

BOOK REVIEWS

MAUET'S FUNDAMENTALS OF TRIAL TECHNIQUES –
New Zealand Edition, Eichelbaum (Editor in Chief). Oxford
New Zealand, Auckland 1989. 319 pp.

[M]ere acquisition of knowledge in law school is of little value to a practitioner because that knowledge (a) can only be a tiny portion of the whole, (b) can be understood only superficially, (c) is easily forgotten or only partially or inaccurately remembered, (d) is rarely needed in practice in the form in which it is learned, (e) is likely to be quickly outmoded and thus dangerous to rely on, and (f) is of little use when new problems arise to be solved.¹

As the preface to Mauet's *Fundamentals of Trial Techniques* acknowledges, this is a book primarily aimed at the "young New Zealand litigation lawyer". It recognises the type of work such a lawyer will usually engage in, and attempts to provide an overview of the basic skills and techniques required for the effective conduct of both civil and criminal litigation, particularly in the judge-alone context. This is expressly acknowledged in the preface by the Chief Justice Sir Thomas Eichelbaum:

[The book's] greatest value however, should be to those practitioners with a limited amount of post-admission experience in practice, who have had little or no formal training in the principles of advocacy, are interested in developing a litigation practice, and motivated to learn how to conduct a trial properly and to improve their professional performance.

The emphasis the authors have placed on the practical rather than theoretical aspects of litigation is evidenced by the chapter on objections written by Mr Justice Robertson. He points out that although young counsel have learned the theory of evidence and civil procedure at law school, they nevertheless require guidance as to when it is in their client's best interests to object to questions being asked by opposing counsel, when cross-examination is necessary and the extent to which a witness should be cross-examined, and how to deliver an opening and closing address. On the point of when to make objections Mr Justice Robertson sets out a five pronged analysis of relevant factors:

1. Judges and jurors generally dislike objections.
2. The effect of the answers on your client's case.
3. An objection must have a solid legal basis.
4. A counsel must sometimes object to protect the record of the court.
5. An objection may be used as a tactical device.

The book emphasises formality in the procedural sense (which sits more easily with High Court rather than District Court etiquette). This is particularly manifest in the chapters on opening and closing addresses along with

¹ Professor W. Twining, Paper to 9th Commonwealth Law Conference, Auckland, 1990.

that on jury selection. These features render the text valuable to more experienced practitioners as well as to those who are newly admitted.

The section on conduct in court written by the Chief Justice is invaluable. It covers such matters as dress in court and how to address the bench and other counsel, and emphasises the duty counsel has to the court as well as to the client. The imbalance caused by the impact of American litigation procedure through various television serials is thereby redressed.

Of great assistance to younger lawyers are the sections on preparation for trial, and the preparation of exhibits and interlocutories. These are areas in which junior solicitors and law clerks (and even summer clerks) will be largely involved. Mauet explains the basis and object of these procedures and provides examples of how client instructions can be adhered to. Thus the book covers not only the theoretical considerations but also relates those to the more immediate problem of improving the position of one's client prior to trial. The writing and drafting of documents is also covered along with suggested training programmes to improve those skills.

Of even further assistance to young solicitors would be a consideration of tactical aspects of when it is appropriate to make interlocutory applications and how such tactics fit in with the wider conduct of a case. An explanation of the role of Masters of the High Court in the court hierarchy as a guide to the conduct of applications before them would also help to cover a void in New Zealand legal education. If a second New Zealand edition of Mauet is proposed a chapter written by a Master of the High Court would be useful.

A further area not covered by the text is appearances before quasi-judicial bodies such as the Planning Tribunal, Council Regulatory Committees, the Accident Compensation Corporation Review Boards and various other bodies in which clients may require legal representation. Litigation is not merely the contesting of matters in court; it may involve arbitration, negotiation and mediation. A chapter dealing with the non-adversarial practice of civil litigation in New Zealand would be a welcome addition.

The role of counsel in pre-trial judicial conferences in both the civil and criminal contexts together with questions of pre-trial discovery are crucial elements in the trial process. Both are aspects of trial in which young solicitors are able to be involved, and practical advice on these would therefore be welcome as would a section on the pressures young litigation solicitors are likely to face.

The book does not attempt to favour one particular style of advocacy over another. It provides a solid foundation upon which junior solicitors can build, depending on their style and the guidance given by more senior practitioners. This enhances the value of the text to younger lawyers in the development of their careers particularly as it is emphasised that the examples throughout the text are not to be treated as strict rules; rather they provide a good general basis but must be modified to suit each individual case.

The authors of Mauet have combined two different tasks: an introduction to the conduct of litigation by newly admitted practitioners, and a useful reference point for more experienced practitioners. Students should not wait for their professional course to purchase this book; an understanding of the mechanics of trial techniques would be advantageous before undertaking employment in litigation departments. Mauet's *Fundamentals of Trial Techniques* is more than useful in this regard, and will provide a valuable reference point throughout the development of a litigation career.

