BOOK REVIEWS

Textbook of Criminal Law, by Professor Glanville Williams, (Stevens, London, 1978), pp. i-xl, 3-973. Price $35.20 (hardback), $22.00 (paperback). ISBN 0 420 45470 5.

Ever since Professor Williams' classic work, *Criminal Law: The General Part* (second edition) appeared in 1961, its sequel (*The Special Part?*) has been eagerly awaited. What Professor Williams has produced instead is a general textbook dealing with the criminal law, covering much the same ground as that contained in the earlier work, but extending also to a consideration of the constituent elements of substantive offences.

The author describes the purpose of his new book as being 'educational', with no assumption being made that the reader has knowledge of any branch of the law whatsoever. However the book which he has written is not in any real sense suitable for persons untutored in the law. Certainly some of the earlier chapters contain general expositions of such matters as the theory of precedent and the basic aims of the criminal law. It soon transpires that the author finds himself growing impatient with such 'pedestrian' material and almost imperceptibly the reader finds himself being drawn into increasingly rigorous logical analysis and complex doctrine. The culmination of this process is reached late in the book where several chapters (notably Chapter 31 'Theft: The Ownership' and Chapter 34 'Theft and Illegality') are written in a vein which would be difficult to comprehend for anyone other than a highly skilled jurist well versed in the doctrines of law discussed therein.

The manner in which the book is presented is most unusual. We are introduced from the earliest chapters to an almost mythical student — the type of student whom law teachers purport to desire to produce but secretly dread the thought of having in their classes. This student is extraordinarily precocious, persistent and absurdly clever. Professor Williams engages in sharp dialogue with him/her constantly throughout the book, each testing and probing the merits of the arguments put forward by the other. A very engaging image is conjured up of the learned Cambridge Don sitting in his study avidly conducting animated discussions with himself, while passers-by shake their heads in bewilderment. The technique of presenting material in this manner ensures that the exposition is lively, but whether it renders the ideas in the text more readily capable of being undersood is perhaps doubtful.

The author is not loath to express his opinions forcefully. He is strongly critical of the narrow scope given to the doctrine of attempt by the House of Lords in *Roger Smith*.[1] He is remorseless in exposing the logical flaws inherent in the reasoning of their Lordships in *Majewski*[2] and in rejecting the distinction there drawn between crimes of basic intent and crimes of specific intent. One can only sit back and admire the devastation which he inflicts upon these ill-conceived excrescences of the criminal law.

He is perhaps on less firm ground in his overall treatment of property offences. The Theft Act 1968 (Eng.) was designed to simplify and rationalize the law relating to offences of dishonesty. To a considerable extent it has been successful in so doing. Yet Professor Williams has an enormous bee in his bonnet. He insists that courts cannot properly construe the provisions of the Theft Act without a full and deep understanding of the complexities of the law of property and of contract. The

[1] [1975] A.C. 470 (H.L. (E.)).
[2] [1977] A.C. 443 (H.L. (E.)).

spectre of lay justices and partly trained magistrates (who preside over the vast bulk of offences involving dishonesty, in Victoria at least) working their way through the law pertaining to equitable tracing, constructive trusts, and quasi-contract is one which is too awful to contemplate. Yet Professor Williams argues that the theft provisions must be construed in this manner. Your reviewer can only shake his head and respectfully disagree. This is not to say that civil law concepts have no role to play in analyzing the Theft Act, but merely that it is dangerous to import in its entirety a body of case law clearly designed and developed to achieve different ends.

It is difficult to know how to evaluate this book. It displays great erudition on the part of the author (who quotes extensively from Deuteronomy, Lewis Carroll and Nietzsche amongst many other sources) and is, on the whole, exceedingly well written. Yet it is not a book that will commend itself to first year law students studying Criminal Law. Nor will it appeal to practitioners seeking brief and straightforward expositions of the substantive law involved in any particular case they might happen to be handling. It is really a scholar's book, full of speculation about troublesome issues, painstaking analysis, and concrete proposals for reform. In these terms it will be of inestimable value.

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The Law of Intestate Succession in Australia and New Zealand, by I. J. Hardingham, (Law Book Co. Ltd, 1978), pp. 1-156. Price $16.00 (hardback). ISBN 0 455 195 471. $11.50 (paperback). ISBN 0 455 198 411.

This book sets out and explains the statutory provisions of the Australian States and Territories and of New Zealand governing distribution on intestacy. It begins with the historical setting of intestate succession. This is of course interesting for its own sake, but is also of contemporary importance because in a number of States, where the intestate is not survived by a spouse, children or parents, the legislation provides for the distribution of the residuary estate among his 'next-of-kin' without disclosing how they are to be ascertained. Although the legislature offers some assistance by saying who is not included in the favoured class, it is to the civil law that one must look to determine this aspect of intestate entitlement under the common law. Dr Hardingham describes the method of determining the next-of-kin under the civil law (page 10).

The de facto wife gives rise to several problems in the succession context; problems which are arising with increasing frequency. In Victoria she cannot claim under Part IV of the Administration and Probate Act 1958 and she cannot take on an intestacy although she may be most deserving. On the other hand her children by the deceased are not discriminated against: see Status of Children Act 1974. Her position is the same in most Australian States. Dr Hardingham points out that South Australia makes provision for the 'putative spouse' and gives that person a right to take on an intestacy and to make a family provision application. A 'putative spouse' is one who is, on a particular date, cohabiting with another as that other's de facto husband or wife and has so cohabited for five years immediately before that date, or during the period of six years commencing before that date has so cohabited for periods aggregating not less than five years, or has had sexual relations with that other person resulting in the birth of a child: see Family Relationships Act 1975 (S.A.) (discussed at pages 69-70). The New South Wales, Western Australian, Tasmanian and New Zealand legislation makes a token gesture to deserving non-kin. There the Crown is able to make provision out of intestate property coming to it as *bona vacantia* for the intestate's dependants, whether kindred or not, and for other persons for whom the intestate might reasonably be expected to have made provision. This would enable the Crown to benefit dependent remoter kin not eligible to take

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