

Civil Advocacy - skeleton arguments

Tim Prudhoe (14.3.2024)

The hard yards...a skill to be *acquired*

Genius is one percent inspiration and ninety-nine percent perspiration – Thomas Edison

- The Sri Lankan cases (2020, ongoing)
- Same sex marriage constitutional (ongoing?)
- Islander status JR (2022, ongoing)

Unlimited scope to test and be tested; to improve and be improved

- St Kitts (passport revocation); Nevis (FSC fines)
- JCPC, Darren Singh v. LMCS Ltd, [2024] UKPC 5 (14.3.24, this AM)
- Guyana

Noblesse oblige, or...



Dangers of delegation

- Up
- Down

Where to *avoid* “proxy” advocacy?

- Witness statements,

JD Wetherspoon PLC v Harris [2013] 1 WLR
3296

Petroci Holding v Masirah and others BVIHC
(Com) 2021 / 0134 (20.7.2023, Mangatal)

Help the Judge(s), 1

- the paramount duty is to the Court (relevant law, however unhelpful to your client)
- hit deadline for skeletons (whatever the approach of your opponent(s))
- without useable, timely, separate Hearing and Authorities bundles even an A* skeleton flounders

Help the Judge(s), 2

- cross-referenced second version (otherwise 100% same content) **AND KEEP IN FINAL WORD FORMAT**
- Indicate reading times and “core” documents
- 12 font (for footnotes too); 1.5 spacing; margins and headings. Short sentences and (short) numbered paragraphs; consistency in style and abbreviations

“...fewer words, Mr. Prudhoe”.

Avoid

- any more facts than essential (consider separately chronology)
- lawyer-speak / jargon / Latin
- duplicate cases / cases you have not read / quoting from headnotes
- selective extracts from legislation
- sub-standard law reports (know your judge(s))

Simple is good...

61 To all of this, Counsel Prudhoe argues it has been, or should have been, argued before, and is '*an attempt to put lipstick on a pig*'⁸¹. I agree. PEL has been a party for years, since 2007, in 39 actions from 2012 at the direction of Rooney, (40 if including the 2008 action), on Montserrat, also in Virginia US, and finally before the PC in London; it is just clever sophistry to argue at this late stage it cannot seek redress from Cassell's fraud, proven at criminal trial.

Rather than:

"...an impenetrable cross between the writings of Karl Marx and an amended statutory instrument, and with the vibrancy of an instruction manual for a car alarm, all neatly hole punched and presented cheerly in a file"

A skeleton, not a script

Aim for / the basic “anatomy”

- the (relevant) facts (in evidence)
- the law [if it is even clear; and if not then what remains to be clarified]
- the facts, as applied to the law
- consider whether a colleague could use it
- focus on the solution, rather than just the size of the problem
- number and date your versions when drafting a skeleton

Ancillary parts of “the record”

- Reply (or not)
- Written closing and / or post-hearing submissions
- Non-verbal reaction(s), get them into the transcript
- Note of Hearing, for any “without notice” (aka *ex parte*) hearing

“How to” guides: useful tools / (very) dangerous masters

- William Rose and Roger Eastman, “Pleadings Without Tears” (9th Ed, Oxford Press) Chap 12, pp310-345
- Bar Manual, “Advocacy” (21st Ed, Oxford Press), Chap 25 (‘Skeleton Argument’) pp174-189
25.1.3 (pp176-177) on the length of skeletons
- David Ross KC, “Advocacy” (2nd Ed, Cambridge Press)

