BOOK REVIEW

Bobette Wolski, with David Field and John Bahrij, *Legal Skills: a Practical Guide for Students* (Lawbook Co, 2006)

I INTRODUCTION AND OVERVIEW

It is not often a new skills text is published, and this one is timely given the increasing focus on skills development at undergraduate level, and in postgraduate practical legal training. The authors are teachers in the law school at Bond University, Queensland.

The book aims to assist law students, and newly-admitted practitioners, to develop a range of fundamental lawyering skills, and to gain an understanding of the ethical and professional responsibilities lawyers owe to clients, the court and other parties. The preface tells us that the skills covered are:

- interviewing clients
- legal analysis and problem solving
- legal research
- writing clear and concise letters and legal documents
- advising clients on dispute resolution options
- representing clients in negotiations and mediations
- presenting a client's case persuasively in court.

While the book is primarily designed for skills teachers and their students, it will also be of interest to teachers of substantive law and legal procedure subjects who may wish to use simulated legal practice exercises as part of learning or assessment in those subjects. The book contains many exercises that can be used to teach students how the law is applied in practical contexts, and provides guidance to students on how to perform those tasks.Also of general interest to law teachers are sections covering:

- assignment writing (chapter 5)
- basic legal concepts such as precedent and legal reasoning (chapter 3)
- legal sources and research (chapter 4)
- methods of resolving legal disputes (chapters 6 and 7).

Importantly, the book covers the theory underpinning practical legal skills. The need for lawyers to develop practical skills on a sound foundation of theory is a compelling argument for teaching skills at university. Law firms often do not have the time, or expertise, to instruct employees in skills theory.

The authors claim that the book addresses issues of ethics, values and professional responsibilities relevant to each skill area. This is a laudable aim, but the treatment of ethics and professional responsibility is patchy, with no reference to ethics in chapters 3 (legal analysis and problem-solving) or 4 (legal research), and only brief references in chapter 5 (legal writing). While the relevance of ethics to some of these skills might be less obvious than, for example, its relevance to interviewing, negotiation or advocacy, the fundamental responsibilities of honesty, loyalty, confidentiality and competence permeate all professional activities.

The book is generally well-structured. Each chapter begins with a comprehensive list of objectives, followed by a summary of content, and includes exercises that require students to think about the material covered. There are also plenty of examples, practical trips, and suggestions.

Page design is sometimes busy, with sidelining, dot points, different fonts and heading styles, as well as paragraph numbering (which is confusingly in increments of five). The icons used to identify the exercises and examples might be cute, but they add to the impression of clutter.

Inevitably, some skills are covered in greater detail than others, but sometimes the balance struck by the authors in their treatment of different skills seems inappropriate. This is further discussed in the context of the relevant chapters.

One weakness of the book is that while it aspires to be a national text, it has a strong Queensland focus in some areas. For example, in the discussion of ethics there are references to the Queensland conduct rules, but none to the national Model Rules which form the basis of the conduct rules in some other States. Another example is that while the Queensland courts are described (at 178-9 [3.575]), there is no reference to equivalent courts in other jurisdictions.

II CHAPTER 1: LEARNING SKILLS AND VALUES IN LAW SCHOOL AND IN PRACTICE

The introductory chapter is written by Bobette Wolski and begins with a list of objectives. They include identifying the characteristics of a profession, explaining the concept of skills, and how skills are applied by lawyers in their daily tasks. It also discusses what is meant by ethics, and describes professional responsibilities and the rules which govern professional conduct and relationships.

A description of lawyer roles (solicitors, barristers etc.) is followed by discussion of differences between knowledge, skills and values, and how being a competent lawyer means being able to integrate all three. Different kinds of skills

(intellectual, performative and affective) are explained, and the characteristics of skilled behaviour identified. The author draws on the McCrate report and other sources to compile a list of skills required by lawyers, and explains how skills and techniques fit into a hierarchy of activities that make up a legal transaction or case.

There are useful tips on the efficient processing and storing of information gleaned from texts and other sources. Exercises in this part of the chapter are useful for getting students to think about, for example, the attributes of effective communication.

As already noted, one of the themes of the book is that skills must be learnt in connection with relevant values, ethics and professional responsibilities. Chapter 1 contains an introduction to this topic which is generally sound, but its focus on the Queensland conduct rules diminishes its value for students in other parts of Australia.[1] Another weakness is the limited range of ethics references cited by the author. Inexplicably, one major Australian ethics text is not mentioned at all.[2]

III CHAPTER 2: CLIENT INTERVIEWING

This chapter, also written by Bobette Wolski, begins with a discussion of the importance of the client interview as a forum for exchanging information and ideas, and establishing the lawyer/client relationship. She points out that lawyers and clients often harbour misconceptions about each other, resulting from stereotypes and faulty assumptions. She suggests some strategies for recognising preconceptions and ensuing they do not get in the way of effective communication.

