIORARI
CHARGE

CIRCUIT COURT
CIRCUMSTANTIAL EVIDENCE
CIVIL PROCEDURE
CIVIL CASES
COMMITTAL
COMMON LAW
COMMONWEALTH
COMPANY
COMPLAINTS
CONSPIRACY
CONSTITUTION
CONTEMPT OF COURT
CONTRACT
CONVEYANCING
CORRUPTION
COURT OF APPEAL
CRIMINAL RECORDS
CURRENCY OFFENCES
CUSTOMARY LAW
DEBTS
DEEDS
DEFAMATION
DEPOSITION
DOCUMENTS
DRUGS OFFENCES
EASEMENT
EQUITY
EVIDENCE
EXECUTIVE INSTRUMENTS
EXEMPTION CLAUSE
EXTRADITION/FUGITIVE OFFENDERS
FIREARMS OFFENCES
FORENSIC SCIENCE

FORGERY
FRAUD
HEARSAY
HIGH COURT
IDENTIFICATION
IMPERSONATION
INDICTMENTS
INJUNCTIONS
INQUESTS
INSANITY
INTERLOCUTORY
INTERNATIONAL LAW
INTERROGATION
INTERROGATORIES
INTERPRETERS
INTESTACY
INTIMIDATION
JUDICIAL REVIEW
JUDICIARY
JURISDICTION
JURY
KIDNAPPING
LAND
LAW OFFICERS
LAW REPORTS
LAW REPORTING
LAW REFORM
LAWYERS
LEGAL AID
LEGISLATION
LEGISLATIVE INSTRUMENTS
LIABILITY
LIBEL

LICENCES
LIMITED LIABILITY COMPANIES
LIQUIDATION, OFFICIAL
MAGISTRATE'S COURT MANDAMUS
MANSLAUGHTER
MATRIMONIAL
MENS REA
MILITARY
MORTGAGE
MORTGAGOR
MURDER
NATURALISATION
NATURAL JUSTICE
NOTARY
OBITER DICTUM
OFFICIAL SECRETS
OMBUDSMAN
ORDINANCES
PARTNERSHIPS
PASSING OFF
PASSPORTS
PATENTS
PERJURY
PIRACY
PLAINT
PLEADINGS
POLICE
POST MORTEMES
PRECEDENT
PREROGATIVE
PRISONS
PRIVATE LAW
PROBATE

PROHIBITION
PROSECUTION
PROVENANCE
PUBLIC LAW
PUBLIC TRUSTEES
PUBLIC FINANCE
RAPE
RATIO DECIDENDI
REAL ESTATE
RECEIVING
REGISTRATION (OF BIRTHS ETC.)
ROBBERY
SECURITY
SENTENCE
SHIPPING
SLANDER
SOLICITOR-GENERAL
SUB JUDICE
SUPREME COURT
TAXATION
TORT
TRADE MARKS
TRAFFIC OFFENCES
TREASON
TREATIES
TRESPASS
TRIBUNALS
TRUST
VICTIM
WILLS
WITNESSES

SUMMARY

The Director of Public Prosecutions (DPP) will be responsible for prosecuting at least the most serious cases in the country. The principal record of the DPP's department is the criminal case file. The principal finding aid is the index of criminal's names cross referred to the file number. This lesson has set out in some detail improvements that can be made to the records of the DPP throughout their life cycle. The final section covered retention of the records.

STUDY QUESTIONS

1. What is the main difference between the responsibilities of the police and the responsibilities of the DPP in relation to a crime?
2. What are the main functions of the DPP?
3. Describe the typical route of a case file through the DPP's department?
4. List the types of police record you are likely to find on a DPP case file.
5. List the types of record created within the DPP's department that will be placed on the case file.
6. What is a 'docket'?
7. In what circumstances should a case file be closed? Give two.
8. What are the five main categories of record held on a case file?
9. What is a 'runner' card?
10. What is a precedent? Describe a simple system for keeping precedents.

ACTIVITIES: COMMENTS

Activities 22-25

Each of these activities allows you to examine the principles discussed in this lesson and apply these ideas in a situation relevant to your own jurisdiction. Review your answers against the information provided here.

AUTOMATION AND LEGAL RECORDS MANAGEMENT

This lesson discusses issues related to the automation of legal records, in particular computerisation. It builds on the material set out in the two advanced modules, *Automating Records Management* and *Managing Electronic Records*. Much of the material has a wider relevance than simply to the three organisations covered in Lessons 3 to 5.

As with any system that handles large volumes of records, and in particular case files, computerisation of some of all of the legal record-keeping systems described in this module has obvious attractions. However, even in developed countries a large proportion of computer projects fail to produce expected business improvements.

Computerisation is not effective if it is based on well-designed manual systems.

It is a commonly stated principle of records management that computerisation of any records or record-keeping system should not be attempted until the manual systems are as efficient as possible. The main argument is that simply to computerise an inefficient system will not remove those inefficiencies and may indeed make them worse. Despite commonly held assumptions to the contrary, computerisation is not the panacea for every record-related problem. This is particularly true if existing systems do not meet the information and records needs of the business. As a senior executive in a major multinational expressed it:

$$\text{OS} + \text{NT} = \text{COS}$$

(Old System + New Technology = Costly Old System)

A computer should simply be considered as another problem-solving tool and should only be used if doing so can be shown to improve efficiency and effectiveness. When approaching any problem, you should first analyse the symptoms in relation to the underlying processes.

- Why does it take ten years for a case to come to appeal?
- Why is it that a large percentage of case files cannot be located when they are required?

- Why is it that when people come to pay fixed penalty traffic fines it is never possible to find the police copy of the ‘ticket’?

The last instance occurred in an actual situation, when it was found that the traffic patrol’s extended tours of duty in remote rural areas meant it took much longer than the time allowed for offenders to pay their fines. The tickets were still sitting in the patrol car long after they had been issued, and so the police headquarters could not match the offenders payment to a ticket and confirm payment. In this situation, computerisation would likely not have helped.

