BOOK REVIEWS

CASES AND MATERIALS ON EVIDENCE 2nd edn *by P K Waight and C R Williams* (Law Book Company 1985) pp lxx, 884.

The most obvious new feature in the second edition of this case book is the change in format. Typeface for commentary and cases is larger than in the previous edition. Commentary is distinguished from case excerpts by a vertical line down the margin of commentary. Notes at the end of cases are distinguished from both cases and commentary by being in much smaller type. These devices are definite improvements on the first edition.

One unchanged feature is the persistent use of the male pronoun when referring to persons in general. It is offensive to many readers. Given the detailed reworking of the book, this error should have been corrected.

As to substantive changes, the preface claims that the new edition has been "fully re-written and re-edited to take account of the many developments which have taken place since the first edition was published". The changes are not apparent at first glance.

Some page number references are the same in both the old and new editions (for example, *Driscoll* at p 320). The table of contents contains only one major addition, which is to chapter 10 on the subject of a defendant's right to make an unsworn statement. The lack of a bibliography of references to articles or texts makes it impossible to rapidly identify any such new material.

However, a review of the table of cases shows the addition of many recent cases in notes or brief references and the addition of several major cases in extended excerpts. This, of course, is exactly what one wishes for in an updated edition of a casebook. Closer examination reveals a number of important substantive changes.

The first of these is a discussion, in the introductory section headed "Appeals" (p 13-15), of the *Chamberlain* case. Like everyone in Australia, the authors have their opinion on the correctness of the High Court decision. According to the authors,

> "it is submitted that the approach taken by Gibbs CJ and Mason J was incorrect. Once their Honours had concluded that the key evidence on which the prosecution relied, that of Mrs Kuhl, was unsafe to act upon, then that should have led to the appeal being allowed. It is not correct to seek to justify a jury's verdict by reference to evidence which the jury in all likelihood found far less significant than that which the appeal court considers it was unsafe to act upon." (p 14).

The other major reference to *Chamberlain* is in the section on the criminal standard of proof, which comprises an excerpt from *Chamberlain* and very brief excerts from *Green, Moffa, Grant* and *Thomas*. Students have enormous difficulty understanding issues relating to circumstantial evidence generally and the specific *Van Beelen/Chamberlain* problem of when a jury can draw certain conclusions from uncertain facts. The excerpts from the cases themselves

are generally too brief to be of much help, and there is little or no helpful commentary on this topic beyond the criticism of *Chamberlain* in the introduction. Additional material with a clearer explanation of these issues would be helpful.

Major changes are found in the discussion of the privilege against self incrimination. The cases of *Westinghouse Uranium* and *Attorney-General* v *Riach* have been deleted and the cases of *Pyneboard* and *Sorby* have been included. The deleted cases dealt with the question of whether testimony which would subject the witness to non-criminal penalty or forfeiture is protected by the privilege. This issue has been settled by the High Court in *Pyneboard.* Other issues canvassed in *Pyneboard* and in *Sorby* are the extent to which Parliament can abrogate the privilege, whether corporations can claim the privilege, whether privilege can be claimed in proceedings that are not specifically judicial and how direct the risk of criminal proceedings must be.

The legal professional privilege cases have been re-organized, with *Grant* v *Downs, Baker* v *Campbell* and *R* v *Braham & Mason* making up a section called "Scope of Privilege" and the remaining cases, with the addition of *R* v *Bell,* in a section entitled "Exceptions to Privilege". This is misleading, since it suggests that cases where privilege is denied are the result of some extraneous exception, rather than being examples of situations outside the scope of the single rule.

The section on the use of the defendant's evidence of good character and the uses of evidence showing bad character to rebut the defendant's claim of good character (pp 350-369) has been improved. *R* v *Trimboli* gives a clearer statement of the defendant's use of good character. *R* v *Stalder* makes clear the limited use of the prosecution evidence in rebuttal. *R* v *Darrington and McGauley* identifies the residual discretion which a court has in setting the limits of examination where character has been raised by co-accused.

