

## BOOKS RECEIVED

- BARNARD, WITHERS, *Financing the Australian Courts*, Australian Institute of Judicial Administration Incorporated, Victoria, 1989.
- BISHOP, *Prosecution Without Trial*, Butterworths, Sydney, 1989.
- BRAITHWAITE, *Crime, shame and reintegration*, Cambridge University Press, Victoria, 1989.
- BUTT, *Land Law*, 2nd ed., The Law Book Company Limited, 1988.
- CAMPBELL, GLASSON, LEE, SHARPE, *Legal Research: Materials and Methods*, 3rd ed, The Law Book Co Ltd, 1988.
- CERTOMA, *The Law of Succession*, The Law Book Company Limited, 1987.
- CHISHOLM, NETTHEIM, *Understanding Law*, 3rd ed, Butterworths, Sydney, 1988.
- Commonwealth Secretariat, *Developing Human Rights Jurisprudence: The Domestic Application of International Human Rights Norms*, Marlborough House, London, 1988.
- DELANY, *Security for Costs*, Law Book Co Ltd, Sydney, 1989.
- DETMOLD, *Courts and Administrators: A Study in Jurisprudence*, Weidenfeld and Nicholson, London, 1989.
- DUGGAN, BEGG, LANYON, *Regulated Credit: The Credit and Security Aspects*, Law Book Co Ltd, Sydney, 1989.
- Equity, Fiduciaries and Trusts*, ed. by Timothy G. Youdan, The Carswell Co Ltd, Canada, 1989.
- EVANS, *Statutory Interpretation: Problems of Communication*, Oxford University Press, Auckland, 1988.
- GOLVAN, *Words & Law*, Penguin Books Aust Ltd, Victoria, 1989.
- HARDING, *Public Duties and Public Law*, Clarendon Press, Oxford, 1989.
- HETHERINGTON, *Annotated Admiralty Legislation*, The Law Book Co Ltd, Sydney, 1989.
- International Law and Aboriginal Human Rights*, ed. by Barbara Hocking, The Law Book Co Ltd, Sydney, 1988.
- LANE, *A Digest of Australian Constitutional Cases*, 3rd ed., The Law Book Company Limited, 1988.
- Law and Poverty: Critical Essays*, ed. by Upendra Baxi, Tripathi Private Ltd, Bombay, 1988.

Law Reform Commission (NSW), *Community Law Reform Program*, 12th & 15th Report, 1988.

MILLER, *Contempt of Court*, 2nd ed., Oxford University Press, 1989.

MORISON, SAPPIDEEN, *Torts: Commentary and Materials*, 7th ed, The Law Book Co Ltd, Sydney, 1989.

NEATE, *Aboriginal Land Rights Law in the Northern Territory*, ed, by Garth Nettheim, Alternative Publishing Cooperative Limited, 1989.

NORTHAM, *Shooting in the Dark: Riot Police in Britain*, Penguin Books Ltd, Victoria, 1989.

ROBERTSON, *Freedom, the Individual and the Law*, Penguin Books Aust Ltd, Victoria, 1989.

STOLJAR, *The Law of Quasi-Contract*, 2nd ed, The Law Book Co Ltd, Sydney, 1989.

SUNGAILA, *Litigation in Education*, Gavemer Publishing, Sydney, 1988.

TREITEL, *Remedies for Breach of Contract: A Comparative Account*, Oxford University Press, Melbourne, 1988.

WALKER, *The Rule of Law: Foundation of Constitutional Democracy*, Melbourne University Press, 1988.

WOODS, WILLIAMS & SHARMAN, *Governing Federation: Constitution, Politics, Resources*, Hale & Iremonger Pty Ltd, Sydney, 1989.

## THE BUTTERWORTHS BOOK AWARD

In 1985 Butterworths completed 75 years of publishing in Australia. To celebrate the occasion it offered an award of \$10,000 for the best legal manuscript submitted and accepted for publication. The conditions of entry were that the manuscript must be unpublished and either a practical text for the legal profession or a text designed principally for the use of law students.

