



ST. VINCENT AND THE GRENADINES





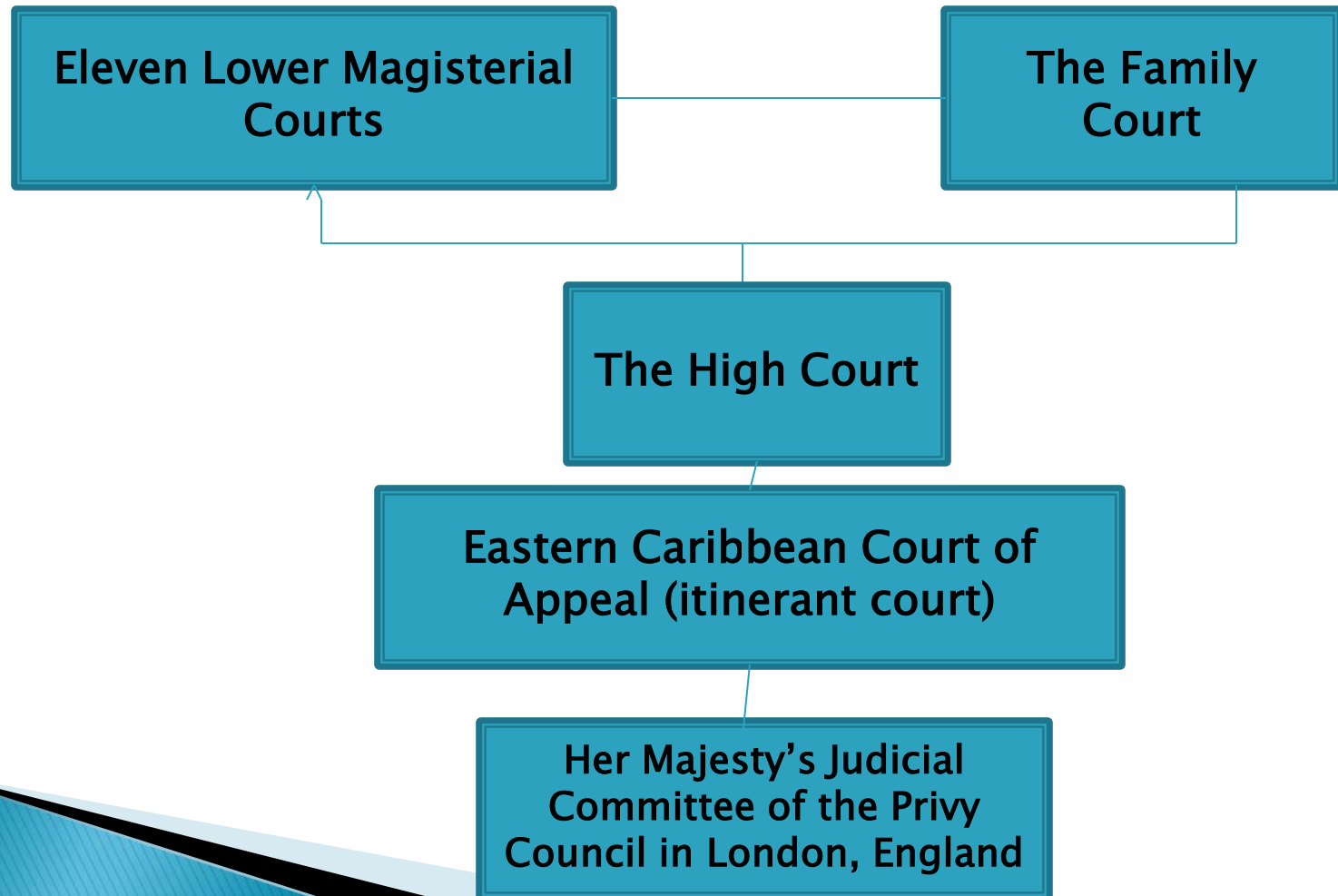


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Criminal and Civil Courts

The Process





LEGAL SYSTEM

St. Vincent and the Grenadines



LEGAL SYSTEM – Lower Courts

- ▶ There are eleven lower courts in three Magisterial Districts that exercise both civil and criminal jurisdiction up to a certain limit.
 - There are three official Magistrates:
 - Chief Magistrate,
 - Senior Magistrate, and
 - one other Magistrate.
 - (The Registrar of the High Court has the authority to sit as a magistrate if called upon)

Legal System – Lower Courts (cont.)

- ▶ All magistrates exercise coordinate jurisdiction.
- ▶ Magistrates hear and determine:*
 - All complaints and information for summary conviction offences i.e. indictable offenses, *up to a certain limit*, which may be tried either summarily or indictable as the magistrates determine.
 - i.e. Criminal, Civil.
 - Such civil and criminal matters as provided by statute.
 - *SVGIFSA

Legal System – Lower Courts (cont.)

