For example, I would express somewhat differently the Australian position as to the distinction between exclusive and concurrent powers, and the operation of "inconsistency" (pages 137-138). Thus he says that "residual" competence is always exclusive, but this is so only from a misleadingly formal point of view; the dynamics of such systems ensure that a residual competence is constantly subject to being eaten away. Nor can it be said that a concurrent power lasts only "so long and so far as the federation makes no use of its legislative competence", unless the word "use" is given a fairly extensive gloss. "Covering the field" tests require a more subtle expression. Similarly the author, when discussing spending power problems, does not quite appreciate the distinction which Mason J. draws between mere appropriation on the one hand, and effective, systematic spending by the federal government, in *Victoria* v. *The Commonwealth and Hayden* (the Australian Assistance Plan Case)[1] and the consequences of this for the *ratio decidendi* of that decision. This, however, is a matter on which neither High Court decision nor learned commentary has as yet thrown much light.

The bibliography is the most thorough in this field which I have ever seen.

GEOFFREY SAWER*

An Introduction to the Security Industry Acts by R. BAXT, Sir John Latham Professor of Law, Monash University, H. A. J. FORD, Professor of Commercial Law, University of Melbourne and G. J. SAMUEL, Barrister and Solicitor of the Supreme Court of Victoria. (Butterworths, 1977), pp. i-xv, 1-232. Paperback, recommended retail price $12.00 (ISBN: 0 409 33030 4).

This book recognises the need that has existed in Australia for two if not seven years for a reasonably priced and readily digestible collection of information and sources on the legal regulation of stock markets and other activities constituting the securities industry. It is not that there has been or is a shortage of information on those subjects; quite to the contrary. The four volumes of the Report of the Senate Select Committee on Securities and Exchange, the ill-fated Corporations and Securities Industry Bill (together with its Explanatory Memorandum) and the four State Securities Industry Acts are only the base on which a vast quantity of opinion and comment has been erected. Although sources suitable for those cognisant with the area are available, a comprehensive description of the scope of current law, with adequate but not undue depth, has not been available. Against this background and in the face of imminent legislation, the initiative of the authors and publisher is to be applauded.

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[1] (1975) 134 C.L.R. 338.

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The book devotes the first five chapters, comprising 33 pages, to a brief but useful description of the constitutional context and political origins of the State Acts. The legislative predecessors and prospective progeny are also discussed. Unlike some passages later in the book, the depth of legal analysis in this part is sufficient to show the complexity without purporting to satisfy a knowledgeable constitutional lawyer. This seems an appropriate balance between description and analysis for an introductory book.

The subsequent order of material appears to follow largely the order of treatment in the State Securities Industry Acts, namely regulation of the establishment of stock exchanges, their relations with their members and with listed companies; the licensing of dealers, investment advisers and others; the disclosure of interests in securities; regulation of licensees' accounts and of establishment and use of fidelity funds, and lastly offences arising from misstatements and false, fraudulent and insider dealing.

With some notable exceptions, the substantive chapters summarise the relevant provisions of the State Acts and the effect of incorporating the lengthy and complex definitions. The commentary that follows in these chapters is predominantly in the form of exploring the semantic possibilities of these untried sections, an approach that, coupled with accurate paraphrasing of statutory material, does not make for lively reading.

There are, happily, some important exceptions to the common form of chapter. Chapter 6 grapples well with the mass of regulation to be found in the Articles of the Stock Exchanges of Sydney and Melbourne as a necessary preliminary to comment on the scope for judicial intervention under sections 12 or 31 of the State Acts. While the chapter is to be admired for the order that it brings to material from disparate sources, some points of criticism can be made. The duplication of provisions on cessation of membership and disciplinary powers in the Articles of the Sydney and Melbourne Exchanges could have been reduced, perhaps in recognition of their unification initiatives. The discussion of the statutory obligation to enforce stock exchange articles seems to be based on the unjustified assumption that enforcement necessarily involves instituting court proceedings. A discussion of experience with section 141 of the Conciliation and Arbitration Act 1904 (Cth) (as amended), which is in virtually identical form to section 31, could provide some useful precedents or arguments.