Having said that, computerisation has a great deal to offer the legal system. Speaking of the court service in England and Wales, Lord Justice Saville said

So far as the courts are concerned computers and information technology might have been invented for them, because the courts work from a system of communication and information retrieval and computers can provide both these things far better and quicker than any method that has yet been devised.⁶

Once it is decided to commence a computerisation project it is essential to avoid the error of effectively ignoring the users. An effective information technology (IT) system cannot be designed by technical experts working in isolation. As the US Center for Technology in Government (CTG) has observed:

An organisation that becomes enamoured of a database or office automation project without understanding how real people use information to accomplish real work is setting itself up for failure.⁷

SPECIFIC AREAS FOR COMPUTERISATION

The first experience many public sector organisations have with computers is when word-processing software applications are introduced to replace typewriters. This can provide clear benefits for business processes and record keeping. For example, lengthy official documents such as court judgements do not have to be retyped in full whenever an error is detected. In one high court, a typical order or judgement was totally retyped six times. This introduced significant delays into the legal process. In this example, the file tended to accompany the drafts as they travelled between typists, court officials and judges; thus the file became increasingly difficult to trace.

⁶ Bill Mayon-White and Bernard Dyer, eds., *From Mythology to Understanding as the Electronic Document Comes of Age* (London, UK: IDMA, 1996), p. 6.

⁷ Sharon S Dawes et al, *Making Smart IT Choices*. 1998. Available as a web document. url: <http://www.ctg.albany.edu/resources/>.

Databases are excellent tools for managing case file information and record indexing systems.

Given the dominance of name-related transactions, the use of databases as case or record indexing systems has obvious advantages over a manual system. The benefits can be considerable given the searching and indexing capabilities of databases. This type of system needs to be very carefully planned using standard systems project methodology (see the two advanced modules referred to earlier). A computer project should always be discontinued if it fails the requirements at any key milestone.

In many countries some or all of the actual processes of public sector legal organisations have themselves been automated with many benefits. Other such systems are planned. Regarding the courts in the United Kingdom, Lord Justice Woolf wrote in 1996:

As well as handling information about the progress of judicial cases, these court systems can also handle allocation of the resources within courts, including the scheduling of judges' workloads and the listing of cases, including electronic diarising and the timetabling of cases. As a valuable byproduct, management information is created as well – about trends, costs, delays and types of cases being processed.⁸

Many police forces and prosecuting authorities have automated or are in the process of automating case management and other activities. Ideally, if records management functionality could be added there would be no need to have separate automated records management systems. If this is not feasible then an automated records management system could be introduced as an interim measure. Consider the following two examples.

In Australia, a programme has been developed to automate the lodging of cases with the magistrate's court. This programme involves the electronic lodgement in the court of legal documents from a solicitor's office. For example, a civil complaint is sent to the court electronically (via a modem link). The court case number and date of filing is registered and then sent to the solicitor. The complaint can then be served on the defendant. There is provision for electronic warrants to seize property and for electronic summonses. A records management system could provide additional features, for example links to a business classification system.

In the United Kingdom, the police, crown prosecution service and the magistrate's court have piloted the electronic workflow of cases between the three agencies.⁹ Copy statements and charge sheets can be electronically passed from the police to the other

⁸ *Access to Justice: Interim Report*. 1995. Chapter 13. Available electronically at <http://www.open.gov.uk/lcd/civil/interim/chapter13.htm>.

⁹ 'Workflow can be described simply as the movement of documents and tasks through a business process.' A DiCaterino et al, *An Introduction to Workflow Management Systems* (New York, NY: Center for Technology in Government, 1997). Available electronically at <http://www.ctg.albany.edu/resources>.

agencies. Witness summonses and other documents are automatically generated and transmitted.

Any major project presents a number of risks, particularly those involving the life-cycle management of legal records in an electronic format and workflow systems. Such projects should not be tackled without professional, independent technical advice and support.

In many countries of the world, the quality and reliability of electricity supplies should always be assessed and taken account of in any computerisation project.

AUTOMATION AND RECORDS ISSUES

As a public sector legal organisation starts to automate its records, a number of issues become increasingly relevant. The following are of particular importance:

- legal status of records
- security and user authentication
- copyright
- long-term preservation.

Legal Status

When records are created and retained in digital format or when paper records are captured digitally, the question of legal admissibility of the record arises. It is particularly critical when the records are likely to be used as evidence in a court of law. An example of this would be when the police decide to scan in all the documentary exhibits in a fraud case.

Graham Smith, a lawyer with the London firm of solicitors ‘Bird and Bird’ and a person with a particular interest in electronic records, has suggested that the evidential problems are often exaggerated:

The courts have dealt for centuries with what is essentially imperfect evidence – imperfect recollections of witnesses, paper which is an extremely unreliable material – and yet when we get into information technology suddenly we get into a mindset where if the thing is not 100% verifiable and 100% secure and so on, then people seem to think it will be no use whatsoever.¹⁰

Nevertheless, even if the problems are often exaggerated there are issues that must be considered. One of these is ‘hearsay’. Documentary evidence that is being offered by a party to a case to prove the truth of something is considered as ‘hearsay’ evidence.

¹⁰ Mayon-White and Dyer, *From Mythology to Understanding*, p. 39.

Hearsay evidence is normally inadmissible but there are many exceptions. If a document is admissible that is not the end of the matter. A judge will also consider the ‘weight’ of the evidence. (Weight and admissibility are defined earlier in this module.) Graham Smith, the lawyer quoted above, has neatly summarised for a lay person the difference between admissibility and weight:

Admissibility is getting the judge to read the document and weight is getting him to take any notice of it.¹¹

When considering an electronic document that has been created in that format (for example a word-processed letter), a judge is likely to admit it, certainly in a civil case. The main issues will arise in relation to the weight that will be given to it as evidence.

In considering what weight can be given to an electronic record as evidence the judge will be concerned with the possibility of the document having been altered at some stage. It can be a simple matter to amend an electronic document without this being apparent to a subsequent reader. Because of this, the judge will be likely to investigate the reliability of the system to ensure the reliability and authenticity of the records it generates.

It is therefore extremely important to follow accepted good practice when designing and using such systems. Guidance on good practice has been developed in a number of countries.¹² Such guidance is concerned with ensuring that

- the system is secure
- appropriate technologies are used
- the system complies with relevant legislation and regulations
- there is are clear written policies and procedures
- an audit trail and internal monitoring is established.

