BOOK REVIEWS

Negligence in the Civil Law : Introduction and Select Texts. By F. H. LAWSON, D.C.L., of Gray's Inn, Barrister-at-Law, Professor of Comparative Law in the University of Oxford. (Oxford University Press. pp. xvi and 341. £2 3s. 9d.).

Comparative Law is becoming more popular as a teaching subject, but the main difficulty has always been the provision of suitable material for the student. The average law student is not skilled at languages and in the Dominion universities it takes time to build up adequate reference libraries of foreign material.

This work provides a useful tool in teaching. There is a solid foundation of Roman law and the subject of negligence is then carried forward to modern days. The original text is provided in most cases, but a translation is appended for the use of the student (and the teacher, for we do not all know the language of Germany, France and Italy, to say nothing of the Soviet and Mexico). A great deal of research must have gone into the compilation of this work, for there is no waste of words. In a comparatively slim volume, there is an immense amount of useful material. To write a critical review one would need to be very expert in many legal systems. It is to be hoped that the example of Professor Lawson will be followed so that other subjects may be dealt with in this comprehensive way.

Part I is a comprehensive and clear introduction to the *Lex Aquilia* and negligence in modern law; then follows the text and a translation of that *lex* and of other passages relevant to the problem of negligence. Part IV gives extracts from European codes; Part V cites from French texts and cases, and finally there are excerpts from Canadian statutes. It is a canvas covering over two thousand years of legal evolution.

The introduction shows particular skill in tracing the concepts of negligence from the republican Roman era to modern days. Thus there is an interesting discussion of the duty of care which covers the *Lex Aquilia,* German, French, English, and American law and even descends to such fine points as the duty to take care *(Candler v. Crane, Christmas and Co.,* [1951] 2 K.B. 164, was decided too late for inclusion in this section). "French law, though remarkably favourable to plaintiffs, seems to move empirically from case to case without any strict doctrine of precedent. In the laws of all these countries except Germany, it would appear that there is, indeed, a rugged forward advance, which is best expressed as a continual discovery

of new duties of care" (p. 34). There is also an interesting discussion of the modern development of strict liability. Peculiar skill has been shown in avoiding the danger of inserting too much detail which would have obscured the broad outlines presented. Such a topic as abuse of rights is concisely but very adequately analysed.

In Part V there is an interesting note on the structure and procedure of the French courts, the form of a French report, and the authority attaching to French case law. This will be very useful for all students of comparative law. The French judgments are certainly more laconic than the English—to the eye of a common lawyer they seem too short, but a little more brevity in English courts would make the lot of the student much easier. One interesting point made concerns motor car law. If a motorist injures a pedestrian, French law raises a presumption of fault against the motorist; if two motor cars collide, this presumption still remains in force and each driver must pay for the damage done to the other car and its driver and passengers. The French justification for this illogical rule is apparently that a driver is more likely to carry third party insurance than insurance of his own vehicle and person.

Modern English statutes are not reprinted on the ground that they are easily accessible, but it is useful to have excerpts from the Quebec Civil Code and the statutes of Ontario and Saskatchewan.

G. W. PATON

Joint Torts and Contributory Negligence. By GLANVILLE L. WILLIAMS, LL.D. (Stevens & Sons Ltd., London. 1951. xlix and 544 and (index) 13 pp. £3 10s. stg.).

This book by the Quain Professor of Jurisprudence in the University of London is an exhaustive study of the legal problems which arise when harm is caused by the fault of two or more persons. The first part deals with those cases where two or more are responsible for the harm suffered by a third, and the second part with those cases where the victim of a tort or other wrong is part author of his own damage.

It must be said at once that Professor Williams has produced a very valuable, and indeed almost revolutionary, addition to the body of legal literature. Nor is his work of academic interest alone; it is replete with discussions of problems that arise in everyday practice, and the practitioner who has to advise a client involved in, say, an

ordinary running-down action will neglect the learned author's views at his peril.

The subjects studied have a long and respectable history at common law, and in recent years they have been considerably modified by legislation, both in England and in Western Australia, as well as in other parts of the British Commonwealth and in the U.S.A. The English statutes which affect these subjects—the Law Reform (Married Women and Tortfeasors) Act, 1935 (25 & 26 Geo. 5, c.30), and the Law Reform (Contributory Negligence) Act, 1945 (8 & 9 Geo. 6, c. 28)—contain in all 10 sections; the corresponding Western Australian statute—the Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act, 1947 (No. 23 of 1947)—contains 9 sections. The learned author concludes his work with a draft statute designed to codify and amend the existing statutory provisions, so that the various difficulties which he discusses shall receive adequate attention; his draft contains 44 sections. These figures show that the existing statutes have done no more than effect the most superficial reforms, and indeed have created as many problems as they have solved.

