

dential matters resulting, no doubt, from the practical problems which the present era of rapid social change forces us to grapple with. The evils of the Nazi era have impelled us to reconsider the complete divorce between law and morality which Austin appeared to have promulgated. Changing attitudes on questions of sexual morals have led to another major controversy dealing with the same problem from a somewhat different angle. In these discussions jurisprudence has, as always in the past, leaned heavily on the work of contemporary philosophers. And so the careful analysis of language which has formed the major part of English philosophic writing in recent years has received in this latter period a specific jurisprudential application.

In this collection of essays Professor Summers has brought together a number of examples of this type of jurisprudential investigation. All of the essays have already appeared elsewhere, but in journals which are not readily accessible outside university libraries. It is thus extremely useful to have these pieces brought together and published in a form which makes them readily available to any lawyer who is concerned with his place in society and looks beyond the daily task of earning a living by advising clients. Professor Summers has himself contributed a brief introduction outlining the philosophical approach which is common to all the writers represented.

The ten essays in this collection are divided into two sets, the first five discussing legal concepts. In this section Professor Ronald Dworkin asks whether we can really consider law as nothing more than a system of rules. Dr Honoré re-examines the concept of social justice, Professor Herbert Morris investigates the claim that law is concerned with external conduct and morality with internal conduct, Professor Glanville Williams discusses the concept of legal liberty and Dr Kenny the problems of intention and purpose in law.

The second set of five essays has the common theme of asking what is the rational justification for dealing with particular problems in specific ways. Dr Lucas discusses various processes for resolving disputes, Professor Graham Hughes analyses and refutes the thesis concerning morality and law advanced by Lord Devlin, Professor Golding discusses the justification of constitutional decision in the United States Supreme Court, Professor McCallum examines the value of considering legislative intent when interpreting statutes, and Professor Wasserstrom asks to what extent one is justified in disobeying the law.

This account of the scope of the collection suffices to show its broad range and depth of interest. The problems discussed are of vital concern to every lawyer today. He cannot avoid holding some philosophy with regard to them even though he may be unconscious that he holds it. And a volume such as this, which brings out clearly the implications in the different views held on each of the problems, cannot fail to be of value.

Inevitably, one has one's own preferences for particular discussions and treatments. In my opinion, every one of these essays is worth reading, but I would single out for especial commendation the contributions by Professor Dworkin, Dr Lucas, Professor Hughes and Professor Wasserstrom. Each of them is a splendid discussion which of itself would justify an investment in the whole collection. But I do not wish to imply that the other essays can be disregarded. My particular preferences for these four probably reflects no more than the fact that I found these four topics more relevant to the problems which are currently attracting my attention than the other six, but other readers with different interests could and probably would take a quite different view.

In conclusion, I would stress once again that this is an excellent collection, and warmly recommend it as a book that should form part of the library of every contemporary lawyer.

P. BRETT*

Australian Divorce Law and Practice, by PAUL TOOSE, C.B.E., LL.B., One of Her Majesty's Counsel for the States of New South Wales and Victoria, RAY WATSON, B.A., LL.B., One of Her Majesty's Counsel for the State of New South Wales, and a member of the Bars of Victoria and Papua-New Guinea, and DAVID BENJAFIELD, LL.B. (Sydney), D.Phil.

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(Oxon.), Professor of Law, University of Sydney, Member of the Law Reform Commission of N.S.W., 1966-67; Historical Introduction by MALCOLM BROUN, B.A., LL.B., Barrister-at-Law, with a foreword by HON. NIGEL BOWEN, Q.C., M.P., Attorney General of the Commonwealth. (Law Book Company Ltd, Australia, 1968), pp. i-cvi, 1-1162, plus a supplement to 29th February 1968. Price: \$29.50.

This is an excellent book. For most practising lawyers it is necessary to know 'where to find your law', and for any lawyer, whether specializing in this jurisdiction or not, this book provides the answer to the question 'Where to find the Law on Australian Divorce and Practice'.

The timing for publication is good. The Matrimonial Causes Act 1959 (Cth) was proclaimed in the month of February 1961, and the Supplement brings the book up to date to 29 February 1968, so that the seven years during which the Australian Matrimonial Causes Act has been in force are covered.

The Preface commences with the words 'The Matrimonial Causes Act 1959-1966—Sir Garfield Barwick's Act', which is literally true, but many years before the Matrimonial Causes Act was passed Mr Justice Joske, then a Member of the House of Representatives, endeavoured by a private member's Bill to get a matrimonial Act passed, because he realized, as did many other practitioners in the divorce jurisdiction that a federal divorce Act was imperative. One feels that Mr Justice Joske's great singlehanded efforts which culminated in the passing of the Act are too often overlooked. Prior to the passing of the Act each State of the Commonwealth of Australia had different grounds for divorce. The Matrimonial Causes Act 1959 not only remedied this but created an Australian domicile and revolutionized the practice of Australian divorce law. Before the passing of the Matrimonial Causes Act there was an excellent book, *Divorce Practice in New South Wales* by Mr W. K. S. MacKenzie, which although dealing mostly with the New South Wales legislation dealt with the basic principles of the English law, and on all subjects common to the States quoted relevant cases and the conclusions and principles applicable to the law. The last edition of *MacKenzie* which was to bear his name alone was published in 1935, but other authors were responsible for carrying on this work, the last edition of which was edited by Treatt, St John and Mahoney in 1952.

