

4. FOREIGN JURISDICTIONS: RECESSES OF THE SUPERIOR COURTS

In comparing our recess system to other recess systems internationally, it must always be borne in mind that circumstances **differ** from country to country, and from court to court.¹

A **comparison** of the South African High Court terms and recesses with those of foreign courts of similar jurisdiction, shows the following:

1. Our **recesses**, at **14 weeks**, are among the **lengthiest** in the world.
2. Where the need has arisen, **other countries** have **altered** their **recess system**. This they have done in three chief ways:
 - 2.1 by **staggering recesses** (in varying degrees), and/or
 - 2.2 by creating **hybrid courts** (consisting of both high court judges and lower court judges), and/or
 - 2.3 by establishing **separate criminal benches** in order to ensure continuous sessions.
3. In some jurisdictions, pressure of work has effectively caused recesses to be **abolished** in practice.

Length of recesses

- 4.1 In the **United Kingdom**, the Crown Courts (which deal exclusively with criminal matters) consist of Circuit Court judges who have approximately **7 weeks** of (staggered) leave per year

¹ In **Denmark, Hong Kong, Australia, Ireland, Northern Ireland, India, New Zealand, U K and U S A** there is a jury system.

In **Ireland and Northern Ireland** the jury system is excluded in terrorist type cases.

In the **Netherlands, Israel, Germany, Sweden and Singapore** there is no jury system.

Hong Kong, Australia, Israel, Ireland, Northern Ireland, India, New Zealand, Singapore, U K and U S A have an adversarial system.

Germany, Sweden, Denmark, Netherlands and Uruguay are countries with a civil law system. **Denmark** has, however, introduced aspects of trial found in common law countries.

and High Court judges who have **14 weeks** of recess per year.²
[see Appendix E].

- 4.2 In **Ireland**, the Central Criminal Court, similarly, has a recess of **14 weeks** per year, spread over **4 vacations**. [see Appendix F].
- 4.3 In **Northern Ireland** the High Court, the Crown Court and the County Court have a recess of **14 weeks** per year spread over **4 vacations**.
- 4.4 **Australia:** [see Appendix G]
- 4.4.1 The Supreme Court of **New South Wales** has a vacation of **10 weeks** annually, consisting of a **fixed** summer vacation of **6 weeks** (starting the week before Christmas) and a variable vacation of not more than **4 weeks**, regulated by the Chief Justice, who can stagger these vacations if he so wishes. A further **week** of leave is allocated for judgment writing.
- 4.4.2 The Supreme Court in **Queensland** has a recess of **8 weeks** a year – **6 weeks**, from before Christmas to the end of January, and **2 weeks** at midyear, with **4 weeks** scattered across the year for judgment writing.
- 4.4.3 The Supreme Court of **Victoria** has a recess of **12 weeks** a year – **6 weeks** in summer [starting a week before Christmas], **2 weeks** in winter and **4 weeks** at Easter [following Easter Monday].
- 4.4.4 The Supreme Court of **Western Australia** has a recess of **6**

²3 weeks at Christmas, 2 weeks at Easter, 1 week at Whitsun and the two summer months of July and August.

weeks per year – **4 weeks** in summer and **2 weeks** in winter.

- 4.5 The High Court of **New Zealand** has a recess of **7 weeks** a year: a **long vacation** from the 20th December to the end of January, and an **Easter vacation** from the day before Good Friday to the close of the Saturday following Easter. [see Appendix H]
- 4.6 The Court of First Instance in **Hong Kong** has a recess of **7 weeks** a year. This recess does **not** apply to **criminal trials**, which sit continuously. [see Appendix I]
- 4.7 In Supreme Court of **Singapore**, the recesses of **9 weeks** a year comprise a **midyear** court vacation which for the year 2003 ran from 26 May to 20 June and the **end of the year** vacation, which will run from 1 December 2003 to 2 January 2004. [see Appendix J]
- 4.8 **India:** [see Appendix K]
- 4.8.1 The **Supreme Court** of India has a recess of **9 weeks** a year:
 1 - 3 January 2003
 17 - 23 March 2003
 11 May - 6 July 2003
 1 - 5 October 2003
 20 - 26 October 2003
 22 - 31 December 2003
- 4.8.2 The **High Courts** of India, however, are more comparable to our High Courts:
- 4.8.3 The High Court of **Delhi:**
 The recesses consist of **6 weeks**, namely a summer vacation

from 2 June to 5 July 2003 inclusive, and a winter vacation from 25 December 2003 to 1 January 2004 inclusive. Although there are some 23 public holidays, this is offset to a degree by **6 working Saturdays** per year.

