Lawyering Skills and the Legal Process

*Lawyering Skills and the Legal Process* bridges the gap between academic and practical law for students undertaking skills-based and clinical legal education courses at university. It emphasises the extent to which lawyering is a dynamic process, shaped by a range of legal, business and ethical considerations, and encourages students to develop a critical and reflective approach to their own learning which is designed to help them to manage this dynamic environment.

The student’s oral and written communication, group working, problem solving and conflict resolution skills are developed in a range of legal contexts: client interviewing, drafting, managing cases, legal negotiation and advocacy. The book is designed specifically to help students to:

- Practise and develop skills that will be essential in a range of occupations.
- Develop a deeper understanding of the English legal process and the lawyer’s role in that process.
- Enhance their understanding of the relationship between legal skills and ethics.
- Understand how they learn and how they can make their learning more effective.

This book provides a stimulating, accessible and challenging approach to understanding the problems and uncertainties of practising law that goes beyond the standard approaches to lawyers’ skills.

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The Law in Context Series

Editors: William Twining (University College London) and Christopher McCrudden (Lincoln College, Oxford)

Since 1970 the Law in Context series has been in the forefront of the movement to broaden the study of law. It has been a vehicle for the publication of innovative scholarly books that treat law and legal phenomena critically in their social, political, and economic contexts from a variety of perspectives. The series particularly aims to publish scholarly legal writing that brings fresh perspectives to bear on new and existing areas of law taught in universities. A contextual approach involves treating legal subjects broadly, using materials from other social sciences, and from any other discipline that helps to explain the operation in practice of the subject under discussion. It is hoped that this orientation is at once more stimulating and more realistic than the bare exposition of legal rules. The series includes original books that have a different emphasis from traditional legal textbooks, while maintaining the same high standards of scholarship. They are written primarily for undergraduate and graduate students of law and of other disciplines, but most also appeal to a wider readership. In the past, most books in the series have focused on English law, but recent publications include books on European law, globalisation, transnational legal processes, and comparative law.

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Ashworth: Sentencing and Criminal Justice
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Bell: French Legal Cultures
Bercusson: European Labour Law
Birkinshaw: European Public Law
Birkinshaw: Freedom of Information: The Law, the Practice and the Ideal
Cane: Atiyah's Accidents, Compensation and the Law
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Davies: Perspectives on Labour Law
de Sousa Santos: Toward a New Legal Common Sense
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Oliver & Drewry: The Law and Parliament
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Richardson: Law, Process and Custody
Roberts & Palmer: Dispute Processes: ADR and the Primary Forms of Decision Making
Scott & Black: Cranston’s Consumers and the Law
Seneviratne: Ombudsmen: Public Services and Administrative Justice
Stapleton: Product Liability
Turpin: British Government and the Constitution: Text, Cases and Materials
Twining: Globalisation and Legal Theory
Twining & Miers: How to do Things with Rules
Ward: A Critical Introduction to European Law
Ward: Shakespeare and Legal Imagination
Zander: Cases and Materials on the English Legal System
Zander: The Law-Making Process
Lawyering Skills and the Legal Process

Second edition

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University of the West of England
and

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Preface to the second edition

This book provides a bridge between academic and practical law. Its purpose is to introduce you to a set of highly transferable oral and written communication, group working, problem-solving and conflict resolution skills, and to develop them in a range of lawyering contexts: client interviewing, drafting, managing cases, legal negotiation and advocacy. The aims of this exercise are not to turn you, the reader, into a ready-formed legal practitioner, but:

- to help you develop a range of skills and attributes that will be useful to you in a variety of occupational settings;
- to enable you to experience and reflect critically on the problems and uncertainties of ‘real’ law, from the perspective of both lawyers and their clients;
- to enhance your understanding of the interplay between legal knowledge, skills and values in the lawyering process;
- to encourage and empower you to understand your own learning processes and to reflect critically upon them.

It is this dual emphasis on understanding lawyers’ skills ‘in context’ – whereby our understanding is shaped by the contributions of socio-legal research into what lawyers do – and on reflection and critique which we believe distinguishes our ‘academic’ approach from the more functional emphasis of the vocational courses. At the same time we share with the vocational courses (and any undergraduate skills-based course for that matter) a belief that learning has to be grounded in doing. Skills are not acquired passively, but actively by experimentation and practice. Please do not skip the Introduction which follows, where we talk extensively about the learning approach we take and our expectations of you, the reader.

The materials in this book are based on well over a decade of teaching skills to law undergraduates at a number of universities. We have written the book primarily for students in England and Wales on law degree programmes possessing stand-alone skills and clinical modules. We were delighted that the first edition was also used outside this jurisdiction, and on some professional courses where students have been encouraged to think beyond the technical aspects of skills acquisition.

Much has changed in the nine years since we wrote our first Preface. Skill-based learning is far more established in our law schools today than it was in 1995, and the ‘employability’ of graduates has moved up the political and educational agendas. In terms of scholarship too, the volume of research into the legal profession and practice in the UK has grown significantly. Accordingly, every chapter has
Preface to the second edition

been updated to take account of both new research on lawyers and lawyering, and
(where necessary) the extensive changes to both civil and criminal practice since
the first edition. In addition to the inevitable updating and polishing, we have
made other substantial changes. This edition contains an entirely new chapter
(Chapter 4) on working and studying in groups – skills that are increasingly
recognised to be of both pedagogic and practical importance. Chapter 6, on the
ethical dimension, has been substantially re-written around a single case study, and
revised to take account of the development since the mid-1990s of a whole new
domestic literature on lawyers’ ethics. Chapters 8 (drafting) and 9 (negotiation)
have both been revised to take account of changes following the Woolf reforms,
and the chapter on advocacy has been expanded into two. The first of these
(Chapter 10) is now exclusively on case preparation and management in an
adversarial context, and incorporates much of the material on legal problem-
solving that appeared in chapter three of the first edition, while the other
(Chapter 11) focuses on the courtroom skills of the advocate. Teachers in parti-
cular might also like to note that, in addition to our statement of learning
objectives, each chapter now commences with a brief statement of the QAA
Benchmark Skills that are supported by the materials and exercises in that chapter.
We hope you find these helpful in terms of your curriculum design and develop-
ment. This edition is also supported by a website which contains additional
materials that we believe will be useful to both teachers and students – again we
say more about this in the Introduction which follows.

Inevitably we have accrued numerous debts and obligations in the process of
writing and revising this text. Our greatest debt is to Mike Maughan, who has made
an incalculable contribution to our own learning and development over the years.
We are particularly grateful to Professor William Twining for his advice and
support, and his commitment to bringing the second edition ‘home’ to the Law
in Context series. Our thanks are also due to Ron Tocknell for his excellent
illustrations, and Moira Bailey for sharing her insights into values-based training,
and for being both a ‘guinea pig’ and friendly critic for much of the new material in
Chapters 6, 9 and 11. Thanks, too, to Sue Heenan, Caroline’s current teaching
partner at UWE. More generally, we would like to acknowledge numerous friends,
colleagues and students at UWE, Westminster and elsewhere, who, knowingly or
otherwise, have contributed to this book in its various manifestations. Last, but by
no means least, we owe a special ‘thank you’ to Mike and Moira respectively for
their love and support during the very protracted gestation of this edition.

Finally, to anyone reading this book: we welcome your feedback and evaluation.
Whether teacher, student or practitioner, we would be pleased to hear about your
experiences in using this book, and any suggestions you have for ways in which we
could improve it.

Caroline Maughan
Julian Webb
August 2004
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