Models of interviewing are discussed. A participatory 'client-focused' model of interviewing is advocated, and compared with more traditional approaches to interviewing. Traditionalists will no doubt argue that their approach is 'client-focused' in that their aim is to achieve the best outcome for the client. But the difference is that the 'traditional' interviewer decides what is in the client's best interest, while the 'client-focused' interviewer's role is to give clients the information and guidance necessary for them to decide for themselves what is in their best interests.

A 12-stage interview process is advocated, and each stage is explained in detail. The process is broadly similar to a 3-stage model taught in some law schools: Discussion of the interview process is followed by guidelines for file management, and sections on communication techniques and problem-solving

1 It has also led to some inaccuracies. The author makes the general statement at 26-7 [1.245] that barristers do not enter into contracts of service with referring solicitors or barristers. This is not the situation in Victoria where barristers can have a contractual relationship with either the instructing solicitor, or directly with the client.

2 Gino Dal Pont's *Lawyers' Professional Responsibility* (3rd ed, 2006).

skills. The chapter concludes with a section on ethics, values and professional responsibilities. While repetitive of some material in chapter 1, it is specifically related here to interviewing. The chapter includes useful strategies for handling clients with what are euphemistically called 'special needs' - essentially clients with unreasonable expectations and behavioural problems that require special handling. An appendix contains answers to, and a commentary on, practical exercises in the chapter.

	12-stage process	**3-stage process**
Pre-interview Interview	1. Preparing for the interview 2. Opening 3. Receiving preliminary information 4. Setting an agenda	Meeting, greeting and introduction **1. Listening**
	5. Gathering detailed information 6. Evaluating information received	**2. Questioning**
	7. Giving information and generating options 8. Making decisions 9. Taking instructions 10. Closing the interview	**3. Advising**
Post-interview	11. Attending to post –interview matters 12. Continuing communication with the client	

IV CHAPTER 3: LEGAL ANALYSIS AND PROBLEM-SOLVING

In this chapter David Field explains some fundamental legal concepts in clear and concise prose, with easy-to-follow examples.

After an explanation of the difference between issues of *law* and issues of *fact*, the reader is introduced to a process of legal problem-solving conceived by John Wade of Bond University and called 'MIRAT' (Material facts, Issues of law and policy, Rules and resources, Arguments or application, and Tentative conclusion).

More easily grasped than MIRAT is the author's use of an archery analogy to explain the concept of legal analysis. An arrow fired at a target is a metaphor for discovering the law that applies to a set of facts. The target's 'bullseye' represents clear law, and the arrow lands here if the fact situation is clearly covered by existing precedent (case law or statute). If the facts are not 'on all fours' with precedent, but there are sufficient similarities between the facts and existing authority to discover an answer by a process of inductive or deductive reasoning, the arrow lands in the target's next 'ring of possibilities'. If the facts are so novel that a process of reasoning based on existing authority does not provide an answer, the arrow drifts into the outer ring of the target where an answer is found by reference to statements of policy or principle. A decision based on policy or principle then becomes the 'bullseye' of clear law should like cases arise in the future.

The author then explains how cases in each area of the target are decided:

The chapter is an excellent introduction for students to the processes by which lawyers analyse legal problems, and construct legal arguments. Its sole weakness is that, despite the book's promise that each chapter will address relevant ethical issues, there is no reference to the ethical duties that apply, for example, when you argue in court that your client's case should be decided in a certain way (the duty to disclose the law, and not mislead the court about the facts).

bullseye	statutory interpretation and the use of precedent
middle ring	analytical reasoning (deductive, inductive and reasoning by analogy)
outer ring	how judges use policy and principle to make decisions in novel cases.

V CHAPTER 4: LEGAL RESEARCH[3]

No book on legal skills would be complete without at least one chapter covering legal research. This chapter 4, written by John Bahrij, effectively covers the basics of legal research for early law degree students.

General legal research concepts, specific Australian primary and secondary sources, and the major legal databases are covered. Citation and current awareness services are also included. Although the sources of legislation and finding legislation exercises within the chapter are focused on the Commonwealth and Queensland, the appendices (which list popular legal abbreviations, and websites for Australian courts, legislation and government information) cover other Australian jurisdictions.

The use of important legal databases is explained using screenshots, which may be of limited value a year (or sometimes even months) later, given the frequency with which interfaces change. The images do, however, serve to break up the text and provide more visual instruction.

