Practical Legal Skills by Susan Campbell, Ross Hyams and Adrian Evans, Oxford University Press, Melbourne, 1998

The onslaught of computers and technology has had an inevitable and profound impact on legal education and the conduct of the law. Computers have changed the way legal research is carried out in a radical way. They have also become permanent fixtures in classrooms, law libraries, law offices and even courtrooms. Electronic legal research is now *de rigeur* in the undergraduate law curriculum and a variety of elective subjects that link the law with computers and e-business have been created overnight. Universities have adopted "flexible delivery" *via* the Internet and computer programs like Top Class and Platform Web are increasingly being used for the delivery of lectures, rather than face to face in a lecture theatre. This alternative method of imparting information from lecturer to student is fast becoming an expectation rather than an exception.

But the question that is increasingly being asked is whether computers can be used for the "teaching" of legal skills. If so, what form or forms should it take? The Macquarie Dictionary defines "skill" as an "ability that comes from knowledge, practice, aptitude, etc. to do something well".[1] The word is also defined as "competent excellence in performance" or "expertness" or "dexterity". A skill is therefore acquired, from doing and not the result of learning. It is the practice, rather than the theory. At first glance, such definitions make it absurd to contemplate the acquisition or development of skills or legal training in terms of a computer atop a desk. However, this has been put to the test in relation to practical legal training and seems to have passed it. This will be elaborated below.

Although academic programs may be computerised and accessed *via* the Internet, computers cannot totally replace books and a common remark is that a reader cannot take a computer to bed in that sense. Furthermore, although computers are fast becoming commonplace in the home, the reality is that they are not universally affordable. Recent reports suggest that although the penetration rate is high at 60% in Australia, it is still not high enough.

---

[1] A. Delbridge (ed) *The Macquarie Dictionary*, North Ryde, N.S.W, Macquarie Library, (1997)

There is now another book on legal skills on the market and *prima facie* this testifies to the fact that there is a demand for it. This book by Campbell, Hyams and Evans, which deals with a number of practical legal skills in a neat handbook,[2] makes no reference to computerisation and its potential impact on legal training. Instead, the book sets out to achieve one aim, namely, to address the increasing demand that lawyers, and law students in particular, have to be rounded in both the theory and practical skills.

The authors say that the book is meant "for teachers and students engaged in legal education in university law schools, practical legal training ("PLT") programs, professional in-house education programs, and any other context in which law is taught."[3] Broadly speaking, there are three target groups: (1) undergraduate law students and their lecturers; (2) PLT students and their providers; and (3) persons interested in continuing legal education.

Given the divergence in audience, is such a book realistic? Would this straddling be successful? The first group's interest would be in a skills program that resides in the undergraduate law curriculum. On the other hand, a PLT program is a different species and postgraduate in nature.

The answers to these questions are a tentative yes, depending on how the book is used. Although the authors do not say so, the presentation and content support the conclusion that it is an elementary handbook on the basic principles governing the lawyering skills that have been isolated for comment. The book does not go beyond this and lacks the rigour that is demanded by textbooks in discrete subject areas. Assuming the book was meant to be in the nature of a textbook, it would have been better to separate the topics, with each becoming a volume in a series of textbooks.

So, what is an undergraduate skills program exactly? Or a PLT program, for that matter?

Skills programs form part of the undergraduate law curriculum and may be integrated or stand-alone. They are designed to enhance the student's substantive learning by contextualising the theory and

---

[2] The book that is reviewed is in the form of uncorrected page proofs for textbook evaluation purposes.

[3] S Campbell, R Hyams, A Evans, *Practical Legal Skills*, Melbourne, Oxford University Press, 1998 at 1.

showing its operation in practice. At the same time, the program is used to develop the student's lawyering skills. The extent of the part to be played by a skills program within the undergraduate program depends on purpose and intention, and the best practice approach is to maintain a balance between theory and practice. This may be achieved by providing "body of knowledge" courses together with practical skills.[4]

On the other hand, PLT is a separate and mandatory requirement established by admission bodies for the professional practice of law. It has been described as:[5]

> "a pragmatic process resulting from the historical division of legal education into three stages: law school, postgraduate, and continuing training. [It] overlays the three to five years of traditional (substantive law) legal education of its students with practice-based exercises."

