

Strike Law in Australia (2nd ed.), by E. J. Sykes, The Law Book Company Limited, 1982, xxiii + 369 pp. (including appendices and index).

No doubt it is desirable that the law should be made as accessible as possible to the layman. The need for this is no where more apparent than in the area of industrial law. Many industrial officers, union officials and public servants without formal legal qualifications are expected to use, obey, administer and work within a system of industrial relations the framework and operating rules of which are legal. Indeed, lawyers can normally only appear before industrial tribunals by consent or leave. This is not the place to debate the wisdom of such a system, but given that it does exist it is apparent that the many persons without legal training who are necessarily involved in it have need of some fairly detailed legal knowledge and training. It is equally apparent that many do not have any, or any sufficient, training. Until fairly recently relatively few courses catered for the needs of these people and few legal books made any concessions for them.

It is easy for a lawyer to write a book on strike law for non-lawyers. It is not impossible for a lawyer to write a book on the subject for lawyers. But it is a most difficult task to write a book on the subject which is useful for both groups. The problem is that the work which informs or stimulates the lawyer will often be incomprehensible to the layman, while the book for the non-lawyer is normally of little use to the professional.

Yet this is the aim which Dr. Sykes set himself in the first edition of this work, published in 1960 — an aim to which he has adhered in the second edition. To add to the difficulties the author does not shrink from the implications of the title — “Strike Law in Australia”. It is common to speak of the arbitration “system”, but there is no such thing. Each state has its own scheme and these in turn differ from the federal system. They all interact; they have similarities and differences and it is ambitious to attempt to weave law from these disparate sources into a cohesive presentation.

That the author has substantially succeeded in both these tasks in the one book goes a long way towards explaining why the first edition was and why the second edition will be a standard work on strike law in Australia. Legislative changes, in particular, have made a second edition overdue. It is perhaps as well that it was delayed, for legislative action with respect to strikes now seems to have slackened after a fairly active decade. Save for one matter to be mentioned, the book is, then, comprehensive and up to date so far as statutory material goes and one can reasonably hope that it will remain so for some time. One cannot be so hopeful about decisional law and already since this edition was published there have been a number of important judgments.

The book contains fourteen chapters. The first two are intended as necessary preliminary reading for the person without legal training. Most lawyers could also omit the third chapter, unless perhaps they are coming to the area for the first time and desire to obtain an overview of the various industrial tribunals and their mode of proceeding. The fourth chapter,

which concludes Part I of the book, outlines the course of treatment to be followed for the remainder of the book.

Part II of the book, chapters 5 to 11, contains most of the "meat" of the subject and the treatment is extensive. It covers the nature of industrial pressures used, the legal meaning of strike and lock-out, criminal and civil controls, the Trade Practices Act, controls of the arbitration tribunals and a chapter on the statutory injunction. Part III deals mainly with the legal status of trade unions and their liability for industrial action. It must come as a surprise to those who believe that the "right to strike" exists to find that there is so much complex law on the subject and that there is no such right, save perhaps in a very attenuated form.

As might be expected of the second edition of a work by an experienced and distinguished author, these topics are all treated with thoroughness and lucidity, and are stimulating even to the lawyer who comes to the book with some knowledge of its subject matter. One would like to have seen in Chapter 6 some treatment of the concept of "industrial action" as introduced into the Conciliation and Arbitration Act in 1977. The definition of that term covers more than is encompassed within the common law meaning of "strike" or within most state statutory definitions. It avoids many technical problems hitherto associated with the concept. A number of consequences and sanctions can flow from engaging in "industrial action" and those too might have been explored in some detail. This aside there is little else to criticise in the content or emphasis of the book.

As the author concedes in the preface, Chapters 8 and 9, dealing with tort liability and trade practices, may prove difficult for the lay reader, but generally the work meets the author's aim of producing a book which the intelligent lay person can use with profit.

There is little more to be said. The book will remain a reliable and necessary reference for anyone concerned with Australian strike law.

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