4.8.4 High Court of **Chhattisgarh**:

The recesses consist of **6 ½ weeks** namely, a summer vacation from 12 May to 13 June 2003 inclusive, and a winter vacation from 22 December 2003 to 1 January 2004 inclusive. The 28 public holidays are offset to a degree by **12 working Saturdays** per year.

4.8.5 High Court of **Himachal Pradesh**:

The recesses consist of **11½ weeks**, with two summer vacations from 16 June to 21 June 2003 inclusive and 2 to 31 July 2003 inclusive, and a winter vacation from 13 January to 22 February 2003 inclusive. The 22 public holidays are offset by **28 working Saturdays** per year.

4.8.6 High Court of **Bombay**:

The recesses consist of **7½ weeks**, with a **summer** vacation from 5 May to 1 June 2003 (both days inclusive), an **October** vacation from 20 October to 2 November 2003 (both days inclusive) and a **winter** vacation from 22 December 2003 to 4 January 2004 (both days inclusive). The 25 public holidays are offset to a degree by **5 working Saturdays** per year.

4.9 The District Court in **Israel** enjoys **6 weeks'** recess annually, from 15 July – 1 September. The court sits from 08:30 – 13:00, Sundays to Thursdays and on Fridays there is a duty roster for emergency rosters only. [see Appendix L]

- 4.10 The District Courts in the **Netherlands** ('rechtbanken') have an annual leave of approximately **4 weeks**, which is normally taken during the summer holiday period, from 15 June to the end of August. The winter holidays apply at the end of December and the beginning of January. During these periods there will be **half** the amount of court sessions as compared to other months. [see Appendix M]
- 4.11 In **Denmark**, all the courts sit **throughout the year** except for a short recess during the **summer** holiday, usually **3 weeks**. Only urgent cases are being dealt with during the summer recess. The judges are granted **5 weeks'** vacation a year provided that such vacation does not interfere with the daily work of the court. [see also Appendix M]
- 4.12 In **Germany**, all criminal cases are dealt with on a **continuous** basis and leave is staggered. Court holidays were **abolished** with effect from 1 January 1997.
- 4.13 In **Sweden**, the court structure is based on a three-tier structure comprising the District Courts, Courts of Appeal and the Supreme Court. Swedish Courts do not sit in terms nor do they have any court vacations. However, the months of July and August are traditionally "**light schedule**" months for the courts and they tend to deal with urgent matters only. Most court personnel take their vacation leave during this period.
- Swedish courts do not sit every working day of the year but rather sit as pressure of business in the courts demand.
- 4.14 In **Uruguay**, the courts of first instance (sometimes referred to as

lawyer courts – “juzgados lerados”) have a recess of **8 weeks** a year namely 25 December to 31 January and a midyear recess from 1 – 20 July. [see Appendix N]

4.15 In the **United States of America**, there exists a **Federal Court System** and a separate, **State Court System** in each of the States.

There are as many State legal systems as there are States³. All State criminal trial Courts with a jurisdiction similar to our High Courts, do **not** have **recesses** and have a policy of not closing their doors, except on public holidays. The courts continue throughout the year, while the judges take their annual vacation on a staggered basis. Most State judges work between 195 and 230 days each year. ⁴ The **average** is between **215 to 220 working days** a year.⁵

A chart relating to the working days of probate judges demonstrates this point.⁶

Accordingly the **average leave** of a State judge varies **between 3**

³ The **structure of State Courts**, like that of the Federal Courts, is in the form of a pyramid. Most States have a three-tiered judicial system composed of a **trial court** level (variously called Superior Courts, District Courts or Circuit Courts), an **Appellate Court** (often called the **Court of Appeals**) and a **court of last resort** (usually called the **Supreme Court**). Some States have only one level of appeal.

