

WORK BOOK FIVE



# LITIGATION

**7 GOOD REASONS TO**

**AVOID LITIGATION**

**COACHING ACADEMY SPECIALIST**

**Where Small Businesses Grow**



# Litigation

*“Fearlessness is like a muscle. I know from my own life that the more I exercise it the more natural it becomes to not let my fears run me.”*

**Arianna Huffington, President The Huffington Post Media Group**

## 7 Good Reasons To Avoid Litigation

Have you sued, been sued or is it just about to happen?

You should very seriously consider the following seven key points before and during litigation.

- The loss of Goodwill.....Some people will say” I don't care if he gets upset”
- The Potential cost..... Brace yourself.
- Justice will be done.....it's a nice idea but don't kid yourself.
- Logic V Emotion.....Why should he get away with it?
- It's the principal of the matter.....Are you sure? This might cost a great deal.
- You might need a lawyer to explain what your lawyer is doing for you.
- Litigation should have a Government Health Warning.

### 1. Goodwill

**Once you appoint a lawyer any goodwill that might have been present tends to evaporate.**

A defendant who has been reluctant to communicate or negotiate will often adopt the position after he has heard from your lawyer, “well if that's the way you want to play it, so be it” and thereafter all communication is through the lawyers.

Each lawyer writes to the other lawyer as they create massive files wrapped in beautiful purple ribbon, whilst the two interested parties are discouraged from communicating directly.

## Litigation/Continued

### 2.The Cost.

#### **Litigation is expensive!**

The legal team tend to get paid an hourly rate and not generally on performance. Your solicitor's hourly rate is unlikely to be less than £250 with the junior charging out at £175 and the Partner and senior partner billing some £450 and £600 per hour.

If of course your case needs thinking time, out of hours or at the week-end then there might be a 150% uplift. When your solicitor suggests that you might take advantage of an opinion from a specialist barrister, then brace yourself for some real and proper fees as you head for counsels chambers.

As the protocol demands your barrister should not meet you without your solicitor being present then you can expect, super service and a double whammy of a bill to include your solicitors costs and of course travel time.

### 3. Will Justice be done?

#### **You need to have a budget probably ten times and maybe fifty times in excess of what the lawyer suggests.**

The lawyers opening budget is just to get you in the game.

Once you have started we tend to feel that we have to continue, particularly when the lawyers provides you with a long list of possible (which you will interpret as probable) positive outcomes.

Of course the lawyer will protect his position by advising you in writing of the risk but quietly you will tend to just recall all the positive opportunities and possibilities, together of course with the simple logic that your claim is just and honourable and surely justice will be done.

#### **Don't kid yourself!**

Litigation is not about right and wrong, the outcome is based on the evidence submitted and the balance of probability.

## Litigation/Continued

### 4. Emotionally involved!

Another huge factor in Litigation is that you must have the full budget available and you must then be able to treat the claim as a project.

If you passionately believe and “feel your claim is a fair one” then it will prove very difficult for you to be able to stand back and not be emotionally involved.

If you are so closely involved, it can play hell with your mind and your health; it can very easily dominate your mind and take you away from how you should be thinking.

It is very likely that the other side i.e. the defendant is either a corporation where the matter will be passed to the litigation department where they all go home at 5pm without a worry in the world or the defendant is an individual who couldn't care less.

**You could be worrying and writing out cheques while the other side are having a fine time.**

### 5. It's the Principle of the matter.

I will sue him out of principal”, if the principal is based on “Why should he get away with it?” forget it, because not only might he still get away with it, you might have to pay your costs, court costs and his costs.

Every litigation case going through the courts today will result in “a loss” for one side and “a result” for the other but never a draw.

Bear in mind that “the loss” could be a great deal more than you were prepared to risk. “The result” which might appear as a victory could cost you a great deal, materially and psychologically.

## Litigation/Continued

### 6. Legalise talk.

**Every litigation case should come with a Government Health Warning.**

Litigation lawyers have to possess a Practising Certificate (PC) issued by, The Law Society and to protect the lawyers position, they have very expensive Professional Indemnity Insurance (PII) and to ensure that they do not fall foul of their obligations under this policy, you will find that they properly notify you in writing of all events and possible outcomes.

**It is no surprise that you might feel in need of a lawyer to explain what is happening.**

To keep costs under control, it can be very efficient to have an in-house lawyer deal with the matter.

### 7. A Health Warning

Litigation can be so stressful for the litigant that it can affect your health and relationships. You need to be in the best of health and should do everything possible to maintain that position.

Even if you manage to deal with the litigation as a project, you should be extremely careful to whom, where or what you turn to in stressful situations.

It's best that close family are involved from the outset because it is almost inevitable that they will be affected down the line.

**You will be seriously tempted to involve those closest to you as you are about to “Win the race or lose your shirt”.**

Is it suggested that you should never litigate and that you should just “roll over and let them have it”? of course not, but be careful, get to know all the facts and consider the alternatives including a compromise and settlement.

## Steps To Take Before Proceeding With Legal Action

1. Is the debtor, an individual or a company at the address stated?
2. Are there any disputes outstanding?
3. Is your companies' paperwork in order? If not and the debtor raises a defence in court, you will be made to look extremely foolish as well as incurring additional court costs.
4. Is amount of debt worth the effort?
5. Would it be more practical to write the debt off?
6. Many companies that have learned the hard way that pride and the legal system do not mix. Anyone can win a judgement, but if it is not enforceable then it is very expensive and absolutely worthless.
7. Check that the debtor has the where-with-all to settle any judgement enforced by the court.
8. Only proceed with legal action if you are certain of obtaining a successful and enforceable judgement.

## Success Story And Positive Mental Attitude

Tony McCoy 16 Times Champion Jockey had numerous falls.

When asked by Paul Hayward for the Daily telegraph how many falls he had he answered by saying "I don't count the falls, but I've had 3561 winners if that is any good to you".

**Tony is inspired by Richard Johnson who tends to come second.**

***"You forget pain when you ride winners. My face could have been broken to bits and I would have gone on".***

Leg: In 1993 McCoy then 18 heard his leg snap when his horse hit wooden fencing on the gallops. "I could see the bone sticking out. I thought I was going to die. I was screaming like a baby.

Hands: Dislocated thumb put him out of action for nine days, but he made a winning return on his first ride back. Badly broke his wrist in 2005, "it was hanging on by the skin" said McCoy not great to look at.

Back: Broke his back in a fall at Warwick in 2008 after suffering a similar injury 10 years before. He had two metal plates inserted into his back to protect damaged vertebrae, then cryotherapy to speed the healing. He was back in action in Cheltenham two months later.

Ribs:: Has broken ribs many times, including a final fence fall at Taunton in December 2011 that left him with seven fractured ribs and a punctured lung.

Shoulders: Has broken both shoulder blades and suffered multiple broken collarbones. Once continued riding for three days before being treated for a break.

Face: Smashed cheek bone and eye socket when his horse's knee hit his face in 2004. At Wetherby last week needed 20 stitches in his face and had two broken teeth after a kick. Rode next day.

Arm: Broke both bones in his right forearm in 1999 and again in 2003.

Mouth: Has chipped his teeth 14 times and lost 10, suffered a seriously split gum and lost four teeth during a fall at Cheltenham in 2006 but despite blood pouring from his face he continued to ride in further races and won

**The Mail on Sunday November 2012.**

**DON'T FORGET TO WATCH THE  
"LITIGATION" VIDEO**