

Butterworth Battles On

David Catterns reviews Civil Litigation written by Mr Justice Young and published by Butterworths (1986).

His Honour Mr Justice Young has written "A Practical Guide for Advocates" which should become an indispensable tool for all newcomers to the Bar and a valuable reminder for more senior advocates.

The vehicle for his Honour's instruction is a year in the life of the alliterative Brian Butterworth — a senior junior whose years of devoted attention to the various causes of Ms Carol Carson is justly capped by his receipt of Her Majesty's Commission and a free lunch at the hands of his pupil Isabel Ibsen.

Brian Butterworth is the perfect barrister. He is a stickler for the letter and the spirit of the Bar Rules, unfailingly generous of time and advice to his stable of pupils, a dynamo of preparation, and fabulously knowledgeable in all areas of law. I look forward to appearing against him but tremble at the probable result. It would be more trying to appear as his junior.

The basis of the book is Butterworth's brief for Ms Carson, whose years of litigation, as the learned author says, "encompass almost every problem that could happen to man or woman." The reader is shown how Butterworth approaches the legal and procedural aspects of each of these problems and we follow his successes and (thankfully) failures as each case is run or settled. By this means, new advocates and many others obtain very valuable practical and theoretical guidance in an endeavour which all of us think can be learnt, but never taught.

Ms Carson has a mountain of problems. She is an attractive woman who had a promising career in administration in her father's nightclub but, as a result of a fall (Chapter 34 *Common Law Proceedings Before a Jury*) can't concentrate and has to work in the Club, playing strip poker, and giving and receiving beatings in various stages of undress. Despite this, she wins the custody case (Chapter 28) with her answer, under savage cross-examination by David Dancey, with this answer:

"Well, Mr Dancey, if you had an injury so that you couldn't use your head or concentrate, and you had a child to support, and the only asset you had was your body, would you not do like me and support your child by using that asset."

One imagines Dancey blushing modestly and, as the author says, "Butterworth noted that the judge seemed to understand". Despite the usual disclaimers about resemblance to persons living or dead, readers can have hours of harmless fun identifying Dancey's body and the judge's face.

Ms Carson's catalogue of woes, each of which is the basis of a chapter, also include the following:

- Application for Injunction (the mother of Carol's late de facto wants possession of his house — Butterworth obtains an injunction)
- Petty Sessions Proceedings (Carol loses her drivers' licence

but Butterworth persuades the magistrate to recommend that she be issued with a new one)

- An Inquest (Butterworth is jammed but Charles Coulson handles the inquest into the de facto's death so well that the fact that his trousers and underpants were below his knees when he drove into a telegraph pole does not come out in evidence)
- Witness Proceedings in Equity (Carol sues the de facto mother-in-law for a declaration of trust — held, that the house was beneficially owned by Carol and the late de facto as tenants in common)
- District Court Litigation (Carol claims damages for loss of goodwill suffered by her wine bar as a result of its purchase and use of deteriorating peanuts — verdict for the defendants)
- A Property Summons in Equity (variation of a covenant — Butterworth loses)
- Family Provision Act Proceedings (Carol gets half of her father's estate)
- Professional Negligence (her solicitor's conduct on the purchase of the wine bar — settled for \$79,000 inclusive)
- The Probate Suit (Carol's mother's will is challenged by her brother — probate in solemn form granted)
- Company Matters (Carol holds all the shares in her late de facto's building company — Butterworth staves off a winding up following a s364 notice)
- Building Cases (the building company has a net win in the District Court)
- Commercial Causes (Carol sues for fraudulent misrepresentation of the wine bar's turnover — she is disbelieved by the judge)
- Common Law Proceedings (Carol sues a supermarket for her fall on a banana skin — she gets \$395,000)

In each of these cases, Butterworth's analysis of the law and, more importantly, his advice and example on its preparation and running is of immense benefit to his pupils — and should be to the readers of this book.

Although Butterworth gives useful advice as to the desirability of trying to settle cases, and he's obviously a tough negotiator, I think his technique could be modified a little. Some of the barristers I know wouldn't react kindly to the following response to a settlement overture:

"I'm always happy to settle anything Gladys, provided it can be done honourably. Have you thought about the figures."

Despite these minor quibbles about Butterworth's personality, the use of "the year in the life" technique avoids the problems which appear in other books on advocacy — they are either a listing of helpful hints without factual context, or a recounting of the advocate's finest moments.

It is often at the level of the simpler procedural matters that the new advocate has trouble and this is another strength of the practical emphasis of this book. For example, his Honour gives, via Butterworth, very useful material on preparation, ethics, motions lists, adducing evidence, affidavits, and so on. I think, however, that Butterworth's approach to legal research — write everything down in case it becomes relevant — would become a little tedious and his leisurely thoroughness could lead to the odd unpleasant telephone call about late chamber work.

Most of this book was written while his Honour was at the Bar. He adds a rather terse postscript from the point of view of one who has had appear before him a number of barristers of lesser perfection than Butterworth.

One final question: bearing in mind that the attractive Ms Carson finished the year more than a million dollars in front, did she have lunch with Butterworth too?