▶ Civil Court Procedures:

- The majority of Civil matters are filed by the Lawyer on the behalf of the Plaintiff.
- Filing a claim in a civil suit is the first stage of proceedings. The matters are entered into the order books and given a suit number and date of hearing.
- The complaint, along with the summons, is then sent to the magistrate for the district for signature. After signature, the complaint along with the summons is returned to the Filing Clerk, who will then separate the complaints from the summons.
- The complaints are then filed in the complaints' register and the summons in the summons' register.
- These are then placed in the suits cupboard in the date appointed for hearing.

Legal System – Lower Courts (cont.)

► Criminal Court Procedures:

- Criminal matter are filed by the Commissioner of Police for the crown in the case of criminal matters.
- Upon receipt at the Registry, the complaints are dated and given to the Typist of the particular districts who would then type the summons, which are attached to the complaint.
- They are then sent to the magistrate for signature. On return from the magistrate, the same complaint, along with summonses are then given to the clerks of court, who will then file these in the order books.
- The clerks then enter the judgments in the order books.

Legal System – Lower Courts (cont.)

- ▶ There is also a separate court called the Family Court that is presided over by a President and deals exclusively with family related matters.
 - The Chief Magistrate is the President of the Family Court.
 - Types of cases:
 - Domestic Violence, Child Maintenance/Spousal Maintenance, Variation of Maintenance Order, Custody/Access Application, Care and Protection of Children, Juvenile Offenders, Sexual Offences, Child Abuse.
- ▶ There are no separate security or military courts.

Legal System – High Court and Appeals Court

- ▶ **The Eastern Caribbean Supreme Court Act** establishes:
 - **High Court of Justice** – the court of first instance and has original jurisdiction over matters in contravention of the SVG Constitution and appellate jurisdiction from the lower magisterial courts.
 - Puisne Judges preside over civil and criminal matters at the High Court.
 - There presently three such judges in the St. Vincent jurisdiction.
 - **Eastern Caribbean Court of Appeals** (itinerant) – appeals are heard by a panel of three judges and are presided over by the Chief of Justice or President of the Court of Appeal and the Justices of Appeal.
 - The Court of Appeal hears appeals from the decisions of the High Court and Magistrates' Courts in Member Territory in both civil and criminal matters.
 - The court of final appeal is Her Majesty's Judicial Committee of the Privy Council in London, England.

Legal System (cont.)

- ▶ The basic law is English common law.
- ▶ SVG has developed its own body of statutory law, mainly concerning international finance.
- ▶ SVG has not accepted compulsory International Court of Justice (ICJ) jurisdiction.
 - States may at any time declare that they recognize as compulsory *ipso facto* and without special agreement the jurisdiction of the ICJ.
 - SVG has made no such declarations in recognizing ICJ's compulsory jurisdiction over disputes between states, as such cannot be compelled to commit to the jurisdiction of the ICJ. ([www. icj.org](http://www.icj.org))

Legal System (cont.)

- ▶ The Governments of Antigua, Bahamas, Barbados, Belize, the British Virgin Islands, the Cayman Islands, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts–Nevis–Anguilla, St. Lucia, **St. Vincent**, Trinidad and Tobago, and the Turks and Caicos Islands have signed an agreement establishing a Council of Legal Education which sets common education and training standards for their jurisdictions.
- ▶ The *Council of Legal Education* determines the education and training standards for persons with a law degree from the University of the West Indies or from institutions in common law countries. It operates the three regional law schools, located in Trinidad and Tobago, Jamaica and the Bahamas, which issue Certificates of Legal Education.
- ▶ Governments of the above countries recognize that a person with a Certificate of Legal Education has the appropriate education and training for admission to the profession in that country.
 - Admission to the bar, complaints, discipline and continuing legal education are determined at a national level by the bar association or government body.
 - Any citizen within the CLE government signatories, upon receipt of a law degree may apply to any CLE jurisdiction to practice.

Legal System (cont.)