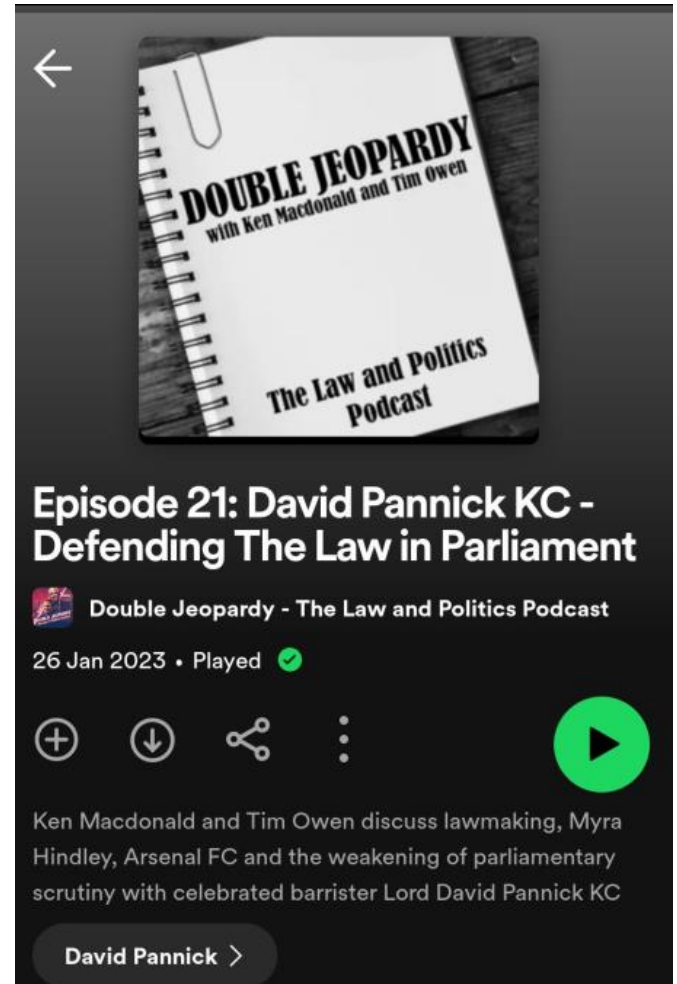
To aim for

“Legal writing should be like a cavalry charge – swift, full, impressive with no messing around, it should cover the ground, all of it, and do the job, fast. Legal writing is not the military equivalent of the trenches of WW1 – endless, uncertain and bogged down.”

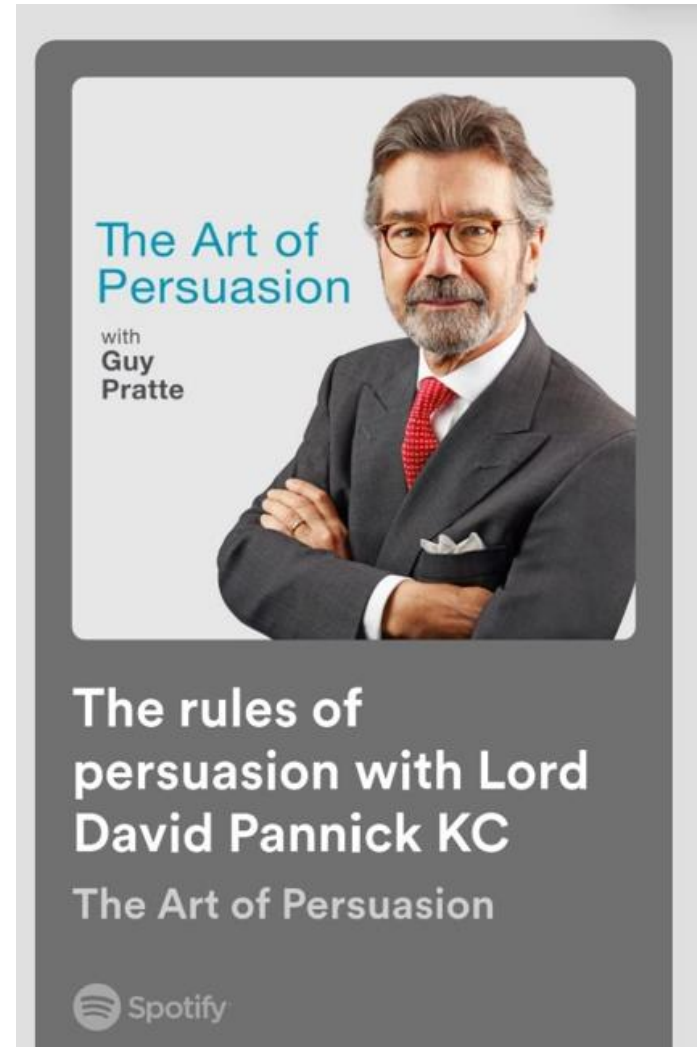
“The judge needs to be helped to shore, not drowned in paper...the hallmarks of an able lawyer – being able to distill large amounts of material to what is needed, and being right about what is irrelevant.”

<https://open.spotify.com/episode/5KFefTeDxgnRAkVespoBFr?si=4IJpxht-RHeCeGd6T8T-zg>

The object is to entice the [reader]



<https://open.spotify.com/episode/3ODXD7krjdYEHr0EhWjXDJ?si=eRZBaYUFQpa8fMlvbvGH6g>



Other reading

- Richard Du Cann QC, “The Art of the Advocate” (Penguin)
- Iain Morley KC, “The Devil’s Advocate” (Sweet & Maxwell)

the best learning opportunity is...

“I still take great pleasure in watching an A* at work
– they are out there, go find them, learn from them”

Stanbrook Prudhoe

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