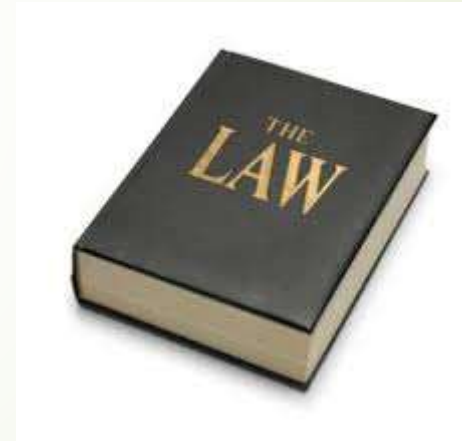


# Topic: Introduction of Research Skills Development Framework and its Effects in Enhancing Legal Research Skills of Students



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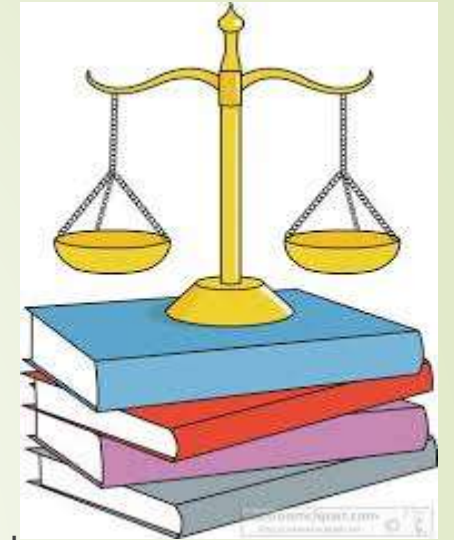


# Research Skills Development Framework

- Research is a crucial part of learning and used in finding out more about a topic or issue and to have a better understanding of the subject matter. Law courses are no exception as most of the legal issues are only effectively addressed through research of a particular law and how it applies in the jurisdiction.

# Torts 1 - relationship with RSD Framework

- RSD Framework was introduced in Torts 1 in first semester 2017
- Torts course tries to teach students areas of the law in relation to trespass against a person (such as assault, battery, false imprisonment), the law of negligence and the various types of claims a person may be able to bring under the tort of negligence and various other civil liability aspects.
- These laws in relation to battery, false imprisonment and negligence are usually not found in the legislation of country as they have developed over time through various cases known as precedents and these precedents are generally followed when deciding new cases. In order to understand these legal principles, it is very important that a student knows how to find a case and then knows how to analyse the case and apply it to a given fact scenario.





# Trespass Against a Person in Torts

- ▶ The law relating to trespass against a person involves acts such as assault, battery and false imprisonment and these are very commonly found in our Pacific societies. Battery can occur during sporting activities such as rugby which is a very common sport for the Pacific islanders. So what rights does a person have in relation to bringing an action against the trespasser is important?

# Examples of Battery in the Pacific Societies

- ▶ Cole v Turner – any touching to a degree that may do harm is battery. That the act was intentional, offensive and non-consensual contact. (volenti non fit injuria- signing up for contact sports-acceptable contact within the rules of the game).


