

procedural matters so that these extracts may be added to the work. Should this occur, the criticism which can presently be made of the *Practice*, namely that it concentrates on the judgments of some, giving lesser attention to the judgments of others, would not be warranted. □

C.R. Einstein

Law of Evidence in Australia

Dr P Gillies, Legal Books, \$85 (HB), \$60 (PB)

No longer scraping the bottom of the barrel . . .

In *Reg. v Morgan* Lord Hailsham of St Marylebone described the prosecution as having had to travel all the way "to New South Wales for direct authority in their favour": [1976] A.C. 182 at 210 — as though thereby counsel were so desperate that they were scraping the bottom of the barrel of judicial authority. One can even perhaps speculate on His Lordship's vocal intonation of those clipped English tones to emphasise the distant peregrinations of counsel viz. to the other side of the globe. Counsel had cited *R v Flaherty* (1968) 89 W.N. Pt.1 (N.S.W.) 141 and *R v Sperotto & Salvietti* (1970) 71 S.R. (N.S.W.) 334.

It may be that their Lordships were not accustomed to hearing the citations of N.S.W. cases in the hallowed surroundings of the House of Lords.

It is perhaps very appropriate that in this Bicentennial year Dr Gillies has given us the last word on the Law of Evidence with emphasis on "In Australia". Indeed at page 8, when discussing the sources of evidence he writes that:

"The Australian Legislatures have tended not to follow British Parliamentary initiatives in the area with as much alacrity as was evidenced in earlier generations. . . . Today it is appropriate to speak of an authentically Australian law of evidence, one differing in a number of more or less significant ways from the English which, for so long, fulfilled the role of the template."

In his 78 pages of Table of Cases, Dr Gillies cites a total of 2,407 cases, of which 1,540 are Australian. The total number includes a small number of United States and Canadian citations, but 64% of the total number are Australian, emerging from each of the States and Territories.

The Author's method of citation in the table is most welcome in that, at a glance, one sees a collection of all the reports in which a case has been included, e.g. "*Rogers v Home Secretary* [1973] A.C. 388; [1972] 3 W.L.R. 279; 116 S.J. 696; [1972] 2 All E.R. 1057; affirming *R. v Lewes Justices*; Ex p. *Secretary of State for Home Department* [1972] 1 Q.B. 232; [1971] 2 W.L.R. 1466; 115 S.J. 306; [1971] 2 All E.R. 1126 . . . 431, 432, 434, 435".

The work, released in December of 1987 is a statement of the law as it stood at March 1987.

The student and practitioner are referred to the relevant statutes of all the Australian States and Territories — even

those of the United Kingdom (if I may say that with tongue in cheek).

As we have come to expect from Dr Gillies, this work is the obvious result of meticulous research. He gives us a refreshingly different approach in the exposition of the fundamental principles, doctrines and rules in the law of evidence. His method of exposition is to take us on an historical overview of the general common law principles and trace their development to the present day. The journey is both comfortable and illuminating because of the logical sequential flow of its delivery. He takes us from point to point in such a way as to evoke from the reader "Well, yes, that makes sense when you put it that way".

Dr Gillies exhaustively deals with the various doctrines by dividing them into segments each under a short heading. At times he appears to adopt a Thomistic or Socratic system by posing a short question e.g., in discussing the scope of *Res Gestae*, after demonstrating that strict contemporaneity is not required, he asks, "Must the transaction in issue be inherently dramatic or surprising?", "Does the doctrine apply to purely verbal acts?" and "Whose statement can be part of the *Res Gestae*?"

The work comprises thirty-nine chapters. Under the heading "Applying the Law of Evidence" he devotes two short chapters (14 and 15) on "No Case to Answer" and "Taking Evidence on the *Voir dire*". In treating on the exclusionary rules, there is a chapter on Opinion Evidence another on Propensity Evidence as well as four chapters (24, 25, 26 & 27) on Privilege in General, Occupational Privilege, Privilege Against Self-Incrimination, and Public Interest Immunity, which is followed by a short chapter (28) on the Ireland Discretion. Under the heading Admissions and Confessions, chapter 33 represents a plenary study on the exclusion of confessional statements.

The author's style is laudably readable, often times obviating that all-too-familiar exercise of re-reading a passage in order to understand the particular doctrine.

The Law of Evidence in Australia is, indeed, a major and important work. I would go so far to say that it should be a compulsory acquisition for students and practitioners. Bearing in mind the author's other works viz., *The Law of Criminal Complicity* (1980), *The Law of Criminal Conspiracy* (1981), *The Law of Criminal Investigation* (1982), *Criminal Law* (1985) and numerous articles on Criminal Law and Evidence, it is no wonder that (at least in the District Court) we are hearing more and more citational references to Dr Gillies' works. □

L.J. Attard

Brysonalia

"In pursuing this opportunity to obtain rental revenue the S.R.A. took little notice of signals displayed by persons not on its staff and proceeded on iron rails to a timetable and destination known only to itself." (*National Australia Bank Limited v. Italo Australian Club Ltd*, Bryson J, 23 September 1986)