



Compass Chambers

## WRITTEN ADVOCACY

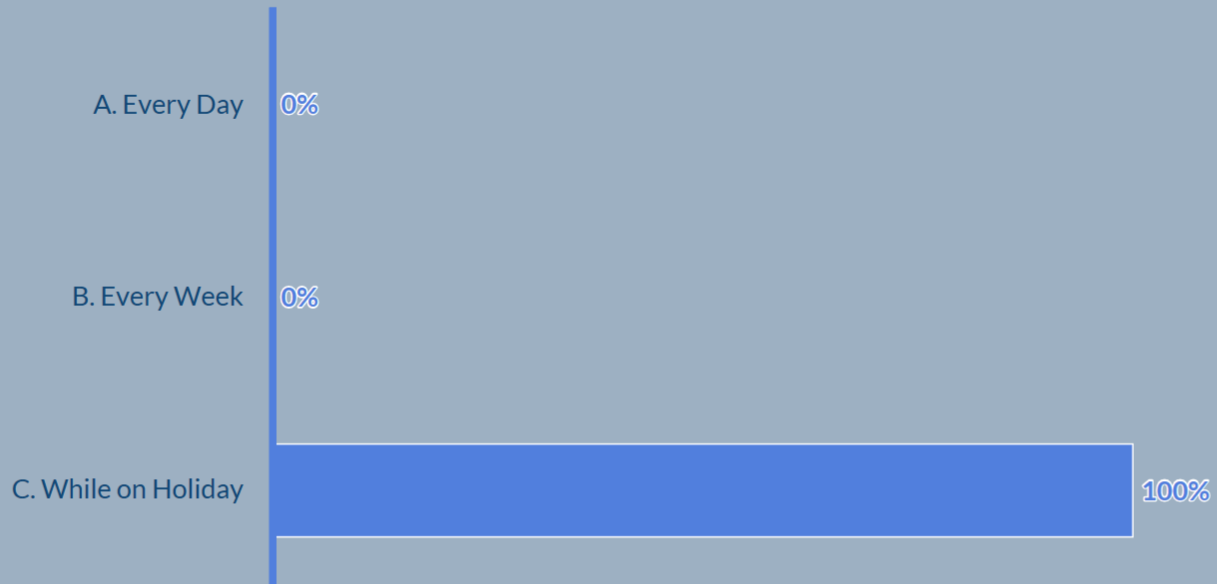
I didn't have time to write a short  
letter.....

Amber Galbraith, Advocate

Compass Chambers

23<sup>rd</sup> November 2018

## Written Advocacy Poll 1: How often do you read books in your spare time?





Compass Chambers

# Written Advocacy

- What is advocacy?
- Why is written advocacy important?



# Written Advocacy

- General points for writing/composition
- Formal, style-based, legal drafting
- Other legal drafting





# Written Advocacy

General drafting  
points



# Written Advocacy



## THE SCOTSMAN

EDINBURGH, SATURDAY, November 11, 1911.

The King and Queen, with the Prince of Wales and Princess Mary, will leave Buckingham Palace this morning and drive in semi-state to Victoria Station, leaving by train at 10.30 for Portsmouth, to join the Medina for India. (p. 9.)

Prince Arthur of Connaught, the Archbishop of Canterbury, Lord Leominster, and Lord Morley have been appointed a Commission for the transaction of certain matters of State during the absence of the King in India. (p. 7.)

It is announced that Mr Bonar Law will be Mr Balfour's successor in the leadership of the Unionist party. At the meeting of the party on Monday Mr Walter Long and Mr Austen Chamberlain respectively. Our London correspondent describes the circumstances under which this decision has been made. (p. 9.)

A serious explosion took place in the four mills owned by Messrs Wm. Primrose & Sons (Ld.), Centre Street, in the Tradeson district of Glasgow. The building was completely wrecked, the upper stories being blown into the street. One person has so far succumbed to injuries, but three children missing are believed to be buried in the debris. Nine persons, including two women, were injured, and several are in a critical condition. (p. 9.)

The debate on the Franco-German Agreement was renewed in the Reichstag. The principal speaker was again Dr von Bethmann-Hollweg, the Imperial Chancellor, who replied to the criticism of the agreement. He said that while he had never claimed the arrangement to be ideal, no one had pointed out a better way. The Chancellor sternly rebuked those speakers of the previous day who had suggested that Germany should be treated before another Power. A great reaction has been caused by the conduct of the Crown Prince in the Reichstag on Thursday. He openly applauded the Chancellor's most violent critics, particularly when they declared that the nation was ready to vindicate its high sense of public duty. Many journalists condemn the Prince's unorthodox conduct, but it meets with the approval of the Pan-German organs. (p. 10.)