The Award attracted several entrants. Only five met the criteria stipulated and these finalists were assessed by the adjudicators, The Rt Hon Sir Harry Gibbs, formerly Chief Justice of the High Court of Australia, J. D. Heydon, Queen's Counsel and Master William Windeyer of the Supreme Court of New South Wales. The criteria used for selection included assessment of how substantially the work succeeded in meeting the purposes it set for itself and the quality of the writing, particularly its clarity, originality, depth of analysis and method of presentation.

Leading members of the judiciary, academia and the legal profession attended a function on 16 November 1989 at History House. A presentation was made to two works of equal merit, the award was shared equally between Mr Michael Evans (*Outline of Equity and Trusts*) and Mr Andrew Ligertwood (*Australian Evidence*).

## EMERITUS PROFESSOR K. O. SHATWELL

Kenneth Owen Shatwell died on 24 March 1988, aged 78. Professor Shatwell was Challis Professor of Law at the University of Sydney from 1947 until his retirement in 1974 and was Dean of the Faculty from 1947 to 1973.

At a memorial service in his honour held in St James Church on 19 April 1988, Emeritus Professor W. L. Morison delivered the following eulogy.

Kenneth Shatwell was the last of three men at the Law School who combined the titles of Challis Professor of Law and Dean for long periods. Among them, they accounted in this way for three quarters of the School's century of history. That period was thus one of personal rule. At times this may have meant that it had autocratic features, but in Shatwell's own case it was personal in different senses. No one gave more anxious personal consideration than he did to the fortunes of the School, to the point of disturbing his sleep. And no one attached more importance than he did to close personal relations with those with whom and for whom he worked.

He was the product of a small and intimate Oxford college: Lincoln, when H. G. Hanbury was law don. In ways they were alike and they were to one another, after the Oxford style among close friends, Hanners and Shatters. Later, Hanbury became Vinerian Professor of English Law, and was called upon to lecture to classes in the mass. But it is doubtful whether he ever really did. It was his habit to perch himself with difficulty on the writing desk of one of the students and talk to him.

The personal connections Kenneth Shatwell established with Lincoln were important to Sydney in later years. Both of those who joined him as second and third professors of law in 1959 had gone to Lincoln to take their doctorates, under his guidance. A present Professor in the Faculty, David Harland, who worked closely with Kenneth Shatwell, was to follow them there.

What Shatwell had done for the School through his personal contacts with Lincoln, he was later to do in the same way through his personal connections at Yale. In the mid-1950s he established the kind of close personal relations which were second nature to him with two significant figures at the Yale Law School. The first was Eugene V. Rostow, then and for sometime afterwards Dean, later Secretary of State for Political Affairs under President Johnson, and still later Director of Disarmament under President Reagan. The second was Myres S. McDougal, then Sterling Professor of Law, a number of times President of the American International Law Association, and counsel in important international cases

down to the present time. Because of these connections, all three professors of law in Sydney had by 1960 been Senior Fellows at the Yale Law School. The connection continued. When McDougal retired from full teaching, and when later Rostow attained the age of seventy years, Yale published books of essays in their honour. By invitation of the Yale editors, the first chapters in both books, assessing the contribution to knowledge of Rostow and McDougal respectively, were written in the Department of Law of the University of Sydney.

Of the personal relations which Kenneth Shatwell had with members of the Sydney profession, among the most important was that with Sir Kenneth Manning. Manning's lectures in bankruptcy in the Faculty were much admired, and the two men were closely associated in Faculty matters. Manning retired from the Faculty when he became a justice of the Supreme Court. Left to himself he would not have done so. But Sir Gordon Wallace, then representing the Bar on the Faculty, took a strong view that it was the function of judges to stick to judging. Nevertheless, it soon became apparent that Sir Kenneth had not really taken Sir Gordon's point, for he became associated with the University in new ways with Shatwell's support. Manning had been concerned that the Admissions Boards of the Supreme Court examined but did not train. When, with Shatwell's support, Manning's feelings were translated into action, the Law Extension Committee of the Senate of the University of Sydney came into existence to provide the training.

