

BOOK REVIEWS

**LABOUR LAWS: AN INTRODUCTION / BREEN
CREIGHTON AND ANDREW STEWART**

Sydney: Federation Press, 1994 \$45 00

and

**EMPLOYMENT SECURITY / RON McCALLUM,
GREG McCARRY AND PAUL RONFELDT, EDS.**

Sydney: Federation Press, 1994 \$45 00

As Creighton and Stewart note in the Preface to their "new" book, *Labour Law. An Introduction*, "The four-and-a-half years since the publication of the first edition of this book have witnessed momentous changes in the field of labour law and labour relations in Australia". These changes include, of course, the introduction of the *Industrial Relations Reform Act 1993*, which includes new laws on enterprise bargaining, unfair dismissal and the right to strike, and significant reforms in the State systems, particularly Victoria and Western Australia. As a result of these changes and the pace of reform, texts which deal with industrial relations and the industrial relations system can quickly become out-of-date, as Creighton and Stewart readily acknowledge. One of the advantages which both of the books under review share is their ability, given their publication dates, to deal with and analyse these changes and their effect on labour law and labour relations. Both books are, however, very different in terms of focus and scope. And, of course, one is an edited collection of essays and papers and the other, a jointly written text.

I like edited collections. While the pitfalls of such works are, perhaps, obvious - uneven quality between the papers or essays, lack of a constant theme or unifying purpose, and no real reason for publication save that the papers were all given at a conference - I am

happy to say that, while the papers included in the McCallum, McCarry and Ronfeldt book were apparently first delivered to a conference organised jointly by the Australian Centre for Industrial Relations Research and Teaching and the Committee for Postgraduate Studies of the Faculty of Law at the University of Sydney, none - or almost none - of the usual pitfalls or dangers which I have just mentioned can be said to attend this book. It successfully brings together a lively collection of papers from a very accomplished group of people in the labour law field. The connective tissue is, as the title suggests, employment security and associated issues.

JW Shaw's paper - "The Industrial Relations Court of Australia" - provides a useful introduction to both the 1993 federal reforms and the book generally. Other chapters - "Principles of Unfair Dismissal in Australia", "Redundancy Under Enterprise Bargaining and New Federal Laws" and "Public Sector Employment and Public Offices" to name three - provide detailed overviews of particular aspects of industrial relations law and the industrial relations system which, it seems to me, would be accessible to both the student and the practitioner of labour law. Two particular chapters, however, I regard as deserving of special attention. These are MacDermott's "Equality of Employment Opportunity in a Decentralised Industrial Relations System" and R W Harmer's "Employee Creditors and Corporations" make accessible relatively complex areas of the law. In this respect I was particularly impressed with R W Harmer's paper. Both, however, provide a concise, well laid-out summary of the relevant law and both consider and incorporate recent legislative enactments. These are two excellent chapters in what is

an excellent collection of essays dealing with all aspects of "employment security". Each chapter also includes a briefly-stated conclusion and a bibliography

Labour Law. An Introduction is, of course, a general introductory (or not-so-introductory) text to labour law. It includes, as one would expect, the usual chapters on the role of international standards, the constitutional framework of labour law, conciliation, arbitration and bargaining, individual rights and obligations, termination of employment and discrimination and equal opportunity, amongst others. There is something in this book for everyone. The student, the practitioner, the interested observer - all will find much that is useful in this book. Again, it incorporates all of the momentous changes in the field of labour law and labour relations in Australia. It is, however, "an introduction" and, at just over 300 pages, offers more an overview than an exhaustive treatment (although it does not purport to be exhaustive). Those students and practitioners seeking the latter would be well advised to seek out another text written by Breen Creighton (with W J Ford and R J Mitchell), the second edition of *Labour Law Text and Materials*. And for an account of the way institutions - tribunals, courts, unions, employers and, particularly, political parties - have shaped the content of labour law, and for an examination of the social, political and industrial dimensions of labour law, Laura Bennett's *Making Labour Law in Australia* must be read. Breen Creighton and Andrew Stewart's book, however, is a useful, well-organised book and could very well become the "standard" introductory labour law text.