Feudalism between Chinese Imperialists and revolutionaries is going on in Xining. Many of the inhabitants have been slaughtered, and the people are fleeing from the

general weakness of home railway stocks. Rubber shares, on the other hand, had a decidedly stronger appearance. (p. 8.)

New York Stock Exchange was again very busy, with a generally strong undertone, and numerous important rises occurred. (p. 11.)

In a golf match for £50, Bernard Sykes defeated Andrew Kirkaldy by six up and five to play. (p. 7.)

In their match against South Australia at Adelaide, the M.C.C. opened brilliantly, and when stumps were drawn for the day they had scored 331 runs for the loss of only four wickets. (p. 7.)

WEATHER FORECAST.—Scotland—Wind becoming south-westerly or southerly, and freshening; somewhat changeable, fair to dull, some rain, local mist or fog; some rise of temperature. Variable winds and heavy weather are forecast for the next few days. (p. 7.)

FOLLOWING are the ranges of temperature and weather reports for the twenty-four hours ending yesterday morning:—

TEMPERATURE.			WINDS.		
Max.	Min.		Max.	Min.	
Edinburgh	42	33	Cloudy.		
London	49	28	Cloudy, blue sky.		
Leipzig	52	33	Showers, blue sky.		
Paris	51	33	Overcast.		
Berlin	50	41	Overcast.		
Nice	59	50	Heavy rain.		
Rhodes	51	46	Heavy rain.		
Rome	53	49	Blue sky, cloudy.		
Algiers	70	61	Blue sky, cloudy.		
Mont'Estori	57	46	Fine.		

\* For Thursday.

An arrangement has been made, it is stated, regarding the Unionist leadership. It is that there shall be only one candidate nominated at the meeting of the party on Monday, and that the leader so proposed shall be Mr Bonar Law. If this appointment be made, and in the manner suggested, the interests of Dominion and of Imperial policy will be well served. The understanding is that Mr Walter Long and Mr Austen Chamberlain have declined to allow their names to be put before the meeting, and at the same time have offered to serve under Mr Bonar Law. In determining to act in this manner they have given the most convincing proof of their high sense of public duty. Each had claims and merits that warranted him in the highest expectations. Each had strong qualities to recommend him to the party. When they stand aside they make a great personal sacrifice. They will, however, have the assurance that the course to which they point the party is not one that in the least

conforms with the national mind, without reference to the Treasury, and the Chancellor of the Exchequer had not had time to give heed to Scottish wants.

There has since been found to bestow some attention upon Scotland's case for amendments. Or rather this duty seems to have been thrust upon those who have the responsibility of guiding the Bill through Parliament by the necessity under which they were placed of altering it in its application to Ireland to meet the wishes of the Nationalists. Large modifications, affecting the finance as well as the machinery of the Bill as originally introduced, have been made in order to meet the views of Mr Redmond. These amendments do not entirely satisfy that potentate. But they set up a separate body of Irish Insurance Commissioners and a distinct Irish National Health Insurance Fund, and they grant to the Commission powers, with the approval of the Treasury, of modifying or increasing the benefits enjoyed by the classes and districts among which the measure is accord with the special industrial and social condition of Ireland. Needless to say, these modifications in the destination of the money provided by Parliament, for which a uniform basis of talks is to be prepared, will work, and are intended to work, for the special relief and advantage of the Irish migratory labourers and the other classes which the Bill affects. By the amendments which were tabled yesterday, and which will come before the House in Committee on Monday, a similar separate provision for dispensing and regulating insurance benefits is to be bestowed on Scotland. There is an obvious objection to the scanty time—scarcely that granted to Ireland—that it allowed for considering these important Scottish changes before they come under the guillotine. It is not of small concern that a new Department is to be set up in Scotland, with a head office, staff, branches, and with officers, inspectors, referees, errands, and of course salaries, attached, for the administration of a new fund and the regulation and oversight of a new system, which at many points will touch and be interfered with the systems of local government and taxation that already exist. Of itself, this increase of the formidable and costly fabric of bureaucracy can be justified only by the compensating advantages which it confers. The share of the representation of local authorities on the Local Health Committees, asked for by the Scottish rural and rural rating bodies, is not granted; but on

“scrap de wares diversions will be made along the principal trade routes by attacks on British commerce, probably by means of armed merchantmen, in the hope of raising an outcry in England that the nation's food supply is in danger.” That, says Mr Bywater, is supposed to be the manner in which Germany would open the attack. The scheme is founded upon “disparaged for the moral attitude of the British people,” and presumably is liable to break down if the British morale is different from what the Germans think.