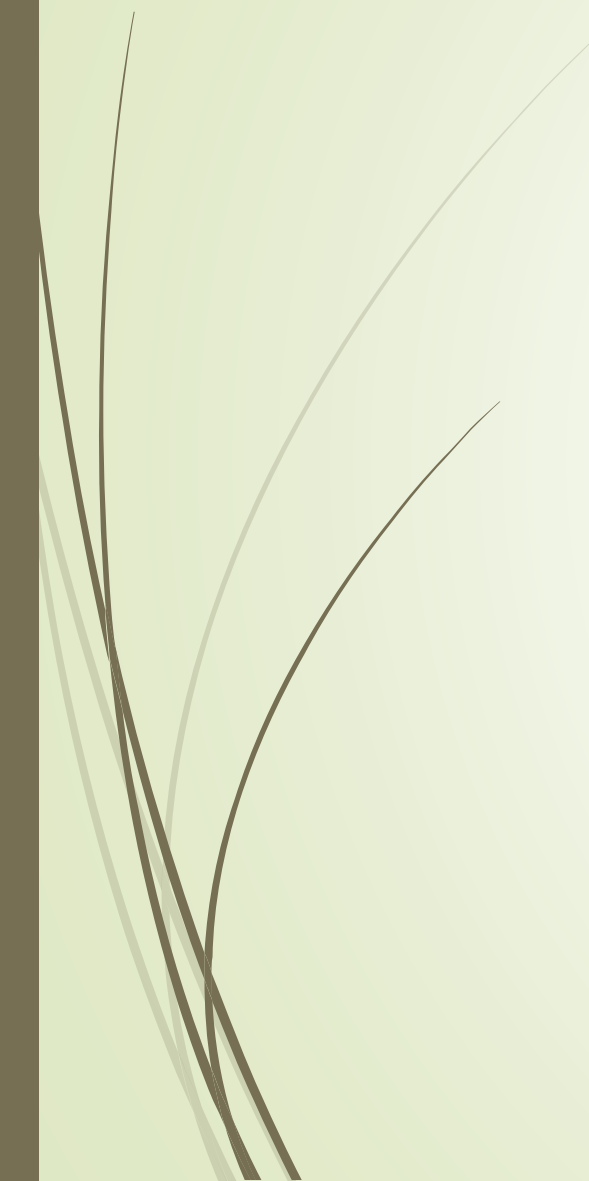






# Whiteside v Akosawa [2014] SBHC 46; HCSI-CC 311 of 2013 (29 April 2014)

- ▶ The claimant is a Fiji citizen employed as General Manager by the Russell Islands Plantation Estate Ltd ("RIPEL").
- ▶ At about 2.30am on Sunday 9 June 2013, the claimant was arrested at Heritage Park Hotel on allegations that his residence permit had expired on 6 June 2013 and was living illegally in the country.
- ▶ On arrest, he was taken to Rove Police Headquarters where he was placed in custody.

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- In his claim, the claimant alleged that he was unlawfully arrested, assaulted and falsely imprisoned from 2.30am to 9pm (18 ½ hours). He therefore seeks damages for malicious invasion of his private rights, unlawful arrest, false imprisonment, trespass to goods, battery and assault. He also claims aggravated and exemplary damages and compensation under section 17 of the Constitution.



Is battery being committed here?



# Assault and False imprisonment:

## Latu v Leone [2007] TOLawRp 34; [2007] Tonga LR 196 (14 September 2007)

- ▶ The plaintiffs claimed damages against the first defendant, a serving police officer, and the Kingdom for alleged assault and false imprisonment on 6 May 2006 when the plaintiffs were arrested and placed in the cells at Angaha Police Station at 'Eua. The first defendant counterclaimed seeking damages in the sum of \$1200 for unlawful assault and \$30 for damage to clothing. The defendants alleged that Kolo was arrested on the night in question somewhere near Maxi's Discotheque when he was involved in obstructing the course of justice in that he had attacked a police officer as he was in the process of arresting Latu.




➤ Held:

- 1. The court held that at the time of his arrest, Latu was obstructing the course of justice and in those circumstances there was no unlawful assault on him. Latu's claim for damages was dismissed with costs. The first defendant was awarded the sum of \$200 on his counterclaim against Latu together with \$15 being half the cost of the damaged T-shirt along with costs.
- 2. The plaintiff Kolo failed in his claim for damages for wrongful imprisonment as the court held that he had been lawfully arrested for obstructing the course of justice.
- Kolo was awarded general damages in the sum of \$5,000 along with \$1000 for exemplary damages together with interest at 10% and costs.

# Rokotuiviwa v Seveci [2008] FJHC 221; HBC374.2007 (12 September 2008)- False Imprisonment

- ▶ The Plaintiff's story is of a middle aged religious man who had never been inside a cell being wrongly arrested upon the basis that he carried the same name as that of a person wanted for an outstanding enforcement warrant. Despite protestations as to his innocence, the Police arrested and detained him for some 22 hours forcing him to be held overnight in an overcrowded cell without a mattress, a pillow or blanket and doubtful whether it met acceptable sanitary and Occupational Health and Safety (OHS) conditions. Upon their error being verified sometime mid-morning the following day, the Police did not immediately release the Plaintiff, rather, they detained him for approximately three more hours without explanation and eventually released him without even offering him an apology.

