

MASTERING THE ACCUSATIVE CASE

A new tenant at a top London set, **Rosanna Foscett's** path to the Bar was less than direct. Yet since choosing a legal career, the classicist's rise has been swift; and it's been marked by her involvement in several notable cases, a hearing in front of the Chancellor of the High Court, and her astute reliance on **JustCite**, the citator that assures a "more comprehensive and more thorough job". **Alistair King** meets her to discuss her work.



Rosanna Foscett: has the Latin for the judgin'

"I could've been a judge but I never 'ad the Latin for the judgin'. I never 'ad it, so I'd 'ad it, as far as bein' a judge was concerned."

Not, you'll be reassured to hear, the words of my articulate interviewee but those of the down-at-heel, flat cap-wearing Beyond the Fringe halfwit portrayed so exquisitely by the erudite and no doubt linguistically perfectly well informed Peter Cook.

As if confirming Cook's satirical point, young barrister Rosanna Foscett laments with a carefree chuckle that the Latin she covered while reading Classics at Cambridge has been of little help in its own right in her later legal studies.

Gaining a double first and going on to specialize in ancient Greek in her MPhil, Foscett's decision to convert to law came relatively late in the day, despite having parents representing both sides of the

profession.

But, as is clear from our conversation, which takes place in a smart meeting room in Lincoln's Inn in central London, the terrier-like research skills she developed pawing over Pliny, Virgil and Sophocles paved the way for her successful switch to a grueling GDL and BVC.

After applying for pupillage in early 2007, she was taken on by the prestigious Maitland Chambers when called to the Bar in 2008 and, on completing her apprenticeship, she is, at the time of writing, six weeks into her hard-fought tenancy at the renowned commercial chancery set.

Foscett's journey has undoubtedly been a tough one. But the cool, professional air she emanates suggests to me that her work has been as smart as it's been hard.

Along with legal nous, intelligence, perseverance and commonsense, it seems that finding the sleekest research tools – such as the provider-neutral JustCite citator – has eased her progress immeasurably. But we'll come on to that; it should follow as part of

JustCite: "absolutely invaluable"

my investigation into Foscett's transition from pupil to tenant.

By exploring some of the key cases she's worked on – whether researching points of law and preparing skeleton arguments for chambers colleagues, or in her fledgling independent practice – we should uncover a few pithy pointers for other would-be lawyers. So what is Foscett's modus operandi in lex and how can we emulate her?

This time last year I interviewed JustCite user James Clifford, runner up at the 2008 Bar Pro Bono Awards. By coincidence another Maitland practitioner, Clifford is more than 20 years Foscett's senior so unlike her, his earlier career-establishing cases were fought pre-JustCite.

Foscett, on the other hand, embraces her IT native status. "It's fair to say," she explains, "that I'm in the generation that has had access to online resources since we started and they're increasingly prevalent." Though her GDL conversion course was quite textbook-focused, her research environment from BVC onwards has been predominantly electronic. But "at my stage," she adds, "it's very difficult to know exactly where to go in the first instance and obviously you don't want to pester the librarian all the time."

Having relied on the service since she was first introduced to it, this is where she turns to JustCite, which she describes as "absolutely invaluable". Though she will often first consult a textbook to find the crucial three or four cases that could support her argument, she uses the citator for two key purposes: for guidance on where those full texts are available – it deep-links into and provides information on

numerous third-party providers; and to see what subsequent decisions might have affected the authority of the cases in question. Speculative subject term searches on JustCite and other databases provide her with another useful route to initial precedents.

Let's put this in context.

First as a pupil and now as a junior, Foskett is routinely expected to prepare research notes for her chambers colleagues. "When there's a particular point of law on which your leader wants to be fully briefed, while he or she probably knows all the most famous cases, he or she might want to research the most up to date cases in that area, so I'll be asked to write a note that must be brief, concise and entirely on the point," she says.

And JustCite gets the ball rolling on this?

"You need to start with a citator in my view," says Foskett, "so that you get a good overview [of subsequent citations and the like]. Once you've established the cases you want to rely on it's vital to go to the full text and have a proper close read of it – that's the beauty of the system."

