

# Teaching Case Concept

*a discussion*

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# Morley History

- Criminal practice – domestic and international, some FCO.
- 1992 Gainesville, Florida.
- Inner Temple ATC 1992-2005.
- 1994 George Hampel.
- Student, helper, teacher, teacher trainer.
- Early IT Course Director, Pupils, case materials in crime.
- 2005 The Devil's Advocate.
- 8 years icl 2004-12.
- From 2013: IntCom ICCA, IT faculty, ASI, Professor NLS & Coventry.
- Taught in 32 jurisdictions – Ghana next week, 33.

# Case Concept

- Teaching case concept is the cornerstone for all other skills training, as to witnesses and submissions.
- *It is very very very important !* (but is usually an adjunct, or throw-in, or add-on).
- Taught differently.
- Meaning that CC means different things to different folk.
- Philosophical – lots of theory.
- Descriptive – talking about what the case is about.
- Prescriptive – there's lots on what the student should do.

*So I'm asking:*

- *What do we mean when we say: 'my case concept is....'*

# Winning

- In my view, a case concept discussion is a discussion on how to win your case.
- It is not a generalised discussion, with bits of philosophy, descriptions of what the witnesses say, and things you should do at trial.
- It is not a list of good points and bad points.
- It is not a discussion about how to neutralise bad points or draw out good points – that is simply part of CC.
- Instead, CC is an overall plan for winning.

# The Test

CC starts with the test:

- what must be proved,
- by who,
- to what standard.

Then we set about creating a plan to work the evidence against the test in a mixture of persuasive comments on the facts as they ought to have emerged from the witnesses.

# THE CLOSING SPEECH

## THEREFORE

- The importance of writing a persuasive closing speech before trial is the overriding point of teaching CC, creating a map for everything done at trial.
- This means teachers need to know how to make a closing speech.
- And why one works.

# Can you teach closing ?

- Demos.
- Interactive.
- Closing on one point.
- Flipping the arguments backwards and forwards.
- Formulae of words: *'you may think'* etc.
- Striving for common sense.
- Hearing how the argument sounds.
- The 3r s: rhetoric, rhythm, references.

# Closing begs...what is persuasiveness?

- Getting a listener to agree with you.
- Or at least to really, really listen.
- Show not tell.
- Help not push.
- The 3i s – integrity, invisibility, irresistibility.
- The argument appears to solve itself.



# The core problem

What is not taught:

- Persuasiveness
- How to deliver a closing speech
- The difference between fact and comment
- The point of witness examination (namely to get just what you need for closing, and then stop).

# The easy option...

- ...is teaching witness handling.
- Parroting rules – *leading, structure, get to the point etc.*
- Rarely hear a review on how elicited evidence would play into the closing speech.
- Much current teaching is ‘rote learning’ – it offers bits of a jigsaw, without showing the overall picture (namely closing).
- There are some emerging attempts at asking a student before a witness examination to explain what each will want for a closing speech, but currently I think this lacks depth.
- Non-advocates are numerous in advocacy teaching, including judges, offering rules, but rarely the ‘big idea’.
- The ‘big idea’ is that advocates seek to ‘succeed’, in other words to win within the rules (like it or not), and if teaching, we need to show how put together a case, so the evidence comes out how you want, in order to win it.

# The Rules

Code of conduct is a lengthy important study, but distilled, the rules are mainly:

- No lying.
- No shafting.
- Be honourable.
- Work within instructions.
- You have a duty to the court.
- Think like the judge, not the client.

And within these parameters, your job is to control the evidence so as to meet the test, and in this way win.

# The ideal case concept class

- There should be a separate class on how to make a closing speech.
- In CC, class should be interactive, starting with mock closing speeches.
- Demos then to put right.
- Discuss fact and comment.
- List the good facts, bad facts.
- Identify the comments to make on the facts.
- Identify the questions to ask of which witnesses in which style to elicit the evidence just right so the comment can be made.

# Students at a loss

- If a student does not know how to make a closing speech, then CC classes are not understood, and witness handling has no context.
- Some get it fast – maybe 50%.
- Others need better help.
- So, to teach well, ideally teachers need to be
  - good advocates, and
  - to understand why they are good.
- And teachers need to understand why a student may not understand, and so see where they are in their head – and then know how to get them to where they need to be.
- And as a final thought, I would encourage more younger teachers, who are advocates, and who remember how lost they were at first.