

# Gee's Laws of Litigation

By Geoffrey Watson SC

Throughout his professional life Christopher Gee QC discovered, refined and propounded a small number of rules which he claimed comprised an original theoretical and practical basis for the presentation of cases, obedience to which would necessarily dictate success and professional advancement. With typical self-effacing modesty Chris called these rules 'Gee's Laws of Litigation'.

During the running of cases Chris would often refer and resort to the Laws, but he resisted all calls to commit Gee's Laws of Litigation to writing. He preferred to regard the Laws as part of an oral tradition. Despite this, when Chris died some of us who were schooled in the Laws decided they must be compiled. Naturally, there was no agreement whatsoever as to the content or wording of the Laws. That which follows is, I believe, the closest we can get to the true list.

These are Gee's Laws of Litigation:

1. The correct answer is always, 'No'
2. The correct answer is always, 'No'
3. The correct answer is always, 'No'
4. No case is not improved by a good verbal
5. Never smile in a jury trial
6. If you need to call the bank manager, settle
7. Under no circumstances pass the water bottle
8. Never re-examine

Each Law deserves elaboration.

## The correct answer is always 'No'

This Law related to the way Chris wanted the witnesses he called to approach their cross-examination. Chris's regard for the importance of this Law is made obvious by its place in the list and its repetition. If you have not observed its importance in your own practice you cannot have been paying attention. How many times have cases slipped from my grip while my witness obliged in cross-examination with a 'Yes', when a 'No' would have done quite nicely?

Chris's fear of a breach of this Law unconsciously reflects his skill as a cross-examiner (it was not often that Chris was unconscious of his skill). Chris was a superb cross-examiner, especially of experts. His target was to get the witness to agree with him. His demeanor was sincere, with just sufficient affability to gain trust. He would commence by establishing assent to general and, in reality, unarguable propositions, building quietly on this until he had the witness agreeing to all manner of crazy things. Many witnesses did not recognise the havoc which their agreement was causing.

## No case is not improved by a good verbal

The 'verbals' of which Chris was speaking here are not those kind of verbals examined in detail in the Wood Royal

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Commission. Rather, Chris was referring to the dynamic effect that oral evidence tended to implicate another party through that other party's own words, can have on a trial. Much of the hard-line commercial and contract cases are entirely dependent on cold examination of de-humanising documents. Chris believed a verbal could bring dry old documents to life. And it always left your opponent compelled to undertake one of those demeaning and inevitably fruitless 'No he didn't / Yes he did' cross-examinations.

## Never smile in a jury trial

In his early days Chris did a lot of common law jury work and continued to do some, until that animal became nearly extinct in New South Wales. Nearly all that work was for insurers representing defendants.

Chris always regarded his role as a task to be undertaken with some solemnity. After all, commonly it was the case presented by the other side which attracted any sympathy.

## If you need to call the bank manager, settle

I was never told the basis for this rule. I guess it derived from some very bad experience. I have never had to call the bank manager. Some have told me the rule is sound and, without knowing why, I suspect it is.

## Under no circumstances pass the water bottle

This was Chris's metaphor for his interpretation of a barrister's role in the adversarial process: Under no circumstances should you provide assistance to your opponent. Chris was always amazed when other counsel would offer him information about their case. Amazed, but receptive. Then, without actively misleading anyone, Chris would offer nothing (or, at least, nothing of value) in return.

Chris regarded himself as an old-school, un-reconstructable, common lawyer. I remember him saying: 'Most modern reforms to the rules of court are designed to eliminate trial by ambush; it is the corresponding duty of a skillful barrister, working within those rules, to attempt to reinstate ambush to its rightful place in the litigation process'.

## Never re-examine

Chris always felt that, for some reason unable to be explained, witnesses who were generally- speaking helpful could be struck by an unbecoming desire to appear 'fair' following cross-examination, making re-examination a dangerous process.

There were other rules or sayings that Chris had which were not elevated to Laws, but might have progressed had he lived longer. For example, in describing his low key presentation designed to attract minimum attention to his client in multi-party litigation, he would say 'Never get out of the trench unless ordered to do so'. When advising his clients on aspects of the inescapably chancy nature of the litigation in which they were embroiled, he commonly added the advice 'No-one ever lost a settlement'. Not long before he took ill he told me that he had just finished an opinion on a difficult point. When I asked him how he resolved it, he said: 'As I normally do - I came down firmly on both sides of the fence'.

Chris had a magnificent gift with words. In a long trial about two years before he died, Chris made a mistake. The trial judge picked it up and Chris conceded the error. The judge expressed surprise - not having seen Chris make a mistake before - to which Chris replied without hesitating 'Your Honour, it is only the mediocre who are at their best at all times'. Mediocre was one thing which that truly gifted barrister, Christopher Gee QC, was not.

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## Sir William Thomas Prentice KtCR MBE

(1919 – 2004)

*By John McCarthy QC*

Bill Prentice was a fine man, an outstanding Australian and a learned and courageous judge. Few Australians have loved Papua New Guinea as deeply as Bill Prentice, His death will be mourned both in Australia and PNG.

Requiem Mass for Bill Prentice was celebrated on Saturday, 7 February 2004 at St Leonard's Catholic Church, Naremburn.

Bill had a long and distinguished legal and military career in Australia and Papua New Guinea. His legal career began when he won an exhibition from St Joseph's College to study arts and law at the Sydney University, to which he matriculated in 1936. He was active in the Campion Society at Sydney University and had joined the Sydney University regiment.

After outbreak of war in 1939, he volunteered for the AIF. He was commissioned and served in the 7th Division both in the Middle East and New Guinea; first in the 2/33 Battalion and later as a staff captain with 7th Division HQ. He was mentioned in dispatches and was awarded an MBE for his service on the Kokoda Track. Later, he was with the 7th Division at Lae and Bougainville.

Bill returned to Australia in 1946 and resumed his legal studies. He graduated from Sydney University in 1947 and was admitted to the Bar in the same year. He had an active and extensive practice from 6th Floor Wentworth Chambers.

After service there during war, Bill continued his interest in Papua New Guinea and its people when he became a member of the Council of Papua New Guinea Affairs, which was responsible for the promotion of legal education for Papua New Guineans and he was influential in the establishment of

the Faculty of Law at the University of Papua New Guinea. He was responsible for encouraging the education of many Papua New Guineans.

In 1970 Bill was appointed a justice of the Supreme Court of Papua New Guinea and served on that court for 10 years. He was appointed successively senior puisne judge in 1975 and chief justice in 1978. He was knighted in 1977. His period on the bench therefore transected the momentous years of change through self-government independence and post-independence. His Honour was responsible for many leading judgments, particularly in the area of constitutional interpretation, which have had a profound effect upon the development of the law in Papua New Guinea.

In March 1980, Sir William Prentice resigned as chief justice in controversial and unfortunate circumstances and returned to Australia where he served for some years as a senior member of the Administrative Appeals Tribunal. He retired from active practice in 1987.

Throughout his life, Bill Prentice was a devout and erudite Catholic. He was a member of the St Thomas More Society for 55 years and served as councillor and honorary secretary in 1952-54. He was delighted to have been appointed as an honorary life member and was a joyous participant in the Silver Jubilee celebrations of the society in 1994-95.

In 1946 Bill married his wife Mary. They were blessed with four children - Damien, Toby, Felix and Jacinta. Bill died exactly six months to the day after the passing of his beloved wife.