"For example I recently had to do a research note in a fraud context on dishonest assistance. I knew there was one case from about 2002 – *Twinsectra*, which I must have known through a practitioner's textbook – but I didn't know how it had been treated in more up-to-date cases by other judges and obviously that's what is important in case preparation," she says.

She continues: "A judge is more likely to be persuaded by your argument if you can support it with something that has been said, say, in the last few months, whereas if you say that there was a case from, say, 1847 and [she tails off pondering the possible consequences of not having bang up-to-the-minute information]... Well, that doesn't necessarily have a huge amount of relevance nowadays in certain contexts. So with this case I just typed its name in and up it came with a whole list of everything that had been citing it since."

The JustCite record for *Twinsectra Ltd v Yardley*, [2002] 2 AC 164, can be seen for free at www.justcite.com/tvtsample. A good example of a typical case, it shows: all the various associated citations; which online services carry the full text; a short description of the subject matter – "really helpful", according to Foskett, for eliminating irrelevant cases; a detailed table of cases considered and how they were treated; and a detailed table of subsequent cases and how they were treated.

This was "just perfect," she says, "because it meant that I felt I'd done a thorough job in analyzing how the case had been used." Furthermore, she adds, "it's vital because you know the other side will be going through exactly the same process and so you must make sure you've covered every possible avenue."

This process, she says, doesn't necessarily save time but "I feel like I've done a much more comprehensive and more thorough job when I've done it. So it's a confidence thing really rather than a time-saving thing. You want to do the best for your client."

As the case for which she and her leader cited *Twinsectra* is ongoing, she can't discuss it in detail. But plenty from her pupillage days have been put to bed.

One of the most significant – made more memorable for its judicial audience – was that of Revenue and Customs Commissioners v *Cassells*, [2008] STI 2729, which can be seen at www.justcite.com/rcsample. Played out in front of Sir Andrew Morritt, Chancellor of the High Court, the importance of solid preparation – in which Foskett was involved – could not be overstated.

Though she didn't speak in court herself, Foskett says this bankruptcy hearing was "particularly interesting as my supervisor was acting for HMRC, so there was a point of public interest."

According to Foskett, "the Chancellor was looking at the judgment of the court below to review whether the judge had exercised his discretion properly. It was a really interesting case to be involved in because [unlike some legal issues] bankruptcy is one of those issues that people outside the law understand and see around them."

So an individual was disputing whether he should have been made bankrupt?

"That's right. He'd been made bankrupt and he'd come back and said to the county court that he should never have been. The court agreed, so they rescinded his bankruptcy order. Then, HMRC went to the High Court and argued that the judge in the county court shouldn't have rescinded the order. Lots of people were looking out for the results of the case because HMRC was involved."

The appeal was allowed, says Foskett, who adds that "it also reaffirmed another big case from 2005, so if someone was relying on that 2005 case they'd now be able to cite the Chancellor's decision in *Cassells* in support of their argument." This 2005 case – *Papanicola v Humphreys* – was itself relied on in *Cassells* but we won't include a sample JustCite record of that because by now the relevance of JustCite should be clear.

It's clear to Foskett. "Every time I start a new piece of work – several times a week, something like that – I use it," she says, and not just for finding cases to cite; borrowing arguments from other jurisdictions can be invaluable; a process made easier by JustCite's indexing of material from Ireland, Canada, Australia and beyond.

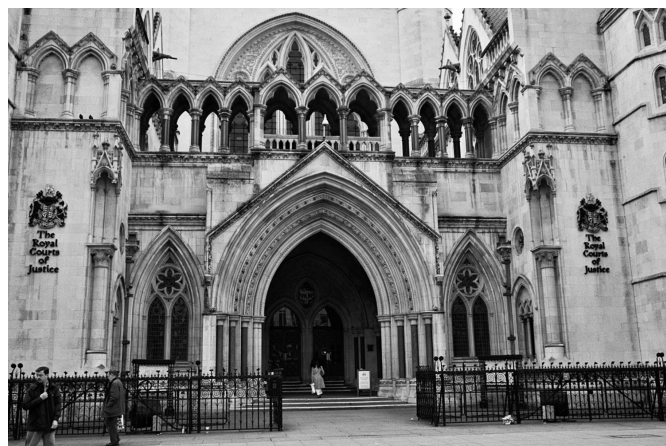
But research methods are just a means to an end; I'm keen to get to the heart of Foskett's legal endeavours. Foskett, in step with her chambers' areas of expertise, avoids family law and criminal work (except fraud in a civil context), the areas for which the current Legal Aid funding crisis – as highlighted by Desmond Browne QC at November's Bar Conference – are most relevant.

