

ADVANCED SUPREME COURT CIVIL TRAINING & ASSESSMENT COURSE

WHAT IS THE COURSE DESIGNED TO DO?

Introduction (and Disclaimer)

It has been suggested that in my capacity as Convenor of this Course, it would be helpful if I outlined my understanding of the operation and purpose of the Course. This is a personal view only. Nothing I say here is intended to cut across any guidance from the Law Society particularly the Statement of Standards for Solicitor Advocates. Likewise, the legal requirements of the Course are laid down in Rule C4.1, and again nothing I say can cut across those requirements.

The Starting Point

Before being able to start the Course, applicants will have required to satisfy the Society that they have adequate experience in Court of Session work or advocacy or both or have other suitable experience. In other words, this is not an entry level course. It is not intended to teach people about advocacy, evidence and pleading, from scratch. It is assumed that practitioners have substantial experience before starting it.

The End Point

It may be helpful now to move to the end point, in the sense of the assessable outputs of the Course so that applicants know what they will ultimately have to undertake. Essentially, there are two elements assessed, written and oral.

Written Material

Candidates will be asked to produce a draft Summons, Defences and (currently) Answers to a Petition for Judicial Review from materials provided, in an open book examination setting. The standard (subject to the caveat above) is of a reasonably competent pleader in the Court of Session.

In addition, candidates will be asked to produce a set of Grounds of Appeal for the Inner House in a Reclaiming Motion from a reported Outer House case. This is to be done by a given deadline but outwith the formal Course environment, ie. in the office or in the candidate's own time. The same standard of competence applies.

Oral

Candidates are asked to present oral argument in a Reclaiming Motion from papers, usually comprising a reported decision at first instance and three or four of the authorities cited before the Lord Ordinary which are thought to be potentially relevant. That is to be prepared as if a full Reclaiming Motion was required, albeit in practice candidates will be allowed around 40 minutes or so to present parts of that to two "real" judges. Precisely the same standard applies, ie. that of the reasonably competent pleader.

In neither written nor oral work is knowledge of any particular specialist area of substantive law examined. Candidates will not be faulted because they do not know the most recent case on restrictive covenants or remoteness of loss or whatever. A general grasp of legal concepts is, however, required because candidates are expected to have sufficient ability to be able to take the limited materials given and deal with them, even if they lie outwith that candidate's selected specialism. Indeed, assessors frequently look for candidates to demonstrate that they have clearly understood the issues when presenting their written or oral response.

It is quite likely that in the written assessment, the oral one, or both, the exercises will involve an area of law with which the candidate is unfamiliar in their own practice.

The Course, between Start Point and End Point

The Course is designed to do two things. Firstly, to provide candidates with information and instruction which may assist them in fine-tuning their abilities in written or oral work, to the standard expected in the Court of Session, for the purpose of the assessments which are to come. When the assessors describe a writ or a submission as "very Sheriff Court" that is not a good sign! Another way of putting the same point is that issues causing particular difficulty in either written or oral pleadings may be identified during the training and thus avoided when it matters. Secondly, however, candidates are also provided with information and instruction which will be of assistance to them, on the assumption that they pass the Course and exercise their extended rights in the Court of Session. This will usually cover a range of topics which are not examinable as such but may help the candidate in that subsequent practice.

In the course of seeking to achieve both of these objectives, an unstated aim of the Course is also to allow candidates to have direct access, in a small group, to members of the judiciary, senior members of the Bar and experienced solicitor advocates in a way which is not often available and which again is designed to assist in their future careers.

Practical Issues

Every candidate will know (or should know) the areas in which they have most experience and confidence. They may be very familiar, for instance, with drafting pursuers' writs but less accustomed to defences. They may have produced many court documents but rarely see them scrutinised or challenged at debate. They may be steeped in Court of Session procedure but less accustomed to standing on their feet (or vice versa). Quite apart from the formal requirements of Sitting In, candidates should therefore take every opportunity of honing their skills in their "weaker" areas in preparation for the Course. It is not in any sense a rubber-stamp exercise. While the vast majority of candidates do successfully pass the Course, in almost every year some fail one or another element. As mentioned above, with the increased degree of specialism within the profession, candidates may not be familiar with having to look at legal problems set in different areas of law to those forming their day-to-day practice. They may or may not have regular contact with a range of issues which may crop up. Candidates who operate in relatively narrow specialisms ought to be aware of the requirement to demonstrate flexibility and an ability to both understand and marshal materials in an alien area of law as well as being prepared to cope with judicial interventions during the oral assessment. It is not possible to be awarded a "restricted" right of audience limited to any one area of practice.

The best quotation encapsulating the goal for candidates and subsequently for pleaders is set out by Norman Birkett in a lecture in 1954

"In the conduct of any case, the advocate must have made himself master of all the facts; he must have a thorough understanding of the principles and rules of law which are applicable to the case and the ability to apply them [to it]; he must gauge with accuracy the atmosphere of the court in which he pleads and adapt himself accordingly; he must be able to reason from the facts and the law to achieve the end he desires; and he must above all have mastered the art of expressing himself clearly and persuasively in acceptable English."

R Craig Connal QC
Course Convener