Foreign and international law materials are not covered, apart from a short section on UK case law. Overall, the chapter serves as a useful and practical guide to Australian legal research.

VI CHAPTER 5: LEGAL WRITING

This is probably the least successful chapter in the book. Its weaknesses are: the limited coverage given to plain English principles and techniques; a failure to observe plain English principles in some examples given by the author of 'good' legal writing; and its limited bibliography.

The author's five commandments of plain English are:

1. write as plainly as possible;
2. avoid long sentences;
3. use the active rather than the passive vice;
4. avoid archaic words and sentences [sic]; and
5. be as concise as possible.

To this list we would have added:

6. before you write, plan;[4]
7. consider your audience;
8. observe principles of good document design - plenty of white space, clear font,
9. use of headings etc; write grammatically;
10. edit and re-edit the final draft.

Each of the author's five commandments is briefly explained and illustrated with examples. However, the ability to write clearly and concisely is such a fundamental legal skill that its principles and techniques warrant more

[3] Chapter 4 was reviewed by Kay Tucker, the Information Services Librarian in the Faculty of Law, Monash University, Clayton.

[4] One of David Mellinkoff's seven rules, see David Mellinkoff, *Legal Writing: Sense and Nonsense* (1982).

comprehensive treatment than they receives here. For example, the author's advice for achieving conciseness is limited to: '[u]sually a minimum of 10% of deathless [sic] prose can be safely removed from a piece of written work without any loss of effective subject matter.'[5]

There is no advice on how to identify 'deathless' (lifeless?) prose, such as Richard Wydick's simple technique of categorising words as 'working' words or 'glue' words and removing as many glue words as possible.[6]

The author would have benefited from Wydick's advice in paragraph [5.185] (at 276) where he manages to break almost every one of his commandments in a single sentence:

> If [the purpose of writing] is to persuade the potential client with whom you had lunch yesterday that your firm would be a suitable and reliable destination for all their litigation files, then you will seek to convey an air of confidence in association with a suggestion of compendious legal knowledge and skill, topped off with a good measure of approachability and informality.

'Plain' English does not have to be plain in the sense of boring, but this turgid sentence does not exemplify how writing can be both 'plain' *and* interesting.

The author disarmingly acknowledges some vulnerability in this respect by inviting the reader (at 267 [5.40]) to feel free to hoist him with his own petard, and apply the commandments of Plain English to some of his more florid passages.

In the next part of the chapter the author explains how to write file notes and memoranda; letters; witness statements; affidavits and statutory declarations; submissions to government departments, and briefs to counsel. The author includes examples of how each type of document should be written. Unfortunately not all of them are good examples of plain English writing. Several contain excess words, legalese and archaic terms that should have been edited out.

A further issue is the balance struck by the author between the coverage of different types of documents. For example, four pages are devoted to writing client letters, while five pages are spent discussing briefs to counsel, arguably a less important skill for students to acquire at this stage of their learning.
After discussing the different types of legal documents, the author offers some useful advice to students on writing assignments, including referencing, and how to avoid plagiarism. The chapter ends with a section on report writing which is based on another Wade acronym, this time the unfortunate TCAGONARM.

The recommended reading list has notable omissions, Richard Wydick's excellent *Plain English for Lawyers* among them.

5 Bobette Wolski, *Legal Skills: a Practical Guide for Students* (2006) 274 [5.150].
6 Richard Wydick, *Plain English for Lawyers* (5th ed, 2005).

VII CHAPTER 6: DISPUTE RESOLUTION

This chapter covers:

- the theory of conflict;
- processes for resolving disputes;
- criteria for determining their appropriateness and effectiveness;
- how various processes can be combined;
- classification of processes as facilitative, advisory, determinative etc;
- drafting dispute resolution clauses in agreements; and
- the ethics and professional responsibilities involved in dispute resolution.

In the section on theory of conflict the author, David Field, defines 'conflict' and contextualises and characterises disputes. He then examines the causes of conflict and identifies and addresses the causes of conflict, before analysing possible responses to conflict.

The breadth of this examination means that at times it is superficial, so that when writing about identifying causes of conflict the author merely notes that the process 'may involve some trial and error', and that 'most conflicts have multiple causes that are not easy to identify'. After giving students some practical exercises, he moves on to appropriate interventions to address the identified causes of conflict. The section contains references to sources of more detailed information.

The section on dispute resolution processes includes an in-depth analysis of the characteristics of each process, which is useful for newcomers to the subject, and is made very clear by the comprehensive summary table provided.

