Book Reviews

AUSTRALIAN TOWN PLANNING LAW by A.S. Fogg. St. Lucia: University of Queensland Press and Institute of Urban Studies, 1974. Pp. i-xxx, 1-632, Appendices 633-688, Index 689-706. Hardback $10.00.

To deal comprehensively with Australian planning law, as this book does, is a formidable task. In each Australian State, the basic assumptions and form of planning law are similar, but a multitude of variations bewilder the layman, if not the lawyer, and place severe strain on the memories of both. Why there should not be uniform planning legislation throughout Australia is a problem which has baffled many and drawn protests from eminent lawyers and planners.

Mr. Fogg's book is a triumph. Without seeking to minimise or avoid detailed discussion of differences in the laws of the States he nevertheless manages to maintain a clear and unbroken development of theme, which makes what might well have been almost unreadable consistently palatable. This palatability is increased by frequent, but not too frequent, injections of wit and humour, often in the form of anecdote. Moreover, Mr. Fogg does not shrink from suggesting change and reform. While one wearies of lawyers who try to prescribe patterns of conduct for all in bedroom, boudoir and bar the opposite and more common tendency, to state law as it has been and is, without assessment of its social implications or ideas for its improvement, is perhaps worse.

The arrangement of the book is simple and convenient; it is divided into eight parts, which deal, respectively, with the history of town planning law, its relationship with other controls, town planning schemes, appeals, securing change in existing development, town planning and land values, regional planning and, finally, a section headed "What to Do?", which is a summary of Mr. Fogg's main conclusions and recommendations, chapter by chapter. This is a very valuable summary indeed, and many readers would probably do well to read it first to get a general idea of the sweep and scope of the book.

To attempt further summary of the book would be very difficult indeed: how to summarise an Encyclopaedia? Throughout, Mr. Fogg usefully brings to bear his knowledge of British Planning Law and his experience in applying it, though without allowing them to throw his treatment of Australian Planning Law out of balance. Appendix 1, a "Model Planning Scheme for Queensland", demonstrates how the advantages of the two codes could be merged and most of their disadvantages lost, by combining British flexibility and Australian definiteness in appropriate proportions.

One must end by voicing a worry. Though published in 1974, Mr. Fogg's book is already out of date in minor ways. It is bound to get much more out of date quite soon, for Australian planning law is still primitive and in need of much rethinking as well as refinement; every State may review, repeal, amend and introduce legislation quite independently at any time. New editions of a book more than 700 pages long cannot be tossed happily off the press every other year. Short, therefore, of a Sweet & Maxwell type loose-leaf publication, which one guesses the market would hardly stand, how are we to be kept up to date? Unless Mr. Fogg has an answer which he will divulge in due course, or we soon have uniform planning legislation in Australia, it is a bleak outlook for the many who need a book of this kind.

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MANUAL OF QUEENSLAND SUCCESSION LAW by W.A. Lee. Australia: Law Book Company, 1975. Pp. i-xxxiv, 1-255, Index 257-270. Paperback $12.50.

The practical utility of this manual is its outstanding feature. It presents material of great value not only to the law student and practitioner but also to a legislature interested in reform.

Obvious care has been taken to deal with the subject in a logical sequence and in a readable and concise manner. Law students will find the writer's experience as a teacher very much in evidence throughout the text.

The writer's overall treatment of the subject is well illustrated at pp.44-46 where he deals with the requirement of executing a will "at the foot or end thereof". After noting that the decisions on this point are confused and contradictory he goes on to state that "two important factors influence all decisions on this point". Then follows a neat summary of cases where the position of the signature has been called into question. Continuing under the heading "Words following signature" is a short explanation of how this situation may arise, followed by a listing of the three ways in which courts deal with the type of case, and then a further list of the arguments often advanced. Integrated into this approach is a constant referencing to decided cases (over 1350 cases are referred to with very few inaccuracies of reference so far as this reviewer was able to discover.) Clearly the writer is in command of his subject.

Practitioners will appreciate the perceptive approach to the problems likely to be encountered in any law office. Although the manual may not provide a final answer in many cases, it should, in future, establish itself as a starting off point for any research in this subject.

In recent years all States have shown an interest in law reform. Where appropriate the writer highlights those areas which require attention.

Some chapters and topics require special mention as some of the material is highly original. Chapters 8 and 9 dealing with personal representatives give valuable insights into this area particularly the remarks on:—
(i) A personal representative's liability for his own defaults at pp. 114-117 (a topic rarely discussed with any degree of clarity) and (ii) the Trusts Act 1973 as it relates to personal representatives' powers and liabilities. Perhaps the author is a little too conservative in his remarks concerning s.109 of that Act as it is to be hoped that the Court will approach that section with a fair degree of compassion for the personal representative who has acted innocently, particularly where his grant is revoked in circumstances which could not reasonably have been foreseen by him.