But she keeps abreast of this "Bar-wide issue" and as a pupil worked closely with pupil supervisor Andrew PD Walker on a pro

Twinsectra Ltd v Yardley	
Year:	2002
Summary:	Breach of trust - express term of loan only to be used in acquisition of would be acting dishonestly - undertakings - Royal Brunei Airlines Sdn Bhd
Reference:	[2002] 2 AC 164
Citations [7 record(s)]	
Court	Citation
CA	[1999] Lloyd's Rep Bank 438
HL	[2002] 2 All ER 377
HL	930 - 21/03/2002 Daily Cases
HL	1 - 25/02/2002 Times Law Reports
HL	[2002] 2 WLR 802
HL	[2002] 2 AC 164
HL	[2002] UKHL 12
Subject Matter	
TRUSTS	
Resulting trust see also Equity: Equitable interest: Joint bank account	
Dishonesty	
Lender requiring solicitor's undertaking before making loan - Third party as solicitor paying moneys to borrower's solicitor - Borrower's solicitor treating undertaking creating trust - Whether borrower's solicitor dishonestly assisted	

Section of the JustCite record for *Twinsectra Ltd v Yardley*, 2002, showing citations and subject matter

"I just typed its name in and up it came with a whole list of everything that had been citing it since"



Last chancery saloon: many Maitland cases are heard at the Royal Courts of Justice in the Strand

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bono mortgage scam case. Representing a couple who had been victims of a "sale and rent back" scheme, Walker persuaded the court to set aside the entire transaction, the first known instance of such a challenge being successful.

"The law involved was remarkably complicated and it was an important case on the facts," says Foskett, who carried out research on some of the points of law involved. Walker went on to win the Bar Pro Bono Award, which was presented by Browne.

Are Foskett's ambitions, well, as ambitious?

"I suspect I'll probably stay in fairly general commercial chancery practice for the first few years but after that who knows? I guess I'll develop a taste for something during that time but at the moment I'm thoroughly enjoying everything that comes my way," she says, adding that despite the knowledge she's likely to gain over the years, electronic resources will remain her tools in trade.

Bonam fortunam, Rosannam!

Subject Matter ^(?)			
BANKRUPTCY			
Bankruptcy order			
Power to rescind or vary			
Cases Judicially Considered [10 record(s)] ^(?)			
Court	How Cited	Name	Reference
Ch D	Referred to	G v G (Minors: Custody Appeal)	[1985] FL [1985] 2
ChD	Referred to	Papanicola v Humphreys and Others	2 -- 28/D [2005] FL [2005] BF
ChD	Referred to	Phonographic Performance Ltd v AEI Rediffusion Music Ltd	[1997] 3 5 -- 14/D
ChD	Referred to	Fitch v Official Receiver	[1996] 1
ChD	Referred to	Alltrans Express Ltd v CVA Holdings Ltd	[1994] 1
ChD	Referred to	In re F. (A Minor) (Wardship: Appeal)	[1976] 2
ChD	Referred to	In re Benzon, Bower v Chetwynd	[1941] 2
ChD	Referred to	Roache v News Group Newspaper Ltd	[1998] FL
ChD	Referred to	Anolo Manx Group Ltd v Aitken	[2002] BF
ChD	Referred to	Halabi (A Bankrupt) v Camden London Borough Council	14/02/20 1 -- 25/D [2008] FL

Section of the JustCite record for *Revenue and Customs Commissioners v Cassells, 2008*, showing subject matter and cases judicially considered

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