There is no change to the introductory commentary to chapter nine on similar fact evidence. The adequacy of this introduction in the first edition has been criticised (McNamara, (1981) 7 Adel LR 417). There has been important case development in this area which the authors recognise by including excerpts from *R* v *Perry* and *R* v *Sutton.* However the three analytic categories given in the introduction are not clearly related to the cases excerpted, nor has the introduction been modified to take either the criticisms or the new cases into account.

The most extensive re-working in the book is on issues raised by the defendants' unsworn statements (p 460-474). Many older cases have been deleted, and two new ones, *R* v *Simic* and *R* v *Greciun-King,* have been added. There is extensive commentary on the scope of judicial comment to the jury regarding unsworn statements, the impropriety of the use of unsworn statements to authenticate documents, the extent to which other evidential prohibitions apply to unsworn statements (such as hearsay), and reasons for and against the abolition of unsworn statements.

One area where the law has changed rapidly in the past few years is that on the exclusion of improperly obtained confessions and other evidence. Waight and Williams struggle briefly with the problems created by the decisions in this area, with regard to confessions particularly, but do not relate the new material in chapter 16 to the discussion of illegally obtained evidence in chapter 17.

In chapter 16, section J "Discretion to Exclude a Voluntary Confession", they distinguish three discretions which they discern in the decisions and, in an extensive note to *R* v *Cleland* (p 757), they point to some of the problems which remain. However, there is no similar discussion in chapter 17 on illegally obtained evidence. There is only a brief introduction almost word for word the same as in the first edition, with several "illustrative cases", all virtually the same as in the first edition.

Another chapter which is virtually unchanged is chapter 18 "Res Gestae". As the introduction itself notes, res gestae is a concept which has been "constantly the subject of attack". The first excerpt points out that most aspects of res gestae are really applications of ordinary principles of relevance. Given all this, there is really no reason to include a separate chapter on res gestae in this book. To the extent that the cases themselves are important, they should be retained, but redistributed into chapters on hearsay, hearsay exceptions, or relevancy where they logically belong.

Other sections containing important improvements or additions are those on Identification Evidence, the public interest principle and the new statutory treatment of business records.

The criticism of the chapter on res gestae brings up a more fundamental criticism of Waight and Williams' case book. It is a criticism that was made in earlier reviews of the text (McNamara, ibid 418, Hassett, (1980) Mon LR 112) and equally applied to the second edition. The book continues to treat the law of evidence as a bundle of unconnected and disparate rules. There are coherent principles which underlie the law of evidence and they should be reflected more clearly. One major touchstone is, of course, relevance and many of the matters considered in separate chapters would be better analysed in relation to the concept of relevance. Another common thread which is not emphasized is the relationship of the rules of evidence to the adversary process. A third important area is the relationship between decisions based on the application of accepted rules of law and decisions based on the exercise of judicial discretion. A comparison of the cases in the first and in the second editions of this case book suggests a growth in the number and scope of issues left to judicial discretion. This development, if it is really taking place, raises many questions. Are these true discretions or are they rules of law stated in different terms? An example is the discretion to exclude confessions which would operate unfairly against the accused. Is this a rule of law which says: "If the court finds unfairness, then the court must exclude the confession."? Or is it a "true" discretion? Another question raised is the effect on the role of appellate courts if decisions on the admissibility and the use of evidence are moved out of the scope of legal rules and into a broadened area of discretion.

These issues are not addressed in the new edition of the case book, and perhaps it is not the role of a case book to do so at length. It can, however, be done to some extent by including excerpts from the references to other works which do address these kinds of questions. There is some use of such material, but there has been apparently no systematic canvass or updating of commentary.

In summary, the second edition of Waight and Williams *Cases and Materials on Evidence* continues the important strengths of the first

edition, but does not adequately repair some of its weaknesses. Its strength is the comprehensive scope of cases excerpted, and detailed references to many cases not fully excerpted. It has certainly been thoroughly and elaborately updated, both in the addition of new cases and references and in detailed attention to re-editing of previous material.

Its weakness is that it offers no new ideas, and there is no movement towards a comprehensive analytical approach to the thorough compilation of material which has been assembled.