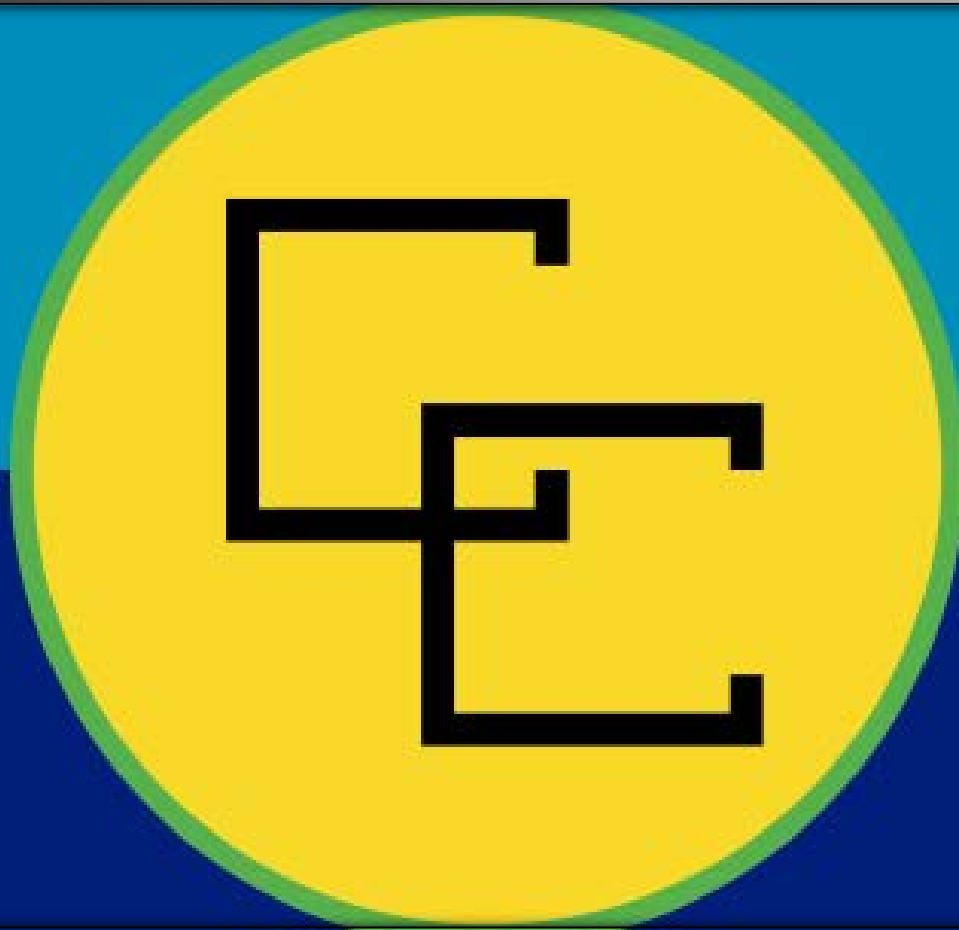
- ▶ Two regional bar associations covering common law jurisdictions:
 - OCCBA (Organization of Commonwealth Caribbean Bar Associations – Anguilla, Antigua, the Bahamas, Barbados, Bermuda, Belize, British Virgin Islands, Grenada, Guyana, Jamaica, Montserrat, St Kitts and Nevis, St Lucia, **St Vincent and the Grenadines**, Trinidad and Tobago, Dominica and the Cayman Islands.

Legal System (cont.)

- ▶ The **Organization of Commonwealth Caribbean Bar Associations (OCCBA)** is an organization of the Bar Associations in the Commonwealth Caribbean and neighboring Commonwealth countries. It is the successor of the West Indies Bar Association, which was established in 1957 in Barbados after a conference in Trinidad in 1952.
- ▶ The aims and objects of **OCCBA** are as follows:
 - (a) To be concerned with questions of Human Rights, Justice and the Rule of Law and to undertake any action which in its judgment may contribute to the protection and preservation of these and other fundamental conditions for a well ordered society.
 - (b) To deal with all matters affecting the legal profession and to take such action thereon as may be deemed expedient so as to promote, preserve, regulate, and protect its interests and the interest of its members.
 - (c) To act as representative of the Bar Associations and to answer questions and recommend rules relating to professional conduct.
 - (d) To maintain the honor and independence of the Bar and to defend the Bar in its relations with the Judiciary and the Executive.
 - (e) To support the independence of the Judiciary and to maintain cordial relations among members of the Bar and between the Bar and the Bench.
 - (f) To promote the improvement of the administration of Justice.
 - (g) To examine and report on legislation in the area and to promote uniformity.

Legal System (cont.)

- ▶ **OECS Bar Association (Organization of Eastern Caribbean States Bar Association)** – Antigua and Barbuda, Dominica, Grenada, Montserrat, St. Kitts and Nevis, St Lucia, **St Vincent and the Grenadines**, Anguilla and the British Virgin Islands.
- ▶ The **OECS BAR ASSOCIATION** is an organization of legal practitioners and representative Bar Associations all functioning within and under the jurisdiction of the Eastern Caribbean Supreme Court, the superior Court of record of the Eastern Caribbean.
- ▶ The **OECS BAR ASSOCIATION** in furtherance of its aims adopted and published a Code of Ethics which established rules relating to the professional conduct of its members and to encourage good relations and understanding between the Bar and the Public.