In the second part of his paper Mr Bywater examines the possibility of invasion of the British Isles by a German force. His analysis of the elements which make up the present before the project becomes feasible is too long to summarise in detail, but two or three points may be extracted. In the first place, “invasion postulates command of the North Sea for a period variously estimated as from three days to a week, which in turn entails the practical annihilation of all British force within a radius of 100 to 200 miles.” Mr Bywater evidently regards this as a condition not likely to be present unless we neglect our Navy or make a ridiculous use of it. Secondly, an invading force of at least 300,000 men would be required—some say 500,000. Of course, the number would depend upon the strength and efficiency of our Army for home defence, so that the stronger our home forces are, the more formidable does the task become. Taking, however, the invading number at 300,000, Mr Bywater says that “the withdrawal of this great force from Germany would be highly injudicious under any circumstances, and it would be unwise at a moment when a great war was in progress, even if the campaign were confined to England and Germany, since nations which had remained neutral might seize the opportunity of crossing the German frontier.”

In other words, Mr Bywater believes that Germany would not afford to take the risk of leaving her own land unprotected. Ignoring, however, this circumstance, and considering the technical difficulties alone, he goes on to point out that a huge, unwieldy flotilla of at least 250 transports would be required to carry the troops over the North Sea, and he says it is open to doubt whether there would be a sufficient number of steamships available at the precise moment, as the boats out of the war a number of German vessels would be on the high seas and unable to reach home, unless our fleet had been totally annihilated in all its parts. There there would be the time required

## THE SCOTSMAN, SATURDAY, NOVEMBER 11, 1911.

Foreign Affairs, and the Right Hon. Sir George Buchanan, His Majesty's Ambassador in Brussels, and Plenipotentiary of St. Petersburg, had audience of His Majesty today; and Viscount Esher and Lord Maseson Barendse had the honour of being received by the King.

Prince Albert arrived at the Palace from the Royal Naval College at Dartmouth, and Prince Henry arrived from St. Peter's Court School, Broadstairs yesterday.

The Princess Royal and the Duke of Fife, with Princess Alexandra and Princess Maud, visited the King and Queen today and the Prince of Wales and Princess Albert, dined with Queen Alexandra and the Queen of Norway at Marlborough House this evening.

His Frederick Mitchell Hodgson was received in audience by the King yesterday upon relinquishing his appointment as Governor and Commander-in-Chief, British Guiana.

The Princess Royal, with the Duke of Fife and the Princesses Alexandra and Maud, visited Queen Alexandra today.

The Grand Duke Michael of Russia visited Her Majesty yesterday.

The King and Queen, with the Prince of Wales and Princess Albert, dined with Queen Alexandra this evening.

### ROYAL VICTORIAN ORDER.

It is officially granted that the King has been graciously pleased to make the following promotion in and appointments to the Royal Victorian Order:—

To be Knight Commander—Right Hon. Sir Thomas Vaux Strong.

To be Commander—Captain Henry Harvey Campbell, M.V.O., R.N.; Lieutenant-Colonel Neil Ferguson Macintosh.

### THE PRINCIPALITY OF SCOTLAND.

Lord Dundee's new office. Last night's London Gazette has the following:—

The Prince of Wales's Council Chamber, Buckingham Gate, S.W.

19th November 1911.

His Royal Highness the Prince of Wales has been pleased to appoint the Right Hon. Andrew Graham, Baron Dundee, to be Keeper of the Great Seal of the Principality of Scotland.

It may be mentioned that His Lordship occupied the office when His Majesty King George was Prince of Wales.

### LADY GLADSTONE'S HEALTH.

South Africa announces that the state of Lady Gladstone's health necessitates a visit to England at an early date.