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STATUTES *by A I MacAdam and T M Smith* (Butterworths, 1985) pp xviii, 257

Recently, in an Elements of Law class at the University of Adelaide, students were required to write an essay commenting on the assertion "In the world of statutory interpretation, there are no rules". It is clear how MacAdam and Smith would have responded. Their book comes down strongly on the side of the existence of rules — lots of rules.

For each topic isolated in the book there is a brief introductory explanatory note, sometimes including historical material; a formulation of a rule regarding the topic; and an excerpt from a case (frequently quite a long excerpt) demonstrating the application of their rule.

This approach exhibits the strength and weaknesses of all books in this mode. It is an extremely comprehensive review of many aspects and techniques of statutory interpretation. Its examples are helpful and apt illustrations of the techniques described. The notes at the end of each chapter cross referencing the rules and techniques to the various Acts Interpretation Acts are also very useful.

In formulating their rules, the authors are careful to point out when there is little or no law on the subject, or where existing law is in conflict. (An example of this is the treatment of the use of short titles at pp 43-44). However, the overall effect of the book is to give a too-comforting illusion of certainty in the existence and application of fixed rules of statutory interpretation. For this reason I would not recommend this book as a sole text for statutory interpretation with first year students.

One of the difficulties for beginning law students is their desperate desire to cling to anything that looks certain and solid in the uncertain world of legal analysis. It is difficult for them to accept that law frequently does not give clear and certain answers. The process of ascertaining and applying the law is an art as well as a craft and cannot be done in a rote fashion. In my experience, first year students are too ready to believe a text writer's summary of the law rather than facing up to the harsh reality of the uncertainty of case analysis. The approach of MacAdam and Smith would, I fear, give too much support to a view of law and the study of law which I think is incorrect.

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Statutory interpretation is not best taught as a collection of rules. There must be significant attention to the conceptual issues which are raised by the process of statutory interpretation. Though the introductory section indicates that "the rules of statutory interpretation are not mathematical formulae" (p 1), this message is severely undercut by the emphasis on rules in the text and by the structure of the book.

There are many conceptual questions which are an essential part of statutory interpretation but which are, in a sense, preliminary to the operation of specific rules or which lurk in the background of the system as a whole. It is clear that, underlying many of the often contradictory principles and practices of statutory interpretation, there are conflicting views of the respective roles of courts and legislatures. The basic principle can, of course, be stated quite briefly: Parliament enacts laws which courts apply. As any lawyer knows, beneath that simple statement of a principle lie difficult issues of analysis and application. MacAdam and Smith do not adequately address this aspect of statutory interpretation.

For example, one of the early chapters in the book is a lengthy treatment of the various extrinsic materials and of the cases and statutory provisions governing their use. Questions about use of extrinsic materials are closely related to issues of separation of powers such as: what is really meant by the intent of Parliament? what is the court's obligation with respect to any such concept? These problems are not addressed systematically, either in commentary or by including excerpts from other books or articles which do address them.

The most striking feature of MacAdam and Smith's book, when compared with other texts on statutory interpretation, is their sharp de-emphasis of the major approaches, that is, the literal rule, the golden rule, and the mischief rule. They state, at p 238 in the introduction to their final chapter,

> "It is usual for such matters to be dealt with at or near the beginning of texts and courses on statutory interpretation . . . [I]t has been the experience of the authors that such positioning often tends to convey a misleading impression as to the relative importance of these rules. Thus these rules tend to dominate thinking at the expense of the specific rules of interpretation. These approaches to interpretation need to be understood in their proper perspective in that:
>
> (a) they are very often simply descriptive of the result that is obtained by the application of the specific rules; or
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> (b) they are resorted to as a justification for the result that has been obtained by the application of the specific rules; or
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> (c) they are resorted to when a result obtained by the application of the specific rules is unsatisfactory or inconclusive."

Unfortunately these remarks are just as applicable to virtually every other rule in the book. The weaknesses attributed to these three rules are the weaknesses of the whole rule oriented approach of the book generally.

