From the publishers

Hockly’s Insolvency Law
Seventh edition by R Sharrock, K van der Linde and A Smith
Juta Law (2002)
396 pages
Soft cover R236,50 (VAT incl)

The authors, in the preface, state that this work is an attempt to provide a concise, yet fairly detailed, account of the law of insolvency, winding-up and judicial management. They say that the book is intended for a wide readership – that it is a convenient update of recent developments in insolvency and winding-up for the specialist, a text for students and a source of reference for insolvency practitioners. They achieve this aim admirably. A marriage of the principles of individual and corporate insolvency in a single work is necessary given the present dualistic system of bankruptcy. This, I understand, may change in the foreseeable future, given the introduction in bill form of a unified insolvency statute in the National Assembly.

The work, which was originally published in 1940, has, since the 6th edition in 1996, been substantially updated in order to keep pace with the many new insolvency cases and the legislative changes to the Insolvency Act 1936 and to the Labour Relations Act 1995. The book comprises 26 chapters. There are three chapters devoted to the winding-up of companies and close corporations, judicial management and compromises and there is a new chapter on cross-border insolvency, a topic which has assumed greater importance in the face of accelerating globalisation. The work is self-contained in that it incorporates the text of the Insolvency Act 1936, together with relevant schedules. Also repeated in this edition are the appendices containing specimen applications – a particularly useful feature for new practitioners. The specimen liquidation and distribution accounts are helpful to students and practitioners alike.

A notable feature of this book is that the authors have succeeded in condensing a wide subject in a systematic and manageable form without losing the essential detail. The focus on practical issues that regularly confront legal practitioners makes this a particularly useful ready reference. Examples include advantage to creditors in sequestrations and the approach by the Courts in some divisions requiring the value of assets to be in excess of the estimated costs of sequestration, ‘friendly sequestrations’, the principles relating to a trustee’s election to continue with uncompleted contracts and the sequestration of partnership estates and insolvent deceased estates. estates in The introductory chapter dealing with the meaning of ‘debtor’ and other basic concepts also makes useful reference to the sequestration of trust estates.

The authors recognise the importance of the effect of the Constitution on the development of the law of insolvency – a fact illustrated by the recent full Bench decision in Mitchell v Hodes NNO 2003 (3) SA 176 (C). In the chapter devoted to cross-border insolvency the South African common law principles of cross-border insolvency are succinctly stated. The (as yet) unproclaimed Cross Border Insolvency Act 2000 has been dealt with in detail. It remains to be seen whether the new Act will be workable in practice, particularly since our well-developed and certain common law principles of cross-border insolvency have in the past generally proved adequate and flexible.

All in all, this is a work to be commended to the new and experienced practitioner alike.

Gavin Woodland SC, Cape Bar

Litigation Skills for South African Lawyers
By CG Marnewick
Butterworths (2002)
553 pages
Soft cover R435.05 (VAT incl)

It becomes obvious quite quickly precisely what this book does, and that it does so well. Well it might, since it is already widely used in the training of pupil advocates, and carries the associated responsibilities of a basic textbook. It promises, above all else, to be ‘practical’ (as opposed to ‘academic’) and to concentrate on the ‘how to’, leaving much of the ‘why’ for academic treatises. This promise it fulfils with admirable skill. It can be stated with a high measure of confidence that any inexperienced lawyer who works through this book (the verb is chosen deliberately, as the book is pre-eminently an exercise manual, rather than a reference work or a monograph) will do himself or herself a favour. Unleashing this book on the young and restless can do no harm, and will certainly do much good.

The emphasis on being a working book will tend to lend some imperialism to the book’s function as exercise manual – once ‘done’, it appears that the book will not tend to invite being reverted to for the sake of reference. Of course, it may take much to-ing and fro-ing to ‘do’ the book, but the principle remains. There is no index, so reverting for the purposes of reference will in any event be hampered by this odd omission.

We regard the book as an accomplished success in achieving its aim. Its use of example, and a skilful use of general inductive methodology, proceeding often from the specific to the general, are its great strengths. These features also make it necessary to work when ‘reading’ the book, hence its character as an exercise manual.

Given the importance the book is likely to assume in the practical lives of many, we believe it useful to offer what otherwise might be hypercritical observations.