– Robert Hucker

COURTROOM PROCEDURE IN NEW ZEALAND: A Practitioner's Survival Kit, by James O'Donovan. Commerce Clearing House NZ Ltd, Auckland, 1989. ix and 99 pp.

Courtroom Procedure in New Zealand is a survival kit for those about to enter the "jungle" of courtroom procedure. As the author states, the book's purpose is:¹

to provide an introduction to the business of appearing in Court and to assist the reader through what, at times seems to be a minefield of formalities lying in wait for the fledgling practitioner.

The author wrote this book with the expectation that those who read it will have had little or no courtroom experience. For would-be litigators who are reticent in asking the practical questions this book is most welcome. It answers the simplest and at times most naive questions. How do I dress for court? Can I wear trousers in the District Court if I am a woman advocate? What hairstyle is most appropriate? While most law students become conversant with the rules of evidence and civil procedure at university, the straightforward questions often remain unanswered. What do I call the judge? When should I bow? Who speaks first?

The author was appointed a District Court Judge in 1984 and has sat principally in Auckland where he holds a Family Court warrant. The guidance given is therefore from a person who has had extensive experience on both sides of the bench, and the author adds a personal touch by referring to his own experience as an advocate.

The pages are interspersed with excellent cartoon strips by Rick Bigwood, a lawyer and cartoonist, which both elucidate the points made by the author and add a good natured and humorous theme to the book without undermining the seriousness of its content.

The advice given may sometimes appear disagreeable to readers. In the

¹ At para 101.

chapter entitled "Appearing in Court", for example, the author states that:²

whether you agree with the notion of minimum standards of dress in Court or not, the fact is that Judges require them (I believe for good reasons because of the seriousness of the occasion and the respect in which the Court should be held) and your duty is to observe them.

But the author gives valid reasons for expressing such views. The advice is given on the basis of how one is to be a successful and respected advocate in the courtroom as distinct from a personal view of how the court system should be run.

The book follows a logical sequence: becoming familiar with the courtroom; advising a client; preparing a case; and appearing in court. There is a chapter on each type of criminal trial: undefended hearings, defended hearings and jury trials.

The author gives an example of the sort of criminal case which an inexperienced advocate might be expected to conduct and guides her from the first step of the process, seeking a remand or an adjournment, through to the passing of sentence. There is even advice on how to resolve a conflict in the number of court appearances in any one day and how a client should dress. On the subject of jury trials the author confides in the reader that the first thing the young advocate must know about appearing as counsel in a jury trial is:³

that the nervousness, the thrill of real fear on occasions, never really goes away, despite the passage of years.

Although the examples used by the author are mostly from criminal law, the guidance given is applicable to all branches of law, and a brief introduction to civil proceedings is given. There is also a concise chapter on appearing in the Family Court, in which sound advice is given:⁴

To practise successfully in the Family Court, the lawyer needs to understand and accept the philosophy of the Court. All persons, including judges and counsel, who work there have a responsibility to promote reconciliation and conciliation. The lawyer who pays only lip-service to this obligation should not practise in the Family Court.

This book also includes a vital chapter on relationships with other members of the profession, particularly judges. The author points out that:⁵

judges spend a great deal of their time observing the performances of counsel and frequently discuss among themselves the progress of counsel who appear before them.

This is an excellent book for quick reference. It is simple to understand and provides sound advice, using humour and the author's own experiences. It does not purport to cover the entire area of courtroom procedure, which would be an enormous undertaking, but concentrates on simple points. It will

² At para 304.

³ At para 701.

⁴ At para 803.

⁵ At para 308.

help an aspiring litigator to survive the potentially daunting first years of legal practice.

– *Gustava Macartney-Filgate*

LEGAL RESOURCE MANUAL, Legal Information Service Incorporated, Auckland, v and 404pp.

For if knowledge became too great for communication, it would degenerate into scholasticism, and the weak acceptance of authority; mankind would slip into a new age of faith, worshipping at a respectful distance its new priests; and civilization, which had hoped to raise itself upon education disseminated far and wide, would be left precariously based upon a technical erudition that had become the monopoly of an esoteric class monastically isolated from the world by the high birth-rate of terminology.¹

The brochure which arrived with the *Legal Resource Manual* described the Manual as

an essential reference work setting out in plain English the rights and entitlements of the citizen under New Zealand law.

For legal professionals and the layperson the Manual holds a unique position in providing accessible commentary on a wide scope of subjects affecting the New Zealand individual. Many law information services stop at the point of supplying statutes. The *Legal Resource Manual*, while referring to relevant statutes and sections, chooses to use expert writers to summarise, comment on and provide guidelines concerning the rights and entitlements of the New Zealand citizen. Yet its plain English format does not reduce the obvious rigour which has combined information from many sources. Use has been made of the Official Information Act 1982 to gain access to internal memoranda from government departments, and statutes and case law have been reported in a refreshing non-legal manner. This formula works when combined with the skills of competent writers and the objective of compiling and disseminating information in the most accessible form.