CARICOM AGREEMENT



CARIBBEAN COURT OF JUSTICE

St. Vincent and the Grenadines and CARICOM

- ▶ **Date of CARICOM membership: May 1, 1974**
- ▶ *1. Members of the Community consist of:*
 - (a) Antigua and Barbuda
 - (b) The Bahamas
 - (c) Barbados
 - (d) Belize
 - (e) Dominica
 - (f) Grenada
 - (g) Guyana
 - (h) Jamaica
 - (i) Montserrat
 - (j) St. Kitts and Nevis
 - (k) Saint Lucia
 - (l) **St. Vincent and the Grenadines**
 - (m) Suriname
 - (n) Trinidad and Tobago.

CARICOM Agreement Regarding the Caribbean Court of Justice

- ▶ *“Court” means the Caribbean Court of Justice established by the Agreement.*
- ▶ **ARTICLE 211**
- ▶ *Jurisdiction of the Court in Contentious Proceedings*
- ▶ *1. Subject to this Treaty, the Court shall have compulsory and exclusive jurisdiction to hear and determine disputes concerning the interpretation and application of the Treaty, including:*
 - *(a) disputes between the Member States parties to the Agreement;*
 - *(b) disputes between the Member States parties to the Agreement and the Community;*
 - *(c) referrals from national courts of the Member States parties to the Agreement.*

CARICOM Agreement Regarding the Caribbean Court of Justice

▶ **ARTICLE 214**

▶ ***Referral to the Court***

- ▶ *Where a national court or tribunal of a Member State is seised of an issue whose resolution involves a question concerning the interpretation or application of this Treaty, the court or tribunal concerned shall, if it considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the Court for determination before delivering judgment.*

CARICOM Agreement Regarding the Caribbean Court of Justice

▶ *ARTICLE 216*

▶ *Compulsory Jurisdiction of the Court*

- *1. The Member States agree that they recognise as compulsory, ipso facto and without special agreement, the original jurisdiction of the Court referred to in Article 211.*
- *2. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be determined by decision of the Court.*



Caribbean Court of Justice

► **Mission:**

- The Caribbean Court of Justice shall perform to the highest standards as the supreme judicial organ in the Caribbean Community. In its original jurisdiction it ensures uniform interpretation and application of the Revised Treaty of Chaguaramas, thereby underpinning and advancing the CARICOM Single Market and Economy. As the final court of appeal for member states of the Caribbean Community it fosters the development of an indigenous Caribbean jurisprudence.

► ***Vision:***

- To provide for the Caribbean Community an accessible, fair, efficient, innovative and impartial justice system built on a jurisprudence reflective of our history, values and traditions while maintaining an inspirational, independent institution worthy of emulation by the courts of the region and the trust and confidence of its people.

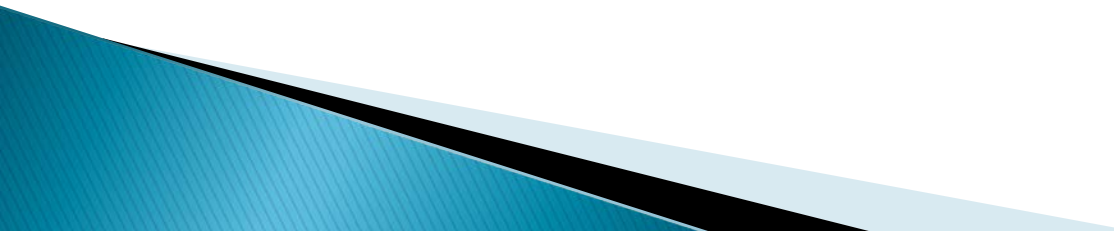
Caribbean Court of Justice

- ▶ Membership is open to all member states of the Caribbean Community (CARICOM)
- ▶ Judges are appointed by the members of the Regional Judicial and Legal Services Commission.
- ▶ There shall not more than nine Judges; at least three shall possess expertise in international law including international trade law.
 - *The determination of any question before the Court shall be according to the opinion of the majority of the Judges of the Court hearing the case.*

Caribbean Court of Justice

- ▶ The CCJ was inaugurated in 2005 year and has two jurisdictions, an original jurisdiction and an appellate jurisdiction.
- ▶ In its original jurisdiction the court would be an international tribunal with compulsory and exclusive jurisdiction for the interpretation and application of the Revised Treaty and is tasked with the responsibility to hear and deliver judgments on:
 - Disputes arising between contracting parties to the Agreement
 - Disputes between contracting Parties and the Community
 - Disputes between Community Nationals, Contracting Parties, Community Institutions or between nationals themselves
- ▶ In its appellate jurisdiction, the CCJ would consider and determine appeals in both civil and criminal matters from courts within the jurisdiction of Member States of the Community which are parties to the agreement establishing the CCJ.