- Held:
- (a) That that the Plaintiff was unlawfully arrested and then falsely imprisoned for approximately 22 hours;
- (b) That I am satisfied that in the present case the Plaintiff suffered “a loss of liberty and dignity” as a result of his unlawful arrest and **false imprisonment** by the Defendants;
- (c) That it is also clear that the Plaintiff twice suffered the humiliation of being arrested by the Police. On the first occasion, he was released soon afterwards and did not press for damages in relation to that matter at the hearing. On the second occasion, the First Defendant did not make any background check as to the Plaintiff’s identity and/or the person named in the warrant such as to result in the Plaintiff being unlawfully arrested. Indeed, the Plaintiff was not listened to when he tried to explain to the First Defendant that a similar error had occurred previously. As noted above, here was a middle-aged religious person without any prior convictions being told that they had indecently assaulted a police woman and that they were on a warrant to go to prison!
- (d) That the timing of the detention from late afternoon, overnight and then into the next afternoon meant that, in reality, the Plaintiff, spent two days falsely imprisoned;
- (e) **That for the initial shock and humiliation of the unlawful arrest, I award \$2,500;**
- (f) **That for the false imprisonment , I allow two days at \$2,500 per day totalling \$5,000;**

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- (h) That for aggravated damages, I allow \$1,000 for the unlawful arrest and \$1,500 per day for each day of the false imprisonment making a total award of for aggravated damages of \$4,000;
  - 
  - (i) This means that the total I award for general and aggravated damages is \$11,500.
  - 
  - [153] Therefore, it is the finding of the Court that in relation to “exemplary damages”, although not specifically pleaded, it was voiced in submissions and there is clear evidence to support it in relation to both the unlawful arrest and false imprisonment . The Court orders separate amounts of \$2,500 for the unlawful arrest and \$5,000 for the false imprisonment making a total award of \$7,500 for exemplary damages.



# Negligence

- Similarly, the law of negligence is nothing new to the Pacific societies. Negligent acts are committed and a person may be affected by it, so what redress does this person have against the person who was negligent?
- Defendant owes a duty of care, breach of that duty resulting in damages or injury suffered by Plaintiff
- A very common example is holding employers liable for the acts of the employee's example in an accident case where the driver of the vehicle was just an employee.

# Ali v Patterson Brothers Shipping Company Ltd [2012] FJHC 1152; HBC41.2008 (8 June 2012)

- The plaintiff was an instructor in sports who coached soccer and athletics. He accompanied some of his students to Suva to take part in a competition. He paid \$80.00 and purchased a ticket from the 1st defendant company for a return voyage from Labasa to Suva. He left for Suva on 13.11.2007.

He paid for his ticket and travelled to Nubuwalu by bus and from there he travelled to Suva by ferry. After taking part in the competition, he returned to Nabuwalu by ferry and from Nabuwalu to Labasa by bus. When he was travelling from Nubuwalu to Labasa he met with the accident.

**Patterson Brothers**, the 1st defendant was the travel organizer which was responsible for his journey to Suva and return to Labasa.

According to the plaintiff, on his return trip he got off the ferry on 18.11.2007 and boarded the bus at Nubuwalu. The accident happened at Tabia, a place between Natuva and Labasa.

According to the plaintiff's evidence, there were two buses travelling at a very high speed. The plaintiff was travelling in bus No. BD 653 and bus No CX 565 was travelling in front of BD 653.





- ▶ When BD 653 was trying to overtake CX 565, CX 565 came to the middle of the road and collided with BD 653. Due to the impact of the collision the rear bus in which the plaintiff was travelling fell off the road and hit a FEA post. The plaintiff was sitting in the middle of the bus and his legs were struck between the metal of the bus and the FEA post.

Half an hour later a bulldozer came and pulled the bus. Then only the plaintiff's legs were freed. Both his legs were crushed and his right leg was hanging above the knee. Thereafter, the plaintiff was taken to the Labasa hospital where both his legs were amputated.