PLT programs are offered as postgraduate programs by universities or by independent institutions as a Graduate Diploma or Graduate Certificate. In New South Wales, the universities that offer such programs are the University of Newcastle, University of Western Sydney Macarthur, University of Technology, Sydney and University of Wollongong. The New South Wales College of Law and the Leo Cussens Institute in Victoria are examples of independent institutions. Students may enrol in one of two ways: after they complete their undergraduate qualification or in tandem with their undergraduate enrolment. Examples of the former are the New South Wales College of Law and the University of Wollongong. University of Technology, Sydney and University of Western Sydney Macarthur are examples of the latter.

The primary aim of PLT is to initiate students into the carriage of legal matters. It is formal but practical training that focuses on the rules of conduct[6] within a simulated environment. In accordance with prescriptions laid down by the Australasian Professional Legal Council ("APLEC"),[7] PLT programs are usually intensive and require a certain amount of rigour. The demands of such rigour make the

---

[4] n4 at 14.
[5] n4 at 3.
[6] *Campbell*, n4 at 9.
[7] Refer Standards for the Vocational Preparation of Australian Legal Practitioners, APLEC, 1997.

book unsuitable for the purposes of a PLT course to an extent, although it would be useful as preliminary reading. As a consequence, the reader will quickly discover that the book's presentation and content are biased towards the more flexible skills programs.

Australian law schools are quite aware of the concept and benefits of skills programs within the undergraduate curriculum. There is a growing acceptance that undergraduate law students should be given the opportunity to acquire practical legal skills, and more and more law schools in Australia are devoting funds and space to this initiative. Some law schools (e.g. the University of Western Sydney Macarthur and University of Sydney) have even created staff appointments to oversee this purpose. By so doing, the law schools have recognised the value of a skills program and implicitly acknowledged the dividing line that exists between this and a PLT program.

As described above, PLT is simulated legal practice. Like a skills program, it facilitates the acquisition or development of practical legal skills. Therefore, it is inevitable that both programs share some aims and this overlap should be addressed when programs are being designed. If not, students would complain about excessive duplication. On the other hand, students should also realise that the acquisition of legal skills does not occur overnight and they should take advantage of the repetition and practice opportunities that arise.

Since PLT involves the doing of mundane tasks, PLT providers should pitch their programs at a higher level. They should use materials that are more challenging. PLT is a postgraduate course after all. Instead of concentrating on what is blatantly obvious, PLT providers should design exercises and simulations that students will find to be both stimulating and worth while doing. The blatantly obvious should be left to self-directed learning, aided by books such as this one by Campbell, Hyams and Evans, and by way of prescriptive pre-reading or through the revision of undergraduate content, like practice and procedure.

Besides these two programs, a third exists for the acquisition of skills but its discussion goes beyond the scope of the book. This can include student clinical legal education, clerkships and other work placement programs that provide hands-on experience for students.

Reference is made to this in one sentence of this book.[8] Some law schools have made available this real life practical experience within the curriculum, such as the skills placement program at University of Western Sydney Macarthur. Practical experience may also be gained under summer clerkships, an example being the joint program of the New South Wales Law Society and a number of leading law firms in Sydney.

The authors refer to clinical experience as a pure form of undergraduate "learning by doing", as distinct from "learning by simulation".[9] But clinical legal education is an expensive venture for any provider and it becomes even more challenging during hard economic times. Unless there is long term commitment to funding, such programs would be delicately poised all the time. As a result, clinical education in Australia is not extensive, and examples are the "shopfronts"[10] of Monash University, the University of New South Wales[11] and University of Technology, Sydney in Springvale, Kingsford and Chippendale respectively.

Skills programs appear in various modes. The authors state that "[l]egal educators have taken different routes in relation to developing student awareness of practical skills".[12] They may appear as formal discrete modules in stand-alone mode ("the stand-alone model") or as "some informal encouragement to include skills as part of each substantive law subject"[13] ("the integrated model"). An example of the stand-alone model is seen in University of Technology, Sydney where a number of skills subjects forms part of the core curriculum. These include subjects like Moots and Computerised Legal Research. In the past, other subjects like Legal Drafting, Pleadings and Litigation were also included, but with the introduction of a PLT program that partly nests in the undergraduate law degree, the subjects are offered now under the new banner.

The other model, the integrated model, involves "the integration of practical skills into substantive subjects [and] greatly enhances

---

[8] n4 at 2-3; see also page 14.

[9] n4 at 14.

[10] Other labels may be used and include "clinic" or "centre", to reflect the predominant purpose of these institutions.

[11] The Kingsford Legal Centre receives income from the New South Wales Legal Aid Commission and it has been dependent on ad hoc grants (eg. from the Law Foundation of New South Wales) and support from other bodies like law firms.

[12] n4 at 2.