Caribbean Court of Justice and SVG

- ▶ St. Vincent and the Grenadines, like the other member states of the CSME (CARICOM Single Market and Economy), has accepted the original jurisdiction of the Court to hear and determine cases related to interstate trade between St. Vincent and the Grenadines and other countries within the Caribbean Community.
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Caribbean Court of Justice and St. Vincent (cont.)

- ▶ **What needs to be done to access the CCJ?**
- ▶ (1) Constitutional amendment is required for the abolition of appeals to the Privy Council, *which requires an accepted referendum.*
 - The CCJ was part of a recent package of constitutional reforms submitted to a national referendum and subsequently rejected by the Vincentian electorate (2009)(A total of 97,751 persons were eligible to cast ballots in the referendum. Of that number, 29,019 voted for, while 22,493 voted against the new Constitution) (2/3 vote req.)
 - Other reforms included in the referendum would have seen St Vincent and the Grenadines doing away with the Queen as Head of State and becoming a Republic.
 - Also, the Constitution did not reduce the powers of the prime minister enough and it gave Parliament, rather than citizens, the power to elect the president.
 - Unknown as to the true reason for the rejection of the referendum, thereby rejecting the CCJ.

Caribbean Court of Justice and St. Vincent (cont.)

- ▶ Reason for apprehension?
 - ▶ There is concern regarding the protection against political interference within the CCJ.
 - The CCJ is supported by a “Trust Fund” set up by Community governments so there is no separation of powers between the executive and judiciary.
 - Governments apprehension have abated since the loans from the participating governments were secured through the Caribbean Development Bank (CDB) and not directly from CARICOM member States.
 - However, there is still concern as some governments loan/fund more than others. Funding is not equally contributed which may give rise to interference:
 - Ex. Trinidad and Tobago has contributed close to a third of the US\$100 million for the Caribbean Court of Justice Trust Fund (US\$29 million – 29.3% share) with the other 13 CARICOM countries making up the rest.
 - Jamaica is required to contribute 27.09% – US\$27.09 mil*
 - SVG's is only required to contribute 2.1% – US\$2.1 mil*
- **The Caribbean Court of Justice Trust Fund Act of 2006*

Alternative Dispute Resolution

- ▶ Caribbean Court of Justice
- ▶ St. Vincent and the Grenadines
- ▶ Eastern Caribbean Supreme Court



ADR – Caribbean Court of Justice

*ALTERNATIVE DISPUTE RESOLUTION**

- ▶ *1. Each Contracting Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes.*
- ▶ *2. To this end, each Contracting Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.*
- ▶ **Revised Treaty of Chaguaramas (2001)*

St. Vincent and the Grenadines (Arbitration)

► **ARBITRATION:**

- United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)
 - (SVG has been a member since 2000)
- Requires courts in contracting states to recognize arbitration agreements in writing and to refuse to allow a dispute to be litigated before them when it is subject to an arbitration agreement. It also requires courts to recognize and enforce foreign arbitral awards.



St. Vincent and the Grenadines (Arbitration)

▶ Trade Disputes Act

Trade disputes may be reported to the Governor-General.

3. Any trade dispute, whether existing or apprehended, may be reported to the Governor-General by or on behalf of either of the parties to the dispute, and the Governor-General shall there upon take the matter into his consideration and take such steps as seems to him expedient for promoting a settlement thereof.

Reference to arbitration tribunal.

4. Where a trade dispute exists or is apprehended, the Governor-General may, subject as hereinafter provided, if he thinks fit and if both parties consent, refer the matter for settlement to an arbitration tribunal constituted of either:

(a) a sole arbitrator appointed by the Governor-General;
(b) an arbitrator appointed by the Governor-General, assisted by one or more assessors nominated by or on behalf of the employers concerned and an equal number of assessors nominated by or on behalf of the workmen concerned, all of whom shall be appointed by the Governor-General:

1. Provided that the award shall be made and issued by the arbitrator only; or
(c) one or more arbitrators nominated by or on behalf of the employers concerned and an equal number of arbitrators nominated by or on behalf of the workmen concerned, and an independent chairman, all of whom shall be appointed by the Governor-General:

1. Provided that where all the members of the tribunal are unable to agree as to their award, the matter shall be decided by the chairman as sole arbitrator.

St. Vincent and the Grenadines (Arbitration)

- ▶ **ALBA:**
- ▶ Antigua & Barbuda, Bolivia, Cuba, Dominica, Ecuador, Honduras, Nicaragua, St. Vincent & the Grenadines, and Venezuela, are the nine Member States of the *Bolivarian Alternative for the Peoples of our America*, known as ALBA, a regional organization created in 2004 by Venezuela and Cuba.
- ▶ During the VI annual Presidential Summit held in Maracay (Venezuela) in January 2008, all presidents agreed to establish a regional international commercial arbitration court as an alternative to the World Bank's International Centre for Settlement of Investment Disputes.
- ▶ The initiative intends to help Member States resolve their bilateral or multilateral commercial disputes.