Of less practical value, given the target audience, is the exposition on classification of processes.

The advice on dispute resolution clauses is detailed, and deals comprehensively with what can be a demanding drafting task. However, the explanation of the responsibilities and liabilities of arbitrators near the end of this chapter is unlikely to be of immediate value to students. It also confuses ethical obligations with the procedural obligations under which some arbitrations may be conducted.

VIII CHAPTER 7: NEGOTIATION AND MEDIATION

This chapter deals comprehensively with the distinction between traditional positional negotiation, and the interest-based model expounded by Fisher & Ury in *Getting to Yes: Negotiating Agreement Without Giving In.*[7] While the latter is now a common pedagogical model, the author does not ignore its limitations. He recognises the need to understand that both alongside an interest-based approach,

and within it, recourse may need to be had to positional bargaining to achieve the settlement the client is entitled to.

For the student, sections headed 'negotiation tightropes' and 'why to use the phrase "win/win" cautiously', provide appropriate words of caution against believing interest-based negotiation is a universally and comprehensively applicable system, equally attractive to all disputants. However, the more serious practical and ethical problems confronting a practitioner wishing to adopt a collaborative approach to negotiation, that concern the relationships with the client and the other negotiator, are not examined.[8]

The chapter provides a wealth of material to assist the student in the preparation and conduct of negotiation exercises, although it is questionable whether sections on multi-party negotiations, and negotiating in teams, are useful at this stage of skills development.

The sections on negotiation skills and common mistakes made by negotiators are good, but it is not clear why they are separated from the earlier sections on negotiation, by sections on mediation and ethical considerations in negotiation and mediation.

Nevertheless, those intervening sections are a good introduction to the processes of mediation, which lawyers today are increasingly likely to encounter. The author concentrates on the standard 'facilitative' model (as categorised by Boulle, *Mediation: Principles Process Practice*[9]) which is complementary to the principles of interest-based negotiation. By giving students an understanding of the mediation process, and the functions of the mediator, they will more easily appreciate the following section on the role and functions of legal advisors in mediations. This section is complemented and augmented by an informative section on ethics, values and professional responsibilities in negotiation and mediation.

IX CHAPTER 8: ADVOCACY

The main message in this chapter is that advocacy skills are more than oral fluency and flair. Advocacy is about effective communication and persuasion, and is achieved by utilising the full range of legal skills, as well as more generic attributes such as integrity, judgment and courage.

The author examines particular situations calling for advocacy - bail applications,

7 Roger Fisher and William Ury, Bruce Patton (ed), *Getting to Yes: Negotiating Agreement Without Giving In* (1991).

8 For an interesting analysis of these problems see generally Scott Peppet, 'Lawyers' Bargaining Ethics, Contract, and Collaboration: The End of the Legal Profession and Beginning of Professional Pluralism' (2005) 90 Iowa Law Review 475. The author argues for a radical overhaul of current codes of conduct that generally apply to all lawyers in all circumstances. Instead, lawyers could contractually choose the ethical obligations under which they wished to operate in different cases. For example, lawyers acting for parties who wished to adopt a collaborative approach to dispute resolution would contract to be bound by different rules to the rules appropriate to adversarial bargaining.

9 Laurence Boulle, Mediation: Principles, Process, Practice (2nd ed, 2005).

pleas, interlocutory applications, and appeals. The general assertion that the various bail statutes raise a presumption in favour of bail, fails to acknowledge the extent to which such a presumption is expressly overridden in, for example, the *Bail Act 1977* (Vic). Similarly, the discussion of relevant specific issues that need to be addressed in bail applications, does not take account of the shift in the burden of proof that may occur in applications under the Victorian legislation. The failure to address differences between jurisdictions has been noted in relation to other chapters. Here it also reduces the value of the author's subsequent advice on legal research and fact gathering.

The section on interlocutory applications contains excellent advice on the drafting of affidavits in support.

At first glance, some of the material on court etiquette might seem simplistic and obvious, but it is appropriate in a text for students. However, the otherwise succinct and efficient summary of ethical duties and professional rules is marred by its limited references to Queensland and NSW sources, mainly barristers' rules. Finally, a list of common mistakes by advocates may prove helpful to students in navigating the pitfalls of advocacy, although it is unlikely that they will be concerned for some time with the problems associated with appeals, except perhaps in the context of mooting.

X CONCLUSION

Taken as a whole, the book is a valuable addition to the skills literature - a useful learning and teaching tool. Its strengths are its wide coverage of skills, and its generally good balance of theory and practical advice. Its weaknesses are its Queensland-focused treatment of some topics, limited bibliographical references, and the wordiness of some chapters.

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