The learned authors of the book under review have to some extent modelled their work on *MacKenzie's Divorce Practice*, but have had a much wider field to cover. They had not only a new Act and Rules covering the whole of Australia but the seven years during which there have been decisions under the Act and amendments to the Act and Rules. The book contains reference to relevant judgments given in the English and New Zealand Courts as well as Australian decisions on principles unaffected by the passing of the Act. In the seven years many judgments of the Courts in the various States have been reported. Some of these judgments are the subject of marked judicial conflict in the interpretation of the Act and Rules. One example of this concerns the subject of discretion statements. Rule 164 of the Rules provides *inter alia*: '(1) The court may, if it considers it proper to do so in the circumstances of the particular case, require a discretion statement filed by a party to a suit to be tendered in evidence, read out in open court or produced for inspection by another party to the suit—(a) at any stage of the trial of the suit'. The book under review then proceeds to quote the case of *Nestor v. Nestor*,¹ and it would appear from Selby J.'s (N.S.W.) judgment that he assumed the Court's power to order inspection of the discretion statement. In *Wagner v. Wagner*,² Begg J. (N.S.W.) made an order at the hearing of the suit for the disclosure of the discretion statement. In *Tuck v. Tuck*,³ Allen J. (N.S.W.) refused an application made before trial to inspect the contents of the discretion statement. In *Jarvis v. Jarvis*,⁴ Barber J. (Vic.) granted an application to inspect the discretion statement before the hearing of the suit. In *Graham v. Graham*,⁵ Selby J. (N.S.W.) held that the leave to the Court under Rule 164(2) should only be granted in exceptional circumstances. In *Hawkins*

1 (1965) 6 F.L.R. 394.

2 (1965) 6 F.L.R. 446.

3 (1966) 8 F.L.R. 80.

4 (1966) 8 F.L.R. 87.

5 (1966) 8 F.L.R. 90.

v. Hawkins,⁶ Jenkyn J. (N.S.W.) decided that the Court had no power under Rule 164(2) to allow inspection by one party of a discretion statement by the other prior to trial or custody proceedings. In *Carmen v. Carmen*,⁷ Mitchell J. (S.A.) followed *Hawkins v. Hawkins*. However, in *Kubiak v. Kubiak*,⁸ Lush J. (Vic.) declined to follow *Hawkins v. Hawkins*. In *Pertoldi v. Pertoldi*,⁹ Smithers J. (A.C.T.) in refusing to give leave to inspect the discretion statement says: 'My decision in this case of course owes much to the comprehensive examination of the relevant authorities and the reasoning of Jenkyn J. in *Hawkins v. Hawkins*'. The divergence between the judiciary in the various States has been dealt with in this book by setting out the judgments given in some detail. In most instances the learned authors refrain with great wisdom from advancing their own opinions.

It would be a great pity if the work which has been done in unifying the divorce laws throughout Australia should be lost by the development of different practices in different States in the application of the Act and Rules.

This work must have been a formidable project. It is extraordinary to find that the authors have been able to inject some humanity into it. An example of this is found at page 626 of the book where the authors are dealing with the subject of injunctions. In dealing with a case of *Taylor v. Taylor*,¹⁰ they say: 'Selby J. refused the injunction sought but ordered that the husband be restrained from molesting the wife, from using insulting, indecent or humiliating language to her and from entering her bedroom except at her express invitation. He ordered that the wife be restrained from provoking the Respondent by words or actions'. A footnote appears: 'The authors understand the parties were before the Court within a short time seeking attachment for non-compliance with these orders'.

Having said earlier that this book is modelled on *MacKenzie's Divorce Practice* it is worth noting that the structure of both commences with a table of contents followed by a table of cases. The developments that have taken place in the last 15 years in this field are illustrated by the fact that in *MacKenzie's* book the table of cases takes up 30 pages, and in the book under review the table of cases takes up nearly treble that number. In the present book there follows the Introduction, called a 'Historical Introduction', and then follows the Matrimonial Causes Act 1959-1966, annotated and explained section by section. At page 1074 at the end of the book there is a comprehensive index from which it is possible to find any subject matter contained in this book quite easily.

In most instances judgments are exhaustively set out and explained but when it is necessary to refer to a case noted at the foot of any page the case is directly relevant to the principle expounded. It may seem strange to compliment authors of a textbook on this ground, but unhappy experiences in some legal textbooks cause me to praise it.

In this volume one also finds that the authors have included, in addition to the Matrimonial Causes Act and Rules, the Marriage Act 1961-1966 and the Regulations to the Act, thus covering the subject of law relating to marriage and divorce.

There is one criticism I make and the fact that it is so minimal speaks for the general excellence of the book. I feel that when amendments to the original Act appear in the text it would be easier to follow if they were printed in darker letters. The learned authors of this work are to be congratulated that from their knowledge, industry and research they have produced an analysis of the divorce law and practice in Australia which will be of practical use as a standard textbook for students and of invaluable assistance to the legal profession.

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The Law Governing Employment in International Organizations, by M. B. AKEHURST, M.A., LL.B., Docteur de l'Université de Paris, of the Inner Temple, Barrister-at-Law, Lecturer in Law at the University of Manchester. (Cambridge University Press, Cambridge, 1967), pp. i-xxvii, 1-294. Australian price: \$11.90.

⁶ (1968) 8 F.L.R. 92.

⁸ (1967) 10 F.L.R. 64.

¹⁰ (1964) 5 F.L.R. 122.

⁷ (1966) 9 F.L.R. 200.

⁹ (1966) 10 F.L.R. 53, 60.

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