The second exceptional chapter is that on the relationship between broker and client (Chapter 9) which contains an excellent summary of the common law background of the statutory duties and rights of brokers. The chapter is clearly ordered and plumbs depths in analysis not reached elsewhere in the book.

The third exceptional chapter is Chapter 12 on Liability for Statements or Non-Disclosure in Dealings in Securities. Here the authors have sought to set some specific provisions of the State Securities Industry Acts into a broad common law and statutory context and

have shown clearly much of the duplication and inconsistency that exist. This was not an easy task and it may be expecting too much to ask for some ordering principles rather than the table at the end of the chapter which plainly reveals the resemblance between this area of law and a patchwork rather than an integrated pattern of regulation. Again, as with Chapter 9, the level of legal analysis is significantly deeper than in most other chapters.

The style of the book, generally speaking, is on the dry side, sacrificing reading pleasure for accuracy and precision. The variations within the book, from the exceptional chapters to the majority of chapters to the last two chapters may be the result of a division of labour among the three authors. Chapters 13 and 14 contain many passages that lack the economy and precision characteristic of most of the book and which are suggestive of haste.

Criticisms of substance arise mainly in the form that, in considering untested legislation, the authors do not always discuss alternative constructions or provide convincing justifications for the adoption of that which they prefer. Accordingly, such criticisms are of approach as well as of substance. For example, after a lengthy and illuminating discussion of whether any obligations underlie the relationship between stock exchanges and listed companies, it is said that "Section 3 of the requirements sets out those matters that the company must continue to comply with if it is to remain on the official list" (page 65). From the immediately preceding discussion it appears that this proposition is simplistic and possibly inaccurate. Failure to comply is firstly not failure to perform any obligation and secondly merely gives rise to an opportunity for the exchange to exercise available discretionary sanctions including, but not limited to, delisting (the source of which power is not stated). The inclusion of some examples of the exercise of such discretionary powers would have clarified this discussion. In a passage on page 173 discussing section 110 of the Securities Industry Acts, no explanation is given as to why objective standards are to be applied on one element and subjective standards on another. The last sentence on page 195 following, as it does, a discussion of the Antimony Nickel N.L. affair, seems inexplicable. In discussing section 109 on page 196, one meaning is ascribed to the word "calculated" without consideration of other possibilities. The comments, on pages 198-199, on civil remedies for contraventions of sections 109, 110 or 111 are enigmatic. Actions by an officer of a company that contravene any of sections 109, 110, 111 or 112 could all involve breaches of his duties under section 124 of the Companies Act.

Criticism of chapter 14 arises mainly from loose language. For example, the statement that on proof of a connection between a person and a company "the insider trading provisions may well apply" (page 209) is simplistic and misleading; section 112(3) refers to persons precluded from dealing, not persons precluded from using information in dealing (page 214); the suggestion that the words "cause" and "procure" in section 112(4) (which prohibits a defined person from causing or procuring another person to deal) are like the word "induce"

(pages 214-215) which is definitionally part of the meaning of "deal" is singularly unhelpful; the source of the ban of which section 112(5) is said to be an "extension" (page 215) is not mentioned.

These are not fundamental matters but could and should have been tidied up; they detract from the otherwise precise standard. There are more important considerations. At the outset of this review, the authors and the publisher were applauded for their initiative. That praise was for the timing of the publication of a book in this area, but is *this* book the one that was needed and by whom?

In the Preface, the authors refer to pressure from the legal profession, academics (lawyers?), the Securities Institute of Australia and the ubiquitous publisher. It is instructive to consider for whom among these groups the book appears to have been written or has value: to which audience is it directed?

For the practitioner who has had little exposure to company or securities law (or who thinks that Securities Industry legislation has something to do with uniform share transfer forms), this book has the immense value of providing information while avoiding the tedious and mind-numbing slog through the legislation itself. The difficulty for this reader is that the book does too much more than provide a summary. The depth and intricacy of analysis of broker-client relations, the meaning of associated person and the remedies for misstatements have such a reader gasping for a simple (if subsequently corrected) proposition. After all, the book is an introduction—analysis can be obtained from other sources.

