

## Book Reviews

AUSTRALIAN PRIVATE INTERNATIONAL LAW, by E.I. Sykes and M.C. Pryles, the Law Book Company Limited, 1979. Pages i to lxvi, 1 to 507 and Index 509 to 529.

It is stated in the *Foreword* to the work by His Excellency the Governor General of Australia, Sir Zelman Cowen, that the aim of the authors of this comprehensive text was to clearly and accurately "set down the principles of Private International Law" applied in Australia, "so that they [might be] readily accessible to practitioners, scholars and students". That this aim of appropriately catering for the needs of such a diverse audience is one difficult to satisfactorily accomplish should at the outset be acknowledged. Indeed, probable it is that no work of this nature could do so with complete success in such a complex and conceptually demanding area as that of private international law. To conclude, then, that such has not been completely achieved should not be interpreted as a serious criticism of the produce of the authors' labour.

Primarily, it will be the student, as well as the scholar, who will read and study this book with the most interest and fulfilment and to whom it will have its strongest appeal and be of most value. Largely because of the complex theoretical bases for many of the rules and lines of judicial authority of (and the arguments for the proper resolution of the problems confronting) the area of law contained within the term "private international law", it is difficult to conceive of a text in the area able to serve both as a digest of cases, giving judicial decisions in a myriad of diverse fact situations, and as a scholarly examination of the rival theories and legal arguments upon which such decisions have been, or arguably in the future should be, based. Indeed, in many areas the state of judicial pronouncements is insufficient, standing alone, to allow a clear indication of either what the law is now, or what it is likely to be in the future, on a given issue to be accurately provided. In order to make a meaningful statement in such areas, an analysis of non-judicial opinions from at least the Anglo-American jurisprudential arena has to be attempted. That such excursions into the theoretical may make the work less useful or of less immediate interest to busy practitioners is more than compensated for, however, in its value to scholars and students, for seldom it is that the book's more metaphysical aspects render it too complex or non-informative for use as a students' text book.

As a teacher of private international law, I view the authors' work as of great value. Even though their literary styles are readily distinguishable by the reader as he/she passes from such chapters as 17 and 21 (on *Property* and *Succession*, respectively), which clearly bear the stamp of Emeritus Professor E.I. Sykes' hand, to chapters 13 and 14 (on *Torts* and *Contracts*, respectively), which equally clearly do not. This "unevenness" in stylistic content is seldom distracting, and, indeed, at times brings a welcome change for the reader; just as the appearance on the lecture dias of a "guest lecturer" is frequently welcomed by a class, no matter how accomplished its regu-

lar teacher may be or in what high respect and regard that person may be held by the class.

From a teaching aspect, some of the most pleasing features of the book are the detailed, yet thought provoking ways in which the topics *Jurisdiction* (chapter 2), *Foreign Judgments* (chapter 3) and *Renvoi* (chapter 4, part 4) are dealt with, while the thorough analysis of the cases related to (together with the clearly reasoned exposition of the basic principles of) the quite difficult property-related topics of "determination of situs" and the "distinction between movables and immovables" (chapter 17) is the best the present writer has read in a text book of this kind. The fact that the book draws heavily upon the cases contained in *International and Interstate Conflict of Laws — Cases and Materials* by E.I. Sykes and M.C. Pryles, Butterworths, 1975, is also a tremendous "plus" in favour of recommending the use of Sykes' and Pryles' recent book as a (if not "the") text book for *Conflict of Laws* and *Private International Law* courses in Australian Law Schools.

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**HISTORY OF THE QUEENSLAND BAR** by ROSS JOHNSTON.  
*Published by Bar Association of Queensland, Brisbane. Pages i-viii, 1-204, Bibliography and Index 205-13.*

For anyone who is curious about Queensland's legal past this book by Dr. Johnston, a senior lecturer in history at the University of Queensland, will provide a measure of satisfaction. This is a history of lawyers with a difference: the author's intention has been "to show barristers in the round . . . as a professional unit, as individuals at work and as citizens in the community." Most similar studies have been confined to the first of these three themes, but in going beyond that limit Dr. Johnston has written a history that is largely biographical rather than institutional.

The book begins with an examination of the Bar as a distinct professional body. Most of the topics one would expect to be discussed under this heading are included here: the growth of the Bar in size and influence, legal education and standards of training, the question of reciprocity of admission, the never-ending debates over the division of the profession, its monopolies and other restrictive practices, reform of the law and its institutions, and the development of the Bar Association.

