

How to lose an Arbitration

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Or indeed any case before a tribunal or court



1. Just Do It

- As long as you are honest, just go for it irrespective of your level of experience, as you can comment on all matters before the tribunal to ensure your client wins.
- It matters not whether you are an expert witness, an advocate, or both



1. Just Do It - Expert Witnesses

Special care must be taken to ensure that expert evidence is not biased towards those who are responsible for instructing or paying you.

AND

Opinions should not be exaggerated or seek to obscure alternative views or other schools of thought,

4th Edition



1. Just Do It - Advocates

You may advance the case you are presenting by all fair and proper means;

You may not deceive or mislead the tribunal or any opposing party; and

You must take reasonable steps to ensure that the tribunal has before it all relevant decisions and legislative authorities

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1. Just Do It

Although both Mr X and Mr Y were valuation experts, they were not experts in building costs... Accordingly, having made his findings, the judge was fully entitled to adjust Mr X's valuation of Mr Y's valuation in order to insert the correct inputs for the cost of works... in my judgement he cannot be faulted for having done so.

Tiger v Sunlife [2013] EWCA Civ 1656



2. Your experience is far superior so...

- Do your own thing
- Better still, ignore everything I ask, or direct, that you do as well

2. Your experience is far superior so...

"In making his comments Mr X did not comply with the directions of the arbitrator in relation to points of law"

Cordoba Holdings Ltd v Ballymore Properties [2011] EWHC 1936(Ch)

3. Ignore RICS Guidance

"My view of the Practice Statement as put in to practice is so jaundiced that I no longer include it in my own submission. I regard its intention as entirely laudable and endeavour to abide by it in practice, I am however only human and you Sir will therefore have to be the judge as to the degree by which I succeed in abiding by its precept..."



Examination/Cross Examination

Que: Do you recall the time that you examined the body?
 Ans: The autopsy started around 8:30 PM
 Que: And Mr. Denton was dead at the time?
 Ans: If not, he was by the time I finished.
 Que: How many of your autopsies have you performed on dead people?
 Ans: All of them.. The live ones put up too much of a fight.



5. Remember it's all about weight (grms/kilos)

- Tell me what I already know
.....several times
- Include every transaction you can think of
irrespective of its relevance
- Repeat your case at every opportunity



6. Forget Impartiality and your credibility

- Omit what does not suit your client
- Make the analysis fit the answer you want
- Remember that as long as they are small
ones, lies are acceptable



6. Forget Impartiality and your credibility

Whilst both experts endeavoured to assist me, both of them were, to an extent, somewhat partisan in their approach and there are aspects of their evidence which I am unable to accept"

Car Giant v London Borough of Hammersmith - [2017] EWHC 197 (TCC)



6. Forget Impartiality and your credibility

It is unfortunate that in arguing his client's case Mr X has omitted to refer to his involvement in Failure to bring to my attention that he is acting for the landlord of, and its potential settlement at a Zone A rent less than he contends for does bring into question the weight I can attach to his opinions as Expert Witness in this arbitration.

D Gilbert award



7. Don't Investigate Anything

- The arbitrator will inspect both property and comparables anyway
- Your assistant can do most things and you can charge your hourly rate for them...kerching!



7. Don't bother to prove your case

'It is not possible to disregard any increase in rental attributable to an improvement to the premises if there is no evidence as to the nature of the improvement, who carried it out, when and at what cost'

Cordoba Holdings Ltd v Ballymore Properties [2011] EWHC 1936(Ch)



8. Charge Whatever You Want

- As long as you charge an hourly rate for the arbitration just forget about the underlying fee agreement, nobody will ever know
- Forget about keeping a timesheet you can make that up if you are awarded costs



8. Charge Whatever You Want

Whilst Mr X has pointed out that he has agreed a fixed fee for the arbitration work itself, it is an inescapable fact that the more I award, the more Mr X's practice will be paid for his work. I Find as a matter of Fact that this cannot be compatible with Mr X duty to me in this case. There is a clear danger that Mr X expert opinion evidence may be, albeit subconsciously, affected by this fee agreement.

D Gilbert Award



10. Remember Valuation Is An Art

- You can largely ignore facts
- Theoretical approaches are far more credible
- No need for calculations



10. Remember Valuation Is An Art

- *"These all might be good explanations, but none of them are supported by evidence."*
- *"It is based on an unproved assumption."*
- *"No evidence has been called to support the figures"*

Car Giant v London Borough of Hammersmith - [2017] EWHC 197 (TCC)



Examination/Cross Examination

- Que: She had three children, right?
Ans: Yes.
Que: How many were boys?
Ans: None.
Que: Were there any girls?
Ans: Your Honour, I think I need a different attorney.
Can I get a new attorney?



11. Be Temperamental

- Ignore when your opponent has made a valid point, or rubbish it



11. Be Temperamental

"It is hard to take seriously the tenant's surveyors comments. When you get to paragraph (iv) the tenants surveyor suggests that the circuit round the Shopping Centre includes part of the exterior townscape, a concept which, if I thought for one moment he was serious, would lead me to question his sanity"



11. Be Temperamental

- Score As Many Points As You Can By Putting Your Opponent Down
- If All Else Fails..... Get Angry!



11. Be Temperamental

"Sir, I am in awe of the level of experience that Mr has demonstrated in his CV. It is regrettable that he has applied none of it in writing his submission"



11. Be Temperamental

"Further it comes complete with the most awkward landlord it has ever been my misfortune to come across, an entity who's sheer obstructiveness is only exceeded by that of his managing agent."



In Summary

- Demonstrate that your knowledge and experience is superior to everyone else's at every opportunity
-Including mine!



And Lastly on Cross Examination

Que: So the date of conception (of the baby) was August 8th?

Ans: Yes.

Que: And what were you doing at that time?

Ans: Getting laid.