Manning was also the first Chairman of the Law Reform Commission in the State, the first body of its kind in the country. Concurrently with the establishment of the Commission, Shatwell worked out with Manning the practice of seconding professors from the Department of Law to the Commission. David Benjafield served four years, I two and after us Professor Heydon and the present Dean, Professor Phegan.

Shatwell's intensely personal approach also infused his academic stance. Hanbury said of him that what assured Shatwell's first at Oxford was his extraordinary knowledge and understanding of legal history and its general historical background, which Shatwell treated as a history of people and ideas rather than of impersonal forces. In this respect he fell naturally into an Oxford tradition coming down through Maine, Maitland, Vinogradoff, Pollock, Holdsworth and in his own time C. H. S. Fifoot.

For some time, Shatwell was scarcely in a position to specialise in what was of most interest to him. The strength of his Oxford record precipitated him, after only the briefest apprenticeship, into guiding the fortunes of Tasmania's law school and teaching practically everything. But then, after war service commanding small naval ships in two hemispheres, he received his Sydney appointment. Whereupon his pattern of interests emerged as like those of Fifoot: legal history and common law subjects. There was one gap in the pattern. He never taught Torts in Sydney. On his arrival in 1947 he decided that, as a matter of personal

kindness, he would not displace me from the subject. But he pressed forward with Legal History, with Contracts and Comparative Law where his right hand man came to be David Harland, and Criminology where his right hand men came to be Gordon Hawkins and Paul Ward in the establishing of the Institute of Criminology.

In the last area he also came to be assisted by his wife Betty. It is not my place to elaborate on her help to him there, for in my time the activities of the Institute were beyond the scope of most of the Department. But what we all knew was that Betty made of her husband's home the proverbial thing of beauty and joy for ever. In it were raised children who achieved success in their own right. One remembers the many delightful staff occasions in that home over which Betty presided, backed up by members of the non-academic staff who helped to make the Dean's life easier generally at the School.

As an administrator, Kenneth Shatwell was confronted when he came to Sydney with a large task of post war reconstruction. The ship of the Law School, when our new captain came on board in 1947, reminded me of the description of the *Patna* given by Joseph Conrad in *Lord Jim*. The structure was crammed with pilgrims, returned from the wars and now on their way to the professional Mecca. The older part of the structure was not taking kindly to having lecture rooms banged together to increase accommodation. The crew was depleted by war and the competing demands of professional reconstruction. But Shatwell turned to resolving some serious conflicts and to building, literally as well as metaphorically. In the late nineteen sixties the new Law School was constructed.

Shatwell's heart was not in a city Law School, but once the decision was made he entered upon the tasks involved with determination. He needed all of his determination, because arranging for an educational institution to be erected in the city's legal heartland is no mean feat. What stood him in good stead then, as so often, were the friends on whom he could rely—in this instance pre-eminently Minister of Justice Downing and Sir Frederick Deer.

The function for Shatwell's retirement from the Deanship a few years later was a brilliant occasion. The Chief Justice of Australia, the Chief Justice of the Supreme Court and hundreds of legal luminaries had come to say "Vade et vale" and listen to a graceful and fundamental speech from the retiring Dean about his beliefs.

In the 14 years of his retirement, he looked out on a changing scene. History came to be still less a matter of people and individual beliefs as he had taught it, and still more about the grip of economic forces. But this would not have bothered one brought up in Oxford, on the historical analysis of A. V. Dicey, as he was. Dicey explained that the dominant outlook in England in the early nineteenth century had been utilitarianism, at the centre of which was the economics of David Ricardo. In our own times the utilitarianism, and the planks of Ricardo's

economics, have resumed dominance. But Dicey said that the less human aspects of all this led to a humanitarian reaction, as he claimed occurred in England in the mid nineteenth century. If history should repeat itself, people of the heart and mind of Kenneth Shatwell will turn out not only to have been significant figures of our past. They will be figures of our future as well.