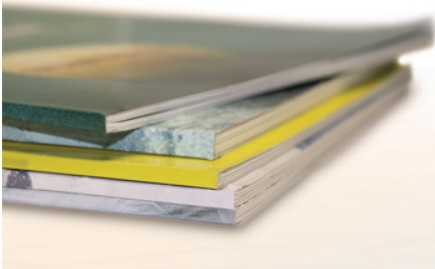


## The Royal Court – A Practical Guide

*As originally appeared in Resolution – Jersey Spring 2010*



BY GILLIAN ROBINSON

**The Royal Court is presided over by the Bailiff - a full time judge (currently Mr. Michael Birt) who is appointed by the Crown. He is also a member and president of the States (Jersey's parliament). He has a right to speak, but to vote only if opinion is divided. The other full time judge is the Deputy Bailiff - currently Mr. William Bailhache QC, who is authorised to act in the same way as the Bailiff. The dual role of these two office holders, as well as the role of two other Crown Appointments, the Solicitor General and the Attorney General, is currently the subject of a review by a panel chaired by Lord Carswell, a former Lord Chief Justice in Northern Ireland.**

The availability of judges is augmented by the presence of Commissioners. These are part-time judges such as the former Bailiff, Sir Philip Bailhache, retired Jersey practitioner, Julian Clyde-Smith, or Commonwealth practitioners such as Sir Richard Tucker.

In civil cases, the presiding judge will sit with two jurats. The judge will decide on issues of law, which includes procedure. Decisions of fact are however within the sole domain of the jurats, unless the jurats are divided, in which case the judge will have a casting vote. The post of jurat is an honorary one. They are elected by an electoral college including the Bailiff, Jersey advocates, solicitors, and politicians.

### Open Forum

Every Friday afternoon, the Royal Court sits effectively as an open forum. It is confusingly referred to as the Samedi Court. Its first business is the buying and selling of property. In Jersey, all land transactions are completed by passing a contract in front of the Royal Court, with the transacting parties being present in person or by attorney, swearing an oath to confirm that they know of no reason why the transaction should not go ahead. It is only in the last few years that contracts of conveyance have been permitted to be drafted in English, rather than the previous French. Once the conveyances are finished, all new cases are listed and called with the defending party having the opportunity to put in an appearance indicating the case will be defended.

Working with the Royal Court is the office of the Judicial Greffe. This office includes the Master who sits on interlocutory matters and assessments of damages, etc. Taxation, i.e. assessment of costs is also undertaken by this office. There is an appeal from those decisions to the Royal Court. The Judicial Greffe also covers the role of clerk of the court - i.e. sitting with the court and preparing acts of court, administering oaths to witnesses, etc. It also falls upon one of the officers of the Greffe to commence every morning sitting of the court by reading out the Lord's prayer in Norman French.

The official languages of the Royal Court are French and English. In practice, however,

proceedings are invariably conducted in English. Exceptions are the morning prayers, mentioned above, the oaths administered to advocates and other officers of the court when they are sworn in, and certain other formalities.

There is an appeal from the Royal Court to the Court of Appeal of the Channel Islands. This was a court created by statute in 1961. The Bailiff and the Deputy Bailiff are ex officio members, but in practice they do not sit on it frequently. The Court of Appeal is constituted of three judges drawn from a panel of QC's which includes Michael Beloff QC, Clare Montgomery QC, Geoffrey Vos QC, as well as the Bailiff of Guernsey.

The same panel also sits on appeals in Guernsey. Insofar as members of the English Bar, for example, sit as judges of appeal, they are prohibited by statute from advising on, or in any other way being connected with, any matters arising within Jersey. The Court of Appeal comes over to Jersey regularly and sits for a week at a time. Applications of an interlocutory nature can be made to a single judge of the Court of Appeal and may on occasion be carried out by video link.

There is an appeal from the Court of Appeal to the Privy Council in London, although special leave is generally required and Privy Council agents will need to be instructed.

### **Onerous Examination**

The Jersey advocacy examinations are onerous, although the experience of studying for them now has been improved since the establishment last year of the Institute of Law which provides a centralised system for the provision of notes, tuition and examination. Jersey advocates alone have rights of audience before the Royal Court and the Court of Appeal. Unlike some Commonwealth jurisdictions such as Cayman Islands and Bermuda, there is no facility for English Counsel, for example, to be admitted to the Jersey Bar on an ad hoc basis. It is only in the Privy Council that matters of Jersey law may be argued by English Counsel - in the other courts they can find themselves in the unusual position of sitting unrobed behind their robed, but not wigged, Jersey counterparts.

GILLIAN ROBINSON

Partner

[grobinson@applebyglobal.com](mailto:grobinson@applebyglobal.com)

*This publication is intended only to provide a summary of the subject matter covered. It does not purport to be comprehensive or to provide legal advice. No person should act in reliance on any statement contained in this publication without first obtaining specific professional advice.*

April 2010

© Appleby

Bahrain  
Bermuda  
British Virgin Islands

Cayman Islands  
Guernsey  
Hong Kong

Isle of Man  
Jersey  
London

Mauritius  
Seychelles  
Zurich