St. Vincent and the Grenadines Eastern Caribbean Supreme Court (Mediation)

- ▶ The High Court and Court of Appeals encourages parties to use the most appropriate form of Dispute Resolution, in particular **Mediation**.
- ▶ Almost all disputes can be mediated.
 - Examples:
 - Landlord and Tenant
 - Commercial contracts
 - Wills and Estates
 - Employment
 - Land Disputes
 - Debt Collection
 - Personal Injury
 - Family Disputes



St. Vincent and the Grenadines Eastern Caribbean Supreme Court (Mediation)

- ▶ **Who are the Mediators? ***
 - ▶ Mediators are persons of diverse professional backgrounds with standing in the community, who have been specially trained.
 - ▶ The Eastern Caribbean Supreme Court has a roster of trained Mediators.
 - ▶ The roster of Mediators may be obtained from:
 - The High Court Office and/or;
 - The office of the Mediation Coordinator
 - ▶ The Eastern Caribbean Supreme Court has a roster of trained Mediators.
 - The parties can pick their own Mediator from the list or if they cannot compromise, the court will assign a mediator.
- *www.eccourts.org

St. Vincent and the Grenadines Eastern Caribbean Supreme Court (Mediation)

- ▶ ***Mediators are trained by institutions such as the Dispute Resolution Foundation in Jamaica.***
 - From 1995 to 2002, over 8000 people have been recipients of mediation training in Jamaica, Belize, Trinidad & Tobago, **St. Vincent** & Barbados.*
 - ▶ ***Participant profiles include:***
 - *CEOs with advanced degrees;*
 - *Policy makers in the public and private sector;*
 - *Teachers, Police Officers and Supervisors;*
 - *Attorneys;*
 - *Clergy, Justices of the Peace, Magistrates and Judges.*
- *www.disputeresolutionfoundation.com

St. Vincent and the Grenadines Eastern Caribbean Supreme Court (Mediation)

- ▶ **How is a case referred to Mediation? ***
- ▶ A case may be referred to Mediation at any stage of the proceedings:
 - A Master or Judge may make an order referring any civil action filed in the Court to Mediation.
 - The parties may by consent notify the Court that they wish to have their case referred to Mediation and in such case, the Master or Judge shall make a referral order.
 - The Mediation will be conducted by a trained Mediator, approved to be on the Roster of Mediators for the Supreme Court.
 - Parties may select a Mediator from the Roster of Mediators.
 - If the parties cannot agree on a Mediator, one will be appointed for them by a Judge or Master.
- *www.eccourts.org

St. Vincent and the Grenadines Eastern Caribbean Supreme Court (Mediation)

- ▶ **Who should attend the Mediation? ***
- ▶ All parties must attend the Mediation session. If a party is represented by a lawyer, the lawyer may also attend. The lawyer can help the client work out the terms of the settlement. A lawyer may not attend in place of a party.
- ▶ Agreement/Settlement:
 - 1. At the end of the Mediation session the Mediator shall complete and lodge the notice of Outcome of Mediation with the Mediation Coordinator, for filing at the Court Office.
 - 2. If there is an agreement resolving some or all of the issues in the dispute ...it shall be signed by the parties and the Mediator and lodged with the Mediation Coordinator for filing at the Court Office; and within seven days after the agreement is signed the parties shall apply to the Court for an order in terms of the agreement and the Master or Judge shall make an order.

• *www.eccourts.org

St. Vincent and the Grenadines Eastern Caribbean Supreme Court (Mediation)

▶ **What is the cost of Mediation?***

- Court-connected mediation fees are regulated and set by the Court. A fee schedule may be obtained from the Mediation Coordinator.

▶ **Where is the Mediation held?***

- Mediation sessions will be conducted at a Mediation Office which is under the management and control of the Court.
- *www.eccourts.org

LEGAL AID



Legal Aid

- ▶ The proposed 2009 Constitution stated:
 - Legal aid is afforded to “accused indigent persons...subjected to capital punishment, as well as in other cases where such persons face serious criminal charges if in such cases legal aid is recommended by the presiding judicial officer.”
 - In essence, if not a capital punishment case, legal aid would have been made available if recommended by the presiding judicial officer.
 - *The constitutional reform referendum was defeated.*
- ▶ **As it stands today:**
 - Legal aid is offered only to indigent defendants, but only when the defendant is charged with a capital offense.
(1979 SVG Constitution)

Legal Aid (cont.)