Reference must be made, too, to Chapters 14, 15 and 16 concerning the construction of wills. Although the principles of this subject are discoverable elsewhere, the collation of these principles, their orderly presentation and an extensive referencing to Australian cases make these chapters compulsory reading for any Australian law student.

The comparative slimness of this volume (some 250 pages) and the fact that it is a first edition place upon the reviewer a duty to comment concerning omissions and inaccuracies. In this reviewer's opinion matters deserving of attention in a subsequent edition are the following.

(1) Mention should be made of the fact that an executor who intermeddles may not, thereafter, renounce probate of the will.

(2) The statement on page 180 that an executor should not make any distribution to beneficiaries if there is a possibility or expectation that proceedings for a family maintenance order may be brought, should be placed in the context of

section 93 of the Succession Act which protects personal representatives who have distributed as provided in that section.

(3) The reference on page 17 to section 4A of the Guardianship and Custody of Infants Acts 1893 to 1953 should be to section 90 of the Childrens Services Acts 1965 to 1973.

(4) Reference is made to the Registrar General where reference to the Registrar of Titles is intended, perhaps an understandable mistake if one refers to the reprints of the legislation.

(5) The ubiquitous tax man is of such importance today that the traditional omission of a substantial treatment of the subject of the duties which are exacted upon the deceased estate is no longer justifiable in this reviewer's opinion. It is to be recommended that this omission should be made good in a future edition of this work.

To conclude this manual is excellent value at $12.60 and should prove a valuable asset to the Queensland profession as well as to practitioners inter-State with any Queensland clients. It is to be hoped that it receives the support it deserves and that a second edition can be considered at a suitable time.

J.K. DE GROOT.*

A HISTORY OF CONTRACT AT COMMON LAW by S.J. Stoljar. Canberra: Australian National University Press, 1975. Pp. i-xi, 1-199, Table of Cases 201-217, Index 219-221.

If a little knowledge is a dangerous thing, then Professor Stoljar's latest book has comfortably avoided the pitfall of tribulation. He reveals that he has indeed drunk copiously at the fabled spring of wisdom. In an era when the common-law idea of freedom of contract is under unremitting assault from the legislature, it is apt that a writer of the author's eminence should reflect awhile on the origins of our Law of Contract.

By and large, the author holds true to his Prefatory promise to treat legal history almost as an extension of legal analysis. The first half of the book lucidly traces the defects in the old actions of Debt, Detinue, and Covenant, as vehicles for contractual remedy, and recounts the rise of *assumpsit*, in its various forms, as the means whereby the modern contractual actions evolved. Central to the writer's theme in this book (particularly the first half) is the notion that the doctrine of consideration stems from the common law's pre-occupation with bargain; Professor Stoljar feels strongly that the modern law of consideration, with its emphasis on detriment to the promisee, has diverged substantially from the historically "pure" idea of bargain, with its emphasis on mutual benefit to both promisor and promisee. For example, the author is happily unfashionable and non-trendy in justifying, rather than denigrating, the Rule in *Pinell's Case* (as immortalized by the House of Lords in *Foakes v. Beer* in 1884) as being in accord with the common law's development of bargain and consideration (see pages 119-121).

In the latter half of the book, Professor Stoljar casts his learned net widely—perhaps a little too widely?—to examine and document in impeccably thorough fashion, the settlement of common law contract rules in a number of fields: Executors' Promises, Guarantors' Liabilities, *quantum meruit*, privity, and the doctrines of dependent, Independent, and Concurrent covenants, to name a few.

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One cannot help suspecting that, in attempting to trace so many elements in the emerging Law of Contract, the author, in the book's latter half, does lose sight, to some extent, of the fundamental strand—the importance of bargain—which so convincingly gives the first half of the book its excellence of unity and purpose. This danger of clouding the main issues in the history of contract has led the writer to ignore certain aspects of contract history, viz. Incapacity, Illegality, and Mistake (to name several): they were regarded by him as only "marginal" to classic contract theory.