- ▶ In **Lister v. Hesley Hall Ltd [2002] 1 A.C 215** it was held that if the employee's tort was so closely connected with his employment that it would be fair and just to hold the employer vicariously liable.
- ▶ The worker was an employee if the work done was subject to the control and direction of the employer as to the manner in which it was to be done. **Per Latham CJ in Humberstone v. Northern Timber Mills [1949] HCA 49; (1949) 79 CLR 389 at 396.**


### Summary of awards:

The summary of awards and costs are as follows:

<b>General damages</b>	\$ 130000.00
<b>2. Interest on general damages</b>	\$ 19066.00
<b>3. Special damages</b>	\$ 29350.00
<b>4. Interest on special damages</b>	\$ 4306.00
<b>5. Future nursing care</b>	\$ 104000.00
<b>6. Future medical cost</b>	\$ 5000.00
<b>7. Future medical care</b>	
<b>Cost for prosthesis -</b>	\$ 240000.00
• <b>Air fare accommodation &amp; meals</b>	\$ 110000.00
<b>8. Loss of future income</b>	\$ 20000.00
<b>9. Costs</b>	\$ 6000.00
<b>Total payable</b>	\$ 667,722.00



► **Order:**

- [106]. 1. *The action is decided in favour of the plaintiff in the sum of \$667,722.00.*
  - *The 1st, 2nd and 3rd defendants are jointly and severally liable to pay the plaintiff the aforesaid sum of \$667,722.00*
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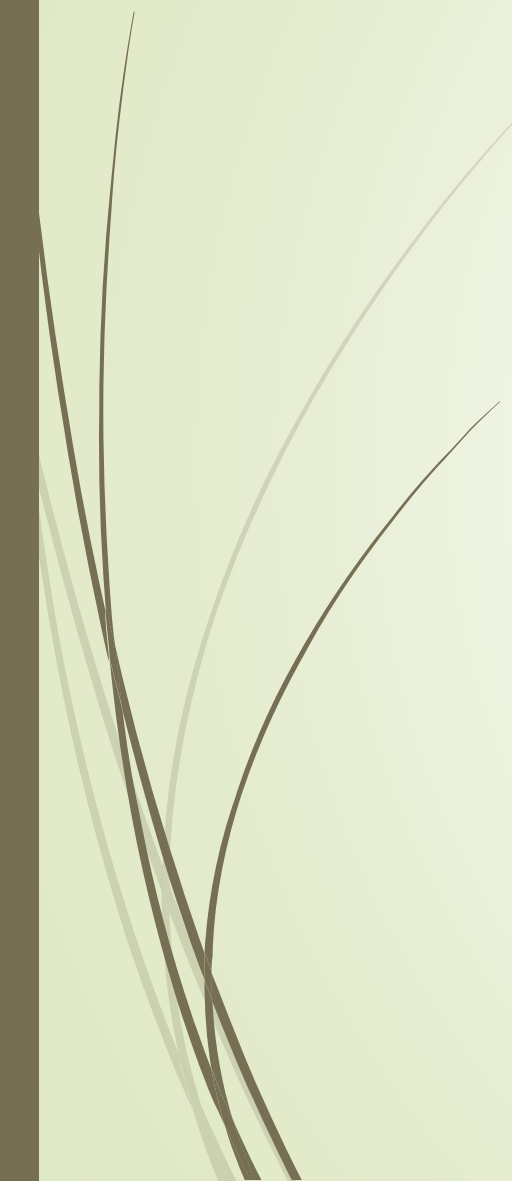
- Many such cases are prevalent in the Pacific societies and if skills to conduct these research are not taught to the Pacific island students, many such affected parties may not get compensated for the wrongs or negligent acts committed against them





# Introduction of RSD Framework into the Course

- Elements that develop research skills of students is incorporated in the course guide and levels of participation are formulated.
  - Different marks are allocated for different elements of research
  - Assessment is aligned with RSD Framework
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- The RSD Framework clearly lays down the criteria on which students will be marked.
  - What steps are used by the Law School -students are taught to use **IREAC** and are asked to find local or regional cases- they are aware that with good examples they will earn more marks. (Issue, Rule, Explanation of Rule, Application and Conclusion).
  - Also for referencing they will specifically get marks for referencing and style of writing.
  - So in order to gain these marks they put in a lot of effort to do research in the region (pacific island countries).
  - Encourages assessments to include Teamwork- tutorials, role plays, Moots
  - So they learn how the law developed and how it is being applied to the region specifically to their own countries and whether these cases are sufficient or if the law needs to be expanded to accommodate other scenarios.

- ▶ Also at the beginning of the semester students were shown how to find cases in the library. Create an interest, curiosity amongst the students for that subject.
- ▶ Of course with advancement of technology students feel they can find everything on Google.
- ▶ However when asked if they knew how to find a particular case, they said they could find a summary but not the full case online.
- ▶ So they were taken to the library and had a session on how to find law reports and how to look up cases in full hard copies.
- ▶ This session made a huge difference and students can now find cases from their own country's Law Reports which previously they were not familiar with.
- ▶ Of course the more recent cases are available on Paclii. But the precedent deciding cases are found in these old Law Reports.