In summary, the book is a thorough and comprehensive compilation of virtually all specific techniques of statutory interpretation, with good

examples, but it is not balanced by adequate attention to the conceptual issues. As a student text, it should be used only as a reference work and only then in conjunction with more analytical material discussing the nature of statutory interpretation and the relative roles of courts and legislatures.

*Kathy Mack**

BIBLIOGRAPHY OF LEGAL FESTSCHRIFTEN, TITLES AND CONTENTS: GERMANY, SWITZERLAND, AUSTRIA *by Helmut Dau* (Berlin Verlag, Berlin) in five volumes: 1864-1944 (1984) 1-567; 1945-1961 (1962) 1-166; 1962-1966 (1967) 1-195; 1967-1974 (1977) 1-546; 1975-1979 (1981) 1-638.

This important work is a comprehensive bibliography of all the contributions made to the legal Festschriften literature published in Germany (East and West), Switzerland and Austria from 1864-1979. The work covers 851 books which fall under the author's definition of "Festschrift", 642 German, 138 Swiss and 71 Austrian. Though generally of very high quality, this literature used to be rather inaccessible to researchers, a difficulty which no longer exists, thanks to Dau's painstaking and exhaustive work.

Like "Kindergarten" or "Blitz", "Festschrift" ("Commemorative Publication") has, in its untranslated form, become part of the English language. The Macquarie Dictionary defines the term as "a commemorative collection of articles, learned papers, etc, contributed by a number of authors, usually published in honour of a colleague". Dau's own working definition (adopted in order to establish the criteria for inclusion of publications in his work) is almost identical with the one we find in Macquarie. As the latter suggests, articles by one author, brought together and published in his or her honour, are not true Festschriften; Dau has not included them, even if their publishers have called them "Festschrift".

Most Festschriften are published in honour of prominent figures, but the exceptions to this rule are perhaps a little more numerous than the Macquarie definition would lead one to believe. Festschriften are sometimes published to mark memorable events. For example, from East Germany comes a Festschrift in honour of the October Revolution. Many Festschriften salute legal and political institutions or important legal documents. Books commemorating anniversaries of the West German Constitution (1974 and 1979) and of the German Democratic Republic (1979) can be found amongst a wide range of Festschriften in honour of numerous courts and even of authorities like the West German Patent Office. The 10th anniversary of the West German Cartel Act (1968) attracted a Festschrift and so did the 50th anniversary of the Turkish Civil Code. If the Festschrift tradition were as strong in Common Law countries as it is on the Continent, we could expect Festschriften in honour of famous judgments like *Donoghue* v *Stevenson* or the *Engineers' Case*. The only comparable work to be found in Dau's bibliography is an "Anti-Festschrift", published in 1976 and condemning,

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in the name of freedom and democracy, the 1956 judgment of the West German Constitutional Court which prohibited the Communist Party, confiscated its property and declared vacant the seats of Communist members in West German parliaments.

The first legal Festschriften were published more than 120 years ago and a strong and still-growing tradition has developed since then. Not surprisingly, this literary form has changed to some extent over the years. In the 19th century it was usual for Festschriften to be published by law faculties in honour of prominent academics. When Rudolf von Jhering celebrated the 50th anniversary of his graduation as a doctor of laws, no fewer than seven German law faculties presented him with Festschriften. With many members of the one faculty contributing to such a work, it was inevitable that contributions ranged over many areas of the law. Since those early days, thematic unity has become recognized as highly desirable. It is now common practice for contributors to focus upon topics which relate in some way to the work of the person honoured. In his list of *desiderata* for Festschriften, Dau stresses the requirement that such a work should reflect the inspiration which the person honoured has provided, and that the contributions should be an expression of the intellectual kinship between him or her and the contributors.

The structure of Dau's 1945-1961 volume (the first to have been published) is as follows. It opens with a list of Festschriften in honour of named individuals, followed by a list of those which have celebrated special occasions, significant institutions or prominent legal documents. Next is the bulk of the volume, a comprehensive digest of all the Festschrift contributions, arranged under some 47 alphabetically ordered subjects from Antikes Recht (Law of Antiquity) to Zivilprozessrecht (Civil Procedure). A concluding segment accommodates biographical contributions and those which could not be otherwise categorized. Most of the subjects relate to the internal laws of the countries covered, but there is a great deal of material of jurisprudential, historical and comparative interest. Alphabetical subject and author indices conclude the volume.