Other issues arise with electronic records created from paper records, for example by scanning. Scanned documents are basically copies of an original paper record. Lawyers in common law countries will be familiar with the so-called ‘best evidence’ rule (discussed earlier in this module). This says that if an original document is available then a copy cannot be produced in evidence. Another rule of evidence, which can be seen as an extension of this, states that if a copy of a document is made and then a copy of a copy, at each stage it must be proved that the copy accurately replicates its predecessor.

In some countries the law has been changed specifically to allow electronic records to be introduced in evidence. For example, the United Kingdom *Civil Evidence Act 1995* has removed some of the obstacles to producing digital copy documents in

¹¹ Ibid., p. 41.

¹² For example see the following: *Center for Technology in Government. Practical Tools for Electronic Records Management and Preservation* (Albany, NY: CTG, 1999). See also *PD0008 A Code of Practice for Legal Admissibility and Evidential Weight of Information Stored Electronically*. 2d ed. (London, UK: BSI, 1999).

evidence in civil cases in England and Wales. It also covers the issue of copies of copies (in Section 8(2)):

It is immaterial ... how many removes there are between a copy and the original.

The Canadian *Uniform Electronic Evidence Act* also addresses this area. It 'replaces the search for an 'original' record with the need to show the integrity of the record before the court. Integrity is demonstrated by showing the integrity of the record-keeping system of which the record is part'.¹³

An organisation, such as a police force, may consider scanning paper documents, perhaps if there is pressure to reduce storage costs. If the records are likely to be used as evidence, lawyers in the organisation concerned will need to consider which ones are likely to be challenged in respect of their authenticity. At present, depending on the legal position in the country concerned, the best advice is likely to be that if a document is likely to be challenged then the original should be retained. Other legal documents that in the words of Professor Mickie Voges of Chicago-Kent College of Law, 'require a higher level of comfort' should also be kept in their original format.¹⁴ These include records that give title to land and such matters as chieftaincy rights.

This is of course not really an issue when documents are scanned to provide convenience copies but the original is preserved. This has been done by the police and prosecution in criminal fraud trials to allow easier access to voluminous exhibit by the judge, lawyers and the members of the jury. If the copy is challenged it can always be checked against the original.

Security and User Authentication

Security is a major issue with legal records. As stated above, the system should be secure. The data should also be secure. This becomes an increasing problem if the system is networked and even more so if external modem links are in place.

If you receive an electronic document it may have a name attached as the claimed author. How can the recipient be sure of its authenticity? If challenged, there is no signature for a handwriting expert to validate. Much research has been done on the issue of authenticity and electronic signatures, but again it is believed that until such methods are foolproof, organisations – particularly those with limited resources – should be very conservative in decisions surrounding electronic records, particularly in a legal environment.

¹³ John D Gregory, *Electronic Legal Records: Pretty Good Authentication*. Paper delivered to the 1997 Canadian Symposium 'The Official Version: A National Summit to Solve the Problems of Authenticating, Preserving and Citing Electronic Legal Information'. Available electronically at <http://www.callacbd.ca/summit/>.

¹⁴ Mickie Voges, Paper delivered to the 1997 Canadian Symposium 'The Official Version: A National Summit to Solve the Problems of Authenticating, Preserving and Citing Electronic Legal Information'. Available electronically at <http://www.callacbd.ca/summit/>.

Copyright

As stated above, scanning a paper document and storing it in digital format is simply another form of copying. There are no copyright problems when an organisation scans its own documents. However, if the document is from an external source, and the author or copyright owner has not given consent, this will normally infringe copyright.

Long-term Preservation

Electronic records must be retrievable and useable for as long as they are required. As has been made clear in earlier lessons, the records of legal organisations such as the courts, police and prosecutors are often retained for a long time. Many will be preserved permanently. It is therefore essential to ensure that appropriate measures are taken to ensure their preservation. Records may be lost because of deterioration in the storage media or obsolescence or deterioration of the hardware and software. Unless it is possible to guarantee to preserve these valuable records for as long as they are required (which often means permanently) it is not safe to move to a fully automated electronic records and document management system.

It cannot be emphasised strongly enough, however, that the technology needed for scanning records into a digital format and managing and preserving electronic records can be quite sophisticated. The costs can become extremely high. There is a strong argument within the records and archives professions that organisations should not consider scanning until they have developed fully functional and manageable paper-based records management systems. This study programme does not advocate scanning records until all other records systems are in place and encourages organisations to adopt a conservative approach to the management of electronic records until they can obtain the technical guidance, expertise and resources necessary to ensure the records are well protected.

For more information on digitisation issues, see Managing Electronic Records and Automating Records Services.

When considering automation, it is critical to take into account the legal status of records, security, copyright and long-term preservation.

THE FUTURE

The spread of new technology and the development within legal organisations has caused people to question what were once thought to be fundamental principles such as the following.

- Does the work of courts actually need to be carried out in physical courtrooms with the parties appearing in person? Video links are already being used to allow some witnesses to give evidence and be cross-examined.
- Do lawyers need to present oral arguments in all cases?
- Why is it not possible to report every case heard in the higher courts instead of just a selected few?¹⁵

One thing that is certain is that the legal organisations in the twenty-first century will be radically different to those of the late twentieth. Lawyers from the late Victorian periods would probably feel quite at home in many late twentieth-century courts. If they return at the end of the next century they might think that they are on a different planet.

Activity 26

Find out if any legal records in your jurisdiction are managed electronically. Write a brief description of how they are created, used and stored. If legal records are not created using computer technologies, write a brief description of how you would develop a programme for creating and managing legal records electronically.

¹⁵ These and other issues are discussed in the Lord Chancellor's Department Consultation Paper, *Resolving and Avoiding Disputes in the Information Age* (London, UK: HMSO, 1998). Available electronically at <http://www.open.gov.uk/lcd/>.

SUMMARY

Whilst automation has many potential benefits in legal organisations there are also many pitfalls that must be avoided. Projects may range from the introduction of word-processing facilities to the full automation of business processes. With more complex projects issues of legal status of the records, security, copyright and preservation are likely to arise.