GALASHIELS MAGISTRATE'S CHAIRMAN.—On Monday last, in theburgh Police Court at Galashiels, a case was brought before Bailie Dalgleish at the instance of the Galashiels School Board, in which a parent who had already been fined 10s. and 10s. expenses, or seven days imprisonment for failing to comply with an attendance order, was brought up on a second charge of failing to comply with the order, the boy having attended only three days at school since the date of the detainer with an admission, and refused to allow the H.A. expenses asked for by the Borough Freeschool. In connection with the case a special meeting of Galashiels School Board was held last night to consider what further action should be taken in the matter.

Mr Wood, Custodian of the Attendance Committee, said this case was the most he had both a school and with, and the boy for the three years. After further discussion Mr Wood stated that the facts of the case he reported seconded. Mr Hodge moved the previous question, and Dr Tyrell seconded. Mr Christie and Mr Dalgleish moved to refer the case to the Board of Education Department. Mr Christie moved to refer the case to the Board of Education Department. Mr Christie moved to refer the case to the Board of Education Department.

### MISS EDITH WALTON'S RECITAL.

MISS EDITH WALTON, a pianist who is well known to Edinburgh musical people, who is thought her early local training. Townsend by study under such masters as Mr Godovsky and Mr. submitted in the Queen's Hall last programme that was in itself of high interest and variety, and at the same time calculated to test the range of the player. Opening with Brahms but somewhat facile Variations on a Theme of Handel, Mr. Townsend, for the first time in Edinburgh, presented three or four world pieces by Corelli, Rameau, as arranged for modern purposes by Mr Godovsky. After a group of Chopin pieces, including Sonata in B Minor (op. 35), a Schumann—the second and more fit which was enclosed—a Prelude and Op. 31. Finally, Miss Walton gave pieces more or less of the brilliant Chant Polonois of Chopin as did Liszt, the “Gnomes” of Liszt, the remarkably fine Barcarolle by the Tchaikovsky, and the extremely difficult and intricate in fantastic Oriental music Balakireff wrote under the title “Arabia,” which was first introduced Edinburgh audiences by Mr. On a broad view—and such a programme permits of a broad view standing feature of Miss Walton's is extreme clarity. There were no no improvisation effects, in which of the pedal compass covers up execution. The Angelus of Corelli with appropriate simplicity and sweetly. The Scherzo was given a section. More strenuous work was in the Chopin Sonata, in which the chief melody in the Allegro was given, and the Scherzo was given a style. The rendering of the Liszt somewhat unimpassioned as compared delivery by other eminent pianists only just to say that the hall was full and that the audience was much less than the talents of the pianist and a fraction of the programme deserved certain applause, and suggested we could not deny the brilliance and Miss Walton's execution in the wo brilliance and lucidity were the general impression. The programme was the poetry and warmth of feeling, a mostly fine expression even in pie appeal mainly to technical display, not occasionally suggested that the player was “Whom art thou?” and the feeling. At the close of a most

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# Written Advocacy

## General drafting points

- Audience
- Purpose
- Structure
- Content



# Written Advocacy

## General drafting points



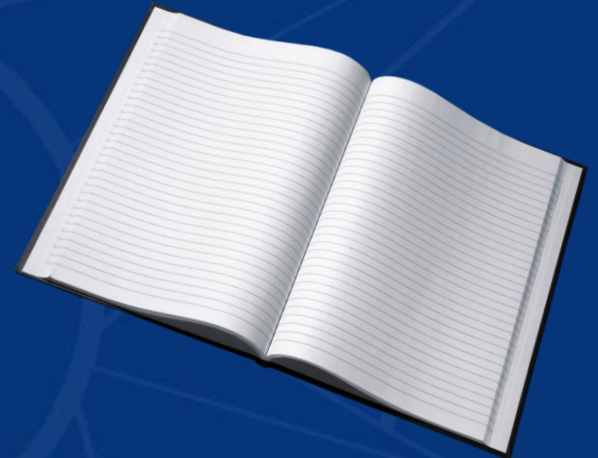


# Written Advocacy

## FORMAL LEGAL DOCUMENTS

### Pleadings

- Initial Writ
- Summons





# Written Advocacy

- *“The averments should always be made as clearly as possible. A power of precise expression is the strongest weapon of a pleader, both in written and oral pleading. An ambiguous or evasive statement not only provokes distrust, but occasionally carries with it its own punishment in the injury it may do the case ...*
- *A pleading may be guarded in its conception and language, but it should be fair. It must not be self contradictory, neither should it be argumentative; all that needs to be done is to indicate plainly the line of action or defence.*
- *Verbosity, tautology, lengthened quotations, and the needless use of irritating language, ought all to be carefully eschewed ... It is desirable in most cases to use popular, rather than technical language.”*