The structure of the 1962-1966 volume, published in 1967, is virtually the same as that of the earlier one, but the much greater amount of material to be digested in the last three volumes understandably prompted Day to differentiate some of his indices further. From the 1967-1974 volume onwards he has added to subject and author indices, lists of persons who featured prominently in one or more of the Festschrift contributions. This is a useful feature as the following examples, especially selected for the benefit of the English-speaking readership of the *Adelaide Law Review,* show. Under "Bentham" one finds an article by Koch, "Jeremy Bentham's philosophical views on taxation"; under "Shakespeare" one finds Hagen's "Shakespeare as a lawyer". There is also a contribution by Hazeltine on John Selden. It is obvious that access to such material could be of great value to an Australian researcher who happens to be dealing with the particular subjects covered by such contributions. To avoid misleading readers it must be stressed that the bulk of the material digested is obviously not concerned with Common Law subjects.

The 1975-1979 and the 1864-1944 volumes (published in 1981 and 1984 respectively) also contain geographical indices. Should a curious

antipodean reader look under "Australia", Max Huber's 33-page contribution, "The constitutional development of the Australian colonies up to the foundation of the Australian Commonwealth" will be found.

The final volume brought one further useful innovation. In the lists of Festschriften Dau has added to each item an indication of the field or fields of law to which the contributions in the Festschrift relate.

An invitation to contribute to a Festschrift has always been regarded as a challenge to produce work of the highest possible quality. If one remembers further that much of the literature digested in Dau's work has an historical, philosophical or comparative orientation, it becomes clear that this bibliography is of world-wide interest. Although it is mostly in German, some of the explanatory text (having been translated with the assistance of Professor Igor Kavass) is also reproduced in English. Interest of Australian lawyers in Comparative Law has grown to the point where Australia is about to host a World Congress on Comparative Law (in Sydney in August 1986). In this climate Australian law libraries can ill afford to be without this important research tool. Its acquisition is therefore warmly recommended. There is a set in the Adelaide University Law Library and the Law Librarian has kindly agreed to make this available for inspection by inter-library loan to any of his colleagues who might wish to peruse it.

*H.K. Lücke**

ASSESSMENT OF DAMAGES FOR PERSONAL INJURY AND DEATH 2nd edn *by Harold Luntz* (Butterworths 1983) pp ixvii, 570.

This review is a belated recognition of the appearance of the second edition of Professor Luntz's book on damages for personal injury. The outstanding merits of this work are already well-known. This review really need do no more than add one small voice to the general chorus of change. The book is that rare commodity – one that is eagerly sought and used by the academic lawyer, student and practitioner alike. Its virtues are those of vast erudition and industry involving the pursuit of authorities into very often the most unlikely sources; impressive logical coherence in the order of treatment; and wise and impartial bringing to bear of judgment on the vast assembly of cases that are displayed in the text. Occasionally one might wish Professor Luntz would doff his quasi-judicial garb and don the robes of prosecutor. He seems to me to be unduly tolerant of the performance of the High Court in the field of damages for personal injury during the last two decades – of, for example, the obstacles to scientific assessment of damages represented by the views of the former Chief Justice, of the appalling mish-mash that cases like *Todorovic* v *Waller* and *Barrell Insurances* v *Pennant Hills* present; and of the continued tendency of the Court in its judgments to behave like a group of strangers rather than a collegiate body. The virtues of collaboration are amply demonstrated by the joint judgment of Stephen and Gibbs JJ in *Sharman* v *Evans,* certainly one of the most helpful of judicial utterances in the field of damages for personal injury.

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The book in its second edition is much expanded. There are two long introductory chapters on general principles relating to damages, and causation and remoteness of damage in tort (which could with advantage be read by any student of torts or of civil remedies). The remaining chapters of the book concern the various problems of assessment of damages that a personal injury case may cause. There are useful tables relating to financial evaluation of lost income in an Appendix at the end of the book.