LW203 Torts 1 - Marking Guidelines for Written Assignment					
GUIDELINES	MARKING CRITERIA	Total Mark	Highly Satisfactory (71-100%)	Satisfactory (50-70%)	Unsatisfactory (<50%)
<b>INTRODUCTION</b> States the purpose of assignment (intent, thesis statement) Defines and unpacks key terms/legal issues Provides a brief plan for assignment	Purpose of assignment (intent, thesis statement) <b>EMBARK AND CLARIFY</b>	1	Precise and clear	Satisfactory but lacks precision and clarity	Does not represent the rest of the content. Inadequate
	Defines and unpacks key terms/issues <b>EMBARK AND CLARIFY</b>	1	All or most key terms/ issues sufficiently defined and unpacked	Up to half of the key terms/ issues are sufficiently defined and unpacked	Key terms/ issues inadequately defined
	Plan for assignment <b>EMBARK AND CLARIFY</b>	1	Precise and clear	Satisfactory but lacks precision and clarity	Does not represent the rest of the content. Inadequate
<b>DEVELOPMENT</b> Addresses all parts of the question Presents original arguments using own words Evidence of analysis/synthesis of legal issues Personal position clear in the assignment Use of IREAC Cites examples	Addresses all parts of the question <b>FIND AND GENERATE</b>	5	Answers all aspects of question	Answers some parts of question 50%	Off topic and ideas do not address topic
	Presents original arguments using own words <b>EVALUATE AND REFLECT</b>	4	Original argument(s) presented	Some argument(s) presented	Limited or no argument
	Evidence of analysis/synthesis of legal issues <b>ANALYSE AND SYNTHESIZE</b>	6	Clear analysis/ synthesis based on relevant issues	Useful analysis but some lack clarity	Analysis stated lacks legal base
	Personal position clear in the assignment <b>ANALYSE AND SYNTHESIZE</b>	2	Author's position clear	Author's position is subtle	Author's position not stated or not clear
	Cites examples, whether local, regional or global <b>FIND AND GENERATE; EVALUATE AND REFLECT</b>	3	Effective use of examples	Good use of examples	Limited, contradicting examples
<b>CONCLUSION</b> Summarizes main arguments Restates and stresses own position	Summary of main arguments; fit contents Restates own position <b>EVALUATE AND REFLECT</b>	2 2	Precise and fitting conclusion.	Conclusion does not fit the contents or is not precise.	Conclusion is not fitting and is not precise.
	<b>REFERENCES</b> Cites credible primary and/or secondary references in footnotes Adopts SOL Referencing Guide (A. Jovitt, CSP School of Law Guidebooks, Legal Referencing (2006))	Footnotes, bibliography (or reference list) <b>COMMUNICATE AND APPLY ETHICALLY</b>	2	Correct and complete citations and a bibliography (with references).	Partly correct or partly complete footnotes and bibliography
Credibility of references <b>EVALUATE AND REFLECT</b>		1	All works cited from credible sources	Work cited is generally from credible source	Some works cited lack credibility
<b>ACADEMIC STYLE</b> Presents coherent assignment structure Formal writing style used No spelling and grammatical errors Organize; communicate	Coherent structure and formal writing style <b>ORGANISE AND MANAGE</b>	1	Coherent assignment structure, correct style used	Assignment structure mainly coherent with mainly correct style	Assignment lacks coherence, style is inappropriate
	Grammar and Spelling; word limit; <b>COMMUNICATE AND APPLY ETHICALLY</b>	4	Correct grammar and spelling; within word limit	Some spelling and grammatical errors; over or under word limit	Numerous spelling and grammatical errors; over or under word limit
		<b>35</b>			



# What RSD Framework Required Students to do

- Requires students to do research
- Learn how to do research in the region
- Where to conduct the research
- Learn from other jurisdictions
- Apply the research to their own jurisdictions





# How RSD Framework contributes to better Research Skills Development

- Motivates students to learn about other pacific societies and how they deal with the same issues
- That how they can use the same or similar approaches to resolve issues in their own societies
- Without proper research skills students will not be able to find cases for other regional countries and use them for the benefit of their country.