This module has introduced many of these issues and has urged a conservative approach to electronic records management. Organisations must ensure they can protect the authenticity and reliability of records before they proceed with sophisticated automated processes.

STUDY QUESTIONS

1. Discuss the statement, 'computerisation of a record-keeping process should not be attempted until the manual systems are as efficient as possible.'
2. What benefits could word processors bring to a court of law?
3. Give an example of a complex legal computerisation project.
4. What is the difference between 'admissibility' and 'weight' in relation to evidence?
5. Generally speaking, what paper records should never be destroyed even if an electronic copy is available?
6. Describe the main copyright issue relating to electronic records.
7. Why is long-term preservation likely to be an issue in relation to legal records?

ACTIVITIES: COMMENTS

Activity 26

This activity allows you to examine the issue of electronic records care in your jurisdiction and compare the reality to the ideas presented in this lesson. Review your answers against the information provided here.

POLICY ISSUES

Lesson 7 covers critical policy and management issues for legal records. Many of these issues have been briefly covered in previous lessons because they underlie the successful implementation of legal records management systems.

Responsibility for the creation, maintenance and disposition of legal records belongs not just to the records manager but to all persons involved in judicial processes. Without the co-operation of all those involved it will not be possible to ensure that accurate and reliable records are being created and maintained. If the judges, police commissioners and public prosecutors are not convinced that managing legal records is central to the effective operation of their institutions, no records management system will be fully functional. It is therefore imperative to consult with all the potential record creators and users, and in particular with senior administrators, when a record-keeping system is set up for any legal institution.

Detailed knowledge of the structures, functions, and operation of the courts, police or public prosecutor's office (see Lessons, 3, 4 and 5), and fluency in legal terminology (Lessons 1 and 2) should assist in communicating confidently with legal personnel about their record-keeping requirements. It will help to convince them that there is a genuine need to create and maintain records that will not only manage a case from its inception to its closure, but that it may be necessary to refer to it at some later date either as a precedent, or for a retrial or appeal. The records may also be needed by other courts or special courts, such as commissions of inquiry.

Discovery (introduced in Lesson 1) may be another legal issue to consider when you are reviewing or setting up a record-keeping system. It is often used as a delaying tactic by the party requesting the documents and disrupts operations in an organisation if the record-keeping system has poor retrieval mechanisms.

POLICY FRAMEWORKS

The management of legal records needs to operate within appropriate legislative and policy frameworks. There may be little scope for flexibility as far as legislation is concerned. Policy may also be set and may only be modified by operating within restricted options. Nevertheless, a management strategy needs to be formulated that takes into account the existing legislative and policy constraints.

Management strategies need to take into account legislative and policy issues.

Legislation

Any legislation that supports record-keeping standards, and legal records in particular, should be brought to the attention of those with authority in the judicial institution in question. Lesson 2 gave a number of examples of legislation that supports quality records management. For example, a number of statutes of African countries have provisions in archives legislation that provide for the authority to advise persons charged with the care of documents and to authorise destruction. More recent archival legislation in some countries, such as Australia, is also concerned with setting standards for records and advising on the most appropriate systems. The legislation will generally define those public bodies, including courts, covered by the Act. If in your country there is no legislation that supports records management, or it excludes legal records, you may need to attempt to introduce appropriate legislation through the assistance of national and international professional records management bodies.

Policy Directives

Administrative arrangements may be a secondary way to obtain official backing for a records management programme for legal records. They could in effect have similar provisions as those found in legislation. These kinds of arrangements may be implemented in the form of government directives or guidelines.

Activity 27

Imagine you have been asked to write a brief records policy to present to senior management of a court of law, a police force or a public prosecutor's office. Write down your notes and ideas for such a policy.

MANAGEMENT ISSUES

Senior managers in the courts and other public sector legal bodies do not normally need to be told of the value of legal records in the effective working of their organisations. However, they frequently need to be reminded of the importance of managing these records in a systematic manner.

The large volume of records that pass through a typical legal organisation in a year, their sensitivity and time pressures mean that if systematic and effective records management is not in place the impact can be high. This may affect not only the organisation in question but also other parts of the legal system (as well as on the rights of individual citizens and corporate bodies).

Experience shows that a fundamental prerequisite for effective programme of improvement in records management is the genuine commitment of the most senior managers in the organisation. Staff at all levels must be made aware of this commitment from the top. Senior managers must publicly endorse the organisation's records management policy, which should underpin all records-related procedures. As stated earlier in the module, there is often a divide between legally qualified and 'lay' staff. It should be made clear that the agreed policy applies to all staff.

Within the policy statement and associated procedures there is a need to

- clarify who has ultimate control of the records (an archival authority)
- establish a clear chain of records management responsibility within the organisation that leads from the most junior creator or recipient of records to the most senior officer (such as the chief justice or police commissioner)
- ensure that the records and record-keeping systems can be used to
 - demonstrate the accountability of the judicial institutions, that is, that as duly constituted public bodies they have carried out the judicial processes fairly
 - ensure the rights of all those involved in the judicial processes are protected and enforceable
 - comply with legal requirements for the creation and retention of records of judicial institutions.

In Lesson 1, some general management problems that arise when working in a legal institution were raised. They are all dependent on policy decisions and the involvement, or endorsement, of senior managers. These include

- countering the negative attitude of legal practitioners to 'lay' records staff
- reducing work pressures in legal institutions that have a constant flow of new cases (improvement in records management procedures can play a significant part)
- obtaining a constant supply of necessary resources (not only material resources such as paper and equipment but also sufficient appropriately qualified staff)

On the practical level, Lessons 3, 4, and 5 covered the need in a paper-based systems for effective and co-ordinated management of the records throughout their life cycle. Issues include

- prompt and effective registration of cases and related documents
- the need for records in each individual case to be kept together (such as in a file cover or 'docket')
- effective mechanisms (such as colour coding) for rapid retrieval of the right record

- control procedures that are applied wherever the records are in the system
- appropriate and secure storage of current case files (in centralised or decentralised areas depending on local conditions)
- storage in appropriate environmental conditions
- retention according to retention schedules specifically developed for judicial institutions and their functions.

