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Tribunals, Debts and The Old Bailey

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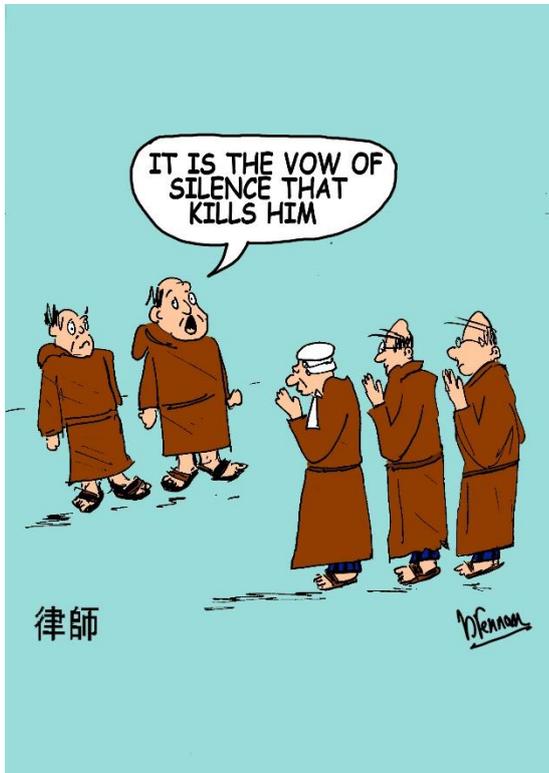
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Tribunals – A Five Point Plan for Beating the Rap



Since time immemorial, apart from maybe duels, lawyers have been assisting clients at what we used to call "having a bit of a dust up" and is now optimistically described as "Dispute Resolution".

Tribunals, offering a cheap, informal alternative to court proceedings, are on the increase. They are used by professional bodies, to deal with professional misconduct, or government agencies and other industries such as estate agents to deal with customer complaints.

It is becoming popular for Tribunals to exclude lawyers. Why? Well, lawyers can be nitpicky, cantankerous individuals who argue about everything, think they always know best and are forever telling everyone what to do. There are exceptions (my wife for instance) but generally this is the case.

In these "lawyer free" Tribunals you are expected to front up, say your piece and accept the decision. This can be quick, cheap, effective justice at its best-unless of course you lose.

Tribunals seem designed to find you guilty in a nice way and compared to being hung, drawn and quartered, they do a very good job. Added to this something very odd happens to ordinary men and women when they are asked to judge their fellow man (or woman), they get all "judge like" (this is not good).

So where does this leave you, if you are summoned to appear before a Tribunal?

Well, if you are prepared to go with the flow then Tribunals combined with humble acceptance, can bring closure to your issues. But, if you are an uncooperative, difficult person who is not prepared to put your head on the block or at least "grin and bear it", you need help. Your lawyer can look at the evidence against you and advise you how to run your case.

Therefore, even though your lawyer will not get a ring side seat, he or she will be an essential part of your Five Point Plan for beating the rap.

Here it is:

