

**IN THE SAHCA TRAINING PROGRAMME  
DISTANCE LEARNING DIVISION**

**Claim No. ABC1234**

**BETWEEN**

**A ROCK LIMITED**

**Claimant**

**and**

**HARD PLACE HOLDINGS LLC**

**Defendant**

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**SKELETON ARGUMENT**

**ADVICE AND GUIDANCE**

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### **Housekeeping<sup>1</sup>**

This is a guide to preparing an effective skeleton argument, adopting that format.

Recommended pre-reading:

- Guidance on case preparation – it will be important to have analysed your case fully before you try to reduce it to a skeleton form
- Note on use of authorities – arguments often depend on legal authority and poor or inaccurate citation can reflect poorly on your case as a whole.

Time estimate: 90 minutes (including pre-reading)

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<sup>1</sup> Note: this is not always necessary, but we would recommend for any case where pre-reading is expected and/or where the duration of the hearing is half a day or more

## Introduction

1. As with any argument, a skeleton should take three parts:
  - a. Begin by explaining what you will tell the Court
  - b. Tell it to them
  - c. Conclude by confirming what you have told them.
2. An introduction is an opportunity to frame the decision-maker's approach to the case, and to the remainder of your skeleton argument. It identifies the themes of your argument and signposts certain highlights to look out for on the way.
3. This note will include:
  - a. Guidance on the structure and content of an effective skeleton argument;
  - b. Suggestions as to format and style
  - c. Some additional tips about the use of skeleton arguments and courtroom advocacy generally<sup>2</sup>
4. Always remember that the purpose of a skeleton argument is to *argue* your case. Anything which does not progress that argument should be omitted (it is far better to cross-reference to witness or documentary evidence elsewhere than bulk out the skeleton by quoting large chunks of that evidence verbatim).

## Guidance

### A. Structure and Content

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<sup>2</sup> When preparing this note, I didn't know what I was going to include here, so I just put [something else], and then came back to it when I knew what that "something else" was!

5. A skeleton is a formal document, to be read by a judge. But formality is not inconsistent with brevity:
  - a. Use short, punchy sentences
  - b. Cross-referencing can be minimalised (“[x/y/z]” is preferable to “at page z behind tab y of volume x”)
  - c. Parties can be C and D<sup>3</sup>, not Claimant and Defendant or party names.
  - d. Footnotes can also assist by adding essential supplementary detail that would break up the flow of the main argument.
6. In terms of structure, think about your case analysis and the logical flow of your argument.
7. First, establish factual matters which are fundamental to your argument: So, for example
  - a. in a personal injury case, the matters which give rise to a duty of care and the circumstances of the injury;
  - b. in a breach of contract case, the basis of the contractual relationship and the term breach; or
  - c. for a criminal case, the essential ingredients of the offence.
8. These can be taken very briefly as they are likely set out elsewhere, highlight any factual matters which are not in dispute.

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<sup>3</sup> Although note that it is also easier to confuse by mixing up the references when abbreviating

9. Set out the legal principles engaged by the factual matters you have identified. Refer to relevant statutory or case law, quoting the minimum necessary to give the Court a clear understanding of how the law stands at present.
10. If it is reasonable to suppose that the Court and your opponent will know the law – because the legal principles are well-established and common-place, do no more than allude to those principles, but be ready to amplify on them in submissions if required to do so.
11. Address any contrary arguments or unhelpful authority that might be expected to be raised. This is always important (and often overlooked) but particularly so where your opponent is unrepresented. It is important here to strike the right balance between representing your client's interests and not misleading the Court or your opponent into thinking that a particular point is clear cut, when in fact there is scope for alternative views.
12. Having set out the factual and legal matrix, guide the Court through the conclusions which you are inviting, based on that information. Explain what the practical implications of these conclusions would be. Sometimes it is also helpful to illustrate the consequences of a contrary conclusion (particularly where this highlights some absurdity of the other side's case, or demonstrates that a wider principle is engaged).

13. If appropriate, conclude with some submissions in connection with costs. In more substantial hearings, it will be prudent to address these separately, and in very substantial cases, this may entail a separate costs-focused skeleton argument.

## **B. Format and Style**

14. Just as much as content, the format of the skeleton argument should support your objectives.
15. Lay out the content cleanly, with consistent formatting. Use an easily legible font size and type face. This will assist the decision-maker, but will also assist you when you come to refer to it in Court.
16. Make sure that your submissions are double-spaced and include gaps between paragraphs and at the end of sections. This will assist you (and the Judge) to make notes as arguments are developed and refined.
17. Consider whether any of the participants in the proceedings might have special needs which might require changes to formatting. Visually impaired people might appreciate receiving the skeleton in a larger font size, or in an electronic format. Litigants in person (particularly, but not exclusively, those with learning difficulties) may need additional time to have the content of the argument explained to them.

18. Always be willing to provide a copy of your skeleton in an electronic format. If your submissions find favour with the Court, it may be that elements of your skeleton will be helpful in forming the basis for the structure of the Court's judgment!
19. Make sure that your text has been proof-read, that all of your references are correct and complete, and that any drafting notes have been cleaned out. There should be nothing that is a barrier to the Court immersing itself in your argument.

**C. Additional Tips and Suggestions**

20. Think about having a skeleton argument even in circumstances where the Court does not require one – it is almost always helpful to have a neat road map through your arguments for you to refer to during the course of a hearing.
21. Consider whether there are any additional forensic documents which it would be helpful for you, as an advocate, to prepare to assist the Court. A summary of issues can often assist – if this can be agreed. Similarly, a chronology of relevant events, or even a plan of a relevant location may be invaluable.
22. Having put all of that hard work into your skeleton, check that the Court has received it. You may be able to do so with a Court clerk or usher before the case begins, but it is always courteous also to check with the judge that they have (a) received and (b) had a chance to read your skeleton. Have a spare copy to hand up, just in case.

23. Speaking of spare copies, if your case is likely to attract any interest from court reporters or the wider media, it may be sensible to have spare copies of your skeleton for them to refer to. You should in any case always prepare your skeleton in the knowledge that this is a document which a reporter is entitled to obtain from the Court, in the absence of any contrary order from the judge.
24. Finally, during submissions, be prepared for the judge to focus on some parts of your skeleton and to overlook others. Use marks to remind yourself which points you have covered to your own satisfaction, to make sure that you do not go back over ground already covered, but equally to ensure that no part of your client's case is omitted.

## **Conclusion**

25. Having reviewed this note, you should now be well equipped to prepare your own skeleton argument, thinking about the content, format and structure that will convey to the Court and your opponent, as succinctly as possible, why your client's case should succeed. Keep it clear, keep it relevant and (above all) keep it brief!