Managers should be forcefully reminded that if ineffective records management practices cause delay in the movement of records through the system this can have an extremely damaging effect. There may be fixed deadlines in place, for example in submitting cases for prosecution or for the initial hearing cases in court. Time periods may be triggered by 'statutes of limitation' that remove certain rights to legal remedy after a certain date. For example an individual may need to start an action for damages for a personal injury within a fixed period after the injury occurred. The date a trial commences, concludes, and sentence is passed are important for records control and appraisal. They may be triggers for disposal and should be clearly recorded.

Finally, managers should be encouraged to play an active part in the control of records management standards. This may include

- taking action on monthly or quarterly reports by the organisations's record officer to senior managers on the performance of records offices against any agreed action plan
- responding to feedback, including performance measures, from any control audits that have taken place
- an agreed system of escalation of records management issues that leads, if any issue is unresolved, to the most senior manager.

Activity 28

Summarise how system controls can outweigh problems encountered with the nature of working with large quantities of case files.

LINKAGES TO OTHER PARTS OF GOVERNMENT

It is critical to recognise that various judicial and enforcement institutions will work closely with other parts of the government, and their records and information may be closely related.

This module has focused on ‘legal records’ emanating from the discrete functions of the judiciary and enforcement institutions. However these institutions do not operate in isolation from other public sector bodies. They have relationships with other government systems, depending on the nature of the specific activity. For example in fraud cases (based on the English common law of theft) the police would frequently need access to records of other agencies to mount a case. As stated in Lesson 4, in each case handled a police force will need to operate a degree of consistency in its record keeping in order to use and exchange information effectively across the force and to provide the necessary documentation for the judicial system.

The law enforcement community may establish systems that liaise with the Internal Revenue (Tax) Department, Crime Authorities, Attorney General, Public Prosecutors and Social Security. There would need to be system controls in place to ensure that data matching is only used for legitimate law enforcement purposes.

Another aspect of working across systems is that of developing a government-wide classification systems for legal records to allow searching across record-keeping systems of an entire jurisdiction. It also provides for government wide functional appraisal that places legal records into an overall jurisdictional perspective (for the whole state or the municipality, for example). This appraisal methodology is being implemented in the Netherlands, Canada and Australia.

Activity 29

Discuss how the police would benefit from access to other public records, including immigration, social security, and taxation records, in a case of mistaken identity.

SUMMARY

Records are central to the process of administering the judicial system. 'Consciousness raising' is an important part of managing legal records. Without policy commitment from all stakeholders involved – government, judiciary, police and citizenry – no effective system for creating and maintaining records for immediate and long-term use will get off the ground.

STUDY QUESTIONS

1. Is 'discovery' likely to be an important legal issue for management to consider when setting up a record-keeping system in your country?
2. Who are the stakeholders who must be committed to an effective record-keeping and records management system in a court, a police operation and the public prosecutors office?
3. What features of legislation may be important for supporting a records management policy for legal records?
4. Which policies and procedures are needed to protect personal information in legal records?
5. List the general management issues that are relevant in a legal environment.
6. What are the advantages of having consistency in classification between judicial bodies and other public sector bodies?

ACTIVITIES: COMMENTS

Activity 27

Preparing a brief records policy to present to senior management of a court of law, a police force or a public prosecutor's office allows you to formulate a coherent list of both general and specific arguments for a records management system. It will help you see that everyday problems such as insufficient paper supplies may be symptomatic of more deep-seated problems.

Activity 28

Linking system controls with the nature of legal records is a practical management issue. This activity reinforces Lessons 3, 4, 5 and 6, in particular naming conventions, registration, indexing, and automation.

Activity 29

This activity reinforces the need to view legal records as part of record-keeping requirements of judicial processes that can be enhanced by working with the systems of other institutions.

WHAT TO DO NEXT?

Managing Legal Records builds on the general principles outlined in the core modules of the Management of Public Sector Records Study Programme; *Managing Legal Records* has considered the specific issues involved in managing legal records created by public institutions. Particular consideration has been given to the care of records created by courts of law, police forces and public prosecutors.

This module has emphasised that legal records are fundamental to the efficient and effective operation of the legal system of a country and perhaps are even more crucial to the administration of law than to any other function of the public sector.

The trustworthiness of legal institutions depends on the good care of their records, which results in part from the high ethical standards of all players involved in the judicial process.

This module has focused on

- identifying the importance of legal records management, in particular how and why legal records support the political system and contribute to overall government accountability
- understanding basic legal principles and terminology relevant to a common law legal system
- locating both general and specific regulatory controls for legal records
- establishing suitable records management systems for managing records of courts of law, police forces and public prosecutors
- implementing the processes involved with appraisal and preservation of and access to legal records
- gaining management support for legal records management programs and promoting the record-keeping responsibilities of all those involved in judicial processes

ESTABLISHING PRIORITIES FOR ACTION

Once you understand these principles, concepts and practices, the next step is for you to consider what to do next. It is necessary to establish priorities for legal records management, to understand the role of the records manager and those involved in judicial record-keeping processes and to know where to go to find out more about legal sources.

This module has introduced key activities in the care of legal records. But which tasks should you undertake first? Which are high priority and which are low? Each institution will make different decisions based on its own priorities, needs and short- and long-term plans. However, it is possible to offer some recommendations for action, to help the institution manage its legal records in a planned fashion. Complete the activity below then consider the suggestions offered.

Activity 30

Based on the activities you did in this module and your knowledge of a court of law, police force or a public prosecutor's office, identify the priorities you would establish for a legal records programme for one of these offices.

Priority 1: Identify Key Legal Processes and Records

Undertake an analysis of the functions and activities of either a court of law, police forces or public prosecutor's office. Understand the key features of the legal system, and terms used by the courts and police. Find out where they all fit in the overall scheme of government. Identify the key functions, the personnel and their responsibilities, current systems and records in existence. Document all your findings. Make a list of specific issues to follow up. In particular consider how and why the records are created and used.