In the following two chapters the focus of attention shifts from the Bar as a whole to individual barristers and judges and their professional careers. Dr. Johnston has approached this second theme by writing a series of "potted biographies" which will have considerable appeal to the legal reader who will be familiar with most of the names, but which may well be a little overwhelming for the lay reader. Indeed the book seems to have been written primarily for a legal audience, although non-lawyers will not find it too technical or uninteresting. The chapter dealing with the silks and judges is more

comprehensive than that dealing with the junior bar, where the author has been content to discuss leading practitioners in the areas of private practice, Government employment, University teaching, textbook writing, and activities both outside Queensland and outside the law. Although the emphasis of these chapters is upon successful barristers, many of the “characters” of the past have not been forgotten — the men whose humour or eccentricities won them remembrance if not in the law then in its lore.

The final chapter, dealing with barristers as citizens in the community, continues in the same biographical vein. Political, religious, cultural and social affairs come under scrutiny, especially politics. In fact, if there is one feature of the Queensland Bar’s history that stands out clearly in this book it is the connexion between the practice of law and the practice of politics. At its strongest during the colonial period it continued into this century, but with the advent of the Labor Party and the rise of other politically-minded sections of the community, the connexion became weaker. The period of Labor’s ascendancy from 1915 to 1957 was a markedly different time for the legal profession than the colonial “golden age”. While many barristers were members of Parliament after 1915, only two were appointed to the Ministry compared with seventeen before then, four of whom were Premier (Herbert, Lilley, Griffith, Byrnes). T.J. Ryan, the Labor Premier from 1915 to 1919, has been the only barrister to lead a Government this century. This connexion between politics and the Bar is stressed throughout the book. The fusion debates, law reform, and many other matters of vital interest to the profession all had a significant political content, and the Bar’s fortunes as a whole ebbed and flowed with the tide of political affairs. As far as Dr. Johnston’s views can be generalised, the Bar was an influential group in colonial society and politics, progressive and reform-minded in the best traditions of nineteenth-century liberalism, later becoming cast in a conservative anti-reform mould by their opposition to the more radical policies of the Labor Party — policies which enjoyed widespread electoral support.

There is much of value in this book. Based on research into original sources, it presents a wide range of information on the Queensland Bar. Since the written sources used will survive for many more years, it is important to note that Dr. Johnston has documented in this book part of the law’s oral history — reminiscences and opinions gleaned from interviews with several judges and barristers. Indeed the book is so full of facts and stories that it is best read in short bursts rather than for sustained periods. Though an interpretive analysis is not lacking, a large part of the book is straight narrative, so detailed that it is easy to lose sight of the broad trends the author has sketched. One is inclined to see the real value of the book as a collection of facts and not an interpretive work for another reason. As this is the first major work on Queensland legal history to be published, and as it deals only with the Bar, it may well be that the author’s interpretations will require modification as further studies are made not only of the Bar but of solicitors and the courts also. Dr. Johnson hints as much in his preface, explaining that some of his views have changed since the book was written in 1965. Unfor-

tunately there was no time for a revision of the text so that one is intrigued to know what changes would have been made. At least no change would be needed to the style in which the book is written. It is enjoyably readable, without pretension or undue formality, though occasionally lapsing into avoidable colloquialisms (“he carted off many prizes”, “dabbled in the law”) and the unnecessary familiarity of using given names instead of surnames.

No book is without faults of some kind, and this one is no exception. Some faults, if they can be called that, are the result of the approach taken by the author to his topic. Although this is a study of the Bar in Queensland, it may not have been too out of place to have included some further account of affairs outside Queensland in which leading Queenslanders were involved. For example, Griffith’s term as first Chief Justice of the High Court, Webb’s leading role in the Japanese war crimes tribunals, or Philip’s involvement in the Royal Commission could have merited further discussion. Perhaps it is being too critical to suggest that the book’s compass could have been widened to include matters such as these, considering the wealth of information contained within the subject limits set by Dr. Johnston. Other matters within those limits, however, are subject to a similar criticism. There is a noticeable lack of background information on many of the leading cases and Royal Commissions, where the underlying assumption seems to be that the reader will know such details himself, or if he doesn’t he will take the trouble to read the reports of those cases. Neither assumption seems warranted, although they are consistent with the general intent of the book, which is to depict the Bar’s history in individual and biographical, rather than institutional, terms. In this respect a problem arises in that the Bar Association was only founded in 1903, and its records prior to 1940 have been lost. This fact may have reinforced the decision to write a biographical history, but by itself does not exclude the possibility of taking a collective, institutional approach. Certainly there seems to have been plenty of scope for Dr. Johnston to have aggregated his individual data and to have presented a broader picture of the Bar as a whole. To a certain extent this has been done, but some further statistics and broad trends would not have been amiss.

Further problems arise from the delay between writing in 1965 and publication in 1978. Some cursory attempts have been made to cover events during those years by the addition of footnotes, a task undertaken not by the author but by several members of the Bar Association. Such footnotes add little to the text, and in at least one place (page 102) they have been mixed up and refer to the wrong persons in the text. The lack of an opportunity to revise the text has also meant that individuals are often “out of place” in the book, having changed their status from junior counsel to Queens Counsel or Judge.

