Understanding the Australian Legal System (1994, Sydney, Law Book Company, 2nd edition)

By John Carvan

Reviewed by Mary Keyes*

This modest little book takes its inspiration from the author's experience in teaching students from non-English speaking backgrounds and mature age students with 'varying levels of secondary education'.[1] The book is intended to respond to a perceived need for introductory reading to the normal array of introduction to law texts[2] - the assumption being that the style and content of these texts are in some ways inaccessible, without assistance, to some students. The author does not explicitly identify what exactly the difficulties with the existing texts might be, nor how he intends to address these difficulties. We can only assess these matters by reference to the way the book is written and what is to be found in it.

The book covers most of the standard 'introduction to law' issues,[3] in a fairly traditional way, although the brevity in explanations and the formatting of the text may be more student-friendly than in some other introductory texts. The main points which set this book apart from other texts are that the book is shorter, the discussion is less formal than in some texts, and this book does not deal with some matters in the detail which can be found in other texts.

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1 Preface to the Second Edition, at ix

2 The author states in the Preface to the Second Edition that it became clear to him that 'there was a need for a textbook that would provide a pathway into the more detailed and generally excellent writings in introductory law subjects': at ix.

3 The chapter titles are Studying Law; The Sources of Australian Law; The Law-Making Process; The Legal System; Precedent; The Interpretation of Statutes; and Some Basic Legal Concepts.

The emphasis is on coverage of a great deal of introductory content. The breadth of coverage of subject-matter[4] undertaken is quite ambitious in such a short book;[5] and will be welcomed by those students who are looking for quick descriptions and explanations in a variety of areas. The breadth of coverage is reflected in the fact that some concepts are not examined as fully as they might have been,[6] while, at the same time, there are unusual emphases on some subjects so far as the length and depth of discussion is concerned.[7]

The author makes good use of examples to illustrate principles which students often find difficult to understand in the abstract. The use of illustrations is particularly good in the sections on case law[8] and interpretation of legislation.[9] In the chapters on case law and legislation, examples of 'real' cases and statutes are referred to in a way which should be easily understood by most students. However, the book suffers from a tendency to rely on an illustration of a principle without ensuring that an adequate *general* description of the principle is given.[10]

At the end of all except the first and last chapters, the author provides sample questions with suggested model answers, including discussions of 'how to' go about answering the particular questions. In addition, further self-testing questions are provided for students' use, which provide a relatively comprehensive basis for self-checking of understanding of the material contained in the relevant chapter. The inclusion of the questions and the model answers will be useful to students.

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4 See *above* n.3. The book includes subjects as diverse as a discussion of *Mabo (No. 2)* (at 31-2) , an outline of the law of negotiable instruments (at 126-8), and a description of the English court structure (at 62-4).

5 The book is 138 pages long, including an index.

6 For example, in the chapter entitled 'The Legal System' (which is largely concerned with court structures and hierarchies), the notion of alternative dispute resolution is introduced: at 64. However, its significance and its relationship to the court system are not addressed.

7 In the chapter entitled The Legal System, only two paragraphs are devoted to tribunals: at 62. By comparison, the author devotes a page and a quarter to the English court structure: at 62-64.

8 See, for example at 72-76.

9 At 99, 103.

10 The explanation of implied authority is an example of this: at 116.

In the final chapter, the author provides brief outline-style descriptions of some important areas of law.[11] The outlines will be helpful to beginning law students, in that they are more detailed than the brief descriptions available in legal dictionaries; and shorter and easier to understand than the mass of information to be found in specific texts. The author makes good use of examples to illustrate the concepts he introduces in this Chapter. The inclusion of the information in this chapter is a sound idea for a book which is intended to provide support for students at the beginning of their academic legal careers.

While most of the book is clearly explained, some curious statements and omissions, which have the potential to confuse and mislead the novice reader, appear throughout the book. A number of examples of this are to be found in the section in the first chapter dealing with the classification of laws as 'public' or 'private'. Carvan uses the public/private distinction as a basis for classifying 'laws', without identifying the reasons for classifying laws, or the basis on which it might be useful to classify laws as either 'public' or 'private'. The lack of justification for the distinction is made worse when he points out, without explanation, that '[t]here is however much overlapping [between public and private law]'.[12] This overlap is then unhelpfully illustrated by way of confusing statements in the thumbnail sketches of the areas of 'public law' which follow.[13] In the corresponding figure which represents 'A Classification of Law', various headings of 'private' law are set out. However, these headings do not

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11 The concepts described in this chapter are agency, administrative law, business entities, contract, crime, negotiable instruments, property, succession, and torts. It is not clear why these particular concepts were chosen. The choice seems rather odd, particularly given that administrative law and crime have already been outlined in the first chapter.