Priority 2: Locate Regulatory Controls

Identify the regulatory controls on legal records by locating relevant legislation, legal considerations and codes in relation to each function and activity you have identified in Priority 1 for the whole organisation. Ask about legislation, and codes, and if you can gain access to any legal resources. The regulatory controls identified are also relevant to records retention.

Priority 3: Gain Management and Professional Support

Write a records programme that includes your functions, activities and records, and develop a list of regulatory controls. Present management and key legal professionals the programme and the accompanying regulatory list. Point out to them about complying with legislation or standards by giving them examples of problems that could arise if the records are not created or retrievable.

Make clear how much physical space and resources you need. Once you have the support of management and key legal professionals, and a budget allocation, begin organising supplies, and equipment to establish the records management systems that will need to be set in place.

Priority 4: Establish Records Management Systems

Depending on whether the focus is a court of law, a police force or a public prosecutor's office, begin to set up or improve existing systems. For example, the following steps could be taken:

- review the systems in place and their effectiveness
- identify the officials and their roles; the functions, systems and records
- improve the management of proceedings and the establishment of systems.

Priority 5: Implement Appraisal, Preservation and Access Programmes

Once the systems are in place implement fully appraisal and access programmes and ensure your preservation programme is operating for records of long-term value. This will depend on physical formats that will be in use. Remember to ensure that personal information is protected and that security guidelines are in place.

GETTING HELP

Many institutions, particularly in developing countries, have limited access to information about legal records care. Following are names and addresses of some of the major records and archives organisations or agencies around the world; these groups can offer advice and assistance.

See the Additional Resources document for information on other organisations and associations involved with records and archives management generally.

International Organisations

Organisation for Economic Co-operation and Development (OECD)

2, rue André-Pascal
75775 Paris Cedex 16
FRANCE

Fax: +33 (0)1 46.34.67.19

Email: laurence.gerrer@oecd.org, luc.garcia@oecd.org

Website: <http://www.oecd.org/>

OECD vocation has been to build strong economies in its member countries, improve efficiency, home market systems, expand free trade and contribute to development in industrialised as well as developing countries. It includes a number of publications of international interest including the 1980 privacy principles.

National or Regional Organisations

Australasian Legal Information Institute

Email: feedback@austlii.edu.au

Website: <http://www.austlii.edu.au/>

The Australasian Legal Information Institute provides free internet access to Australian legal materials. It includes a valuable to law sites around the world including African countries. AustLII publishes public legal information: that is, primary legal materials (legislation, treaties and decisions of courts and tribunals); and secondary legal materials created by public bodies for purposes of public access (law reform and royal commission reports and so on). AustLII is a joint facility of the Faculties of Law at the University of Technology, Sydney and the University of New South Wales.

Bentham Archive of British Law

Website: www.ndirect.co.uk/~law/bentham.htm

This website includes good links to UK statutes and is a valuable general resource for research.

Commonwealth of Australia. Attorney's General's Department

Robert Garran Offices,
National Circuit, Barton
ACT 2600, AUS

Tel: +61 6 250 5851

Fax: +61 6 250 5944

Website: http://law.gov.au/government_sites.html

The website includes *Links to Australian Government Law Sites*, which include courts and tribunals, legislation, case law and commonwealth, state and territory Attorneys-General departments.

FindLaw

Website: <http://www.findlaw.com/>

FindLaw is dedicated to making legal information and community on the Internet easy to find. It includes the FindLaw Guide to Internet legal resources with many useful links. This comprehensive guide includes links to resources in over 30 practice areas, case law and codes, legal associations, law schools, law reviews. Cases and Codes includes searches of case law, including US Supreme Court Decisions, and selected US state codes. There are links to international legal sites including Africa.

Her Majesty's Stationery Office

Website: <http://www.hmsso.gov.uk/>

This site includes the text of UK Acts since 1996, Statutory Instruments since 1997 and House of Lords Judgements.

Bernard J. Hibbitts, Associate Dean for Communications and Information Technology and Professor of Law at the University of Pittsburgh School of Law

Website: www.law.pitt.edu/hibbitts/law.htm

This page features links to key materials for the study and practice of American, English and Canadian law.

Society for Computers and Law

10 Hurle Crescent, Clifton, Bristol
DX: 37017 Clifton - 1 Bristol
BS8 2TA UK

Tel: + 01179 237393

Fax: + 01179 239305

Website: www.scl.org/

SCL exists to encourage and develop both IT for lawyers and IT-related law. There are journal articles and papers that may be useful for legal records research.

United Kingdom. Court Service: Lord Chancellor's Department: Information about Courts

The Court Service

Southside, 105 Victoria Street

London

SW1E 6QT, UK

Email: Customer Service Unit - cust.ser.cs@gtnet.gov.uk (General enquiries to the Court Service)

Website: http://www.courtservice.gov.uk/cs_home.htm

Website showing hierarchy of courts: <http://www.courtservice.gov.uk/highhome.htm>

The Court Service, which is an executive agency of the Lord Chancellor's Department, provides administrative support to a number of courts and tribunals, including the High Court, the Crown Court and the county courts. While the outcome of cases coming before the courts and tribunals is determined by a judge or judicial officer, much of the supporting administrative work is carried out by the staff of the Court Service.

United Kingdom. Judicial Office House of Lords

London

SW1A 0PW UK

Tel: +44 20 7219 3111 / 3112 / 3113

Fax: +44 20 7219 2476

Website: <http://www.parliament.the-stationery-office.co.uk/pa/ld199697/ldinfo/ld08judg/ld08judg.htm>

The House of Lords hears appeals from the Court of Appeal in England and Wales and Northern Ireland in both civil and criminal matters and from the Court of Session in Scotland in civil matters. In addition, the House hears criminal appeals from a Divisional Court of the Queen's Bench Division of the High Court in England and Wales and from the High Court in Northern Ireland. Certain kinds of civil cases may also be brought direct from the High Court in England and Wales and Northern Ireland under what is colloquially known as the 'leapfrog' procedure. The House may also hear appeals from the Courts-Martial Appeal Court.