[13] n4 at 2.

student's understanding of the law they are learning."[14] The authors are of the opinion that this "integrated substantive law/skills approach is more realistic in Australian education terms",[15] a reason being that it is less resource demanding. This model is more flexible than the stand-alone model, and the materials may be introduced variously, in lectures, seminars or tutorials.[16] On this point, the authors suggest that negotiation fits nicely into Contracts and Torts, and legal drafting into Contracts. Letter writing and interviewing are deemed more flexible, suitable for any subject.[17]

It is noteworthy that the model used by University of Western Sydney Macarthur is a variation of the integrated model since it formally allocates an identifiable 25% of core subjects to the teaching of skills during tutorials. For example, 25% of Contracts, Torts and Constitutional Law is set aside for negotiation, legal interviewing and moots respectively. In this regard, this program may even be considered to be a hybrid of the integrated and stand-alone models.

In addition, the authors have identified a third "route" which they describe as a "more adventurous process" in undergraduate legal education.[18] This is the so-called "problem-based" learning method that may claim to be the "best law school teaching method".[19] This model depends on smaller class sizes and hence is more expensive to deliver. But the authors are of the opinion that for it to be successful, it involves more than a question of funding. They state:[20]

> "Problem based/transactional learning methodologies require teachers with extensive and sophisticated practice backgrounds if the relevant courses are to avoid superficiality. While such individuals exist, it is financially difficult to attract them into law schools on an ongoing and substantive basis. Those that can be attracted in this way tend to be relatively uninterested in, or unable to teach the bodies of, substantive knowledge that must go alongside practice issues in a transactional course. It seems likely also that many law schools in Australia would be reluctant to adopt a

[14] n4 at 11.
[15] n4 at 2.
[16] n4 at 11.
[17] n4 at 12.
[18] n4 at 2.
[19] n4 at 2.
[20] n4 at 14.

> problem-based approach when up to half their graduates will not be in practice."

Under the problem-based model, the student is required to find a legal solution for the client's problem. In other words, the student is given the problem first and then has to find the law.[21] Contrast the traditional lecture/tutorial method, where the student is given the law first, and then has to apply it to a legal problem.

However, the third model cannot be considered an acceptable skills program in the usual sense of the term.[22] The reason is that practical legal skills cover a range of lawyering skills, skills that are overtly addressed in the stand-alone model and the integrated model. The only skill that the problem-based model addresses is problem solving, and this occurs within the context of the learning of substantive law; the emphasis is not on generic legal skills. Unless more skills are incorporated into the curriculum, the problem-based model is not equal to a skills program *per se.*

The book opens with an introductory chapter that explains how students and teachers can best use it. The substantive chapters (five of them) follow, and begin with objectives for each one of them. The chapters discuss the following skills: (1) legal interviewing, (2) legal advising, (3) letter writing and legal drafting, (4) the dispute resolution mechanisms of negotiation and mediation, and (5) advocacy.

The authors reiterate that lawyers should not only be skilled, but must be ethical in practice as well.[23] They give careful attention to legal ethics. This move supports the demands from various quarters that lawyers should rise higher than their current standing (or non-standing) in the eyes of the community. Indeed some surveys tend to rank lawyers at the bottom of the pile, in bed with used car salesmen. Responding to the call to reshape the teaching of ethics in law school curriculum and to address "the perceived deficiencies of the litigation system",[24] the book gives expansive treatment to ethical and morality issues.

---

[21] Sometimes referred to as the Socratic method.

[22] See n4 at 2.

[23] n4 at 5.

[24] Refer Australian Law Reform Commission, Review of the Adversarial System of Litigation: Rethinking Legal Education and Training, Issues Paper 21, August 1997, Sydney at 76 para 8.19; see n4 at 15.

The authors describe the teaching of skills as "a value-laden endeavour"[25] and they offer the following insight on how to do it:[26]

> "The subtlety of the whole undertaking of ethical skills teaching involves helping students to draw their own lines in the sand, rather than having this done for them by the teacher. Students must work out the balance between what is required of them by the duty of competence (to the client) and which is required of them by their duty to the court (or to the community, or to justice). We suggest that the task requires both courage and accumulated experience as to what is ethically dangerous. The sooner students start to gather experience...the better for all aspects of their professional life."