12 At 5.

13 In relation to taxation law (included as an example of 'public' law), the author states that '[a]lthough individual cases might properly come within the cloak of private law, taxation law falls properly under the category of public law': at 9. This apparent contradiction is not clarified. Similar statements are made in relation to industrial law: at 8.

precisely correspond with what are stated to be '[t]he main areas of private law' two pages further on.[14]

These examples illustrate some deeper problems with this book. It may appear helpful and consistent with the book's intentions to provide brief, simple descriptions. However, if the underlying justification for a principle is not explained, then students are likely to become confused, particularly where a complex notion is reduced to a generalisation, which is then qualified, without adequately explaining the basis for either the generalisation or the qualification.[15]

At one level, the book is highly structured, in that it contains many sub-headings which break up the text. This makes the book less visually intimidating than some of the more substantive texts. The use of sub-headings makes the book quite easy to read; and will probably be welcomed by students looking for quick explanations which do not require much effort on the part of the reader. On another level, one is often left without any clear sense of structure, even within chapters.[16] The linkage between different chapters, particularly so far as identification of any coherent themes is concerned, is quite weak.[17] The lack of structure and explanation of links leads to difficulties in the order in which material is

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14 The areas common to the figure and to the list of the 'main areas' two pages later are: contract, torts, succession and property. The additional areas of 'private law' in the diagram are corporate law and banking law, which are not further discussed in the book: at 7. The additional 'main' area set out two pages on, under the heading of 'Private law', is 'negotiable instruments': at 9. The law of negotiable instruments is explained at length (in a rather confusing way), along with the other 'main areas' of private law, in the final chapter of the book.

15 The classic difficulties in attempting to make confusing legal principles appear rational and logical pervade this book. The difficulties are exacerbated by the author's task in attempting to present legal principles in an accessible form to novices.

16 This is particularly so of the first chapter, where a range of different ideas are introduced, under the general heading of 'Studying Law', with little apparent sense in the choice of subjects or in the order in which the ideas are introduced.

17 There is, for example, no explicit discussion of the relationship between legislation and case law as sources of law.

introduced.[18] The absence of an introduction and a conclusion to the book highlights the absence of any clear structure at a deeper level.

The book is quite traditional in that it contains only limited reference to contextual or theoretical issues. The chief exception to this is found in a section titled 'Theories Of Law' in the first chapter, where a very brief introduction is given to some ideas in jurisprudence.[19] The significance of the discussion is not explored, and has no apparent connection to the rest of the book. The author's traditional approach is also exemplified in his deference to England, in terms of reference to English authority,[20] as well as emphasis on the significance of Britain in Australian legal history.[21] The importance of the latter is not seriously open to question, but it is respectfully suggested that there is no real justification for the former.

While much of what is said in the book will be relevant to law students Australia-wide, the book is based on New South Wales legislation. The author sometimes notes where the legal position in the 'other' states and territories differs from that of New South Wales; usually without providing details as to the exact differences or the states and territories in which the differences are to be found.[22] This is understandable given the size of the book, but for these reasons, the book will be of greater

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18 For example, the phrase 'bicameral legislature' is first used at 30, and is not defined until the following chapter: see at 39.

19 The author refers briefly to natural law and positivism: at 3.

20 The Table of Cases refers to thirteen English cases; by comparison, it refers to only nineteen Australian cases: at xiii. There is no reference to cases from other countries.

21 There is an extended section on the history of the reception, and application, of British legislation in Australia: see at 26-30.

22 The most notable exception is in the section on Courts in Chapter 4, where some detail is provided on the courts of the 'other' states and territories, although this detail is mainly related to jurisdictional limits in civil proceedings (although no jurisdictional limits are provided for Western Australia), and otherwise by direct comparison to the New South Wales court system. This over-simplification could mislead a reader. For example, the author writes that "the Supreme Court [of Queensland] is similarly constituted to that of New South Wales": at 58. While this is partly true, it might give the incorrect impression that, like the New South Wales Supreme Court, there are 'speciality divisions' (the examples given in relation to New South Wales are Admiralty, Probate and Commercial Causes) of the Supreme Court of Queensland.

assistance to students in New South Wales, and incomplete in significant respects for students in other states and in the territories.

While the content of the book is quite orthodox, the style differs from traditional legal writing. It is quite simple in the language used, which is fairly informal and appropriate in levels of explanation.[23] Occasionally, the author reverts to a traditional legal writing style, particularly in his choice of words;[24] however, generally, the style should be accessible to first year law students. The book does not contain footnotes,[25] is quite short, the print is large, and the pages small. All of these features, together with the use of sub-headings and short paragraphs should make the book an easy and popular reference for students.

The book, ultimately, should be judged against its own statement of intention. In short, it is a relatively easy to read[26] pre-digestion of the standard material commonly presented for students' enjoyment in introduction to law courses and texts.

At one level, this is as much as might be expected of such a book; and on one interpretation, might represent a successful achievement of the author's stated objective in writing the book. However, underlying issues are obscured if this interpretation is accepted. How appropriate is this approach in a work which professes to complement, not merely replicate, what might be found elsewhere?[27] To what extent is a highly content-based book adequate to address the underlying educational issues which are to be found where students require assistance in their early legal studies? Might it not have been more appropriate to focus on developing explanations and understandings of the key concepts which would help to

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23 There is some reference to latin terminology, which is clearly unavoidable in such a discipline; although it is sometimes used where this is not necessary, such as the reference to the 'nemo dat' rule in the discussion of negotiable instruments: at 126-7.

24 See the use of the word 'proper', for example, n.13 above.

25 [I could not resist inserting a footnote here. After all, this is a scholarly journal, isn't it?] The book does contain adequate reference to cases and legislation, and limited reference to other works.

26 Although, unfortunately, the book is about as exciting to read as most other law texts.

27 Preface to the Second Edition at ix.

unlock some of the mysteries of the law and the way that it is taught? This book does not evidence consideration of such questions.

While the author must be commended for covering so much material in a way which is likely to be accessible to beginning law students, it would have been nice to see a fresh approach to the explanation of important ideas in law, which would have supported introductory texts, without merely replicating the content of those texts. Unfortunately, this more ambitious project must wait until another time.