United Kingdom. Crown Prosecution Service

50 Ludgate Hill, London

EC4M 7EX UK

Tel: +44 20 7334 8505

Fax: +44 20 7273 8092

Email: complaints@cps.gov.uk

Website: www.cps.gov.uk

The CPS is the government department that prosecutes people in England and Wales who have been charged by the police with a criminal offence. The site includes policy documents.

Activity 31

Find out if your institution has any information about any of the agencies listed above. Does your organisation receive publications, participate in conferences or meetings or otherwise work with any of these groups?

In your opinion, which groups should your institution consider communicating with first, if any, and what would you expect to achieve by doing so? How would you go about building a productive relationship?

ADDITIONAL RESOURCES

There are a few publications available about legal records care. Some are more easily obtained than others, and some more up-to-date than others. However, older publications also contain valuable information and may be more easily found in libraries in your particular country or region than new publications that have not yet circulated around the world. Core publications are identified with an asterisk (*).

Core publications are also identified in the Additional Resources document; refer to that document for information on more general publications on records and archives management.

Overview Publications

Corrigan, Barbara E, et al. *Guide to the Management of Legal Records*. Prairie Village, KS: ARMA International, 1987.

This publication focuses largely on the care of private legal records but contains valuable information.

Maher, Frank and Louis Waller. *An Introduction to Law*. 7th ed. North Ryde, NSW, AUS: LBC Information Services, 1995.

Oxford University Press. *A Dictionary of Law*. 3d ed. London, UK: Oxford University Press, 1994.

Rutherford, L and Bone, S. *Osborn's Concise Law Dictionary*, 8th ed. London, UK: Sweet and Maxwell, 1993.

- * Twining, William and Quick, Emma Varden, eds. *Legal Records in the Commonwealth*, Aldershot, UK: Dartmouth, 1994.

In particular, see Willian Twining, 'Legal Records in the Commonwealth: A Theoretical Perspective', pp. 6-36; Pino Akotia, Harry Akussah and Victor Dankwa, 'Accra', pp. 69-131; and Musila Musembi, 'The Management of Legal Records: The Kenyan Experience', pp. 172-81.

Articles on Legal Records Issues

Archivaria 18 (Summer 1984) has a number of articles on legal records that are still useful. Some are identified below, along with other valuable readings.

Campbell, M. 'Government Accountability and Access to Information from Contracted-out Services.' *Archives and Manuscripts* (November 1998): 294-327.

Iavinco, Livia. 'The Nature of the Nexus between Record-keeping and the Law.' *Archives and Manuscripts* (November 1998): 216-46.

Knafla, Louis A ' "Be It Remembered": Court Records and Research in the Canadian Provinces.' *Archivaria* 18 (Summer 1984): 105-23.

Shepard, CJ. 'Court Records as Archival Records.' *Archivaria* 18 (Summer 1984): 124-34.

Smith, Rodney. 'Strange Distinctions: Legislators, Political Parties and Legislative Ethics Research.' In Noel Preston and Charles Sampford with CA Bois, eds. *Ethics and Political Practice: Perspectives on Legislative Ethics*. Leichhardt, NSW: Federation Press, 1998, pp. 41-51.

Standards

Standards Australia. *AS 43990, Australian Standard, Records Management*.

In particular see Part 1, General, Definitions; Part 2: Responsibilities, Regulatory requirements; Part 3, Strategies; Part 4, Control; and Part 5 Appraisal and Disposal. It recommends analysis of the social and legislative context of an organisation before a business analysis and classification scheme is developed.

Activity 32

Check your institution's library or resource centre. What books or other resources do you have about legal issues? Are any of the publications listed above available in your institution? If so, examine two or three of them and assess their currency and value to your institution. If not, identify two or three publications you think would be most useful to help develop or expand your legal library. Devise a plan outlining how you could realistically obtain copies of these.

SUMMARY

This lesson has provided an overview of the entire module, *Managing Legal Records*. This lesson has then discussed how to establish priorities for action and suggested that the main priorities for action are often as follows:

Priority 1: Identify key legal processes and records

Priority 2: Locate regulatory controls

Priority 3: Gain management and key professional support

Priority 4: Establish records management systems

Priority 5: Implement appraisal, preservation and access programmes.

The lesson then outlined ways to find out more information or get help with legal records issues. The lesson concluded with a discussion of valuable information resources relevant to legal records care.

STUDY QUESTIONS

1. In your own words, explain the reason why the priorities proposed in this lesson are offered in the order they are in.
2. Indicate two of the organisations listed in this lesson that you would choose to contact first and explain why.
3. Indicate two of the publications listed in this lesson that you would choose to purchase first and explain why.

ACTIVITIES: COMMENTS

Activity 30

Establishing a legal programme for a legal body will vary from country to country and will depend on the legal and political system, the organisational cultures, and the available resources. The activities in this module must be modified to local circumstances. In this activity you are asked to write what is realistically achievable. The purpose of this activity is to help you start to think about how to apply the information in this module in a realistic fashion; consider the recommended priorities as suggestions only.

Activity 31

If resources are limited, it is wise to communicate with international organisations first, as they often obtain and filter information from national or regional associations. Thus valuable information is passed on to your organisation through the international group, which can save resources for all. It is also advisable to focus on general information before obtaining specialised publications or information.

Activity 32

As mentioned in relation to the activity above, it is important to begin with general information and ensure you have a good resource library of introductory and overview publications before developing a more specialised library.

SAMPLE RETENTION SCHEDULE

UK Lord Chancellor's Department Record Retention Schedule MAGISTRATES' COURTS

DATE OF ISSUE: JULY 1999

NO	DESCRIPTION	ACTION
1	All papers before 1888	Permanent I preservation. To be transferred to the local record office.
2	Court Registers including Juvenile/Youth Courts and those which are kept separately, but are deemed to form part of the Register such as those in respect of Road Traffic matters	Permanent preservation. To be transferred to the local record office no later than thirty years after their creation by virtue of Section 3(4) of the Public Records Act 1958. Subject to agreement between individual magistrates' courts and their local record office, these registers may be microfilmed to the standards described in the guidance notes not earlier than two years after the date of the last entry, following which the original paper documents should then be destroyed.

Source: UK, Lord Chancellor's Department, Selborne House, 54-60 Victoria Steet, London SW1E 6QW UK.