The book is written in clear and authoritative style—the hallmark of an author in full command of his material. The footnotes are numerous (but not tediously so) and are appropriately replete with references to a library-full of ancient and not-so-ancient case-law, as well as containing many of the author's extra-textual, "sidelight" comments. It in no way derogates from the quality of this book to say that it is very much a specialist work for the legal historian or the academic contract lawyer; its depth and detail of historical legal investigation will not, and is not presumably designed to, guarantee it a place on the shelves of the ordinary practising lawyer or the average undergraduate law student. In summary, it is a meaningful addition to the specialist's library.

C.D. GILBERT*

GUIDE TO COMPANY LAW by A.G. Topp, A.E. Talbot and R.McK. Robson. Australia: Butterworths, 1975. Pp. i-xxii, 1-320, Index 321-345. Paperback $11.50

The company, as the pivotal institution of modern commerce, is a proper subject of study for all whose careers are associated, directly or indirectly, with the world of business. Numerous authors have already produced monographs or manuals designed to meet the needs of this large and varied market. Some of these books have won widespread recognition because of their scholarship but most compete for a share of the general introductory end of the scale. A further contribution to this end of the scale can not expect to receive particular attention unless it is superbly written, different in a stimulating way, or likely to be particularly interesting or useful to one or more groups within the range of potential purchasers. Apart from a possibility that this book may find a niche in the third category, *Guide to Company Law* seems destined for a place in the ranks.

The three authors have produced a book written in two distinctive styles. Most chapters are written in a readable, easy to follow, expository style, typical of this class of book. At times the writing descends to a level of chattiness rarely found in a law book: "it is not uncommon for a director to retire before the end of his term so allowing a "favourite son" to be appointed to the casual vacancy, and thus gaining an advantage over any competitors through being designated as a director" [para 1324]. This is in stark contrast to the style adopted in the remaining chapters where many paragraphs consist of paraphrases of relevant sections of the Companies Act sweetened with a meagre offering of commentary. Unfortunately these chapters are for the most part those that deal with the more technical aspects of company law, especially Takeovers. Such a style may be appropriate in some rare circumstances, but seems out of place at page 3 [para 202] where the reader is advised, accurately, but uninformed by the statement that "[a] proprietary company" means—

(a) any company which was a proprietary company under previous legislation;
(b) any company incorporated as a proprietary company by virtue of S. 15; or

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(c) any company converted pursuant of S. 26(1), and which has not ceased to be a proprietary company under S. 26 or S. 27: S. 5(1). See Chapter 31.
A "public company" means a company other than a proprietary company: S. 5(1) ...." This reviewer believes that the style is inappropriate in a textbook, but concedes that exercise is generally well executed. The number of "sentences" which commence with a conjunction testify to the difficulty of the operation.

An introductory text should afford a reader an opportunity to extend his knowledge of the subject. Statements in the text are supported by reference to appropriate sections in the Act, discussions of some of the more complex or controversial aspects of the law are concluded by a reference to a leading text but the authors have not incorporated references to leading cases. An excess of case material can result in a mass of detail inconsistent with the aims of an introductory text, but failure to provide references may deny the reader an opportunity to broaden his understanding of law and the legal process by reading the cases responsible for developments in the law.

While this book would not be the reviewer's choice for a general introduction to the subject or as a textbook for law or commerce students, it may prove to be a useful addition to the libraries of commercial houses or accountancy firms. A person with a basic knowledge of company law and practice who wants to refresh his memory on some aspect of the law will find in this book a concise, up-to-date and accurate statement of the law. Even where more detailed investigation is envisaged, this book may prove to be a good initial reference.

K.L. FLETCHER*

COMPENSATION AND REHABILITATION by Harold Luntz. Australia: Butterworths, 1975. Pp. i-xu, 1-150, Index 151-157.

Whilst the text describes itself as "A Survey of the Report of the National Committee of inquiry into Compensation and Rehabilitation in Australia and the National Compensation Bill", some 70% of the text is devoted to the National Compensation Bill. The appearance of such a work at this stage comes as something of a surprise. At the time of writing, far from having received the imprimatur of the Australian Senate, the National Compensation Bill is still receiving consideration by the Senate Committee on Constitutional and Legal Affairs.

The most disappointing feature of the work is its treatment of Cl. 97 of the Bill. There can be little doubt that the philosophy behind Cl. 97 is that benefits under the Bill should be in substitution for all other claims, but the actual language of the clause gives rise to great difficulty. One obvious problem is whether Cl. 97(3) operates to deny the right of a person to damages in respect of an injury to or death of another person seeking damages. The brief treatment at pp. 43 to 45 does less than justice to that problem. Whether sub-clauses (1) and (2) of Cl. 97 represent an effective exercise of legislative power or merely an attempt by the Parliament to expose its intention for the guidance of the Courts in construing the legislative command located in sub-clause (3), is an issue not launched upon. The Constitutional competence of the Australian Parliament to enact Cl. 97 is an issue which will not go away because of the alleged intrinsic merit of the Bill, and at this stage of the measure's legislative history might well have merited a somewhat less cursory discussion than that at pp. 125 to 131.