The Manual contains twenty-nine chapters, covering Department of Social Welfare benefits, health related assistance, housing and accommodation, legal assistance and citizen's remedies, civil liberties, and domestic legal issues. In line with the update service operated by Legal Information Service, four chapters are currently under review, most notably the two chapters concerning education and training assistance.

Each chapter is broken into numbered sections, generally following the plan of: introduction, who can get it, how to apply, how much the entitlement is, factors that may affect entitlements, reviews and appeals, other entitlements, and further relevant issues. Chapter 3.3 breaks from this plan to

¹ Durant, *The Story of Philosophy* (3rd ed 1955), 15.

provide a detailed amalgam of all benefits and entitlements, summarised requirements and amounts. The purpose of this separate chapter must be to allow rapid updating of constantly changing benefit amounts. Almost every chapter refers the user to paragraphs within Chapter 3.3 to check current rates and conditions. Cross references between paragraphs in chapters also aid in comprehending often complex areas of law.

Legal Information Service, according to the brochure for the Manual, is an "independent non-profit-making organisation." Its goal is to "fulfil the legal information requirements of both the individual and the organisation", doing so by presenting this information in the "most non-technical, helpful form".

The Manual is not new. Legal Information Service was incorporated in 1981, and the first edition of the Manual in 1983. There have been several updates since then, the most recent being November 1989, when thirteen chapters were provided. A further update of approximately six chapters is expected in August 1990. With the rapid changes occurring in the welfare and individual entitlements areas, access to an accurate comprehensive publication such as the *Legal Resource Manual* is valuable, if not a necessity.

While providing a guide for the individual seeking information, the *Legal Resource Manual* does not ignore the requirements of legal professionals. Every area is covered on a step-by-step basis, providing a reliable alternative to referring to statutes or requesting information from government departments. All legal practitioners, regardless of their particular expertise, would find the Manual a positive addition to their information base. The Manual also succeeds in reducing the research time of law students writing on areas covered by one of the chapters.

There are two disappointments with the Manual. First is the lack of an index which points directly to a page or paragraph number. At present only chapters are referred to, with each chapter having its own contents page and often a summary of requirements for the benefit or entitlement. Considering the volume of information covered, often in different chapters, an index should be strongly considered by the publishers. Second is the often complex sentence structure and word choice. However, people seeking information should not have the expectation that they will comprehend all the requirements and quirks on a first reading. It is accepted that there must be some give-and-take in language when dealing with complex areas of law.

This review of the *Legal Resource Manual* can only close with a recommendation to all legal practitioners and students to at least become aware of the Manual's existence, if not actually purchase a copy. The gap in legal information which the Manual fills will quickly be realised when a question comes up which the Manual answers concisely and accurately. The Manual renders many facets of the law understandable: through communication, the degeneration of legal knowledge into scholasticism is averted.

– Ian Narev and David Cooper

BOOKS RECEIVED

BORROWDALE, A. *Duties and Responsibilities of Directors and Company Secretaries in New Zealand*. Commerce Clearing House New Zealand Ltd, Auckland, 1989. ix and 228 pp. Paper \$60.95

CHAN, R. and BROOKS, P. *The Tax Practitioner 1990: The Complete Guide to Income Tax Practice*. Butterworths, Wellington, 1990. Numbered to 3732. Paper \$75.00

DEAN, R. *The Law of Trade Secrets*. Law Book Company Ltd, Sydney, 1990. 679 pp. Hard cover A\$125.00.

EICHELBAUM, SIR THOMAS (ed). *Mauet's Fundamentals of Trial Techniques - New Zealand Edition*. Oxford New Zealand, Auckland, 1989. 319 pp. Paper \$112.50.

GLAZEBROOK, S. and OLIVER, R. *The New Zealand Accrual Regime - a practical guide*. Commerce Clearing House New Zealand Ltd, Auckland, 1989. v and 210 pp. Paper \$41.95.

HAMMOND, R.G. *Personal Property: Commentary and Materials*. Oxford University Press, Auckland, 1990. xiv and 339 pp. Paper \$69.95.

HUGHES, J. *Labour Law in New Zealand*. Law Book Company Ltd, Sydney, 1990. 2 volume looseleaf binder numbered to 14,046. A\$275.00. Paper \$99.90.

LEGAL INFORMATION SERVICE INC., *Legal Resource Manual 1990 Edition*. Legal Information Service Inc., PO Box 6125, Wellesley Street, Auckland. v and 404 pp. Looseleaf A4 binder \$199.50.

McVEIGH, A. *A Dictionary of the High Court Rules*. Butterworths, Wellington, 1989. xxv and 216 pp. Paper \$63.00.

O'DONOVAN, J. *Courtroom Procedure in New Zealand: A Practitioner's Survival Kit*. Commerce Clearing House New Zealand Ltd, Auckland, 1989. ix and 99 pp. Paper \$28.50.

SHARP, *Justice and the Maori*. Oxford University Press, Auckland, 1990. vii and 310 pp. \$34.95.