Ever been zugzwanged? What chess can teach us about litigation

The FIDE world chess championship took place in London very recently, between Magnus Carlson of Norway and Fabiano Caruana of the USA.

There were 12 consecutive drawn games, followed by a series of 3 ‘rapid chess’ wins for Carlson to retain his title.

Carlson is a chess superstar – world champion, world number one and highest ranked player. His brain is the size of a planet. He also looks a bit like Matt Damon and models for G-Star.

And what, you may ask, does this have to do with our daily bread of litigation? Well, I am here to tell you. Chess simulates a battle between black and white armies: Claimant (White) vs Defendant (Black) if you will. The stratagems in chess and the terms of art involved feed directly into how one might think about litigation and, even, dispute resolution. Sun Tzu’s Art of War: Edition 2 - for board game enthusiasts. What follows is my A – Z of chess as seen through the eyes of a litigator. It’s that time of year and it’s just for fun. If nothing else, you may learn some niche vocabulary with which to zugzwang your friends and family.

A is for Attack

Traditionally white, which has the first move, is the attacking force making aggressive advances towards black. White is the Claimant in litigation.

B is for Blitz

Blitz chess is an extra-fast form of the game where both players have to make all their moves within a set time of ten minutes or less. This is chess as Adjudication, where both sides have to act within a swift time-frame and unusual results can occur.

C is for Checkmate

This is when the king piece is in check and can only move onto squares where it will remain in check. It is the end of the game where either white or black emerges with victory. This is what happens when a judgement is issued by Court. It is the end, subject to appeal. There is no appeal in chess (unless a player has been secretly consulting their i-phone during play).

D is for Draw

A draw can be offered and accepted, like a ‘drop hands’ settlement deal where each party packs up and bears their own costs. A draw also occurs where checkmate is impossible (ie – only two kings remain on the board). This is a bit like when a Direction is made with no order as to costs.

E is for En Passant

This is an obscure pawn capture move that can only occur when a pawn moves forward two spaces to land adjacent to an opposing pawn, which can then slide diagonally forward removing its opponent pawn. It’s a fun move because some chess players don’t know it exists. Think of it as being akin to using some rare part of the CPR rules to gain advantage in litigation. For example, did you know that you can put direct questions to your opponent’s expert in litigation (CPR 35.6). Go on, do it!
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F is for Fool’s Mate

This is checkmate in the fewest moves possible – two! If it happens to you don’t give up the day job. It’s like a Claimant accepting a Defendant’s first offer at mediation. Duh.

G is for Gambit

This is a sequence of opening moves made to a set pattern, designed to gain positional advantage in the game. They have great names like Ruy Lopez, the English and the Albin. Think opening statement at a mediation, where a series of pre-considered assertions are made in open forum in order to gain the upper hand. Everyone has their mediation gambit.

H is for Handshake

This occurs at the beginning and end of a chess match as a mark of mutual respect between players. We don’t always get this at mediation, but it is nice when parties depart having shaken hands. Watch out for knuckle-crushers.

I is for In The Tank

This is a colloquial ‘chess-ism’ for when one player is taking a very long time to think about their next move – they go deep ‘into the tank’. Like requesting a maximum extension of time for service of a Letter of Response or a Defence.

J is for J’adoube

A personal favourite – this is what a player must declare if they want to adjust the position of a piece on the board, without moving it from its square. If they don’t, its ‘touch-move’ and they must move that piece. Akin to requesting the opponent’s consent to amend a pleading.

K is for King

The most important piece on the board, the one seeking to evade check and capture via checkmate. Your star trial witness, protect at all costs.

L is for Line of Play

Set pattern of play determined by a series of moves along a particular offensive or defensive ‘line’. When in cross-examination Leading Counsel poses a series of questions designed to take a witness down a particular track in order to set an ambush. Line of questioning.

M is for Middle Game

Phase of the game with the most complexity, most permutations of move and counter-move. This is where prepared lines dissolve and the real thinking takes place. Players go into the tank here. Carlson loves it. This is the meaty part of litigation – think disclosure, witness statements and expert reports. It can make or break your case.

N is for Nimzo-Indian

Famous solid defence opening sequence of moves. Denying duty, breach and causation in the Defence – several hurdles for the Claimant to overcome.

O is for Octopus

A strongly positioned knight in enemy territory, reaching out its ‘tentacles’ in eight directions. Multiple witness statements corroborating documentary evidence, excellent for going on the attack.

P is for Pin

When a piece is attacked but cannot legally move because doing so would result in a check position. Where making a tactical admission might be the sensible move, but it would undermine a key tenet of the defence. Positionally stuck. Catch – 22.

Q is for Quiet Move

A move that does not attack or capture an enemy piece. Agreement to Alternative Dispute Resolution methods such as mediation or without prejudice meeting. Can lead to a draw. Or may be a brief hiatus in battle.
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R is for Resign

Toppling one’s own king in acknowledgment of defeat. Hari Kari. A formal admission of liability in litigation – waving the white flag.

S is for Sacrifice

Allowing one’s opponent to take one of your pieces in order to gain positional advantage. A Defence might admit the existence of a duty of care, but deny that it has been breached. This can be a way of gaining credibility and focussing only on the key areas of battle.

T is for Time Pressure

Players must obey the clock in chess (ie – make say 40 moves within 2.5 hours) or face critical situations where a number of moves need to be made very quickly. You can lose on time. Similar to the importance of adhering to the Court’s litigation timetable. If a Claimant or Defendant misses Court deadlines they can face sanctions on costs or even worse, including Strike Out in extreme cases. Losing on time.

U is for Unorthodox Opening

Deploying an obscure series of opening moves instead of a well-known gambit. Often helpful if playing against a chess computer which works using algorithms. Think Part 8 or injunction proceedings. Catch the Defendant unawares!

V is for Valve

A move that opens one line of play and closes another. Like discontinuing against one Defendant, but starting Part 20 contribution proceedings against another. Drawing up the most advantageous battle line.

W is for War

Chess simulates war. Even war has rules. Just like litigation.

X is for X-ray Attack

When the power of a piece to either attack or defend seems to pass through an intervening enemy piece. Where a Defendant’s pleading point, even if accepted, does not get the Defendant off the hook.

Y is for Yusupov

Russian bloke, good at chess. Nothing to do with litigation or dispute resolution.

Z is for Zugzwang

My favourite. From German, meaning ‘compulsion to move’. This describes a situation where a player is put at a disadvantage because they must make a move. Doing nothing would be preferable, but is not permitted. A bit like being compelled by the CPR rules on disclosure to provide a document to the other side that is adverse to one’s own case. You’d rather not, but you have to. You’ve been zugzwanged!

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