

ORAL ADVOCACY (11): MAKING A REBUTTAL

EN: Hi, welcome back. I'm Eric and this is the Quick Guide to Oral Advocacy. In this last episode, we'll offer you some tips on how to make a compelling rebuttal or surrebuttal. Specifically, you'll learn: elements of a rebuttal or surrebuttal: summary of the opponent's vulnerable points, refutation, and your own arguments; how to argue in the alternative with *even if*.

EN: To put it simply, a rebuttal allows one party to refute points made by another. A surrebuttal allows a party to respond to a rebuttal. Remember, a rebuttal or surrebuttal should be concise. Parties are not supposed to put forward new arguments or raise any new legal issues.

EN: A rebuttal can be organized with a three-part structure. First, you summarize the opponent's vulnerable points. Then, you refute them. Lastly, you link them to your own arguments. Let's see how Lavesh organizes his procedural rebuttal on behalf of the Respondent:

LK: Mr President, members of the Tribunal, the Claimant has sought to rely on numerous English authorities citing *Walford v Miles*. The decision of *Walford v Miles* was situated on an agreement to agree. It was held that it's not allowed for parties to come to an agreement to agree. However, this is very different from current circumstances. If we look at the recent authority of *Emirates Trading v Prime Mineral Exports* in 2014 from the High Court of England and Wales, it was clearly stated that an agreement to negotiate is binding so long as the parties have agreed to a few terms, one of them being the exact length of the negotiation period. And in fact, if we look at the circumstances of our present case, it's clearly stated that there is a 12-month period of negotiation. Therefore, the Respondent submits that the Claimant has not fulfilled its obligations under Clause 65 of the Arbitration Agreement. This concludes my rebuttal.

EN: In the example, Lavesh first summarizes the Claimant's vulnerable points. He states that the Claimant has relied on English authorities like *Walford v Miles* and points out that that decision concerned an agreement to agree. Lavesh then moves on to the next step – refutation. He distinguishes *Walford v Miles* and introduces a competing authority. Notice the use of *however* in order to help Lavesh move from summary to refutation. In the last part of his rebuttal, Lavesh introduces his own argument that the Claimant has not fulfilled its obligations. Overall, Lavesh

organizes his rebuttal neatly with the three-part structure.

EN: In a rebuttal or surrebuttal, it's common to use a technique known as arguing in the alternative. Let's have a look at how Harp does this in his substantive surrebuttal on behalf of the Respondent:

HS: Mr President and members of the Tribunal, the hinge of the Claimant's rebuttal rests on the element of 'knowledge' on the part of the Respondent of the political climate of Gondwana and the successful implementation of Bill 275. The fallacy of the Claimant's point is that knowledge has never been an element of an impediment beyond control under Article 79 of the CISG, so it's a non-issue. Further, even if it was, there is no evidence to prove conclusively that the Respondent knew of the successful implementation of Bill 275, so the Claimant's argument must fail. This concludes my surrebuttal. Thank you.

EN: In the example, Harp is responding to the Claimant's rebuttal. He identifies the element of 'knowledge' as crucial to the Claimant's arguments and advances two alternative arguments against it. First, he argues that knowledge is not an element of an impediment beyond control under Article 79 of the CISG. In case the panel disagrees with this point, Harp uses the strategy of arguing in the alternative with *even if* to put forward a second argument. Let's watch this part again:

HS: Even if it was, there is no evidence to prove conclusively that the Respondent knew of the successful implementation of Bill 275.

EN: Harp makes use of the strategy to suggest that even if knowledge turns out to be an issue as suggested by the Claimant, there is in any case not enough evidence to prove that the Respondent knows anything about the successful implementation of Bill 275. As a result, the Respondent's position still prevails.

EN: So remember, there are three elements of a rebuttal or surrebuttal: summary of the opponent's points, refutation, and your own arguments. Arguing in the alternative with *even if* is a useful strategy in a rebuttal or surrebuttal.

EN: It's been our pleasure to walk you through some English language tips for oral advocacy in mootings in this series. Anything to add, Sabrina?

SL: I agree, and we hope you've got the most out of the series and will be able to apply what you've learnt very soon.

EN: So it's time to say goodbye.

SL, EN: Thanks for watching!