The work derives its authorities from Commonwealth countries in general but its chief concentration is on Australian case law. This prompts two reflections. First, that Australia is fortunate that a book of international significance should have Australian law as its nucleus. Secondly, that if, and this is Professor Luntz's wish, the present law of damages for personal injury were to be replaced by an accident compensation scheme or schemes, how equally fortunate it would be if he were to turn his attention to the field of damages in general and produce a similar work.

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PRINCIPLES OF AUSTRALIAN ADMINISTRATIVE LAW 6th edn *by S D Hotop* (Law Book Co 1985) pp xxxv, 516.

This book, which was formerly Benafield and Whitmore's *Principles of Australian Administrative Law,* has been largely rewritten by Mr Hotop, whose name accordingly appears on the title-page. The original work contained a considerable amount of basic constitutional law; two topics which always give rise to debate as to where best they should be taught, ie delegated legislation and Crown liability; together with traditional administrative law in the form of judicial review which, granted the name of the book, occupied a surprisingly small portion of it. Hotop has retained all this material, abandoning only the useful chapter on Statutory Corporations and Administrative Tribunals and the chapter on Administrative Law Reform. He has written a very much extended account of the principles of judicial review and has included (for the first time) sections on the Commonwealth legislation and the Administrative Law Act 1978 (Vic). The book is therefore a genuine competitor to other Australian texts in the administrative law field, ie Whitmore and Aronson's *Judicial Review,* and Sykes, Lanham and Tracey's *Administrative Law.* Hotop has done a sound job of editing. He clearly has a capacity for lucid arrangement of material which is also apparent in his excellent casebook on the subject. He writes clearly and he has worked hard in ensuring that the authorities he relies on are comprehensive and up to date.

The book can confidently be recommended to students but its limits must be noted. Its treatment of the leading authorities is always sound and occasionally illuminating but it eschews controversy, speculation and criticism. The more demanding student must be referred to De Smith or Wade for these. An example of the difference in approach is the treatment of *R* v *IRC ex p National Federation of the Self-Employed.*

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Wade at least admits the difficulty of knowing what the House of Lords decided in this case and recognises that the House of Lords seems to have come up with something novel under which the actual "merits of the case" (whatever that may mean) somehow determine locus standi. Hotop merely states that, according to the case, locus standi must not be judged as a preliminary matter but "should be determined in the factual and legal context of the application". This has an authoritative emptiness which should commend it for use in examinations. Hotop also has adopted a low-key approach to the "new" legislation, merely summarising the main effect of the various provisions and citing the various cases that have already been decided. Again this does not seem very satisfactory. This legislation was presumably intended as a major reform, yet any sort of critical evaluation in the light of the intention of the original proposer of the reform (the Kerr Committee Report is not even cited) is not present. It would be interesting, for instance, to hear Hotop's views on the Administrative Decisions (Judicial Review) Act as law reform. Perhaps the abandoned chapter on reform could be restored in a future edition.

There can be no doubt, however, that Mr Hotop has done his work well in transforming Benjafield and Whitmore, a book of rather uncertain status, into a useful modern text on administrative law.

*David Baker**

CASES AND MATERIALS ON CONTRACT 5th edn *by P J Hocker, A Dufty and P G Heffey* (Law Book Co 1985) pp xli, 983.
BREACH OF CONTRACT *by J W Carter* (Law Book Co 1984) pp xli, 551.

Australian common law – is this a contradiction in terms? There is little doubt that our non-statutory law is almost completely derived from our former colonial masters, and even 85 years of independence have done little to incline either State or Federal courts to pursue their own paths. Of all the branches of the common law, Contract most notably displays this trend. Take out oddities such as the rules on the finding of collateral contracts, and one can confidently predict that where the Court of Appeal or House of Lords go, there shall our judges follow. As such, the lack of a distinctively Australian Contract textbook – perhaps soon to be remedied – has been both understandable and tolerable, given the excellent English works by Treitel and Chitty on which to fall back. Needless to say though, the Australian decisions must still be digested – hence the need for a top-flight casebook to provide solid Australian substance to an otherwise distinctively English set of rules.