**A** Manufacturer, 8 Glen Lane, Paisley,—*Defender*; in terms of the Condescence and Note of Pleas in Law hereunto annexed: Therefore the defender Ought and Should be Decerned and Ordained, by decree of the Lords of our Council and Session, to make payment to the pursuer of the sum of £500 sterling, with interest thereon at the rate of £5 per centum per annum from the date of the decree to follow hereon; together with the

**B** sum of £50 sterling, or such other sum as our said Lords shall modify, as the expenses of the process to follow hereon, conform to the laws and daily practice of Scotland, used and observed in the like cases as is alleged.—OUR WILL IS HEREFOR, &c.

**C** *Summons signeted at Edinburgh, 9th April 1929.*

L. M. MACKENZIE, W.S.  
HERBERT MACPHERSON, Solicitor.

**D** 2.—CONDESCENCE for PURSUER,

AND

**E** ANSWERS thereto for DEFENDER.

**COND. I.** The pursuer is employed as a shop assistant, and resides at 49 Kent Street, off London Road, Glasgow. The defender is an aerated-water manufacturer, and carries on business at Glen Lane, Paisley.

**F** *Ans. 1.* The description of the defender is admitted. *Quoad ultra* not known and not admitted.

**G** **COND. II.** At or about 8.50 p.m. on or about 26th August 1928, the pursuer was in the shop occupied by Francis Minchella, and known as Wellmeadow Café, at Wellmeadow Place, Paisley, with a friend. The said friend ordered for the pursuer ice-cream, and ginger-beer suitable to be used with the ice-cream as an iced drink. Her friend, acting as aforesaid, was

supplied by the said Mr Minchella with a bottle of ginger-beer manufactured by the defender for sale to members of the public. The said bottle was made of dark opaque glass, and the pursuer and her friend had no reason to suspect that the said bottle contained anything else than the aerated-water. The said Mr Minchella poured some of the said ginger-beer from the bottle into a tumbler containing the ice-cream. The pursuer then drank some of the contents of the tumbler. Her friend then lifted the said ginger-beer bottle and was pouring out the remainder of the contents into the said tumbler when a snail, which had been, unknown to the pursuer, her friend, or the said Mr Minchella, in the bottle, and was in a state of decomposition, floated out of the said bottle. In consequence of the nauseating sight of the snail in said circumstances, and of the noxious condition of the said snail-tainted ginger-beer consumed by her, the pursuer sustained the shock and illness hereinafter condescended on. The said Mr Minchella also sold to the pursuer's friend a pear and ice. The averments in answer, so far as not coinciding herewith, are denied. { The said ginger-beer bottle was fitted with a metal-cap over its mouth. On the side of the said bottle there was pasted a label containing, *inter alia*, the name and address of the defender, who was the manufacturer. It was from this label that the pursuer's said friend got the name and address of the defender. }

**E** *Ans. 2.* Denied that any bottle of ginger-beer manufactured by the defender contained a snail. *Quoad ultra* not known and not admitted. Any illness which the pursuer suffered was not due to her having partaken of the contents of a bottle of ginger-beer manufactured and sent out from the defender's factory. Explained that the defender has never issued bottles answering the description given by the pursuer.

**G** **COND. III.** The shock and illness suffered by the pursuer were due to the fault of the defender. The said ginger-beer was manufactured by the defender and his servants to be sold as an article of drink to members of the public (including the pursuer). It was, accordingly, the duty of the defender to exercise the greatest care in order that snails would not get