3	All Licensing Registers		Permanent preservation. To be transferred to the local record office no later than thirty years after their creation by virtue of Section 3(4) of the Public Records Act 1958.
4	Licensing Files including those in respect of licensing permits and occasional licenses		Permanent preservation. To be transferred to the local record office no later than thirty years after their creation by virtue of Section 3(4) of the Public Records Act 1958. An exception is where either licensed premises cease to be licensed or a permit holder ceases to hold one, in which case destroy 6 years afterwards, subject to the local record office not seeking to retain them by virtue of Section 3(6) of the Public Records Act 1958.
5	Licensing Occasional Permissions		Destroy 3 years after the expiry of the last permission granted to an organisation or branch.
6	Pardons		Permanent preservation. To be transferred to the local record office no later than thirty years after their creation by virtue of Section 3(4) of the Public Records Act 1958.
7	Notes of Evidence in summary jurisdiction cases, with exhibits and other related documents		Kept in case files. Destroy these after 3 years subject to the local record office not seeking to retain them by virtue of Section 3(6) of the Public Record Act 1958.
8	Committals to Crown Court		Destroy after 3 years
9	Appeals to Crown Court Appeals to High Court		Destroy after 3 years
10	Committals for sentence to Crown Court		Destroy after 3 years
11	Summonses including informations and complaints (also including community charge documentation)		Destroy after 3 years, unless adjourned sine die, subject to the local record office not seeking to retain them by virtue of Section 3(6) of the Public Records Act 1958

12	Information for Warrants/ Warrants for arrest/Search Warrants either returned to the court following execution OR unexecuted at the expiry of the time provided for execution		Destroy after 3 years
13	Probation Orders		Destroy 3 years after the order ceases to be operative
14	Community Service Orders Money Payment Supervision Order Attendance Centre Orders Supervision Orders Combination Orders Forfeiture and Destruction Orders Licensed Premises Exclusion Orders Removal of Disqualification Orders Conditional Discharges		Destroy 3 years after the date the Order was made
15	Non Payment Warrants and Warrants of Commitment either returned to the court following execution OR returned unexecuted at the expiry of the time provided for execution		Destroy 12 months after execution or return, subject to the local record office not seeking to retain them by virtue of Section 3(6) of the Public Records Act 1958

16	Bail Registers		Permanent preservation of any register kept separate from the Court Register to record the decision about bail or the reasons for any such decision. To be transferred to the local record office no later than thirty years after their creation by virtue of Section 3(4) of the Public Records Act 1958. Where additionally decisions in respect of bail are kept with the case files, destroy those copies as at 7 (ie after 3 years, subject to the proviso)
17	Legal Aid documentation		In case files destroy as at 7 (ie after 3 years, subject to the proviso)
18	Hospital and Deportation Orders		In case files destroy as at 7 (ie after 3 years, subject to the proviso)
19	Crown Court Orders		Destroy after 3 years
20	Recognisances		In case files destroy as at 7 (ie after 3 years, subject to the proviso)
21	Affiliation Orders (Obsolete after 1989)		Destroy when child reaches 25 years of age, subject to the local record office not seeking to retain them by virtue of Section 3(6) of the Public Records Act 1958
22	Guardianship papers (Obsolete after 1989)		Destroy when child reaches 25 years of age, subject to the local record office not seeking to retain them by virtue of Section 3(6) of the Public Records Act 1958
23	Children Act cases (and by analogy, where still extant, Care Order cases)		Destroy when child reaches 25 years of age, subject to the local record office not seeking to retain them by virtue of Section 3(6) of the Public Records Act 1958
24	Adoption cases (including minute books)		Destroy after 75 years subject to the local record office not seeking to retain them by virtue of Section 3(6) of the Public Records Act 1958

25	Matrimonial cases/orders		Destroy 25 years after cessation of order, subject to the local record office not seeking to retain them by virtue of Section 3(6) of the Public Records Act 1958
26	List of Transactions (Maintenance)		Keep for duration of Order and destroy 3 years after cessation
27	Original Orders and Variations (Maintenance) includes International Reciprocal Maintenance Enforcement Orders		Keep for duration of Order then destroy 3 years after cessation
28	Write-Off List (Maintenance)		Destroy after 5 years
29	Transfer Register (Maintenance)		Retain for 25 years then local record office to consider retention by virtue of Section 3(6) of the Public Records Act 1958
30	Variations List (Maintenance)		Destroy after 3 years
31	Amendments List (Maintenance)		Destroy after 3 years
32	Court List		Destroy at user's discretion
33	Case Entry Check List		Destroy at user's discretion
34	Defendant Index		Destroy at user's discretion
35	List Paid Fines		Destroy after 5 years
36	Transfer Fine Orders		Destroy after 5 years
37	Vehicle Fixed Penalty accounting records		Destroy after 5 years
38	Write-Off List		Destroy after 5 years
39	Amendments List		Destroy after 5 years
40	Suspense List		Destroy after 5 years

41	Dishonoured Cheques List		Destroy after 5 years
42	Cash List		Destroy after 5 years
43	Till Receipts		Where kept separately destroy after 5 years
44	Paying-in Books		Destroy after 5 years
45	Bank Statements		Destroy after 5 years
46	Presented Cheques List		Destroy after 5 years
47	Cheques Printed List		Destroy after 5 years
48	Unpresented Cheques List		Destroy after 5 years
49	Bank List		Destroy after 5 years
50	Cumulative Accounts Summary/Movements/Control Totals		Destroy after 5 years those used for end of day/weekly/monthly/quarterly balancing procedures
51	Payments to Witness List		Destroy after 5 years
52	List of Payments to Creditors		Destroy after 5 years
53	Warrants List/Register		Destroy after 5 years
54	Post Opening Record		Destroy after 5 years
55	Recorded Delivery Record		Destroy after 5 years

NB In respect to those items which are financial in nature, it is a requirement that the supporting documentation is retained for the same length of period as the item itself.

This schedule has been drawn up by the LCD HQ Departmental Record Officer in consultation with various nominated and interested parties and the Public Record Office. Please retain for future reference.