or by the Prime Minister. Indeed, one of the fascinating features of the book is the way in which it traces the gradual accumulation of tremendous power into the hands of one man.

Little remains to be said. This is an interesting and scholarly work. It will plainly be of great interest to historians and political scientists. I hope that they will pay heed to the author's criticism, in his closing pages, of the bankruptcy of much contemporary English writing in the field of political theory. The book should also be of much interest to lawyers, for if they are to succeed, they need to understand many things besides the rule of cases and statutes; and among those other things the way in which government works holds an important place.

For these reasons I warmly recommend this book. And I venture the hope that before long we shall have a similar production dealing with the Australian political systems.

P. BRETT*

Cases and Materials on Contract, by R. E. McGARVIE, LL.B. (Hons) (Melb.) and F. P. DONOVAN, LL.B. (Adel. and Q'ld), B.A. (Oxon.), B.C.L. (Oxon.), LL.M. (Melb.) (Law Book Company of Australasia Pty Ltd, Sydney, 1962), pp. i-xxiv, 1-610. Australian price £4 5s.

One of the most interesting aspects of legal education in Australia and particularly Victoria in recent years has been the trend towards the so-called 'case-book' method of study. The consequence of this development has been the publication of a number of case-books on various branches of the law, and McGarvie and Donovan's first-rate book *Cases and Materials on Contract* is one of the most recent of them. The field of contract is perhaps a good one to study by the case-book method. This method of teaching is supposed to enable the student to discover for himself, with some assistance from his teacher, the basic principles which guide the courts in reaching their decisions. It is intended to give the student practice in analysis and synthesis. In short, it is intended to enable him to learn something of what the law is, and to gain some understanding of the judicial process. He should also acquire practice in applying principles to different fact situations. There are clear principles in the field of contract, and for the most part they combine together to form a coherent body of law dealing with a single subject matter. These principles can be readily discovered by a study and analysis of the cases, and at the same time the student can acquire those skills which the case-book method of study is supposed to give him.

McGarvie and Donovan's work is an admirable example of the modern case-book. As well as reports it contains such things as comments by the authors, extracts from statutes, extracts from articles and books, and problems. The reports themselves are presented in various ways. At times the whole report appears, at other times there is an extract only, or a summary. Counsel's arguments and headnotes are omitted. The whole is presented in an attractive and stimulating way.

It is clear that the authors have devoted a great deal of time to the form of this work, and have taken the moderate view that the merits of the case-book system will not be lost if the student is occasionally given some assistance in comprehending the intricacies of the subject with which he is dealing. One interesting feature of the book is the

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table of contents. The editors of all modern case-books systematize their material, and divide the material up into chapters and sections corresponding to their notion of how the subject matter ought to be treated. McGarvie and Donovan have carried this process further than most, and have divided the material up in a most elaborate manner. They have set out this breakup in full in the table of contents, which thus runs into seven pages. The scope of the breakup can be seen from this example:

2. Elements of Agreement (b) Acceptance (i) May be express or implied.

The argument against such an elaborate breakup is that the student only has to look at the table of contents to know what to look for in the case he is about to study. Although this may sometimes be true it is not always so. In any event, there will still be much of complexity for him to analyse and he must still study the case to comprehend the principle involved and how it fits into the overall picture. I think this was a wise decision of the authors, and adds to the quality of their work. In the same spirit the authors have included references to the cases from which the facts of many of the problems are taken. Similar thoughtfulness for the reader of the book is shown in the insertion of extracts from articles on such difficult topics as consideration and mistake. These are generally placed at the end of a series of cases on the topic so that the student can compare his conclusions with those of the author of the particular article. The authors' choice of articles incidentally illustrates their own views on some matters of debate. For instance in dealing with mistake they include *McRae v. The Commonwealth*[1] but not *Couturier v. Hastie*[2] (although of course that case is discussed in *McRae v. The Commonwealth*), and conclude the section on mistake by reprinting an article by Shatwell[3] in which he expresses the unusual but, in all probability, correct view that at common law common mistake does not make a contract void.

The authors' arrangement of the subject matter corresponds to that found in most modern books on the subject. The arrangement gives an appearance of coherence to the subject, and covers the field admirably within the limits of a student's book. At first sight the doctrine of privity of contract does not seem to find a place in the table of contents, but it is found under the heading of 'Third Party Contracts' which is included with agency in the Part described as 'Limits of Contractual Obligation'. I would prefer to find privity preceding agency rather than following it as in this book, but such choice of arrangement is largely a matter of personal taste.

The proper rationalization and classification of the cases on illegality has occasioned much thought in recent years. McGarvie and Donovan divide such cases into (a) Contracts Illegal in the Strict Sense, and (b) Contracts Void as against Public Policy (illegal in the traditional sense only). Under the latter heading are placed cases dealing with contracts tending to prejudice the status of marriage and contracts in restraint of trade. Under the first heading are placed a varied collection of cases ranging from *Wood v. Little*[4] dealing with contracts tending to promote corruption in public life to *St John Shipping Corp. v. Rank*[5] dealing with the effect of performing contracts contrary to statute. Whilst the division between the two groups is reasonable having regard to some differences in

