BOOK REVIEW

NEW ZEALAND LEGAL METHOD HANDBOOK Stephen Penk and Mary-Rose Russell (Thompson Reuters New Zealand Ltd, Wellington, 2014)

I was recently given the task of coordinating a 100-level law course. In preparation, I reviewed a range of current textbooks aimed at New Zealand introductory law courses. Of the three legal method books I looked at, the newest book on the market, New Zealand Legal Method Handbook by Stephen Penk and Mary-Rose Russell, stood out because it makes the subject matter so accessible. The language is natural and easy to follow. Each part includes clear learning objectives, prominently exhibited learning points, practice exercises and a focused list of follow-up reading. The use of examples throughout is helpful in making the connection between theory and practice. New Zealand Legal Method Handbook is aimed primarily at first-year law students but will be useful to more advanced law students as well as students and lawyers from other jurisdictions who are interested in learning about the New Zealand legal system.

The title New Zealand Legal Method Handbook suggests that it will focus purely on legal method, but in fact Parts 1 and 2 are about the New Zealand legal system. Part 1 starts by identifying “families” of legal systems (civil law, common law, religious law, and customary law) and then describes selected examples of legal traditions (including East Asian, Talmudic (Jewish), Shar’a (Islamic) and customary legal traditions). A short example to illustrate how a particular legal issue might be resolved according to each of the traditions would be an interesting addition to future editions. There are so many areas that a legal system book could cover, and it would be unfair to expect any one book to address to all of them. However, it would have been valuable to expand the discussion of Tikanga Māori and its impact on the New Zealand legal system, and to discuss the role of custom in relation to sources of law in Aotearoa New Zealand. I would also have liked the discussion of systems of justice to emphasise the important role that lawyers play in informal dispute resolution.

Part 2 focuses on New Zealand’s constitution, including its structure, sources and principles. It may be too detailed for some introductory law courses, unless

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2 At 3–6.
3 At 6–11.
4 At 10–11.
5 At 13–15.
6 At ch 4.
7 At ch 6.
8 At ch 7.
9 At ch 8.
they are specifically focused on constitutional law. Nevertheless, it could also
serve as preliminary reading for public law in second year. The amount of new
terminology that law students are expected to grasp is formidable, and the book’s
various glossaries, such as the list of parliamentary officials and other relevant
terminology, support this type of fact-based learning well.

Part 3, containing a detailed description of the legislative process, may be
appropriate introductory material for dedicated legislation courses, as well as
legal-method courses. Part 4 focuses on legislation itself, starting with a discussion
of the language and style of statutes. The illustration of potential drafting issues
that students may encounter (for example, indeterminacy and jargon) is excellent.
Part 4 also addresses statutory interpretation, including the primary approaches
(literal, golden and purposive), New Zealand-specific approaches (including
the Interpretation Act 1999 and the New Zealand Bill of Rights Act 1990) and
common law cannons of construction. It rightly emphasises that statutory
interpretation is more an “art” than a “science” and that texts can be interpreted
in many different ways. The discussion is well organised with effective use of
elements and a number of practice exercises.

As well as learning about the techniques of statutory interpretation, students
need guidance about how to apply this knowledge. Chapter 14 recommends
IRAC (Issue, Relevant law, Application, Conclusion) as a method for students
to approach statutory interpretation exercises. Depending on the way in which
statutory interpretation is assessed, IRAC may or may not serve as a model for
examination answers but even if not, chapter 14 provides a set of useful examples
of statutory interpretation technique, and IRAC is a good basis for legal writing
in general.

Part 5 covers legal reasoning and case law, starting by introducing common
law, the role of judges, the nature of legal reasoning and the rules of the doctrine
of precedent. The analysis of legal logic is particularly interesting as it articulates
how judges apply established principles to new sets of facts (deductive reasoning),
compare and contrast legal issues and/or facts (analogical reasoning) and develop
general principles based on a collection of specific examples (inductive reasoning).
Part 5 then focuses more specifically on reading and interpreting individual cases,
including the role and status of ratio decidendi and obiter dictum, the formal ways
in which judges can treat precedents (following, distinguishing, applying, etc), how
to locate, read and cite individual cases and finally, the language and style
of cases generally. The final discussion may be beyond what we can reasonably
expect of first-year law students, but for those who are inclined to look further, the
critical engagement with how judges write is instructive.

10 At 72–73.
11 At ch 10.
12 At ch 11.
13 At ch 12.
14 At ch 13.
15 At ch 15.
16 At ch 16.
17 At ch 17.
18 At ch 18.
19 At ch 19.
Penk and Russell raise the question of how closely a ratio should relate to the material facts of a case, in other words how narrowly or broadly it should be formulated. A related practical issue for those who teach students to formulate the ratio of cases is whether this can be adequately done using individual cases in isolation or whether a meaningful conception of a ratio can only be developed after considering the interpretation given to a precedent in subsequent cases. This represents a long-standing debate in legal method. Although Penk and Russell do not explicitly articulate a position, the subsequent demonstration of how to analyse individual cases in the context of a line of precedent is cause for pedagogical reflection.

The highlight of New Zealand Legal Method Handbook is the demonstration of how judges build on precedents in developing a body of law, using the rule in Rylands v Fletcher (1868) LR 3 HL 330 and the implied licence to enter land starting with Robson v Hallett [1967] 2 QB 939. Chapter 20 contains an excellent demonstration of how the common law develops, and introduces two small parts of the core curriculum in the law of torts. That said, the inclusion of suggested answers to questions posed may create difficulties for lecturers who teach the same topics. Building on these foundations, the discussion of unjust dismissal in employment law in Part 6 shows the interplay between common law and statute well and is a good choice of subject because it has relevance to all students, even those who do not go on to further legal study.

Given the challenges students face in writing effectively, introductory law courses need to focus specifically on legal writing and provide opportunities for practice and formative assessment. In Part 7, as with statutory interpretation, IRAC (with a twist) is put forward as a method for legal writing. The advice is good and could be improved by following through the practice introduced earlier of providing illustrations.

Since New Zealand Legal Method Handbook was released I have learned that the two other New Zealand legal method textbooks may be revised. It will be interesting to see whether they follow in the footsteps of Penk and Russell in presenting the content in a way that meets the needs of first-year students. If I were to choose one textbook for an introduction to legal method course, based on the available options, New Zealand Legal Method Handbook would be the one.

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20 At 310–313.
22 At ch 20.
23 At ch 20.