



Compass Chambers

Advocacy Advice – Legal Argument

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Legal Argument

What does this cover?

- Submissions after evidence
- Debate
- Appeal
- Substantive motions

Each a little different, but the concept is the same.

Legal Argument- Purpose

- Fundamentally, the purpose is to persuade the decision maker that your position is correct and that your client should succeed.
- As part of that, your function is to assist the court to understand your position.



Compass Chambers

How do we intend to assist? By looking at:

- Some basics
- The importance of content
- The importance of structure
- Form

At the end, will offer some trouble-shooting advice.

Some Basics

- Put yourself in the decision maker's shoes. What persuades you? What persuades others?
- It is a skill. It can be learned and it can be practiced!
- Some things work: clarity, simplicity, manner.

Content

- A bad argument, no matter how well put, will (or at least should) fail.
- Unfortunately, the opposite is not necessarily true...

- Case analysis:
 - What is the law? Is it clear?
 - Good facts v bad facts?
 - What is the right/just answer? (is that relevant?)
 - What remedy can the Court grant?

Structure

- After content, this is the most important thing to think about. A good structure does two things:
 1. It makes your argument clear; and
 2. It gives you something to hang onto in oral argument.

Structure

What do we need to think about:

- Keep it simple
- Logical order
- “Start slow, finish fast”
- What else do you have (e.g. Note of Argument) and how do you keep consistent?
- The ability to rely on written material, without just reading it, is become increasingly important.

Opening:

- The start is vital. Go too quickly and you will lose the Court. Equally, you don't want to bore.
- The usual formalities make you and the Court comfortable. What is your motion?
- Start the argument with a headline, what is the issue that the Court needs to determine? Engage interest.
- Where are you going and how are you going to get there?

Structure

Develop the argument under:

- Chapters
- Propositions
- Rhetorical Questions

- Keep it as unobtrusive as possible. This is a balance that needs to be struck. Takes practice.
- Remember, the purpose is clarity and persuasion
- If too complex will frustrate court and will make it too hard for you to rely on.
- Remember, if you have gone to the time and effort of preparing written argument, use it.

- Form of presentation is probably the most subjective of all elements.
- What we are thinking about here is how you go about conducting the oral hearing.

Things to think about:

- Your style — be yourself (well, your professional self, at least!)
- How you engage the court.
- How you make sure the court is following you.
- Citation of authority — how to do it properly.
- How you deal with interventions.

Citation of Authority

- What is the purpose of citing authority?
- Do you need it? Is the proposition in dispute? (links back to case analysis)
- “If I can take your Ladyship to Donoghue against Stevenson, reported at 1932 Session Cases, House of Lords reports, page 31. It is at tab 2 of the bundle.”

(N.B. if citing this, probably breaching points 1 and 2, above..!)

Citation of Authority

- Direction to the relevant passage — easier now with paragraph numbers.
- After reading the relevant paragraph, tell the Court what you take from it.

Dealing with Interventions

- The aim should be to engage with the Court. On your best day, it should feel like a conversation.
- A good structure together with well-analysed content allows you to do that without losing the thread.
- What about those pesky questions from the bench...?

When it all goes...

- It will happen at some point
- Don't panic – easier said than done
- Need to try to assess whether it can be fixed, or not
- Take your time, try to think clearly