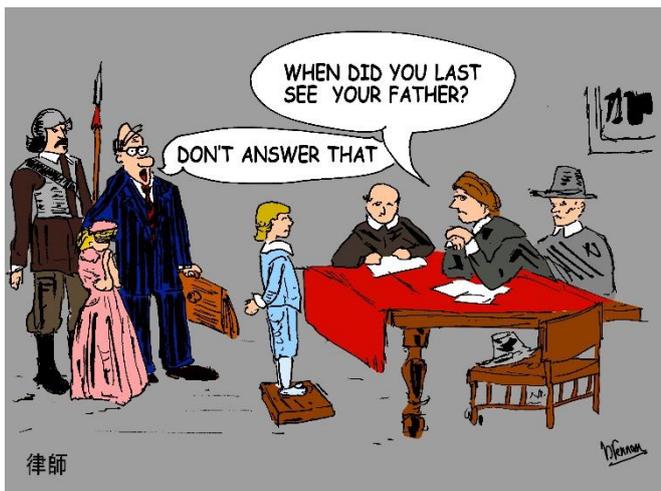
1. Obtain from the Tribunal written details of the case against you. This should be in writing and readily available, well in advance of the hearing. If the case against you is not clear, ask the Tribunal in writing for further particulars. I suggest that you do this sparingly so as not to point out errors and improve the case against you. However, you do not want the goal posts being moved during the hearing or leave the case against you fuzzy so that the Tribunal members can make it up as they go along.
2. Make a formal looking written submission dealing with the evidence against you, putting your evidence in the best light. This has four advantages:
 - Your lawyer can do it for you.
 - It may be used as the basis for the Tribunal's written decision.
 - It will stop the Tribunal from misunderstanding your evidence or fudging/ignoring any inconvenient point which happens to be in your favour.
 - It will show that you have consulted your lawyer and imply that if you do not get a fair go there will be trouble i.e. an appeal, criticism or some other type of ungrateful behaviour.
3. Interview any witnesses giving evidence against you and see if you can take a further statement. Legally there is nothing wrong with this as there is no property in a witness. Often witness statements are written by your opponent who "gilds the lily" and puts in a few thoughts of his own. A second statement from that same witness revealing holes, can undermine the case against you.
4. Get statements from any witnesses who can give evidence in your favour. Do not write the statements yourself as they may look like your words rather than the witnesses (this is a common mistake). Taking statements can be time consuming and costly. In an ideal world, statements would be taken in the form of a statutory declaration. However, most Tribunals do not insist on this formal approach. If time or money is short, your lawyer can even take statements by telephone. He can then write an email of the telephone conversation and ask the witness to confirm what was said. Even if the witness does not want to give a statement, your lawyer can provide a statutory declaration to confirm what the witness has said.
5. Just before you go into the hearing give copies of your witness statements to your opponent. Hand copies to each of the Tribunal members. There may be objections to the late notice of the witness statements and your written submission. However, Tribunal members are reluctant to postpone Tribunals hearings as they want to "get on with it". They usually do not have power to compel witnesses to attend and for them to

exclude evidence or argument, however informal, may risk an appeal. They simply do their best with the evidence before them. You may find that your evidence, however informally obtained, gives you the advantage and it is far better than no evidence at all.

With a lawyer as a manager/trainer are you going to win? Well it is just like Rocky. You may not win every time but you will put up one hell of a fight. Also, you will find yourself getting better if there should be any sequels.

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Debt Where is Thy Sting



As you struggle to manage your personal credit crunch by cravenly avoiding your own creditors while doggedly and indignantly pursuing your debtors, there are a few rules to the game that you should know about.

There are four rules to being a successful debtor:

1. Admit nothing, especially that you owe any money or that you are completely satisfied with the goods or services.
2. If there is anything slightly wrong with the product or services tell the supplier in writing.
3. Try not to sign personal guarantees.
4. Do business in a company or entity that is not worth suing.

At some stage during your evasive activity the creditor will "spit the dummy" and instruct a lawyer. Should you surrender immediately? Well, maybe not. There are two types of lawyer's letter. Either:

- a) Pay or we shall commence action. This is called a "letter before action". It is very precise and states that the money must be received within say, seven days of the date of the letter. The reason for this precision is not to help you pay more efficiently or make the

threat more menacing, it is simply to ensure that once the deadline expires the lawyer can commence action and the costs of the proceedings will be ordered against you. A "letter before action" is like the scene in "Dirty Harry" where Clint Eastwood says, "Make my day". The choice is blindingly simple, pay up or get sued.

- b) Pay or we shall "seek our clients instructions" or "advise our client that action should be commenced" or my own personal favourite "take such action as we deem necessary without further notice to you". This is usually a shot across the bows.