[1] (1951) 84 C.L.R. 377. [2] (1856) 5 H.L.C. 673.
[3] Shatwell, 'The Supposed Doctrine of Mistake in Contract' (1955) 33 *Canadian Bar Review* 164. [4] (1921) 29 C.L.R. 564. [5] [1957] 1 Q.B. 267

the approaches of the courts to each group, the title of the second group does seem misleading. Public policy is the root cause of the courts holding that many of the contracts in the first group are illegal, and the result is that these contracts are held to be void. The words 'illegal' and 'void' are often used by the courts as though they were interchangeable. On the other hand, the contracts in the second group are often referred to by the courts as being illegal. Chitty deals with the contracts of both classes under the one heading, and refers to them as being 'illegal or void'. Thus many of the contracts in the first class could truthfully be described as 'void against public policy'. However, this is but a matter of nomenclature, and in essence I agree with the authors that the two classes are better dealt with separately. In fact I feel that since the authors throughout have sought to subdivide the subject so as to attain maximum clarity, they could have carried that principle further into this part and broken up the first group. The problems raised in such cases as *St John Shipping Corp. v. Rank* as to whether a statute hits at a contract or an act are of a different character from those raised by the other cases in this group. A separate section dealing with contracts made illegal by statute would help the student who tried to draw together the cases reported in this group.

The one topic of any consequence which is not dealt with is 'assignment'. I imagine the reason lies in the authors' aim 'to emphasize the aspects of the law of contract where practical problems arise most frequently today'. The authors have succeeded admirably in this aim. The work is full of interesting cases and the emphasis is on the sort of problems frequently found before the courts today, such as collateral agreements, exemption clauses, discharge by breach and so forth. Whilst many leading authorities are included in the cases reported, the authors have not hesitated to omit leading authorities in favour of more modern cases where the problems involved are found in a modern setting. In such cases the leading authority is discussed and analysed in the case reported, so the student loses nothing by not having it reported in the case-book. It is interesting, incidentally, to note that the authors have not dealt at all with the question whether the performance of a duty owed to a third party can amount to consideration. This omission illustrates how the authors are concerned with practical problems. Whilst this question is very interesting academically, there has been no reported case on it since the nineteenth century.

The authors are to be congratulated on the inclusion of many Australian cases, both amongst the reports and amongst the problems. These cases are not included just because they are Australian, but also because they are excellent examples of the subject matter involved, and at the same time full of learning. The student, and for that matter the practitioner, often fail to realize what a fund of example and learning is to be found in the pages of the Australian law reports. There are such examples of this learning as the masterly comparison of the remedies of specific performance and injunction given by Dixon J. (as he then was) in *J. C. Williamson v. Lukey*[6] and the clear analysis of the effect of incapacity of the mind on a contract or a conveyance contained in *Gibbons v. Wright*.[7] There are many other examples. The authors have also followed the usual practice in case-books of scattering some chaff round amidst the grain. There is a minimum of this, but enough for the student to learn something of the art of sorting out the good from the bad.

All in all this is a thoroughly good book. It is a true Australian case-

[6] (1931) 45 C.L.R. 282. [7] (1953) 91 C.L.R. 423.

book, and yet it could be used with advantage in any common law system. It will be a boon to any Australian teacher in the field of contract, and at the same time it could find a place on the shelves of any practitioner. Here the practitioner will find an outline of what the law of contract is concerned with, and a report of some case stating the law on any of the really practical problems which arise in the law of contract today. Needless to say, as one would expect in a work of this quality, there is quite a full and useful index set out in the back. This book is a significant contribution to the growing number of Australian legal works, and I highly recommend it.

HADDON STOREY*

An Introduction to Roman Law, by BARRY NICHOLAS (Oxford University Press, 1962), pp. i-xiv, 1-281. Australian price £2 6s. 6d.

This small but excellently-produced volume is a recent addition to the Clarendon Law Series—a series of general introductions to various fields or systems of law, designed for both the law student and the student of social sciences. Mr Nicholas tells us in his Preface that he has tried to give an account of Roman law which will make explicit its fundamental assumptions and distinctions, will criticize and evaluate the achievements of the Roman lawyers, and will point out the ways in which their work has survived up to the present day.

I think that Mr Nicholas has made a notable success in his self-chosen task. I must confess at once that my own knowledge of Roman law could properly be described as scanty, if not minute. Thus I cannot say whether, on any given matter, Mr Nicholas' views are completely accurate or require some qualification. But from the academic position which he holds, and the fact that Professor H. L. A. Hart, the general editor of the series, selected him for the task of writing this volume, the reader is entitled to assume—and I have no doubts at all on the matter—that, taken as a whole, the book gives an accurate outline of Roman law.

I am equally sure that there are many points at which the experts in this field would want to make qualifications to the author's views, and that there are some matters of detail on which they would violently disagree with him. But this seems to me to be quite irrelevant. Blackstone is not to be criticized because he omitted to state many refinements which can be found in Viner's Abridgement. So also with the possible criticism that the author has over-emphasized this point, or neglected that aspect. Doubtless, from the expert's point of view, Mr Nicholas has sinned in every one of these ways. Nevertheless, an outline has to remain an outline, and must not be allowed to became a detailed text. Apart from anything else, if it becomes too detailed it will inevitably tend to be dull reading; and to my mind, dullness is a conspicuous feature of much English writing on Roman law. Here again, Mr Nicholas has managed to keep his work in a form which makes it easy, almost racy, to read.

The only doubt which remained in my mind at the end of reading the book is whether the study of Roman law possesses all the value which the author claims for it. The doubt springs from two quite different sources. First, we are all acutely conscious that, with English law, what is written about as 'the common law' in the books is not by any means a true reflection of our legal system operating in practice as a going

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