



The American Way

Andrew Otchie shares his experience of becoming a New York Attorney and discusses the common issues in academic training, qualification and practice

The Bar Council statistics record that when I was Called to the Bar in 2005, 1,392 candidates had successfully completed the Bar Vocational Course (now the Bar Professional Training Course) that year, but only 556 barristers commenced pupillage (the numbers however are not precise because pupillage applicants include previous course candidates, and approximately 30 per cent of those Called are from overseas and are not looking for a pupillage in

this country). That simple arithmetic and the frustration and disappointment in trying to find a pupillage led me to attempt the New York Bar Exam.

Stars and Stripes

New York's liberal attitude, broad-mindedness and historical tradition, permit many candidates from around the world to sit for its Bar exam and if successful, to be admitted and sworn in

New York Bar exam

before its courts as “Attorney and Counselor at Law”. The rules for the admission of attorneys allow those with the academic qualifications potentially to qualify as lawyers in their home jurisdiction to sit for the exam. This can include English barristers who have been Called, but have not undertaken pupillage.

In fact, the provisions on required legal education (22 NYCRR § 520.6) set out that the study of law in a foreign country ought to be substantially similar to that of the American JD (juris doctor) and those with an English LLB have little problem in qualifying. However, candidates who studied law as part of a joint honours, or non-law degree, may encounter difficulty over their eligibility from the Board of Law Examiners. From May of this year, the applicable rule was changed so that potential candidates are only able to cure a defect in their academic record by completing an LLM in America.

The exam is both mentally and physically tough, due to the sheer scale of the syllabus. It includes the substantial and procedural aspects of both Federal and State law, and some very quirky rules which must be committed to memory, such as the elements of the tort of intentional infliction of emotional distress (ie no actual or physical harm needs to be suffered by the plaintiff who may recover punitive damages for the mishandling of a corpse of a next of kin), and the fact that there can be no good faith reliance on a defective search warrant in New York.

Although Bar review courses are run by providers in London, they are not compulsory before sitting for the exam, which now costs \$750 for foreign applicants.

The exam itself involves two days’ worth of essays and 250 multiple choice questions. Of the 15,000 candidates who take the State exam annually, only about one half pass (only 48 per cent passed in 2011). The rate for graduates from American Bar Association approved law schools is 76 per cent, which indicates that those with a foreign legal education may have to attempt the exam a few times before they succeed. There is, however, no limitation on the number of times a candidate can sit for the exam.

Candidates who pass the exam then attend an admission ceremony. This is a happy, yet solemn occasion, taken very seriously by the Americans. The names of all the successful candidates attending each ceremony – in their given judicial department - are read out, and an oath of office is taken before 12 Justices of the Appellate Division of the State Supreme Court, with right hand held high, swearing to uphold United States and New York State Constitutions. After that, new attorneys must turn and face the American flag whilst hearing a rendition of the “Star-Spangled Banner” (ably performed by an attorney soloist).

The Bar in Times Square

Once the exam is passed an attorney is licensed to practice law in New York; no further formal training is required.

This can provide an opportunity for those who have been Called to the English Bar but who have not done a pupillage to gain important, and useful, experience in observing the operation of English common law in another jurisdiction, or by assisting one of the many pro bono projects in New York City. This could count in their favour when they next apply for pupillage.

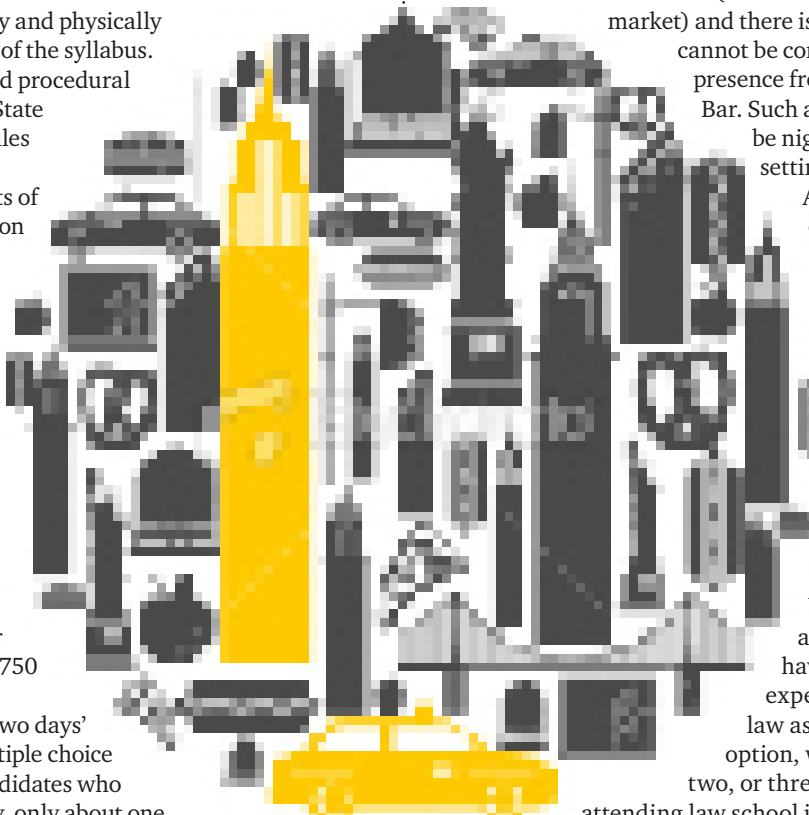
Of course established English practitioners may venture into practice in New York (or any other US State – with the court’s permission and on a limited basis) and take on cases using the same skills in cross-examination, drafting and advising, as is done in the practice of English law.

Large firms of solicitors from the City of London have successfully been able to establish themselves and are prominent players on the US legal scene, specialising in corporate transactional work (such as mergers in the energy market) and there is no reason why they cannot be complemented by a bigger presence from members of the English Bar.

Such an increase may already be nigh, with some chambers setting up a New York annex. Advocacy specialists can find room in the market, as interesting cases continually abound in heavy-weight crime, multinational commercial disputes and appellate work.

The Bar should always be open

The American legal system attracts many candidates from diverse backgrounds to pursue a career in law. Some have had considerable life experience and opted for law as a third, or fourth career option, while others hold down two, or three, part-time jobs whilst attending law school in the evening. One disadvantage is therefore that many thousands of people become attorneys every year, far more than are necessary for the US economy in its current state of recession. Yet, the enthusiasm of aspiring lawyers being admitted to the Bar is inspiring and representative of the optimism and energy of New York. The State continues to maintain a strong and vibrant Bar, which is active in legislative policy, and community work, and provides insights into some of the issues we face today on this side of the Atlantic. Local firms have invested in young lawyers by supporting moderately paid exchanges with not-for-profit organisations undertaking pro bono work to help those unable to find junior associate positions. It is a heartening example that we could embrace. ●



Andrew Otchie is a tenant at 12 Old Square Chambers and has recently been admitted to the New York Bar.