



CASE ANALYSIS THEORY DEVELOPMENT & PREPARATION - CIVIL

‘An advocate’s theory of the case is his total and integrated view of all the facts, and the law which applies to them, in conformity with his objectives’ Marcus Stone, ‘Cross-examination in Criminal Trials’, 2nd ed. 1995, p.110. [See specimen theory – Higgins v. Higgins].

THE LAW [1/1]

1. **IDENTIFY THE LEGAL ISSUES – DOCUMENT THEM – PROPERLY PREPARE THEM**
2. **ORGANISE AUTHORITIES IN PROPERLY MARKED FOLDERS**
3. **MARK AUTHORITIES** (annotate only your copies, flag copies for Bench and other side). Flagging is important. Do not be intrusive).
4. **BE EXHAUSTIVE** (it is better to have more than you need. Trimming can follow. Brief everything carefully - authorities in support and against).
5. **INDEX YOUR MATERIAL. PREPARE BUNDLES** (make it easy for Bench and other side to follow. Always facilitate the Tribunal and the other side in reading and understanding your presentation)

THE EVIDENCE [1/1]

1. FACTS IN ISSUE

2. PROOF OF FACTS IN ISSUE

- ❑ DECISION ON EVD TO BE CALLED: PERSONS,EXHIBITS
- ❑ PREPARATION OF EVD TO BE CALLED
- ❑ ADMISSIBILITY OF EVD. DO CHECKLIST OF PROCEDURE FOR EACH EXHIBIT
- ❑ **APPLICATIONS/SUBMISSIONS/PROCEDURE.** PREPARE APPLICATIONS AND DO CHECKLISTS FOR THE PROCEDURAL MATTERS.

CLOSING SUBMISSIONS [1/5]

1. GUIDE FOR ADDUCING EVIDENCE

- PAY CLOSE ATTENTION TO YOUR XMN
- PREPARE THE POINTS YOU WISH/INTEND TO MAKE IN CLOSING ARGUMENTS. REMEMBER REBUTTAL POINTS
- EVD ADDUCED MUST BE LINKED TO CLOSING POINTS

CLOSING SUBMISSIONS [2/5]

2. ARGUE/CONTEND

- ❑ ISSUES, FACTS, EVD, LAW

- ❑ ANALYSE - ASK COURT TO MAKE FINDINGS – PROVIDE EVIDENTIAL SUPPORT; SHOW HOW ARGUMENTS LOGICALLY COMPEL CONCLUSION SOUGHT. USE THE EVD.

- ❑ ASK COURT TO SEE DISPUTED FACTS IN A CERTAIN WAY

- ❑ ARGUE STRENGTH OF OWN CASE RATHER THAN CONCENTRATING ON WEAKNESSES OF OTHER SIDE.

CLOSING SUBMISSIONS [3/5]

3. ANSWER ARGUMENTS MADE BY OTHER SIDE

- THE FIRST SPEAKER HAS TO ANTICIPATE THE ARGUMENTS OF THE OTHER SIDE
- LISTEN CAREFULLY. ACTIVE LISTENING
- BE FAITHFUL IN REPRESENTATION OF THEIR ARGUMENTS
- NOTE THEIR ARGUMENTS VERBATIM ON SEPARATE PAD

CLOSING SUBMISSIONS [4/5]

4. USE EXHIBITS

- MOST OF WHAT WE KNOW COMES THROUGH SIGHT.
COMBINE AUDIO WITH VISUALS.
- USE EXHIBITS TO SUPPORT & HIGHLIGHT MAIN POINTS.
- USE TO REBUT POINTS OF OTHER SIDE
- USE EXHIBITS

CLOSING SUBMISSIONS [5/5]

5. DEAL FRONTALLY WITH DIFFICULTIES

- DO NOT TRY TO AVOID WEAKNESSES AND HOPE. SHOW, IF THEY ARE ACCEPTED, HOW THEY DO NOT ULTIMATELY AFFECT DESIRED OUTCOME.
- BE CREDIBLE IN DEALING WITH WEAKNESSES.
- IF YOU CANNOT CREDIBLY DEAL WITH WEAKNESSES AVOID THEM AND FOCUS ON YOUR MANY STRENGTHS.

OPENING SUBMISSIONS[1/3]

1. INTRODUCTION OF PARTIES – CLAIMANT TO DO.
2. SUMMARISE CASE. THIS IS A BRIEF EXERCISE. THE COURT HAS READ THE PAPERS. FOCUS ON YOUR THEORY AND THE EVIDENCE YOU HAVE FILED.
 - ❑ CLAIM/DEFENCE
 - ❑ PARTIES - MAKE THEM LIVING
 - ❑ EVIDENCE – BROADLY – SINGLE OUT MAJOR PORTIONS
 - ❑ WITNESSES. MAKE THEM LIVING. GIVE SUMMARY OF EVD OF EACH WITNESS. EXPLAIN ROLE IN STORY.
 - ❑ IDENTIFY MAIN SCENES

OPENING SUBMISSIONS [2/3]

3. OUTLINE THE CENTRAL ISSUES

- DO SO FROM YOUR PERSPECTIVE
- MAINTAIN YOUR INTEGRITY – DO NOT MIS-LEAD THE TRIBUNAL
- DO NOT PUT ANY FANCY SPINS ON THE ISSUES

OPENING SUBMISSIONS [3/3]

4. CLEARLY EXPLAIN THE CONCLUSION THE COURT IS BEING ASKED TO MAKE.
- ENUMERATE THE MAIN FINDINGS OF LAW AND FACT THAT THE COURT IS BEING ASKED TO MAKE AT THE END OF THE EVD. THIS IS NOT YOUR CLOSING. DO NOT FORGET THIS.
 - BE CONCISE, COMPREHENSIVE, COMPREHENSIBLE & ACCURATE.

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