Assuming that you do not want to make payment in full, there are five possible responses to a lawyer's letter:

1. Do nothing and hope it goes away.

Letter a) forget it

Letter b) this may work

2. Offer to pay in installments.

Letter a) maybe.

Letter b) probably acceptable.

3. Say that you will defend any proceedings commenced; this means that you have taken it out of the "cheap and easy" debt collection class and put it into the expensive "defended action" category. If you have credible reasons this may make the creditor think twice before commencing action, especially if it is combined with 4.

4. Offer to pay part of the money in "full and final settlement". This is called negotiating a settlement.

5. The best response and the one most likely to stop your creditors in their tracks is to convince them that you are broke and that suing you is throwing good money after bad. This can be difficult to do as they will think that you are having them on; claims of fatal diseases, lost jobs, deceased relatives (or pets) tend to fall on deaf ears. A good tactic is the "open kimono" approach, by making a list all your assets and debts, offering to pay a few dollars a month to each debtor. On the positive side the worse that your financial position is the more successful that this tactic will be.

Now that you know the four rules to being a successful debtor you will understand that as a creditor you must:

1. Get the debtor to admit that the money is owing e.g. the cheque is in the post. Get it or confirm it in writing.
2. Know legally who owes you the money.
3. Get guarantees and do credit checks.

You are now fully equipped to be in small business during this particular turn down.

Best of luck.

This is an extract from eBook "Unleashing the Dogs of Law... How to win or lose your dispute in the bad times".

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The Old Bailey and the Innocent Man



The Proceedings of the Old Bailey, 1674-1913 have been placed online.

My first appearance at the Old Bailey was for a bail application. Just before I was called into court the police officer in the case said, "Shouldn't you be wearing a gown?". This made me very nervous especially when I found out a minute later that he was right. The judge took off his wig and for the rest of the application treated me as if I was a foreign language student. I found this very comforting and soon, I grew in confidence enough to join with the judge in having a go at the police officer, who was appropriately dressed and had made the mistake of appearing competent.

My client was a 45 year old Irishman charged with rape and buggery of his 74 year old landlady. He maintained that they were lovers and she had made these allegations in a fit of drunken, jealous rage. Before you say "yer right", he was in fact telling the truth. Most of my other clients (at that time) were either persistent criminals or greatly misunderstood by the authorities. He did not even have any previous convictions. I produced letters that she had written to the prison and a few pictures of her in drunken poses. Despite the police officer's objections, he was granted bail.

A few weeks later, I represented John Murphy (not his real name) at his committal hearing. The charges were dismissed and he walked free. Was it my brilliant cross examination? Well it could have been if she had turned up. Could he have been guilty? Well, he would have been found guilty as consent was no defence to certain sexual acts. There is no smoke without fire or in the face of a serious allegation, it is difficult not to feel that he must have done something wrong.

Also, there can be innocent victims. A local Bank Manager, also called John Murphy, unexpectedly called at my office but my then secretary refused to let him in. He too, despite being a Bank Manager, was innocent. If you are ever wrongly accused of a crime, however guilty you appear, your lawyer is prepared to fight for you like a tiger or in some cases like a foreign language student.

The <http://www.oldbaileyonline.org/> harks back to simpler days when "wicked" children were transported rather than being sent to bed early, police evidence was believed and cross examination was not permitted.

Policeman: He stole something.

Judge: Did he by Jove? Transportation.

Juvenile Defendant: Thank you your Lordship.

Policeman: No gown.

Judge: Transportation.

Defendant: Mooloolaba, Queensland?

Judge: No problem.

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Disclaimer:

The content of the Law & Disorder eZine is to give you legal basics and in some instances included unashamedly to try and make you laugh. In law it is sometimes difficult to work out what is serious and what is just for fun. Therefore, if you plan to do anything legal, rely on your own lawyer's advice or instruct me to look at the particular facts of your case. Not only will I deny responsibility for the legal content but also for some of the jokes.

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