

Setting out facts in Written Submissions

Why do this?

I do this so that the Judge has all the facts set out before her in a single document in a succinct manner.

This saves the Judge the hassle of piecing together the facts herself, by shuffling through various documents.

I do this even if I am appearing before a Judge who should be familiar with the claim (say, the trial Judge who is hearing a stay of execution application).

This is because there is no telling how much of the claim the Judge might remember at the stay hearing, given the time-lapse between the trial and the hearing.

Also, the facts that I choose to emphasise at the hearing may be slightly different than those I relied on at the trial.

How do I do this?

- By drawing the facts (as far as possible) from the documents filed by the opposing party (with cross-references to those documents).

I do this to earn brownie points with the Judge by showing how my client is in the right *even* when I rely on the opposing party's version of events.

The hassle with this approach is that I may have to re-word the language used (without losing its essence) so that it gels with the rest of the submissions written in my voice.

- By identifying the cause papers (from which the facts are drawn).

I usually prepare a table (marked as Annexure 1 (see below)) to the submissions setting out the cause papers relied on in the submissions and the enclosure numbers assigned to them by the court.

I do this because I find it neater – whether in oral or written submissions - to identify cause papers and their contents by their enclosure numbers (say, paragraph 6 of Enclosures 5 or 15), rather than recite their entire title (paragraph 6 of *'The Plaintiff's Affidavit in Reply affirmed by Tan Kok Guan on 6 March 2022'*).

Therefore, a portion of the submissions may read:

1. The Contract was dated 27 January 2023. Para 4 of
Enclosure 5.

2. It was signed by the Defendant.

Para 5 of
Enclosure 6.

- By setting out the facts chronologically or thematically.

Setting out the facts chronologically gives the Judge a good picture of what happened, when. This can even be complimented with a table setting out a chronology of facts in Annexure 2 to the submissions. The table will allow the Judge to determine the order of events at a glance.

Setting out the facts thematically allows the facts to be grouped according to the legal complaint or defence. This is useful when the facts that form the ingredients of a particular complaint or defence is spread out over a lengthy period or carried out by different actors.

If you are using the thematic approach, however, I should point out that that rarely are facts hermetically sealed under a particular complaint or defence. Therefore, although a thematic approach makes it easier to present particular complaints or defences coherently, it also comes at a price, since facts impinge on each other and on different legal complaints in a variety of ways.

One way around this is to make this drawback clear in the written submissions itself and to be prepared to explain at the oral hearing how the facts tie together.

When setting out the facts, I also try to make a note of the facts that I would like to mention in oral arguments. This may be so that I can place a particular fact in context (to explain, say, the emotions at play when my client transgressed the law) or how a particular fact should be viewed in hindsight (the client accepts responsibility for a particular wrongdoing, etc.).

Annexure 1 may look something like this:

ANNEXURE 1 – CAUSE PAPERS

<u>NO.</u>	<u>CAUSE PAPERS</u>	<u>ENCLOSURE NOS.</u>
1.	The Plaintiff's Notice of Application (For Summary Judgment) dated 7 March 2022.	3
2.	The Plaintiff's Affidavit in Support (For Summary Judgment Application) affirmed by Ali bin Hassan on 10 March 2022.	4
3.	The Defendant's Affidavit in Reply (Opposing the Plaintiff's Summary	5

Judgment Application) affirmed by John Thomas on 6 April 2022.