**D** Amendment

17<sup>th</sup> June 1930

**F** Answer  
23<sup>rd</sup> June 1930

# Written Advocacy

## FORMAL LEGAL DOCUMENTS

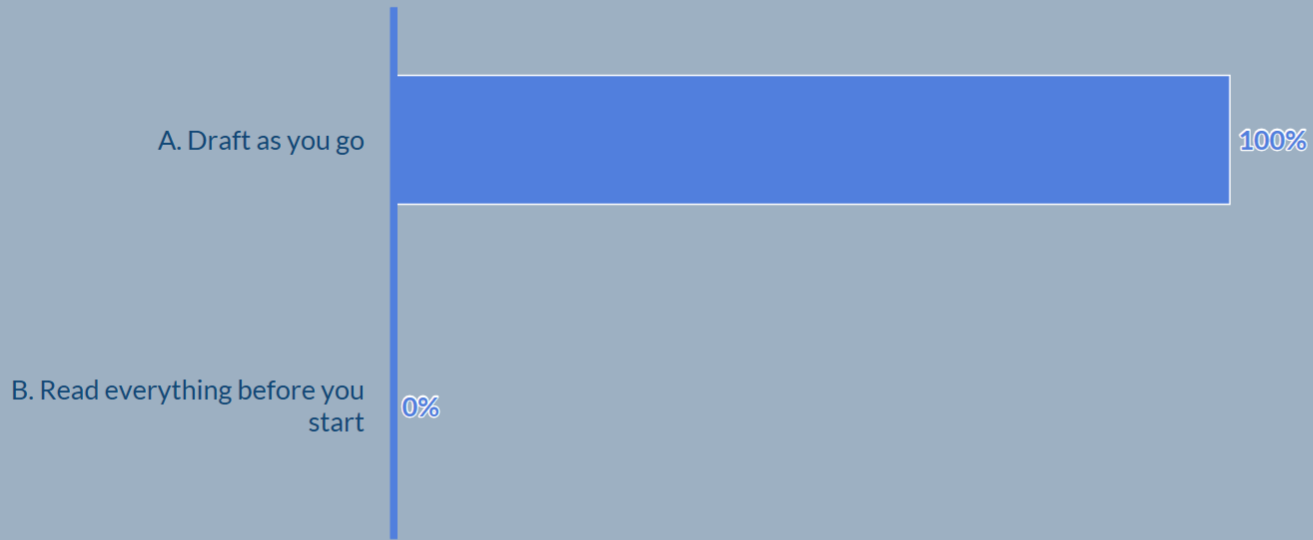
### Pleadings, Chapter 43 & 36

- **Summons**
- **Defences**

## Written Advocacy Poll 2: Do you use styles when drafting?



### Written Advocacy Poll 3: Do you "draft as you go" or read everything before you start?





# Written Advocacy

## SPECIFIC LEGAL DOCUMENTS

Form of summons

43.2.

- (1) The summons shall be in Form 43.2 A and there shall be annexed to it a brief statement containing
  - (a) averments in numbered paragraphs relating only to those facts necessary to establish the claim; and
  - (b) the names of every medical practitioner from whom, and every hospital or other institution in which, the pursuer or, in an action in respect of the death of a person, the deceased received treatment for the personal injuries



# Written Advocacy

## Statement of claim

1. The pursuer is *(state designation, address, occupation and date of birth of pursuer)*. [In an action arising out of the date of a relative state designation of the deceased and relatin to the pursuer].
2. The defender is *(state designation, address and occupation of defender)*.
3. The court has jurisdiction to hear this claim against the defender because *(state briefly ground of jurisdiction)*.
4. *(State briefly the facts necessary to establish the claim)*.
5. *(State briefly the personal injuries suffered and the heads of claim. Give names and addresses of medical practitioners and hospitals or other institutions in which the person injured received treatment)*.
6. *(State whether claim based on fault at common law or breach of statutory duty; if breach of statutory duty, state provision of enactment)*.





# Written Advocacy

- *Baird v Cowie* [2006] CSOH 168, Lord Carloway, paragraphs 19/20.
- *Smith v Hughes* [2007] CSOH 199, Lord Brodie



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# Written Advocacy

## Language

- Adverbs
- Further explained and averred
- Believed and averred
- Hereinbefore, hereinafter
- Incorporated herein *brevitatis causa*



# Written Advocacy

## FORMAL LEGAL DOCUMENTS

### Chapter 42A & 36A

- Summons
- Defences
- Statements of Proposals
- Practice Note no.6 of 2017



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# Written Advocacy

## FORMAL LEGAL DOCUMENTS

### Appeals

- Grounds of Appeal
- Note of Argument
- Practice Note no.3 of 2011

# Written Advocacy

## OTHER COURT DOCUMENTS

- Submissions
- Motions/ opposition
- Notes (on quantum, on the line)

