



Why can't lawyers just answer with a yes or a no?

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A question frequently asked by clients when they present their legal issue is whether they have a good claim. And the common response we give is "yes and no" (and machinations of that like, "it depends"). So why is that the case? Why can't your lawyer give you a definite response?

The simple answer

The practice of law involves a lot of uncertainties.

Although prior court cases give us precedents to be able to guide clients in relation to their legal issues, it is extremely rare to ever find a prior case with exactly the same factual issues as our client's circumstances. Having said that, if a court, in determining a case, sets out some principles then those principles can be applied to different factual circumstances.

An example of the dilemma for lawyers

An example of how this arises might be in reviewing [succession law matters](#).

Let's say that Mum dies, Dad had predeceased her and she leaves three children. The common expectation is that each child receives a one third share of Mum's estate.

But there are plenty of situations where Mum decides not to provide for a child because of a poor relationship with the child. If such a case was presented to us, then the excluded child would likely want us to advise as to whether they have [a good claim to contest or challenge the estate](#).

The answer is... yes and no.

What might be causing difficulty in this example?

In this example, all the factual circumstances of that relationship become paramount. If Mum was acting irrationally and had been pushing the child away from her but the child was in significant financial needs, then the advice would be that the child probably has a good claim – provided that the evidence could be presented to show Mum's irrational exclusion and the child did have financial needs.

On the other hand, if there had been little or no contact between Mum and the child for many years, then the advice would be that the claim would be difficult.

But what if the child had not seen Mum for some time, Mum kept refusing to answer calls or correspondence from the child and the child was financially comfortable? As you might see, the factual context becomes somewhat blurred and it would be very difficult to predict what a court would determine.

What can you do to ensure your court case has the highest likelihood of success?

As lawyers, we cannot change what has happened. But we can ensure that all relevant evidence is gathered and properly presented to the court. We can also ensure it is presented in such a way as to persuade the court that the claim being made is a proper and valid claim.

This is not just for cases like the above but across all areas of law; commercial disputes, family law disputes, property disputes etc.

Full disclosure and honesty with your lawyer are crucial

One issue that is very important from our perspective is to ensure that all the evidence is provided to us, not just a sanitised or limited version.

There is nothing more damaging in making a claim or asserting a position than to be presented with evidence from the opponent which suggests (or proves) our client's understanding of what happened has either been exaggerated or downplayed.

So, all the evidence needs to be provided from which we can then determine what should be presented to the court and to determine what other evidence may need to be sought in order to support the claim.

At the end of the day, the decision as to whether the claim is justifiable or not is in the hands of the court, not in the hands of lawyers. And that is why we often answer whether a claim will succeed with, "yes and no"!

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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