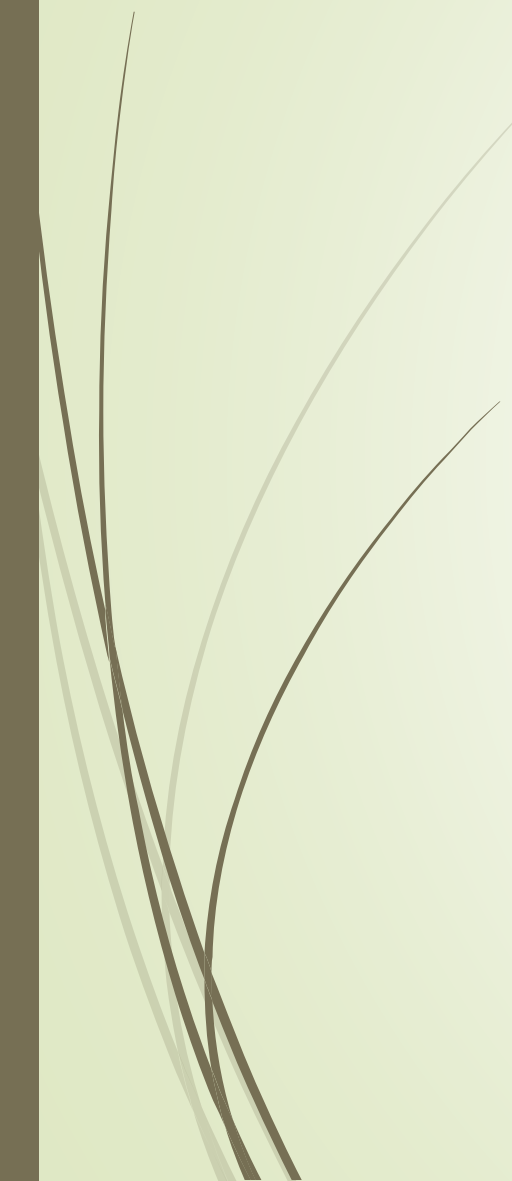
To graduate as lawyers who are well versed with the laws of the Pacific countries is very important. As our students will deal with many cases from our Pacific societies and need to know how to conduct research on relevant laws in that country.

RSD Framework lays down guidelines and also tells students whether they are performing satisfactorily or not. It encourages students to try and do research of cases from the region which are relevant to the assignment problem. They are aware they would lose marks if they do not fulfill the criteria under RSD Framework.



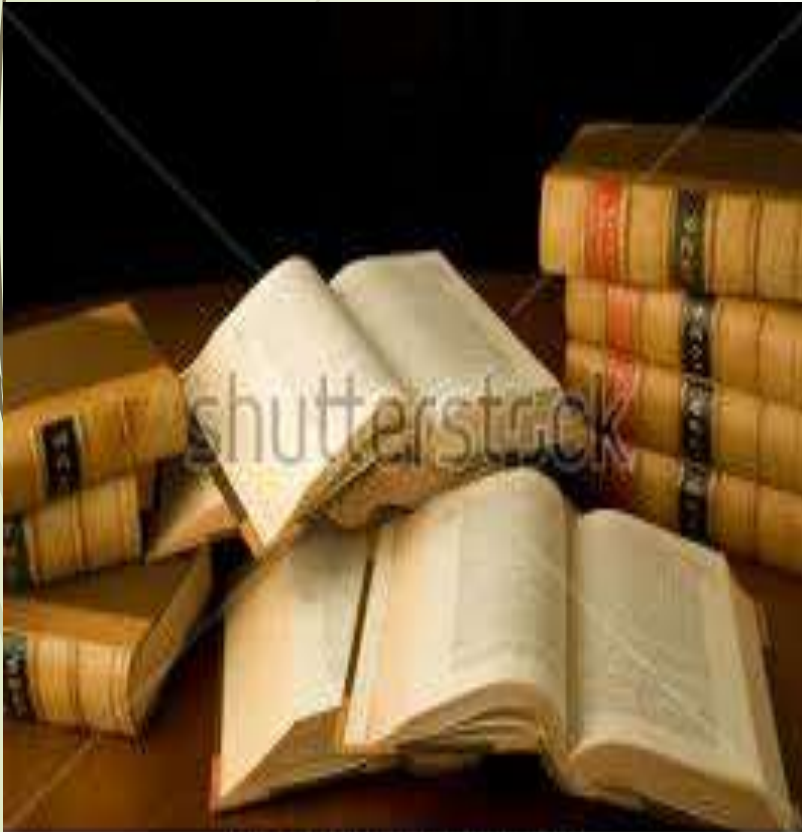
# How RSD Framework worked for Torts

1?