- ▶ Non-Governmental Organizations (NGOs)
 - NGOs are the main source for legal aid to indigent victims other than capital murder cases.
 - Ex. St. Vincent and the Grenadines Human Rights Association (SVGHRA)
 - Provides legal assistance to victims of human rights violations.
 - The SVGHRA states there are no legal clinics in St. Vincent.
 - The government does provide some funding and building space to local NGOs who provide services to indigent victims.



EDUCATION

St. Vincent and the Grenadines



EDUCATION

- ▶ Public education was established on St. Vincent in 1849.
- ▶ All schools follow a common curriculum determined by the government.
- ▶ The government supports all public schools, providing full funding to those without religious affiliation and partial funding to schools that are affiliated with churches.

Education

- ▶ Early Childhood Education: pre-primary education.
- ▶ Access to Early Childhood was approximately 65% in 2007. The figure was projected to rise to 85% by 2008.
- ▶ Primary and secondary education at public schools in the country is free and compulsory to age 15.
- ▶ As of 2003, public expenditure on education was estimated at 10% of GDP, or 20.3% of total government expenditures.

Primary Education

- ▶ Primary public school lasts for seven years (grades K– 6)
- ▶ The education system is highly influenced by the British system and teachings revolved around British history and culture.
- ▶ Historically, English was the only language used in school. However, recently, Vincentian Creole has become widely accepted and the students are being introduced to more Caribbean history and literature.
- ▶ Curriculum during primary education also includes coursework in agriculture and carpentry.



Secondary Education

- ▶ Secondary education consists of a five year program (grades 7–11), followed subsequently by a more advanced two year program.
- ▶ All students who have attained the age of eleven years at the beginning of the academic year, or will attain that age by the following September may be admitted to a secondary School.
(Education Act 2006)

Secondary Education

- ▶ In 2005 (the year Universal Secondary Education was completed) 98% of the students registered at Grade 6 in primary schools were placed in secondary schools.



Legal Education



The Governments of Antigua, Bahamas, Barbados, Belize, the British Virgin Islands, the Cayman Islands, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts–Nevis–Anguilla, St. Lucia, **St. Vincent**, Trinidad and Tobago, and the Turks and Caicos Islands have signed an agreement establishing a Council of Legal Education



Post Secondary Legal Education

- ▶ Upon the successful completion of a qualifying three year Bachelor of Laws degree (or an L.L.B.) from the University of the West Indies, and a two year Certificate of Legal Education from the Council of Legal Education of the West Indies, an applicant may apply to the High Court of SVG for admission to the practice of law.



Legal Education

- ▶ St. Vincentians who wish to attend law school must do so at the University of the West Indies.
- ▶ The Council of Legal Education determines the education and training standards for persons with a law degree from the University of the West Indies.
- ▶ The Council of Legal Education operates three regional law schools, located in Trinidad and Tobago, Jamaica and the Bahamas.
- ▶ Currently half of the graduates from law school are women, compared with twenty per cent two decades ago.

Daniel Dick Trimmingham v. The Queen

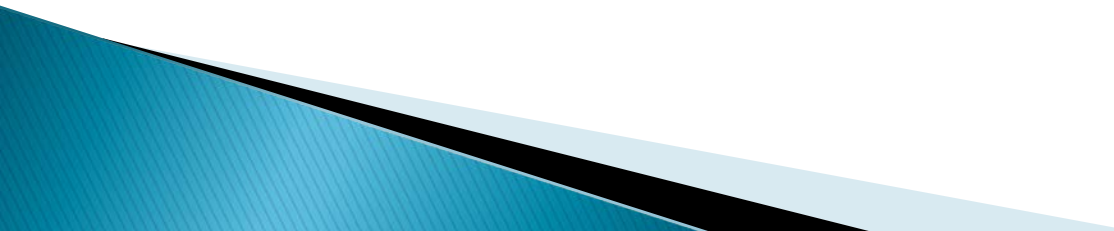
Privy Council, June 22, 2009

- ▶ Procedural Facts: On November 23, 2004, the appellant, Daniel Dick Trimmingham, was convicted in the High Court of St Vincent and the Grenadines of the murder of Albert Browne and on December 8, 2004 was sentenced to death by hanging. His appeal against conviction and sentence dismissed by the Eastern Caribbean Court of Appeal on October 13, 2005.