## Written Advocacy Poll 4: Do you prepare chronologies?





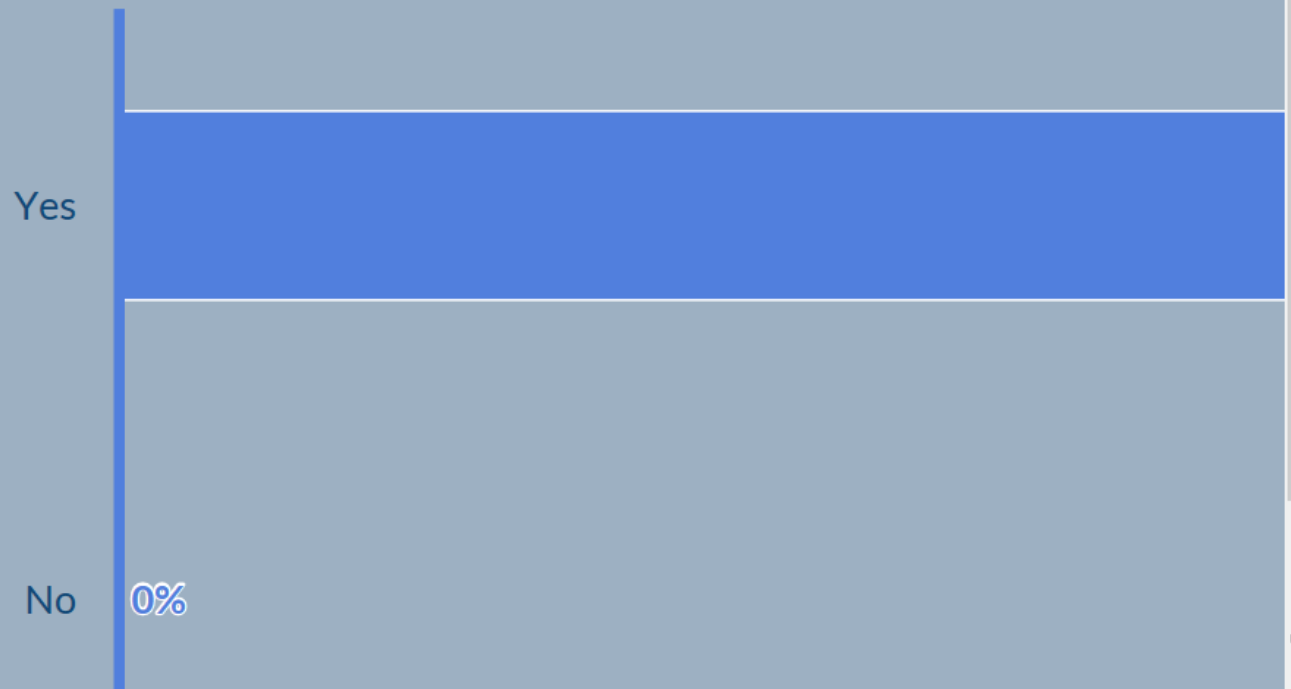
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# Written Advocacy

## OTHER DOCUMENTS FOR AIDS/PREPARATION

- Chronology
- Good/bad facts
- Questions for witnesses
- Correspondence












## Written Advocacy Poll 5: For an oral Court hearing, would you use an outline argument or speaking note?







# Or.....

4. On 12<sup>th</sup> March 2009, at around 9am,  was driving  registration number SN08 MKL along Main Road, Stirling. The pursuer was wearing a seatbelt. The first defender was driving  registration number GJ57 PXU. Suddenly and without warning the first defender emerged from a side street, and turned right across the oncoming traffic. He struck 's .  The second defenders have accepted liability for the accident by letter dated 30<sup>th</sup> June 2012 .
5. As a result of the accident the pursuer has suffered . She suffered a broken . She claims for , past and future  loss and necessary services.





Compass Chambers

# Contact

**Compass Chambers  
Parliament House  
Edinburgh  
EH1 1RF**

**DX 549302, Edinburgh 36**

**LP 3, Edinburgh 10**

**[www.compasschambers.com](http://www.compasschambers.com)**

**Amber Galbraith**

**Advocate**

**Mobile: 07739 639 241**

**[Amber.galbraith@compasschambers.com](mailto:Amber.galbraith@compasschambers.com)**

**Gavin Herd**

**Practice Manager**

**Phone: 0131 260 5648**

**Fax: 0131 225 3642**

**[gavin.herd@compasschambers.com](mailto:gavin.herd@compasschambers.com)**