- The results were quite good. More students did thorough research when doing the assessment than last year.
  - They understood how to do the research, and how to find the cases, analyse them and apply them to the problem.
  - RSD Framework made it very clear on assessment criteria and they knew which areas to focus on specifically.
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# Advantages of RSD Framework


- ▶ Staff can discuss what types of assessment they want for the 100 level students or 200 level students etc. and split the various assessment between different courses.
- ▶ Students know from the start of the semester in detail what is expected from them in terms of performance in assessments for that course.
- ▶ Ensures that staff teach students how to do research and assist in developing the research skills of students.





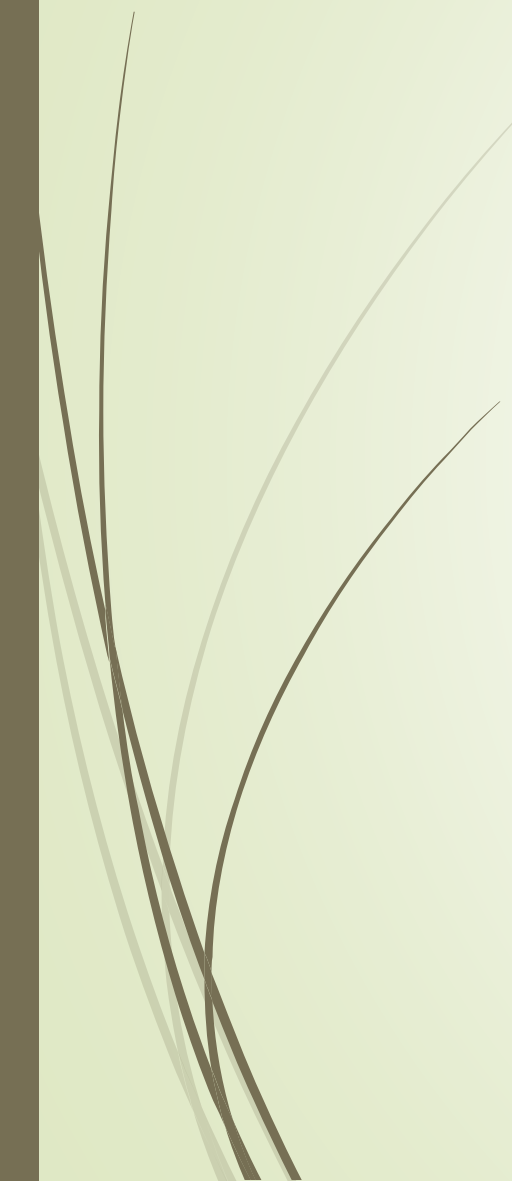
# Weaknesses of RSD Framework

- Once RSD Framework is included in the course guide, it has to be followed by assessments which correspond to the RSD criteria.
- At times it is difficult in cases when a staff leaves and another one takes over. (It works if you have been teaching the same course for some time).
- Requires regional research – challenges are internet, wifi, resources at regional centres,
- online students

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- Despite the advantages above, I still think that a lot more work can be done in this area of RSD Framework.
  - For starters, this was the first time this framework was used in Torts 1. Notifications were received by email that our course guide should have the RSD Framework inserted by way of the table.
  - So it was seen as a requirement where a box has to be ticked to insert this table and it was done.
  - Many staff are new to this and unless they understand how this works, they cannot implement it effectively with the students.
  - It is great that we are having this symposium so that staff learn more about RSD Framework and implement it in a more efficient and effective way in their courses.
  - However more training is needed in this area so that staff actually come up with assessments which address these areas of Research Skills Development for the Pacific people and societies.



# Recommendations

- Have more seminars and workshops for staff and students to encourage the learning process and to share regional ideas
  - Reiterated, incentives and encouraged at Faculty and School Level every semester
  - Make more resources available to our students here, online and regional
  - Increase face to face contact for our regional online students
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# The End