Both books - *Employment Security* and *Labour Labour Law. An Introduction* - make obvious contributions to the literature on labour law in Australia. Both deserve to be successful.

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ENFORCING SECURITIES / JOHN A. GREIG AND BRYAN HARRIGAN, EDS.

Sydney: Law Book Company, 1994 \$75.00

The six essays in this book all relate to the extremely important question of when a secured lender may enforce its securities. The contributors are all associated with Queensland. Those common themes aside, the essays vary markedly in their approach, and must be considered one by one.

Two essays, one on the impact of environmental laws on lenders, the other on the new scheme of voluntary administration under Part 5.3A, almost entirely eschew analysis in favour of description. The latter makes a comparison between Part 5.3A and Chapter 11 of the *United States Bankruptcy Code* and the *Canadian Companies Creditors Arrangement Act*. The author claims that the North American experience is that this legislation is unjustifiably expensive to operate, the costs ultimately being passed on to other borrowers, and that there is no reason to expect the Australian situation to differ. After a lengthy outline of the Australian scheme, some economic argument is presented to support the (plausible) thesis. But, interesting though the chapter is - especially to those involved in law reform - it is difficult to see how it may assist practitioners who have to work with the scheme as it stands.

The essay on environmental laws is also descriptive, and contains much practical information for advising lenders, focussing both on drafting techniques at the transaction stage, and also on conduct at the stage when environmental laws become critical to lenders: when they are enforcing their security. Some mention is made of United States decisions and developments which affect lenders, in particular the question of when a lender is exercising sufficient management control to become liable to environmental laws.

The essay entitled "Injunctions against Mortgagees" sets out the relevant law clearly: that in general no injunction will be available unless the money owing under the mortgage is paid into court. Because in practice few mortgagees are able to fulfil this prerequisite, a deal of attention is devoted to the exceptions to the rule, including a detailed critique of *Harvey v McWatters*. Unfortunately, only a couple of pages are devoted to consideration of the remedies available under the *Trade Practices Act*. Statutory relief under s.87 may be available in a considerably wider range of circumstances than would be the case under general law: see *Town & Country Sport Resorts v Partnership Pacific Limited*, a case relegated to a footnote. One of the burning questions presently facing lenders who seek to enforce mortgages is the extent to which consumer protection legislation such as the *Trade Practices Act* affects the security rights, so it is something of a disappointment not to see this issue examined more closely.

The fourth paper is a clear and penetrating work on the enforcement of possessory securities. The chapter examines these useful, although less familiar, varieties of security interest, and those issues of particular concern to lenders, including registration, subrogation, the effect of bankruptcy. It is marred only by the consistent mis-citation of the not unimportant judgment of Needham J. in *Re Trendent Industries*. This essay is the book's apogee.

The essay which follows, on competing priority claims to fixtures, is a remarkable exercise. Once one accedes to the proposition that a fixture becomes part of the realty, it is apparent that there is very little that can be said. In consequence, more than half of the essay is taken up by an account of the elementary topic of when a chattel becomes affixed, the law concerning which was largely decided in a series of English decisions a century ago. The final offering, on the theory, law and practice of third party securities, is a very practical guide to practitioners, focussing on the validity of corporate and personal guarantees, and proposing a checklist of precautions lenders should make before obtaining security. Useful although the essay undoubtedly is, the analysis is very general, essentially being limited to the proposition that courts these days are looking more to the substance than the form of transactions.

It is likely that there will be at least one essay of benefit to any likely purchaser of this volume - but, by the same token, it is highly improbable that all will appeal. Contrasted with the excellent collections of essays edited by Professor Finn (to which *Enforcing Securities* bears a deceptive physical resemblance), the book disappoints.

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