Introduction

While preparing for the compulsory BSB ethics exam, I managed to work around the revision schedule. Below is an account of my recent experiences over the past few weeks.

Appeal Hearing – aka a moot!

Bryn Adams had an appeal hearing at the Upper Tribunal (Lands Chamber). The appellants are landlords of student accommodation flats. They appealed against the decision of the First-tier Tribunal (Property Chamber) to vary an improvement notice issued by the respondent, a local housing authority. The notice originally required the landlords to carry out specified works to fire doors. The varied notice required the landlords to obtain a report into the doors and to act upon its findings.

The interesting thing about this case is that both parties disagree with the decision of the First-tier Tribunal and want its decision to be set aside. The landlords aim to have the original notice quashed, while the local housing authority wants the Upper Tribunal to uphold the original notice and require the specified works to be carried out, avoiding the need for an additional report. In a scenario like this, the respondent typically “cross-appeals” if they are also dissatisfied with the initial decision, whereas respondents would usually adopt the analysis of the lower court or tribunal. Bryn appeared for the respondent.

The landlords, unusually, represented themselves in the appeal hearing. Predictably, the tribunal judge was quite interventionist, directing the landlords' submissions to focus on specific issues the tribunal had in mind. To my surprise, however, the same approach was taken when Bryn made his submissions. Bryn had a clear strategy in what order and the content of the submissions he was going to make. But the key takeaway from this case is that a deep understanding of your brief is necessary if you need to be flexible and make submissions off course. This level of judicial intervention, perhaps, is relatively uncommon in appeal hearings, even in the Court of Appeal or the Supreme Court, where judges tend to be more active.

Despite the intensive level of intervention, Bryn’s ability to think on his feet was remarkable considering the amount of ground that needed to be covered. Judgment is reserved and we shall find out the outcome of this appeal hearing at a later date!

Dealing with red herrings

As I approach my second six, I'm being assigned more paperwork suited to my level of call. Ben Lafferty requested that I draft a witness statement for a petitioning creditor (the "**Petitioner**") a centralised lender a who initiated winding up proceedings against a borrower company (the "**Company**"). These proceedings are brought when a petitioner seeks an order from the court to liquidate a company, allowing an appointed liquidator to distribute the company's assets to its creditors due to the company's inability to pay its debts.

Tanita Cross actually appeared for the Petitioner back in April when the petition was being heard by the court. It was adjourned on several occasions because the Company eventually said that it disputed the debt. It gave its reasons for disputing the debt through a witness statement. When a company disputes the debt a usual winding up order (i.e. liquidating the company) is not made, so it has to go to a substantive hearing. My role was to respond on behalf of the Petitioner to the issues raised in the Company's witness statement.

The Company only raised two out of seven points that were relevant. So, the first thing to do was to analyse all the papers and separate the wheat from the chaff. The best way to deal with red herrings is by calling out exactly what it is so that the court is under no illusions as to what the real issues are. The court will likely appreciate straightforwardness if you focus on the relevant matters. That leads onto the next topic where good drafting can save you a lot of pain.

Remuneration App

I'm currently spending a week in the Leeds Chambers. I shadowed Penny Emmott in a remuneration application she had in the morning. These are usually dealt with on the papers unless there is something in the case that needs to be ironed out at a hearing. In this case, the issue was relief from sanctions because the application was submitted late. The appointed office holder (a liquidator in this case) must file a remuneration application within 18 months of appointment if the fees haven't been agreed upon with the creditors beforehand.

Penny's skeleton argument clearly explained why the application was late and coherently argued why relief and the application should be granted. The judge began by asking Penny if she had anything to add beyond her skeleton argument. With nothing further to add, the order was approved as requested. The judge then addressed me, stating, "the lesson here is to draft a good skeleton argument." Indeed, a well drafted skeleton argument saves work later and commands respect from the court, as demonstrated in this case.

Words of wisdom I've heeded and will undoubtedly implement when I'm on my feet in four weeks!

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