In this regard, the authors consider exercise design to be important, describing it as a complex process that "can manipulate or encourage a conclusion that is either moral or immoral, depending on the intentions of the law teachers."[27] They say "that practical skills cannot be taught in a value-neutral way",[28] stating that "a teacher's personal values and opinions are regarded by students as important in making their own decision about ethical issues."[29]

Some may disagree with this view, believing that values and the doing of what is right are indoctrinated at a young age, beginning in the home. Yet others believe that while it is possible to lead a horse to water, it cannot be made to drink. Be that as it may, there is an obligation to incorporate legal ethics in the curriculum[30] and expose students to the issues that arise, always hopeful that some awareness and learning may rub off on them.

The book is written in plain English. The reader is constantly reminded to make use of plain English in his or her own communication, written and oral. In Australia, the plain English movement began around the late 1970s and took hold in the 1980s, in step with the United States where consumer advocates like Ralph

---

[25] n4 at 6.
[26] n4 at 10.
[27] n4 at 7.
[28] n4 at 6.
[29] n4 at 9.
[30] For example, the Legal Practitioners Admission Board and the Legal Qualifications Committee of the New South Wales Supreme Court place great emphasis on the inclusion of legal ethics in the curriculum.

Nader had given the movement its momentum. At the same time in Australia, the Law Reform Commission of Victoria was asked to recommend on the steps to "be taken to adopt a plain English drafting style [and with] regard to overseas experience in plain English drafting and plain English legislation".[31] In June 1987, the Commission released its Report and made several recommendations. These include the improvement in clarity of drafting by training drafters and the establishment of a legal drafting institute.[32] This facilitated the pioneering of legal writing and drafting classes as a component of the undergraduate law degree.

However, as with most new products, the introduction of the plain English movement met with suspicion at various levels, and in some instances even resistance and hostility. If the truth be told, it would probably be correct to surmise that this reaction was the result of fear of the unknown, and the fear of change and the ability (or inability) to cope with such change. At the time, several negative remarks were made about the plain English movement. For instance, the point was made that the re-drafting of legislation and documents in plain English would affect the application of the doctrine of precedent, especially in relation to the judicial interpretation of legislative provisions and legal expressions such as those that exist widely in wills and commercial documents. It was argued that the re-writing of precedents and documents in plain English meant that clients would have to bear higher legal costs because of the extra time spent on drafting from scratch in the new style. It was even suggested, albeit cynically, that it was not such a bad thing that clients could not understand their documents in the old style because this permitted the profession to retain its aura of "mystique". And in a similar vein, some had suggested that legal fees were easier to justify if documents were longer and more convoluted in nature. Irrespective, universities pushed on in the early days of the movement, bent on being agents of change.

The student body had a different kind of objection. Since a proportion of them worked in legal environments, they faced a dilemma. To obtain their academic qualification, they had to embrace the new movement when incorporated in the curriculum. But to keep their jobs, they had to follow the old ways at work. This schizophrenic outcome led to student protests in the classroom,

---

[31] Law Reform Commission of Victoria, Report No 9 on Plain English and the Law, 1987 at iv.

[32] n32 at 66.

which were drowned by dogmatic threats of failure issued by university authorities if the students did not toe the new party line. But it was merely a question of time before the movement became mainstream, and when the students themselves became the employers, they would have the opportunity to make a difference. This has now come to fruition.

In the book, the reader is led through the text in a systematic way and each chapter ends with bibliographic details. The text is ridden with useful tips and illustrations. Although there are some obvious statements, they are not so irritating. On the contrary, they are surprisingly reassuring and reinforcing when encountered in print. Wherever possible, the authors make use of the first person, "we" or "you". For instance, the reader is instructed in the first person as shown in the following quotation:[33]

> "If you have a client who is distressed and breaks down into sobs or crying, it is no use offering the sympathetic statement 'I know how you feel', as you cannot possibly know that. Don't ignore tears, however. Ask the client if s/he would like a moment, and then offer a tissue, a handkerchief, and/or a glass of water or coffee. If this is accepted, you can leave the room to get it, thus allowing both your client and yourself a little time to compose yourselves! You should note that it is rarely appropriate to console a client by hugging them or holding their hand, unless you have forged an ongoing professional relationship and such a gesture would not be out of place."

Some observations can be made about the above paragraph.

According to the rules on plain English, doublets and triplets should be avoided, to avoid duplication, verbosity and breach of what may be referred to as "the 3-S Rule".[34] By referring to "sobs or crying" in the opening line, the authors have flouted the doublet rule. Secondly, when preparing for a client interview it is always advisable to include a box of tissues as part of the furniture. This pre-empts the offer of one's "handkerchief", which is objectionable for reasons of hygiene. Thirdly, the paragraph should have elaborated on why hugging and handholding may be inappropriate, which in some cases may be even dangerous. The reason is that the touching of another

---

[33] n4 at 26.