First, the book tends to exaggerate its stated aim of avoiding what it calls theory, by being generally bereft of references to decided cases as authority or foundation

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for much of what it says. This creates a few potential problems. It is never clear to the reader unfamiliar with the development of adjectival law in this country to what extent the statements made with great authority in the book are based on the current bulk of judicial authority, and to what extent they represent the author's view of how things ought to be done. Paradoxically, cases are used most often when the reader is referred to an example of a legal situation upon which a certain exercise is to be performed, but are studiously avoided when they (or some of them) underlie the practical approaches to these situations that the book seeks to teach. In other words, cases are used as part of the background, where this is optional, but are avoided when the book makes out its own case. This leaves a reader (or pupil) with a feeling that there may be a gulf between what the cases say and what the book teaches, or that the relationship between the two is not revealed. It also potentially entraps the book into making sweeping statements that depend on current and perhaps soon to be outdated precedent. Footnotes could never divert the reader's attention from the job the book tells him or her to do, but they could at least indicate where the author believes the law supporting the propositions stated may be found. There appears to be little reason not to do in the rest of the book what is done when dealing with the jurisprudentially precarious status and categorisation of 'status quo' applications - mentioning something of what the cases say about it.

The second difficulty (for advocates) is due to a clearly deliberate intention of the author to be as general as possible, and to differentiate as little as possible, when it comes to the things an advocate should do and the things an attorney should do. No doubt the increasing convergence in practice and the undeniable general applicability of much of the technique of litigation make this an understandable approach. But, although there are numerous examples of drawing distinctions and pointing to different emphases, the book does not directly address, as far as new or aspiring advocates are concerned, the difficult and pressing problems inherent in the relationship between client, attorney and advocate, and the general question that is at the heart of the practice of an advocate practising at a referral bar - how precisely should I act towards the attorney and towards my brief (instructions)? The degree to which one ought to consider deviating from one's brief (instructed to draw a plea and advising to take exception, or instructed to settle liquidation papers and advising to do something completely different, and so on), when it will be less or more expected not to do so, when one ought to do so whatever is expected, when it would not be desirable to do so, how one's instructions and one's discharge of one's professional duties interrelate, and other such questions, are fundamental to the (practical and ethical) rights and wrongs of practising at one remove from the client. The new advocate might have more need of guidance in what exactly to do or say in a consultation with attorney and client, where he or she is of the view that the money spent to date on legal advice (say, from the attorney in question) has not been well spent, and ought not to be increased by a cent, than how to make a client feel at ease the very first time anybody mentions anything about going to a lawyer. Random suggestions in relation to own initiative might cause confusion. For example, the suggestion, under drawing a plea, that 'defendant's counsel is also obliged to consider alternative dispute resolution methods' (p 150) may, if taken as a central task to perform whenever a plea is drawn, lead to undesired and undesirable consequences if a draft plea in a simple matter with simple instructions were, say, to be accompanied by a treatise on the benefits of arbitration, which concludes after much reference to high learning that arbitration would not be appropriate in the instant case. A general discussion of 'the brief' (or the 'mandate', touched on arbitrarily on p 242), and one's duties in relation to this animal, would be very welcome indeed.

For a book that works from the ground up, as this one does, it seems odd that no attention is given to the differences, particularly when it comes to principles and techniques of pleading, between lower and higher courts. Those who will benefit most from this book when they work through it ought to be most acutely aware of these distinctions.

The book fills a long-yawning gap (the need for a book of its kind with the practical emphasis of its kind) and its release and wide use are to be applauded. Is there a reason why it refers nowhere in its lists of 'further reading' to Morris, *Technique in Litigation*? Surely these two (quite different) books ought to be regarded as complementing each other, and any reader of the one ought to be made aware of the existence of the other.

**Frank Snyckers, Johannesburg Bar, and Seena Yacoob (pupil member Jhb Bar)**

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**Treatment of lawyers**

Excerpts from a letter dated 27 October 2003 addressed to the Minister of Home Affairs of Zimbabwe by the Law Society of England and Wales: 'The Bar Council of England and Wales is very concerned for the safety of Beatrice Mtetwa, a lawyer and council member of the Law Society of Zimbabwe, after she was, according to reliable information, severely beaten by police ... Article 23 of the United Nations Basic Principles on the Role of Lawyers states, "Lawyers, like other citizens are entitled to freedom of expression, belief, association and assembly." Furthermore, Article 17 states that "Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities." Unfortunately the assault on Mrs Mtetwa is not the only assault or harassment that lawyers, judges and other legal actors have been subjected to in Zimbabwe this year, and therefore the Bar Council together with other referral bar associations is setting up a fund to ensure that lawyers subject to human rights violations will at least be able to have the best legal assistance possible. We are determined to do all we can that lawyers in Zimbabwe can go on to act for their clients according to their professional duty.'