Enter Hocker, Dufty and Heffey – the latest and by far the most impressive edition of the book originally published by McGarvie, Pannam and Hocker 20 years ago. Normally the review of the latest edition of a casebook simply entails cataloguing the new cases decided since the previous edition. Not so on this occasion. The departure of Clifford Pannam and the arrival of Messrs Dufty and Heffey see a fairly radical

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re-organisation of topics and the inclusion of some 55 decisions (not all of them by any means new). The result is a marked improvement on its predecessors, though this is not at all to complain about the general quality of the previous editions. By and large, the lay-out of the decisions digested has been retained, as has the useful practice of commencing each chapter with an overview of the topic and a summary of some of the leading cases. Although the amount of material included in notes at the end of decisions has been reduced, often substituted by pointed and challenging questions, the 5th edition continues what is basically an excellent format for a student's casebook.

Nevertheless, the restructuring undertaken by the new editors does make a considerable difference. The new edition adopts what I have always considered to be by far the most logical order of contract topics, involving a basic division into Formation (including privity and formalities), Operation (terms, performance, breach, discharge and remedies) and Vitiating Factors. The advantage of this order is that it takes students through the formation, substance and termination of a contract in a way that shows them how an *ordinary* contract works. The *abnormal* factors which may vitiate an apparently valid contract can then be dealt with in their proper perspective, as exceptional occurrences. In particular, the order produces a concentration on the most common of problems in practice, particularly in relation to commercial contracts, namely non-performance and discharge by breach, frustration or agreement. To find a casebook escaping the traditional (and out-dated) textbook organisation is indeed welcome.

The adoption of this general structure is reflected in the much improved selection of material. While, of course, such important decisions as *Codelfa* v *State Rail Authority of NSW, Photo Production* v *Securicor, Legione* v *Hateley,* and *Taylor* v *Johnson* necessitate considerable revision, the inclusion of a great number of other, predominantly Australian, cases testifies to the thoroughness of the reworking. The impression is one of a very modern approach to the subject, and the new editors are to be commended for producing what should be an obligatory purchase for all Contract students.

Reference was made earlier to the appearance of a new and distinctively Australian textbook. That will have to be judged when it finally leaves the presses. One of the authors of that book is J W Carter, and it seems appropriate, in looking forward to it, to review his most recent excursion into the field, *Breach of Contract.* The book (one hesitates to call it a monograph, given its breadth) focuses on the key question of non-performance and its consequences in relation to establishing a right to terminate a contract (the question of damages being only incidentally discussed). As already mentioned, this topic is one which arises continually in practice. It is to Dr Carter's credit that he is able to draw together the inevitably diverse and numerous authorities and present them in a coherent and intelligible treatment.

The book is divided into five sections. Part I discusses standards of non-performance, and identifies the concept of a "breach" and the types of breach which give rise to a right to terminate. These types of breach are then discussed in detail in Part II (breach of condition, fundamental breach of intermediate term) and Part III (repudiation). Part IV looks at the question of the exercise of the right, particularly in terms of its loss, by election or otherwise. Finally, Part V gives a slightly less detailed run-

down of the consequences of termination. That structure reflects the book's chief qualities – its thoroughness and organisation. Although the length of the work does allow some extensive discussion of the wisdom of various decisions or of the appropriate approach to certain difficult questions, the dominant feature is the clarity of presentation of the decided law and its reduction to a number of definite principles. These principles are, as and when established during the book, carefully formulated as numbered articles and rendered in bold print. The result is a concise but extremely well constructed "restatement" (along the American lines) of the relevant law. It says much for the author's grasp of the authorities and his organisational abilities that his "articles" appear comprehensive while at the same time managing to avoid controversial assertions. In fact, the only major criticism of the book would have to be that the articles are not helpfully summarised at the end with appropriate references to their initial appearance in the text. That apart, the excellence of the work recommends it to anyone wishing to investigate the area to a degree of depth, and bodes extremely well for Dr Carter's participation in the forthcoming textbook.

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