

Trial Advocacy

Course Outline

The course will consist of five (5) sessions over five (5) days as follows:

Session 1 - Fact Analysis, Trial Strategy, and the Fundamental Principles of Asking Questions

Theory:

- Analysing the facts of the case – the Good Fact/Bad Fact assessment method
- Theory and theme of the case
- The basic questioning techniques at trial — open (non-leading) questions and leading questions
- Some general principles related to asking questions at trial (short questions, simple language, one issue to each question, watch and listen to the witness).

Practical Exercise:

- The candidates are divided into two groups, each group then performs a Good Fact/Bad Fact analysis on a white board with regard to a set of facts based on a civil case in the High Court, then the two groups come together and compare their analyses of Good Facts/Bad Facts and discuss their reasons for including or excluding particular facts
- The trainer facilitates the exercise.

Session 2 - Examination-in-chief

Theory:

- Controlling the witness's testimony through non-leading questions (the so-called "W" questions)
- Questioning techniques in examination-in-chief:
 - > Short, open questions
 - > Headlines and transitions
 - > Recreate the action
 - > Reflect time, distance and intensity
 - > Repetition through piggy-backing
 - > Draw the sting out of cross-examination

- > The examiner's demeanour
- > Re-examination

Practical Exercise:

- Each candidate takes approximately 10 minutes to conduct the examination-in-chief of a witness in a mock-trial exercise. Candidates take turns in "playing" the witnesses. All candidates who are not actively participating as either questioner or witness at any given time are encouraged to raise objections to questions.
- The trainer assesses each candidate's performance according to "the method" (headnote, playback, rationale, prescription, demonstration, and replay).

Session 3 - Cross-examination

Theory:

- The goals of cross-examination (repair or minimise damage, enhance your case, detract from the opponent's case, establish foundation, discredit the witness)
- Questioning techniques that achieves control:
 - > Ask leading questions only
 - > Establish one new fact per question
 - > Cross-examine in a logical progression to a specific goal
 - > Putting the version of the accused to witnesses for the State
 - > Controlling the runaway witness

Practical Exercise:

- Each candidate takes approximately 10 minutes to conduct the cross-examination of a witness in a mock-trial exercise. Candidates take turns in "playing" the witnesses. Other candidates who are not actively participating as either questioner or witness at any given time are encouraged to raise objections to questions.
- The trainer assesses each candidate's performance according to "the method" (headnote, playback, rationale, prescription, demonstration, and replay).

Session 4 - Opening address and final argument (summation)

Theory:

- Opening address
- Impact beginnings
- Tell a persuasive story
- Use the evidence, do not simply display it (avoid witness summaries, be wary of chronology, use details persuasively)
- End strong
- Strategic considerations (be efficient, keep your promises, dealing with the opposition case, dealing with 'bad' facts and weak points)
- Delivery and technique
- Final argument (summation)
- The use of theory and themes
- The fundamental principles of argument (draw conclusions, make inferences, comment on witnesses' credibility, motive and demeanour, comment on the weight of the evidence)
- The structure of final argument (preparation, topical organisation, chronological organisation, primacy and recency, witness listing, dealing with weaknesses)
- Tell a persuasive story
- Style and delivery

Practical Exercise:

- Each candidate takes approximately 5 minutes to present an opening address based on a mock trial exercise until all the candidates have had an opportunity; then each candidate takes approximately 5 minutes to conduct part of a closing argument.
- The trainer assesses each candidate's performance according to "the method" (headnote, playback, rationale, prescription, demonstration, and replay).

Session 5 - Mock Trial

- On the final day of the course the candidates conduct a full mock trial comprised of opening address, examination-in-chief, cross-examination, and final argument (summation).
- In each trial 3 candidates represent the plaintiff and 3 the defendant.
- The mock trial exercise is such that a full trial can be completed in about two hours.
- Four full mock trials can thus be completed on the final day, allowing for 24 candidates to be assessed.
- The “bench” consists of the trainer and a legal practitioner with at least 10 years’ experience in High Court litigation.
- Each candidate is assessed by the “bench” to determine whether the candidate shows proficiency in trial practice sufficient to warrant the right of appearance in the High Court, and thus whether the candidate has successfully completed the course.

Sincerely yours,



Willem H. Gravett

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