A more general question needs to be asked about the approach taken by the author. Is it preferable to other formats? The short answer to that must, I think, be no. The book wavers between being a serious historical study and a collection of anecdotal and biographical miscellanea. It cannot be characterised as either, for it contains

elements of both, yet it is difficult to say whether the book ought to be regarded as a serious history, making extensive use of anecdotal and biographical material, or as a collection of such material with some serious historical comments appended. The book probably deserves to be received seriously, and there can be little doubt that Dr. Johnson's scholarship has been both thorough and competent. The end result of his labours could have been so much better had he cut his illustrative material to a minimum, perhaps publishing it separately in an unambiguously light-veined portrait of the Bar. As it stands at the moment, Dr. Johnson has not sufficiently drawn out the historically relevant facts from the biographical data and matched them with the broader trends he has sketched. The individual and collective parts of the book tend to run parallel to each other rather than converging and diverging at certain points.

On the technical side there is room for improvement. Insufficient attention has been paid to proof reading so that there are far too many typographical errors. The bibliography is adequate, although covering the period up to 1965 only, while more detailed references to the archival material consulted would have been helpful. The index is largely a names index with some omissions. Surprisingly, neither an index of cases nor of statutes is included. Certainly there are enough references throughout the text to justify such an index.

The overall impression one is left with after reading this book is favourable. As the first substantial work on Queensland's legal history to be published, it is a welcome and long-overdue contribution to the fund of knowledge in this field. It provides both an overview and a more particular view of the Bar's history, and since the law does not operate in a vacuum, throws some interesting sidelights on Queensland society and politics of the past. While it has its faults, it remains a book that can fruitfully be read by lawyers and non-lawyers alike, and should remind us that today's laws and lawyers have been moulded by those of the past, without a knowledge of which we are apt to be the mere working masons and not the architects of Sir Walter Scott's famous metaphor.

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**CRIMINAL LAW AND PRACTICE OF PAPUA NEW GUINEA**  
by W.J. ANDREW, D.R.C. CHALMERS, D. WEISBROT. *Published by Law Book Company 1979. Pages (i)-(xxvii) to 396 and Index 397-427.*

The criminal law of Papua New Guinea has been closely related, since early in the century, to that of Queensland. British New Guinea (Papua) adopted the Queensland Criminal Code in 1902, whilst similar adopting legislation introduced it into New Guinea in 1921. In 1974, the Criminal Code of Papua New Guinea was enacted and, with minor changes, this largely reenacts the Queensland Criminal Code. The attainment of independence in 1975 by Papua New Guinea has left the new Act unchanged, but in other ways has had an affect on the operation of the criminal law of the new nation.

The most marked affect has been through those provisions of the Papua New Guinea Constitution which deal specifically with criminal law. Those are set out in Division 3 of Part III and create a number of fundamental rights to be enjoyed by Papua New Guineans. Another consequence of independence has been the restructuring of the court system, with decisions of the Supreme Court no longer being appellable to the High Court of Australia. A further result of independence has been a growing awareness of, if not as yet the full realization of, the need to take account of the traditional Melanesian concepts of criminal justice. These three factors are given full treatment in "Criminal Law and Practice of Papua New Guinea".

The book brings together a number of statutes dealing with the criminal law, substantive and procedural, in Papua New Guinea (The Criminal Code Act, Bail Act, Arrest Act, Summary Offences Act and selected parts of the Constitution, Supreme Court Act, District Courts Act, Local Courts Act, Evidence Act and Secrecy Act) and anotes sections of these Acts to provide the reader with a summary of cases to aid interpretation. In doing so, there has been a preference for domestic decisions, over English and Australian authorities. This would seem to be a sensible approach in light of the now independent nature of the Papua New Guinea legal system, and also because of the availability of such other material in general reference books on criminal law.

From the preface, it is seen that the book is addressed to the Courts, practioners and students of law. The anoted style should make it a valuable acquisition as a reference work for the qualified lawyer, both in Papua New Guinea and in the Code jurisdictions of Australia, but perhaps an expository style would have been more suitable for student use. Of course, it is difficult to completely satisfy such a broad audience and the result here is a useful compromise, especially when one considers the introductory chapter which provides a brief discussion of the Constitution, a history of the Criminal Code, the Court system, and trends in law reform (including a section on the increasing importance of customary law).

