

**Litigation Skills for South African Lawyers** by CG Marnewick.  
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Some time during the last quarter of 2003, my candidate attorney stormed into my office and demanded an immediate audience. She then proceeded to inform me, in a most animated fashion, that she had stumbled upon the proverbial “holy grail” of textbooks on litigation skills. During a consultation earlier the same day with a client at advocate’s chambers, she was introduced to “*Marnewick on Litigation Skills*” (as I am sure this book will soon be commonly referred to). Her rave review and report was warranted not only by the quality of the work at hand, but also in the knowledge that a book of exactly this scope and

magnitude was what so many legal practitioners were yearning for. Constitutional Court Judge Johann Kriegler's lavish praise in the foreword of the book is thus well motivated.

The aim of the book is to assist law students and practitioners "to acquire and develop the skills and techniques of the litigation process to represent their clients with competence and confidence. The emphasis is on skills, not knowledge." Universities teach substantive textbook law, they teach students the "what" of the law, rather than the "how". The lack of quality practical training for law students in South Africa, with the noteworthy exception of the Law Society's Law Schools, has for some time now been one of the main concerns of the Law Society. Law School attendance is, however, optional and in many cases beyond the financial reach of law graduates, who are often already struggling with debt after their University studies. Universities have answered the Law Society's call by establishing Legal Aid Clinics, where Clinical Legal Education programs are offered to law students who at the same time also cater to the legal aid needs of their respective indigent communities. Once again this system is, however, somewhat limited in so much as a lack of resources and funding in most cases limit the number of students who can be accommodated within the Clinical Legal Education programs of University Legal Aid Clinics. The majority of law students who manage to find employment as candidate attorneys are thus exposed to practice without any practical skills training. The quality of training candidate attorneys receive from their principals, is also by no means guaranteed to fill this *lacuna* in their practical ability. It is especially against this backdrop that Marnewick's book is of extreme importance to aspiring lawyers and advocates, as well as being a "must-have" addition to the law library of every young litigator. The book thus aims to impart practical and fundamental skills on its reader, and not merely to serve as another academic tome of knowledge.

In its structure, the book follows the logical progression of a typical legal matter. The first part is focused on the pre-litigation phase, with chapters devoted to interviewing clients and witnesses, advising and counseling clients, alternatives to litigation, and preparing to commence action. Marnewick's client centered approach towards the professional's dealings with his client is one that places strong emphasis on the ethical reputation and responsibility of the legal profession. The client's best interests are paramount and the lawyer's goal should always be to empower his client by representation, which testifies of superior tactics and planning. The pleadings and trial preparation stages are tackled with equal diligence and proficiency and exercises, precedents, examples and strategies abound. The learned author has through his extensive experience anticipated and discussed even the smallest and seemingly most insignificant skills and techniques required by the litigant, a lack of which could, however, cause serious embarrassment. In this regard a lot of attention is given to such, again seemingly, mundane aspects as

examples of what to say in court and how to deal with mistakes. Part 4 of the book is devoted to the trial stage, and it is here specifically that one finds a plethora of practical wisdom on a subject that receives very little if any attention in conventional University curriculums. Courtroom etiquette, opening statements, examination, special procedures, closing argument, motion court and persuasive advocacy are topics which are dealt with extensively and again with the aim of imparting practical skills. The intricate art of cross-examination is systematically and logically discussed by way of specific techniques illustrated by fitting examples. The final part of the book deals with the appeal stage, where the procedures for both reviews and appeals are thoroughly scrutinised.

In order to assess this book critically, I tried to curb my enthusiasm and to find some fault with it, either in its content or structure. I must admit that for the most part I failed horribly. I suppose that some aspects of general litigation which could also have been touched upon were omitted from this work. The procedure for the taxing of bills of cost come to mind, same being an activity that candidate attorneys are often taxed with. There is also no specific and separate discussion of criminal litigation, although references to topics such as fact analysis and opening statements specific to criminal cases have been interspersed in the various parts of the book. One could also point to the lack of legal authority — no tables of cases or statutes are to be found, and very seldom are citations even referred to. But then the book never in the first instance purported to be a reference-work for substantive or even procedural law. It is simply a book that teaches tips, techniques and skills in litigation, and it does this with copious success. Marnewick's *Litigation Skills* is obviously not the first book to delve into this subject matter, and litigants have in the past drawn upon other excellent resources like *Technique in Litigation* by Eric Morris. Marnewick has, however, achieved the remarkable feat of producing a work that covers the whole litigation process from beginning to end and that should, along with *Jones & Buckle* and *Harms* or *Erasmus*, be considered carry-on for litigants frequenting the magistrate's courts or High Courts. The book was obviously written by an author with a "passion for law as an art and a science, and as something more than a way to earn a living".

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