[34] "The 3-S Rule" reflects the use of the short, simple sentence.

may have sexual or harassment implications, irrespective of actual intention. Fourthly, some readers may find the use of "s/he" grating, and in any case it is not that much harder to say "he or she" instead. Furthermore, would the corollary of "s/he" be "s/him" in the pronoun? Fifthly, why offer "water or coffee" only? A tea addict could possibly feel excluded and offended by the offer. Wouldn't it be better to offer "a drink"? But this suggestion may have its critics too, because it may be argued that the offer may be misconstrued by the client as an offer of something stronger; but if so, why not, if appropriate in the circumstances? And finally, there is some objection to the use of "and/or". For example, when Viscount Simon in *Bonnito v Feurst Bros*[35] was faced by confusion caused by the use of "and/or" in the pleadings, he stated the following:[36]

> "the repeated use of that bastard conjunction 'and/or'...has, I fear, become the commercial court's contribution to basic English."

The authors advocate role playing as a fun "learning-by-doing" tool but caution that if it is not taken seriously, frivolity could be at the expense of learning.[37] In their opinion, the primary benefit of role-playing is "an insight into the human side of legal skills".[38] Role playing also provides the opportunity to practise skills in the safety of a less intimidating simulated environment,[39] which reminds one of the video taping of role play sessions, especially in PLT programs. The immediate benefit of this is the opportunity for student self-assessment, and assessment by peers and instructors.

Exercises abound and are a good learning and practical tool, but the reader will find the book deliberately does not provide answers to the exercises.[40] The reason given is that there is usually no correct answer. This is a trait of the adversarial system of justice that exists in Australia and elsewhere, a by-product of the common law. But from the reader's perspective, answers always help. Since it is often the case that no single right answer exists, perhaps the authors should contemplate the inclusion of "suggested answers" in the next edition of the book.

---

[35] [1944] AC 75.
[36] n36 at 82.
[37] n4 at 13.
[38] n4 at 13.
[39] n4 at 13.
[40] n4 at 11.

Finally, a few parting comments.

The reader is informed from the beginning that the book is the collective result of three decades of teaching experience in practical legal skills.[41] The reader senses an air of pride and achievement in this revelation, which was probably inserted for the purpose of validating the work. As a handbook, it has the potential to become truly enjoyable, combining learning with fun. After all, the book sets out to maximise in-class enjoyment from learning the law.[42] As it stands, the exercises used appear to be a bit staid and consequently could do with an extra injection of fun and excitement. This is not to say that the book is too ponderous. On the contrary, the book is easy to read and there are some glimpses of humour. An attempt is seen in the choice of examples on page 76 where incautious syntactic structuring gave the following sentences multiple meanings:

> The man was convicted of indecent exposure under a section of the Crimes Act.
>
> No person shall carry arms on the highway except for the bona fide purpose of shooting wild animals and policemen in the course of their duty.

Another attempt at humour is the following highlighted subheading found on page 5:

Enjoying law school need not be confined to alcohol and sex

But some may consider the following words that appear immediately below this subheading to be an unfortunate choice:

"Australian law schools require intellectual sophistication..."

Generally speaking, the book may be described as "streetwise". It introduces the reader to a number of elementary practical legal skills. These parts are dealt with in separate chapters. The five skills selected by the authors are fundamental, and hence appropriate for a book of this kind. As such, the selection should act as a good appetiser for a novice in practical legal skills.

---

[41] See Preface at xi.
[42] n4 at 5.

Before concluding, the question on whether skills can be taught or practical legal training provided successfully *via* the Internet has yet to be answered definitively.

In April 1999, the College of Law in New South Wales introduced its Electronic Practical Program ("EPP") as another means of providing practical legal training. By so doing, it has managed to traverse "the breach between the way law has been learnt and taught over the past half-millennium and the way it will be taught into the next millennium."[43] It is intended to reach students in country areas who traditionally had to disrupt their work and family commitments to travel to the College for a number of months to undertake its paper based, face to face, full-time program.

Earlier this year, the Legal Practitioners Admission Board of the New South Wales Supreme Court accredited this program following a pilot intake of 36 students. Similar distance learning programs of the University of Wollongong and the University of Western Sydney Macarthur have also been accredited. In fact, the University of Wollongong has been successfully offering PLT *via* the Internet for the past few years.

Associate Professor Alexis Goh

[43] Centre for Legal Education, "College of Law goes WWW" [April 1999] Vol 8 No 2 Newsletter at 1.