

Advocacy

DAVID ROSS, QC

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Advocacy

‘Painstaking preparation means that luck will run your way.’

Advocacy explains how to win cases in court. Focusing on the techniques and methods of successful advocates, David Ross QC shows how to prepare a case for court.

Writing in simple, clear language he gives the benefit of his many years of local and international experience as he describes

- how to hold a court’s attention
- how to start and stop a witness
- how to cross-examine all types of people, from liars to experts
- the methods of taking objections to questions
- how to address a jury
- how to follow etiquette and behave ethically
- how to win impossible cases.

All the principles of advocacy are explained, from the striking start to knowledge of human affairs, and *Advocacy* is rich with examples taken from real cases.

Advocacy is essential for both beginning and experienced barristers, and anyone who is interested in knowing how the best lawyers operate and how they win their cases.

David Ross QC is an eminent advocate with extensive experience in trials and appeals throughout Australia. He has taught advocacy in many countries.

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DAVID ROSS QC



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Foreword

The best advocates are great artists. In this short book I refer to what some of these advocates have done in the past. My aim is to pass on their lessons. The best advocates have an exhaustive knowledge of all the technical rules. That is their starting point. There can be no shortcuts. They commit the rules to memory so they can be put to use at a moment's notice.

How advocates exercise their skills depends on their preparation and their judgment as a case runs. I have recorded here what some of the best have done in some notable cases. But it is not dogma. In every generation there are classy advocates who find some new way of cross-examining, or addressing, or doing any of those small but important things that are called for in a trial.

Advocacy is a little like the language that serves it. It is in a constant state of change. The excellent advocates of the past found new techniques. Immerse yourself in their lessons but treat it as a study of history. It is now your task to find your own new ways. We all depend on you to keep the flame of justice burning bright.

Chapter 1

The nature of advocacy

The essence of advocacy

[1000] Advocacy is winning cases. Nothing more and nothing less. It consists in persuading a court to do what you want. The court may have serious misgivings, but the good advocate gives them no choice.

[1005] Court work involves the advocate in all sorts of duties. You must do everything legal to win your client's case. You must keep up to date with the law in your field of practice.¹ You must not mislead the court.² You must not cross-examine falsely or lead evidence that you know to be untrue. In your private life you are not required to be totally abstemious, but of course you must never commit a crime.

The qualities of advocacy

[1010] Advocacy is a craft. Like every craft it can be learned. The techniques have to be acquired, practised and constantly honed. The competent advocate can employ these techniques, but the good advocate is a master of them, and moves beyond the craftsmanship of simply appearing in court. The advocate practising at a higher level is an artist.

[1015] Advocacy is played out in a setting that makes it quite different from any other specialty. First, it is done in public. People watch and they judge. Second, every case is different. Not even the newcomer will find the same issues and aspects in every case. Each

case has to be custom built. The good advocate will treat every case as the most important ever. It will be prepared and conducted as if it is the last and the one on which the advocate's reputation hangs – as it does. There will be a different approach to each witness. The strategy is prepared to the finest degree but the good advocate will watch the witness constantly, be ready to adapt the plan and be alert for the opportunity to improvise. It will look effortless.

The qualities of an advocate

[1020] The basic quality an advocate needs is the wish to be an advocate. You must love and need the court work. How many disciplines are there where you can write a script and play a leading part? But you must be able to survive its demands.

And first, has he a healthy frame, capable of enduring long-continued exertion of mind and body, the confinement of the study, the excitement of practice, the crowded court by day, the vigil of thought by night? Can he subsist with a sleep of five hours? Can he, without dyspepsia, endure irregular meals — hasty eatings and long fastings? If he is not blessed by Nature with the vigorous constitution that will bear *all* this, and more, let him not dream of entering into the arena of Advocacy.³

And you must do more than just survive. You must embrace it, love it, live for it. Every old advocate will tell you that the best and worst times of life have been inside a courtroom, from euphoria to misery. The most you can hope for is to do the best professional job. The result is not within your power.

[1025] Good physique is not a necessity. Advocates are tall, short, fat, thin, good-looking, plain. No doubt the good-looking advocate has some attraction, but being well-favoured is probably the least of the qualities an advocate needs. An unhappy physique or unusual looks are never a handicap to one who has the necessary attributes.

[1030] To be a good advocate in court you need the following qualities: