Unit 1: Case analysis

These unit notes will take you through the basics of case analysis as a relevant step in resolving a client's dispute drawing on some of the learning objections for this unit.

Review, analyse and summarise background dispute documentation from both a legal and a commercial perspective

This process above is sometimes known as case analysis. Most civil disputes revolve around documents: for example, contracts, correspondence between the parties or notes of what was discussed at meetings. Therefore, the first step in most new dispute resolution cases is to review documents the client makes available. Let us consider first why you are doing this.

Why are you doing case analysis?

You are doing this for several different reasons:

- **To better understand the facts** – It is important to understand the factual matrix of the parties' dealings so you can advise the client about their legal position. The background should make clear what the legal basis of any claim is (for example, whether it will be contract or tort based, or possibly both), as well as when any relevant limitation period is likely to expire. In many contract-based claims you should also be able to see whether the contract prescribes a method of dispute resolution.
- **To understand what is missing** – It is important to understand which documents you have not seen but which are likely to exist, and which you should try to obtain so that you can advise more fully on the merits of the dispute. Disclosure is fundamental in most cases and something you will need to consider in more detail as the case progresses, but at this stage it is as important to think about what you have not seen as well as what you have.

  The documents which exist will vary from case to case, but at this stage you should think about:

  - references within documents to other documents which have not been supplied
  - documents which appear to be drafts where you might expect there to be a more up-to-date version, and
  - correspondence between parties which appears to be incomplete: for example, if an email acknowledges an earlier one, ideally you would want to see that; if there is a suggestion that one or more of the protagonists uses WhatsApp for work communications, ideally you would want to see those messages.

- **To understand the parties** – It is important to gain a feeling for the personalities involved and how they may have a bearing on how best to resolve matters.

  You can only learn a limited amount about somebody's personality through reviewing correspondence, but it may help you to identify the problem solvers within the client organisation, find out whether someone is conciliatory and discern the level of animosity between the parties.

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It might also help you plan how best to manage client expectations. For example, if you see internal correspondence suggesting that the client has a “cast iron claim” or similar against the other side, that may benefit from early management on your part (unless it matches your analysis of the claim).

Let us consider how you do this in practice.

How do you do case analysis?

Different practitioners do this in different ways. Some practices specify a method or protocol to follow. We will focus on some of the generic principles.

Written, accessible and comprehensible

The key principle is to do case analysis in writing, in such a way that you or another fee earner from your practice can easily access and understand your work. A written analysis is important because you will revisit and develop your case analysis as the dispute develops.

Any fee earner who works on the file in your absence is likely to look at the case analysis first to understand more about the claim. As an example, if you have worked out the limitation period expiry date, set out your calculation in case somebody else reaches a different conclusion. Ensure that these dates (and all key dates) are in both your diary and a central team diary to ensure they are not missed).

Documentation

Identify clearly which documentation you have considered, and any additional documentation you have flagged as being potentially relevant.

Interview and take instructions from a client

Interviewing and taking instructions is a key step in all cases. You may have a short meeting with the client at the very start of the case, when you have not had an opportunity to consider any of the relevant documentation, but generally you will have an opportunity to consider some documentation before taking detailed instructions from the client.

Preparation

Time spent with the client is valuable, so it is key to prepare as best you can. The easiest way to do this is to use your case analysis to devise a strategy for the detailed interview.

This should mean that you are up to speed with the known facts of the case and therefore can offer some preliminary advice and manage the client’s expectations as to what should happen next. It may also mean that you have already identified missing documentation you can ask the client to try to locate and bring to the interview.

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