⁴ Don Kelman, National Centre for State Courts: There are 365 days each year, from which must be subtracted: weekends [104], legal holidays [10/12, according to the State], annual leave and sick days [a minimum of 15 and as many as 30 days and sometimes more].

⁵ Judge Roger Warren, president and CEO of the National Centre for State Courts, Washington.

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STATE	YEAR [DAYS]	STATE	YEAR [DAYS]	STATE	YEAR [DAYS]
KANSAS	224	MISSOURI	224	DELAWARE	222
NEW YORK	221	COLORADO	220	GEORGIA	220
OREGON	220	RHODE ISLAND	220	ARKANSAS	218
HAWAII	218	CALIFORNIA	216	SOUTH DAKOTA	216
MICHIGAN	215	NEW MEXICO	214	WASHINGTON	214
CONNECTICUT	213	WISCONSIN	213	NEBRASKA	211
UTAH	211	LOUISIANA	209	WEST VIRGINIA	209
NORTH DAKOTA	205	MINNESOTA	202	ALABAMA	200
24 STATE AVERAGE IS 215					

and 6 weeks, as shown below.

- 4.15.1 The **Connecticut Superior Court** hears cases all year round. However, the **Supreme and Appellate Courts** have a **recess** period in July and August. Judges of the Superior Court (which is the equivalent of our High Court) are entitled to vacation and personal leave at any stage during the vacation year, which runs from 1 September to 31 August. Each judge is entitled to **20 vacation days** and **5 personal leave** days.
- 4.15.2 In **Delaware**, all courts sit **all year round**. Traditionally, the Supreme Court (the State Appellate Court) used to close during July and August; however, now, although the Supreme Court has **a light schedule during August**, it nevertheless remains open for business. Each justice is entitled to **6 weeks' annual leave** to be taken at his/her own discretion during the year.
- 4.15.3 The trial Courts of **New Jersey** are open throughout the year, except for the week between Christmas and New Year's day. [see Appendix O]
- 4.15.4 In **Alaska**, the courts sit on a **continuous basis** and each Supreme Court justice, Court of Appeal judge and Superior Court judge is entitled to an annual vacation of not more than **30 working days**. The Chief Justice of the Supreme Court may assign one or more justices, judges or magistrates to attend conferences, seminars or schools to further legal educations or professional qualifications. **Administrative leave** authorised for such purpose shall not be counted as vacation leave.
- 4.15.5 **Federal trial Courts** are known as **U S District Courts** and are

not required to hold formal terms of court. Recognizing that court terms have become an **anachronism**, in 1968, congress abolished statutory requirements for the holding of formal terms in the District courts⁷.

- 4.15.6 While an **entire** court of Appeals or District Court is rarely, if ever, in recess for any significant period of time, individual judges may travel on judicial business, take vacations or go on sick leave. In 1967, the Judicial Conference (the policy-making body of the Federal Judiciary) adopted a policy that the vacations of individual judges should **not exceed 1 month per year** in Circuit and District Courts.

Recently the idea of **sabbatical leave** programs for judges has been proposed and is being discussed.

CONCLUSION:

The recess system in the Supreme Court of Appeal and the Constitutional Court, in South Africa, is **consistent** with that of their counterparts in other jurisdictions. As these courts are Appellate Courts, its judges give many **written**, as opposed to *ex tempore*, judgements. **Preparation** of such written judgements takes time; also there are large amounts of material to be **read** before an appeal is heard.

Although it could be argued that the **jury system** leaves less work for the judge, who does not have to pronounce judgement, it should nevertheless be borne in mind that, in the High Courts, (criminal) judges are **assisted** by assessors and researchers and are given time to prepare judgements which are, generally, oral.

⁷ See 28 U.S.C. p. 138