

are usually attributed to him, or whether Bacon or other contemporaries were responsible, wholly or in part. One looks forward eagerly to reading whatever Professor Hood Phillips chooses to publish on this entertaining topic.

A. C. Brassington

**A CASEBOOK IN THE LAW OF CRIMES**, by Peter Burns, LL.M. (N.Z.) Second edition. Wellington. Sweet & Maxwell (N.Z.) Ltd. xxvii and 556 pp. (including index). New Zealand price \$17.00.

The second edition of this casebook, like the predecessor, is primarily designed for use in New Zealand law schools. It may be that Professor Burns has also done a service to teachers and students in other common law jurisdictions in that he has included in this volume a broad cross-section of references from New Zealand, Australia and even Canada, as well as the stock English decisions to which the English casebooks seem limited. For the student in his first year of full time legal study the ready access which this book provides to a wide range of material must be of great assistance not only as an aid to understanding the basic principles of criminal law but in relation to the general problem encountered by students at that part of their course in developing the facility for legal argument with reference to decided authority. Where the authorities appear to conflict a sampling is provided so that the student is left to work out a resolution for himself, a process which is the integer of legal training. Of necessity the casebook can provide only a lead-in to the law reports and every teacher of criminal law is bound to emphasise that there are aspects of some of the cases referred to which are not adequately covered by the excerpts included. Equally, the personal emphasis placed on an individual course may not find a very direct reflection in the arrangement of this volume. By and large though, cases which are not included in excerpts are at least referred to by way of footnote and the footnotes themselves are replete with reference to the journals. The utility of such a collection largely depends on its currency. Professor Burns is to be congratulated on keeping this work up to date.

I. A. Muir

**EMPLOYEES' MISCONDUCT As Cause for Discipline and Dismissal in India and the Commonwealth**, by Alfred Avins, B.A. (C.U.N.Y.), LL.B. (Columbia), LL.M. (New York Univ.), M.L., J.S.D. (Chicago), Ph.D. (Cambridge). Allahabad, India. The Law Book Co. Ltd. cxxiv and 731 pp. (including index). U.S. price \$8.00.

This book is publication of a dissertation for which the author was awarded the degree of Doctor of Philosophy from Cambridge University. The purpose of the dissertation, according to the Introduction, is to demonstrate that there are a great many fixed rules as to what constitutes employee misconduct and that these can be classified in an orderly and logical fashion. This study has been made from a sociological

viewpoint. Dr Avins' approach was to examine and classify all relevant and accessible reported decisions from the British Commonwealth according to their fact patterns and to thus determine the law on the basis of what the courts have done. That is, that the cases are classified with regard only to their facts and without particular consideration of the express or implied terms of the individual contracts of service and without regard to the peculiarities of the various legal systems surveyed which the principles of employee misconduct are said to transcend. However, the learned author sees fit in many instances to note the occupation of the offender and while this might be regarded as a mere point of fact which distinguishes that case from others, it might also be regarded as a concession that the duties arising from the terms of the individual contract have some bearing on the question of misconduct. In any event, this writer does not agree with the author's derogation of the need to look at the terms of individual contracts, for that leads to distortion.

Some six thousand cases are used in the dissertation, of which a large proportion are Indian decisions. Reference is made to 126 New Zealand cases, some being given considerable attention. The classification of the cases is extensive. The work comprises seventeen chapters and these are divided into a total of 87 major headings which are in turn divided into 353 sub-headings. One general comment might be made concerning the detailed discussion of the cases. The dissertation generally reflects the learned author's view that the traditional judicial view, of the employer/employee relationship as being contractual, is inadequate and that it is more akin to penal law. This is true to some extent in New Zealand, notably where the terms of employment are laid down by statute as in the case of civil servants. On the other hand, apart from non-legal discipline such as censure, the only practical "punishment" for most of the labour force is the determination of the contract of service. Thus, the analogy is of doubtful value.

In the Introduction it is stated that the dissertation is designed to show that there is no such thing as a misconduct case decided on its peculiar facts, that no matter where a case is decided the result is likely to be the same, on similar facts. In fact the results of Dr Avins' extremely thorough research clearly shows that there is general judicial agreement as to what constitutes employee misconduct. Whether this is of practical consequence is, however, another matter. The vagueness which has traditionally surrounded the concept of employee misconduct is to a large extent attributable to the reluctance of the courts to give great weight to precedents. They have consistently taken the view that because the facts of cases vary widely, precedents are unhelpful except where they lay down principles of general application. It is noteworthy that the New Zealand Court of Appeal in *Corry v. Clouston & Co. Ltd* (1904) 7 G.L.R. 213, after an exhaustive review of the authorities, took the view that the question of whether the misconduct of an employee justified dismissal was a question of fact and not a question of law. This aspect of the decision was upheld on appeal to the Privy Council—[1906] A.C. 122. It would thus seem that Dr Avins' treatise is of value only insofar as it provides an elaborate illustration of the application of general principles to particular fact situations. To treat these cases, however numerous and however consistent, as establishing legal rules, may be valid according to modern sociological jurisprudence, but from the traditional judicial view it grossly overstates the value of precedent.

Accordingly, for most purposes the general legal principles relating to employee misconduct are adequately dealt with in text books on industrial or labour law.

Despite these criticisms, *Employees' Misconduct* has the merit of giving content to a hitherto vague concept. Unfortunately, however, the book must be regarded as being much too long for the general reader. Because each aspect of misconduct is considered in minute detail, with very numerous examples, and because every possible authority is cited and extensive use is made of quotation, the text covers 657 pages. Contemplating reading the whole dissertation is somewhat daunting, as this reviewer can testify. In the latter's view any future publication of this work should proceed with distillation in mind.

G. S. MacAskill

CHARLESWORTH'S MERCANTILE LAW Twelfth Edition, by Clive M. Schmitoff, LL.D. and David A. G. Sarre, M.A. London. Stevens & Sons Ltd. 1972. xlix and 485 pp. (including index). New Zealand price \$5.60 (hardbound), \$3.20 (paperback).

This book is in ten parts. The first and major part deals with general principles of contract. The remaining parts cover Contract of Employment, Agency and Partnership, Sale of Goods and Hire Purchase, Competition, Negotiable Instruments, Commercial Securities, Insurance, Carriage by Land, Sea and Air, Bankruptcy and Arbitration.

The books appear deceptively small and one cannot but be impressed that such a large number of topics are covered, and covered as well as they are, in less than five hundred pages. Not only could each part be the subject for a single book but in many cases is — Sale of Goods and Hire Purchase which together form part three, and Bailment which is only a portion of part six, are each subjects of major texts. The preface states that this book is primarily intended as a text book for students, and the wide range is consistent with this. The fact that this is the twelfth edition, three of which have been in the last nine years, and that the eleventh edition had three impressions, would appear to indicate that it has found considerable support especially bearing in mind that in England, unlike New Zealand, there are a number of texts covering similar ground.

This is the second English text submitted to this Review in this general field. One wonders what market the publishers anticipate outside their own country for a basic text intended for use by students of that country and confined to English law.

The reviewer remains impressed that topics are covered as well as they are. The extent of the coverage is however vividly demonstrated by a comparison of the treatment of two subjects, Sale of Goods and Bills of Exchange, with the Acts which relate to them. The Sale of Goods Act in the New Zealand Reprint of Statutes comprises twenty-five pages — this book deals with the Act (which is for all practical purposes identical to the New Zealand statute), together with cases and commentary, in the same number of pages — twenty-five. The Bills of Exchange Act occupies forty-six pages in the New Zealand Reprint — this book covers and comments on the Act in thirty-five pages. It is