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**CASES AND MATERIALS ON SENTENCING IN QUEENSLAND.** *By J.E. Newton. Australian Institute of Criminology, Canberra, 1979. Pages i to xxiii, 1 to 234 and Index 235 to 238.*

This book is a valuable addition to the series of monographs on sentencing in the various Australian states being carried out under the auspices of the Australian Institute of Criminology. The author's aim is to provide a collection of materials on the practice of sentencing in Queensland. There is an express disavowal of any attempt to critically evaluate the material produced. The aim is relatively modest and in this field for Queensland, novel. Eschewing the type of analytical technique developed by Thomas in his seminal work, Part II of the book is nevertheless indebted to the approach

developed in that earlier work of expositing principles by quoting extracts from criminal appeal decisions in cases involving appeals against sentence.

The book is divided into two parts, Part I is primarily devoted to succinctly describing the legislative framework within which sentencers operate. Provisions dealing with the available range of custodial and non-custodial avenues of disposition of offenders are marshalled and briefly annotated. This exposition is well directed to one of the anticipated uses of the work, "to enable practitioners to be aware of the sentencing options available in any given set of circumstances". The concise, almost tabular presentation of this material should also assist students of the sentencing process in various criminal law, criminal justice and criminology courses by providing a clear and uncluttered index to most of the relevant legislative provisions.

It is a little disappointing therefore that this particular part of the book is flawed by what appears to be an unfortunate detail of presentation. The very heavily emphasized references to legislative provisions which are of relatively low informational content would be much better relegated to a far lower case and inset away from the leading margin. Each dominates the next succeeding paragraph as a quasi-heading, whereas in fact they are intended to operate as a mere footnote to the preceding textual material. This together with their often unnecessary repetition confuses and distracts attention from the related informational context.

Other chapters in Part I discuss a number of matters affecting sentence determination, additional orders available to the court relating to costs, compensation and disqualification from driving, while the final chapter in this part deals with appeal against sentence by the Attorney General. This last examines at length the evolution of the judicial approach to such appeals and with approval the ultimate result reached by the courts prior to the 1975 amendments to Sec. 669A of the Code. Somewhat surprisingly the new section is merely quoted without further discussion at the end of the chapter with the cryptic assertion that it alters the law.

Part II which constitutes the remainder of the book, seeks to explicate the principles guiding the Court of Criminal Appeal when dealing with appeals on sentence by examining what the court has said in the context of a number of different classes of offence. The difficulty with this part of the book lies in its subject matter. Sentencing is at present undoubtedly as much an art as a science and attempts to constrain it within any logical and systematic framework are fraught with problems. That said, the scheme of treatment based on offence classification seems to work reasonably well and it does have the merit of minimising the amount of overlapping and repetition that must inevitably occur. Sentencing ranges are classified within six offence categories, those relating to motoring, drugs, personal violence, sex, dishonesty and malicious damage to property. The author keeps well within his stated aims with the result that there is little sustained commentary. A succinct narrative of the pertinent facts and relevant extracts from the judgments comprise this part which ends somewhat abruptly with a case extract. A final

chapter drawing together the threads of the author's observations and conclusions would have rounded off the work more satisfactorily, although this aspect is covered to some extent in the introduction.

In summation, the book unpretentiously does what it expressly set out to do. It breaks new ground in Queensland and in exposing the processes of sentencing to informed scrutiny it provides a substantial starting point for further research and investigation as well as a wealth of information for students and practitioners in this field.

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INTRODUCTION TO LEGAL STUDIES. *Third edition by Nicholas Bates, Butterworths Australia 1980, Pages i-vii, 1-434 and Index 435-448.*

This is the third edition of a deservedly standard text-book for secondary and technical school students who study law in Victoria. It should more than adequately fulfil their needs; indeed it should, by its author's admirable clarity and stimulating exposition of his subject matter, inspire its readers to further study of the law, a most important attribute of such an introductory work.

The book includes two main parts. The first is a basic outline of the legal system in Victoria and its federal counterpart in which are to be found chapters on the sources of law, the courts, trial by jury, the legal profession and a particularly valuable chapter on legal personality. The second concentrates on an outline of the substantive law in Victoria as it affects the individual citizen with chapters on freedom under the law, the motorist and the law, the family and the law, and the law of succession. Throughout, the matters dealt with are written in a most readable style and are attractively presented. Not the least valuable parts are detailed case studies and samples of legal documents which vividly illustrate the law in action and the processes by which legal disputes can arise and be pursued to ultimate settlement.

All in all, and with but one *caveat*, your reviewer would have no hesitation in strongly recommending this book, not only to its intended readership, but also to students commencing university studies in law and to intelligent layman desirous of having some understanding of the contents and mechanics of the law. The *caveat* is that in the case of students and other readers in states outside Victoria it should of course be borne in mind that in several respects the substantive law in their own State varies from that in Victoria as described in the book. One might add that, in these inflationary times, the publishers are to be congratulated for having produced such an attractive book at a very reasonable price.

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