

Private International Law, by G. C. CHESHIRE, D.C.L., F.B.A. (4th ed., Oxford, The Clarendon Press, 1952) pp. 1, 664. Australian price £3 18s.

Cases on Private International Law, by J. H. C. MORRIS, D.C.L. (2nd ed., Oxford, The Clarendon Press, 1951) pp. xxvii, 417. Australian price £2 15s. 6d.

The eminent position which Dr Cheshire's treatise on Private International Law has attained not only as a student's book but as a work of reference in the Courts, invests a new edition of it with considerable interest.

As well as incorporating consideration of decisions since 1947 Dr Cheshire has rewritten portions of the book. The rewritten parts are those dealing with contract, domicile, annulment of marriage and transfer of *choses in possession*. The treatment of classification has been shortened and simplified. Capacity is no longer dealt with in a separate chapter but is discussed in connection with the various legal transactions to which it is relevant.

In the new treatment of contract the author vigorously assails the subjective theory of the proper law and seeks to lessen the effect of the authorities which appear to favour the subjective theory by suggesting that they can be explained by having regard to what the Courts did rather than what they said. His method of treatment applied to the *Vita Food* case¹ might dissuade an English Court, which is not technically bound by an opinion of the Judicial Committee, from applying the Committee's reasoning, but one may doubt whether Dr Cheshire's explanation would justify a Dominion Court disregarding the explicit statements of principle contained in that opinion. It also seems to the reviewer that in the discussion of the proper law the author has missed an opportunity to attack the subjective theory by not considering a transaction involving a purported contract where one of the parties could under English law plead *non est factum*. By what legal system is the reality of the agreement to select the law of X as the proper law to be tested? In the previous edition there was considerable discussion of the presumptions in favour of the *lex loci contractus*, the *lex loci solutionis* and the law of the flag which were regarded as facilitating the search for the proper law where the parties did not make an express selection. In this new edition Dr Cheshire recognizes the doubtful utility of these presumptions and abandons them.

The new treatment of domicile is a well arranged and clearly written account of a difficult subject. The reference on p. 159 to Australia might be a little misleading in that it is capable of conveying the impression that there is an Australian domicile for legal purposes generally.

In the discussion of jurisdiction would it not make for clearer

¹ [1939] A.C. 277.

understanding to distinguish between an action *in rem* and a judgment *in rem*? This suggestion is inspired by the comment in Dicey's *Conflict of Laws* 6th ed. p. 205.

That part of the author's discussion of the rules relating to foreign torts which deals with the requirement that the wrong should be of such a character that it would have been actionable if committed in England, must seem inadequate to an Australian reader aware of the problem raised in *Potter v. Broken Hill Pty. Co. Ltd.*² One hesitates to suggest that an English author should investigate the great bulk of Dominion case-law but as Dr Cheshire is not averse to citing South African authority and as the interpretation of the first requirement of the rule in *Phillips v. Eyre*³ is not covered by a great deal of English authority, consideration of this Victorian case in a subsequent edition would not be out of place.

Such of the foregoing comments as are critical are not so fundamental as to prevent it being said that this book remains the best discussion of English Private International Law available for use by an Australian student.

Dr Morris's *Cases on Private International Law* is a case book in the English tradition. The work is intended as a companion volume to Dr Cheshire's *Private International Law* and as such, unlike the American type of case-book, it presents lengthy extracts from the reported cases as illustrations of problems and principles discussed in the companion text book rather than as problems in themselves. The principle of each case or group of cases is indicated in a short introductory statement and at the end of each group of cases relating to a particular topic there is a pithy note. These notes make available many of Dr Morris's views on the subject and at times contain comment critical of the matter in Dr Cheshire's book. For example, Dr Cheshire's view that capacity to marry is governed by the law of the intended matrimonial home is contested at some length.

The range of cases is adequate to the needs of students and for the Australian student desiring the English authorities in readily accessible form the book should be extremely useful.

H.A.J.F.

² [1905] V.L.R. 612.

³ (1870) L.R. 6 Q.B. 1.

A Treatise on Labor Law—by MORRIS D. FORKOSCH. Indianapolis: The Bobbs-Merrill Company, Inc. 1952. Pp.xiv, 1197.

Professor Forkosch, who occupies a Chair of Law in Brooklyn Law School, United States of America, has written an immense book—a volume not only monumental in its physical proportions, but large in its conception. The book includes five "books" (constituting approximately five-sixths of the total contents), with practically all the rest of those contents given over to a number of appendices, to tables of cases, articles and books used or referred to in the text of the