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The work is best evaluated in terms of its own goals. The text is primarily a guide to the understanding of the provisions and operation of the National Compensation Bill. As such, it is of considerable value not only to the layman and political analyst seeking a clear and dispassionate view of a topic clouded by hysterical public debate, but also to the practitioner seeking an introduction to and an overview of a wholly new body of "law". However, should the National Compensation Bill force entry to the statute books, the practitioner will need to go further as the text is in no sense a compilation of the textual difficulties arising out of the Bill or of the arguable solutions thereto.

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PROPERTY LAW, CASES AND MATERIALS by R. Sackville and M.A. Neave. Second Edition Australia: Butterworths, 1975. Pp. i-lxi, 1-964, Index 965-981. Hardback $29.50. Paperback $22.50.

The second edition of Property Law Cases and Materials went to press approximately four years after the appearance of the first. The first edition was an ambitious attempt to give the student of property law in Australia some general text of relevance. As mentioned in the preface to the first edition, where any legislation is reproduced in the text, and the second edition follows this line, the Victorian Statutes are used and where possible the differences in models from other states are explained. There is also an attempt in the second edition to achieve the impossible, that is, to include statutory references from the Australian Capital Territory. The edition contains references to the latest State legislation on property law; For the Property Law Act 1974 of Queensland however, because of eleventh hour amendments to the Property Law Bill to which the section numbers in the book refer, the section numbers, in some cases, differ from those in the Act passed. This is only a technical problem to which the authors in anticipation refer and which may easily be remedied in a later edition.

There are several major changes in the second edition. Firstly, the original Chapter 12 on Planning and Conservation of Resources has been omitted "partly for reasons of space" and partly because only superficial treatment could be afforded this subject in a text such as this covering a very wide field. Although many law schools now have their own separate planning law courses, this Chapter served as a useful introduction for the earlier year student of property who may have been considering taking a planning subject at a later stage during his course.

Two new chapters have been added; The first is a brief chapter on Remedies. There is a short discussion in this chapter of legal and equitable remedies and the effect of the fusion of law and equity. While it would be impossible to treat this most important aspect of Property Law in a book of this nature in greater detail, it is felt that more emphasis could be given to the most frequently encountered equitable remedies, i.e. injunction and specific performance and their role in enforcing and protecting equitable rights and interests and property rights generally. Indeed throughout the text, more weight could be given to the question of the availability of remedies to enforce property rights and a comparison drawn between these remedies and the personal remedies. The inclusion of the separate chapter is certainly an improvement on the material in Chapter 5 of the first edition which only fleetingly deals with the subject.

The second major change is the inclusion of a Chapter 13 on Mortgages of

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Land. When planning property law courses it has been difficult to determine how much weight should be placed on the topic "mortgages". It has been felt that only a brief introduction should be given in a property law course and the bulk should be left to a separate course on Securities, Debtors-Creditor relations or Land Financing. On the other hand it is virtually impossible to understand the question of priorities, especially under the Torrens system without at least appreciating the nature of a mortgage as an interest in land. The chapter deals generally with the rights of mortgagors and mortgagees, i.e. the right to redeem of the former and the right to possession of the latter, together with the other remedies upon default by the mortgagor. I do not see any reason however to discuss the "clogging of the equity of redemption" in such detail and it may have been possible to include the material on Torrens system mortgages in Chapter 7. However this is not a strong criticism and certainly a chapter devoted solely to such an important interest in land is not superfluous.

The only other new material is contained in Chapter 9 Part III, that being, the Rule Against Perpetuities. The obvious defect of its omission in the first edition has now been rectified. It should also be noted that Chapter 4 of the second edition, "The Fragmentation of Proprietary Interests", now includes in Part IV the material in Chapter 5 Parts I to IV of the first edition.

The material on Goods and Personal Property is retained in the second edition. (Chapter 2 Part I; Goods: Chapter II Part 2; Bailments) As recognised by the authors, personal property is given detailed attention in other courses and in teaching property law, with the main attention upon real property, no time is allowed in any such course to cover aspects of personal property. Its retention in this edition may be questionable.

It is pleasing to see that students in Australia no longer have to rely upon English property texts exclusively for their courses and one can only applaud the appearance of a second edition of this valuable aid to property law teaching.

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