The same difficulty will be experienced, and to a greater degree, by students attending the courses offered by the Securities Institute of Australia. There are many passages that assume a significant legal familiarity that many such students will not have. The lawyer's style of setting out a long analysis before noting that the first step could be wrong and accordingly the whole analysis worthless can be most frustrating to non-lawyers. A good example of this occurs on pages 39-41 where a long discussion of the common law doctrine of restraint of trade is followed by the comment that it may have no operation. A simple illustration of an assumption of legal familiarity is the failure to provide a list of abbreviations of official court citations and, particularly in the last two chapters, the citation of American reports as if they were of equal authority to all other reports cited. Other passages where legal familiarity is necessary are the detailed discussion of the corporations power on pages 7-9; the cryptic comments on the trade and commerce power on page 13; the assessment of a Canadian case on page 50; the detailed discussion of interests in securities held by corporations on pages 124-128; the analysis of section 374 of the Companies Act (pages 154-158) and of the prospectus provisions of that Act (pages 162-169). These can be contrasted with passages where the reader is assumed to have no legal familiarity at all.

The point is that the authors do not appear to have decided for whom they are writing, and consequently the level of intelligibility varies

directly with the level of legal familiarity. Accordingly, the book has something for everyone even if it may have too much for some readers and too little for others. The publisher's influence becomes apparent.

The Problem of Realism

In a praiseworthy continuation of the collaboration that marked the drafting of the Corporations and Securities Industry Bill, the authors presented the text of this book to an expert panel from the Securities Institute of Australia and received "practical advice on the text". However, it is difficult to discern where that practical advice resulted in amendments. There are many sections of the text that could have been saved from the lawyer's fallacy of appearing to believe that knowledge of a posited system of regulation provides a uniquely accurate view of the activity to be regulated. Among these are the description of disciplinary powers of Stock Exchange committees (pages 45-49) and the continuing requirements for listed companies (pages 65-66) where some comment on their respective use would have added verisimilitude, while chapters 13 and 14 are almost totally devoid of examples. Characteristic of the lawyer's fallacy is the proposition that the Stock Exchanges met the criticisms of the Rae Report by making new rules (page 67). If the Rae Report revealed anything it was that in the securities arena the number of powers that a regulatory body has counts for far less than the attitude and practice of that body in exercising the powers it has. There can be nothing but an academic, hypothetical perception, however elementary, of the actual or potential effectiveness of regulatory schemes unless there is also an awareness of how the process to be regulated works and why it works in the way that it does. The treatment in this book is dominantly academic, in this sense, where it could have been more expressly linked to practice. The failure to do so reduces its pedagogic value as a text for students undertaking the Securities Institute courses. It also prevents the book from providing to lawyers unfamiliar with the market a working understanding of how the controls are intended to work and thus how a client can be advised to comply with minimum disruption to current practices.

Intricate Law and Introductory Books

The subtitle indicates the paradox presented to authors: how should complex law be introduced without distorting it? As has been suggested above, a more appropriate initial question may be to whom is the law to be introduced? The next question should then be what knowledge and skills does that audience have that can be utilised to assist and render more effective the introduction? The assumption made by introductory books is that readers do not know that to which they will be introduced. But it is equally important to ascertain what those readers know and use that knowledge where possible. Thus, this book uses the familiarity that lawyers have with legal style, phraseology and the textual manipulation that passes for legal reasoning. To employ

those devices is to heighten greatly the effectiveness of the introduction for lawyers. However, to the extent that other literary styles are thereby excluded, the value of the book for non-lawyers is significantly reduced.

The inevitable result of adopting the legal style is that, because it is not suitable for any other subject matter, no other subject matter is included. The book becomes a summary or paraphrase of the law; a simplified version. As this book indicates, and as its authors acknowledge on page 145, simplified versions of complex matters are themselves complex. But complexity and clarity are not mutually exclusive. The problem seems to be that only lawyers are seen as competent by publishers to write introductory books on law. The approach of these books is thus uniform and predictable and lawyers' pathological concern not to be seen to have written anything that is inaccurate produces summaries that are almost as long as the original. The "General Aim of S. 112" on pages 207-208 is a good example.

One purpose that books such as this serve—the introductory informing of lawyers—could be better served by explanatory memoranda produced in conjunction with complex legislative measures, that which was produced with the Corporations and Securities Bill being the obvious example. It may then be a more effective way of promoting a broader and deeper understanding of our law and legal system for non-lawyers to write introductory books on such new laws.

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