



Solution of Final Test

Study Question 1

*Do Cambodian citizens have a right to judicial control of administrative acts?
Quote the relevant international and national legal provisions.*

Yes, Cambodians have a right to judicial control of administrative acts (Articles 39 S.2 and 128 III CC and Article 2 III a ICCPR)

Study Question 2

What is the advantage of having a bench of three judges deciding a case instead of just one single judge?

The advantage is that it is more difficult and more expensive to bribe three judges than just one judge. As the judges control each other it is more difficult for each of them to willingly neglect the law and the facts.

Furthermore a bench combines the knowledge of more than just one judge.

Study Question 3

Why is it important that all court proceeding steps are properly recorded in a protocol and all documents are kept properly in files?

Only well kept files and proceedings protocols enable the higher instance court to check lower instance court decision for procedural or other mistakes. To keep files and protocols also makes it more difficult for the judge to neglect the law and the facts and to conduct an unfair trial.

Study Question 4

*The performance of a judge is controlled by various actors.
Name at least 5 of them and describe the way they control the judge.*

- the **parties and their lawyers** can reject a biased judge
- the **higher instance court** can turn down a judgment
- the **Supreme Council of Magistracy** can sanction judges who violate the code of conduct
- the **free press and the media** can observe, criticize and comment the judges' actions
- the **court president** can instruct a judge to stick to the code of conduct
- the **prosecutor** can accuse a judge for violating the criminal code
- the **colleague judges** of a bench can vote against the proposal of a judge



Study Question 5

Why must a judgement give reasons?

The **right to appeal** (Article 14 V ICCPR) can not be exercised effectively without knowing the reasons for a judgment because it is not possible to point out misunderstandings of facts, procedural errors or simple law mistakes in the judgement. Not giving reasons for a judgement also makes it easier for a judge to hide his/her true motivation for making the judgement (like lack of legal knowledge or being partial and biased).

Study Question 6

Fair speed of a trial means it shall not proceed too slow but also not too fast.

Name

a) *one regulation that ensures that the proceeding is speedy:*

Every arrested person has the right to be **promptly** informed about the charges (Articles 9 II and 14 III a ICCPR) and to have **prompt** judicial control of the legality of the arrest. A final judgement must be delivered **without undue delay** (Articles 14 III c and 10 II b ICCPR)

b) *one regulation that ensures that the proceeding is not too fast:*

Every defendant has the right to get **sufficient time to prepare** his/her defense (Article 14 III b ICCPR) and has the right to **talk without interruption** (Article 14 I 1 ICCPR).

Study Question 7

During a criminal trial the defendant says that s/he has given his/her confession only because s/he has been tortured by the police.

What can the defense lawyer do? Name all the different options!

The lawyer can

- file a **procedural claim** that this **confession** is excluded from the trial because it is **not admissible as evidence of guilt** (Article 38 V CC) and/or
- file a **procedural claim** to **postpone the trial** to get time to investigate his/her client's claim and/or
- **file a lawsuit at the civil court** for damages against the policemen and/or
- **file a criminal accusation with the prosecutor** against the policemen and/or
- **file a claim with the police department** to impose a disciplinary sanction on the policemen.



Study Question 8

The judge has asked a witness in his/her office. The defendant and the defense lawyer were not allowed to take part in that questioning.

What rights of the defendant have been violated by this judge?

Quote the relevant regulations!

Questioning witnesses is an essential part of every trial. By doing this outside the courtroom while the defendant is absent the judge violated the **right** of the defendant **to be present** during the trial (Article 14 III d sentence 1 ICCPR) and also violated the right of the defendant **to question the witness** (Article 14 III e ICCPR).

Study Question 9

How could the composition of the Supreme Council of Magistracy (SCM) members be improved to be more independent? Give a reason for your proposal.

The present composition of the SCM does not ensure enough independence of this body because only a minority of members is elected by the judges themselves. All the other members belong directly to the executive (Ministry of Justice) or are just higher ranking members of the judiciary who have been appointed by the executive in the past.

To make the SCM more independent the **variety of its composition could be increased** by including members of the **Bar Association**, of the **Civil Society** (NGOs like “Legal Aid Cambodia”, etc) or members of the **National Assembly** from different parties or **law professors**.

Study Question 10

What does the “principle of checks and balances” mean?

Why was this principle created?

This principle means that the powers of a state must not only be separated but that they also need to **control and balance each other**. The reason is that all these powers are operated by human beings and **human beings themselves are not perfect** but make mistakes and need control to prevent them from abusing their power.

Study Question 11

How do the legislative power and the judicial power control and check each other?

The judiciary can check the constitutionality of laws that have been adopted by the National Assembly by presenting laws to the Constitutional Council for examination (Articles 140 and 141 CC). Furthermore the criminal courts can punish members of the Assembly for criminal acts when their parliamentary immunity has been lifted.



Study Question 12

What are the main functions of the Bar Association?

The Bar Association represents the interests of the lawyer's profession in the public for example by lobbying a new Law on the Bar or for amendments to it or by giving comments on draft laws concerning proceedings rules, etc.

Moreover the Bar Association as an independent body is responsible to control its members and to sanction them in case of violations of the code of conduct.

Finally the Bar Association is organizing a Legal Aid System with the financial support of the government and is organizing trainings to improve the legal knowledge of the Bar Association members on new laws or legal topics.