Daniel Dick Trimmingham v. The Queen

- ▶ **Case Facts:** The Crown case against the appellant rested to a very large extent on the evidence of one Felix Browne, known as “Ding”. The trial judge correctly directed the jury that he could be regarded as an accomplice. The following account is based exclusively on his evidence. Ding stated that on January 8, 2003 he and the appellant went to where the 68 year old victim, Albert Browne (“the deceased”), kept his goats. With the intention to rob the deceased, the appellant had the deceased on the ground and had held him up with the gun. The appellant demanded money, but the deceased said that he had given it away to his daughter and told the appellant that he could take his goats if he left him alone. He then took the deceased some little distance away and struck him in the stomach and threw the deceased down into a drainage ditch. Appellant then cut the deceased’s throat with a cutlass which he had taken from the deceased, then cut off his head. He removed the trousers from the body and wrapped the head in them. He handled the penis of the deceased and made a ribald remark about it. He positioned the body in the ditch and slit the belly, explaining to Ding that he did so to stop the body from swelling.

Daniel Dick Trimmingham v. The Queen

- ▶ Issue #1: Whether the the trial judge's directions in relation to accomplice evidence and to the appellant's lies as evidence of guilt were deficient as to justify conviction?
 - ▶ Issue #2: Whether the sentence of death was an appropriate disposition for this case?
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Daniel Dick Trimmingham v. The Queen

- ▶ **Issue #1** – Whether the the trial judge's directions in relation to accomplice evidence and to the appellant's lies as evidence of guilt were deficient as to justify conviction?
- ▶ **Held:** No, for there to be a defect, the Council must find that there has been a miscarriage of justice which requires their intervention. The Lordships were fully satisfied that the trial judge's careful summing up stated the law adequately and put the issues properly and fairly before the jury. They considered that any deficiencies to which exception might be taken were minor and that they fell well short of a miscarriage of justice which would cause them to set aside the verdict.

Daniel Dick Trimmingham v. The Queen

- ▶ **Issue #2:** Whether the sentence of death was an appropriate disposition for this case?
- ▶ **Held:** No, the death penalty should be imposed only in cases which, on the facts of the offense, are the most extreme and exceptional, “the worst of the worst” or “the rarest of the rare”.
 - Caribbean courts have set out the approach which a sentencing judge should follow in a case where the imposition of the death sentence is discretionary.
 - This approach received the approval of the Board in *Pipersburgh v The Queen* [2008] UKPC 11, and should be regarded as established law.

Daniel Dick Trimmingham v. The Queen

▶ *Pipersburgh v The Queen* Approach:

◦ Two Basic Principles:

- 1) The death penalty should be imposed only in cases which on the facts of the offense are the most extreme and exceptional, “the worst of the worst” or “the rarest of the rare”.
 - The judge should compare it with other murder cases and not with ordinary civilized behavior.
- 2) There must be no reasonable prospect of reform of the offender and that the punishment could not be achieved by any means other than the ultimate sentence of death. The character of the offender and any other relevant circumstances are to be taken into account in so far as they may operate in his favor by way of mitigation and are not to weigh in the scales against him.

Daniel Dick Trimmingham v. The Queen

- ▶ Discussion: Appellant's attorney contended that it fell short of being in the category of the rarest of the rare. He argued that the killing was not premeditated and although the manner of the killing was gruesome and violent, there was no torture of the deceased, nor prolonged trauma or humiliation of him prior to death.
 - The Council agreed, stating that the killing falls short of being among the worst of the worst, as to justify the ultimate penalty of capital punishment. The appellant behaved in a revolting fashion, but this case is not comparable with the worst cases of sadistic killings. The object of keeping the appellant out of society entirely can be achieved without executing him.
 - **Reversal of Sentencing:** Death penalty substituted with life imprisonment.

U.S. Death Penalty Sentencing Law

- ▶ *Atkins v. Virginia*, 536 U.S. 304 (2002) – Capital punishment must be limited to those offenders who commit “a narrow category of the most serious crimes” and whose extreme culpability makes them “the most deserving of execution.” This principle is implemented throughout the capital sentencing process.
- ▶ *Godfrey v. Georgia*, 446 U.S. 420 (1980) (plurality opinion) – States must give narrow and precise definition to the aggravating factors that can result in a capital sentence.
- ▶ *Lockett v. Ohio*, 438 U.S. 586 (1978) – In any capital case a defendant has wide latitude to raise as a mitigating factor “any aspect of [his or her] character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.” There are a number of crimes that beyond question are severe in absolute terms, yet the death penalty may not be imposed for their commission. *Coker v. Georgia*, 433 U.S. 584 (1977) (rape of an adult woman); *Enmund v. Florida*, 458 U.S. 782 (1982) (felony murder where defendant did not kill, attempt to kill, or intend to kill). The death penalty may not be imposed on certain classes of offenders, such as juveniles under 16, the insane, and the mentally retarded, no matter how heinous the crime; *Ford v. Wainwright*, 477 U.S. 399 (1986)
- ▶ These rules support the underlying principle that the death penalty is reserved for a narrow category of crimes and offenders, however, the crime in the present case goes beyond “the most deserving of execution” principle applied in the United States.