It is not possible in a review to set out adequately even the barest outline of the various theses advanced in this book. Indeed one valuable and novel feature is that at the beginning the learned author sets out a "brief statement" of the general principles which he discusses and the conclusions which he reaches, and this statement alone occupies over eleven pages. It should however be said that the title by no means fully indicates the wide scope of the work. For instance, the doctrine of contributory negligence is not only discussed fully in all its aspects, but it is related to allied doctrines, such as the duty to mitigate damages and the defence of *Volenti non fit iniuria*. Professor Williams argues—and, to this reviewer's mind, argues convincingly—that many of these related doctrines were given an unwarranted extension by the judges in an effort to overcome the harshnesses of the old common-law rules preventing recovery of contribution between joint tortfeasors and of damages in cases of contributory negligence. He discusses the cases at length and shows how the common law should be applied where cases arise on these allied doctrines, now that the main rules have been altered by statute.

Another very interesting discussion is that of the Convention of Brussels, 1910, relating to losses arising out of collisions at sea. Professor Williams shows that the Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), which has been copied in Australia in both Commonwealth and State legislation, failed to carry out accurately

the agreements embodied in the Convention, and his draft statute is designed to remedy this defect.

In general, the learned author confines his argument to a discussion of the law as it is, and points out the various anomalies and difficulties which arise from its present state. The argument is careful although perhaps occasionally a little over-subtle; all the possible arguments both for and against any particular view are discussed at length. It is of course not to be expected that all the opinions expressed will command assent. Thus, this reviewer finds it difficult to concur in the acceptance of the view—expressed by the late Uthwatt J., as he then was, in *Twine v. Bean's Express, Ltd.*, [1946] 1 All E.R. 202—that the basis of a master's vicarious liability in negligence for his servant's acts is the breach of a duty owed by the *master* to the injured plaintiff. The illustrations offered by the learned author in support of this proposition (in footnote 11 on p. 436) are at least questionable. Indeed, the whole of article 115, in which this problem is discussed together with some others, is less carefully argued than the rest of the book. For example, on p. 436 the learned author puts forward a proposition which he says is 'bare of authority'; yet this same proposition is stated on p. 438 to be the 'general rule', and on p. 439 to be the 'usual rule'. These defects are probably due to the fact that the whole article, as is admitted on p. 432, is coloured by the learned author's opinion of what the law ought to be. Here, of course, value-judgments enter into the discussion, and this reviewer would find it difficult to accept all the changes suggested; for example, the suggested identification of a passenger with a carrier who has by contract limited his liability would, in his opinion, be thoroughly unjust unless at the same time the law as laid down in *Parker v. South Eastern Rly. Co.*, (1877) 2 C.P.D. 416, were changed.

A more serious criticism from an Australian point of view is the scant attention paid to this Commonwealth and its several States. In his preface, the learned author claims that his work takes account of the legislation and case-law of, *inter alia*, Australia. Yet out of some 1,100 post-Year Book cases cited, fewer than 20 are from Australian courts. It is difficult to believe that our courts have made so small a contribution to the law; to cite only one example, surely the brief discussion of the 'rescue' cases in article 92 would have been enhanced by a reference to the learned discussion of these cases by Evatt J. in *Chester v. Waverley Corporation*, (1939) 62 C.L.R. 1, at 36 *et seq.* (and indeed a reference to Professor Baker's learned article on the same subject, which appeared in Volume I of this Review at pp. 37-45, would not have been amiss).

Even more unfortunate is the fact that the few Australian references are on occasion incorrect. Thus on pp. 210 and 360 the learned author states in effect that *Caswell v. Powell Duffryn Associated Collieries, Ltd.*, [1940] A.C. 152, is not applied in Australia, citing *Bourke v. Butterfield & Lewis Ltd.*, (1926) 38 C.L.R. 334; he is apparently unaware that the High Court overruled *Bourke's* case in *Piro v. Foster*, (1943) 68 C.L.R. 313, although on p. 360 he refers to *Davies v. Adelaide Chemical and Fertilizer Co. Ltd.*, (1947) 74 C.L.R. 541, in which Latham C.J. refers to *Piro's and Caswell's* cases. Again, on p. 258 it is said that the English Contributory Negligence Act has been copied in Western Australia; if the word 'copied' is to be taken in its conventional sense, it is hard to believe that the learned author has read the Western Australian Act. This error is particularly to be regretted, as it would have been interesting to have the learned author's view on the attempt, in the latter Act, to abolish the last-opportunity rule by express words.

The book is well-produced, and contains only a very few printing errors, which will no doubt be rectified in future editions. The indexing of subjects, cases, and statutes is by reference to articles instead of pages: this has much to commend it in principle, but at times becomes irksome, as when an article extends to some 20 pages.

However, when all criticisms have been made, the work remains a major contribution to legal literature. In this reviewer's opinion, it is a 'must' for all lawyers interested in the law of tort, be they students, teachers, or practitioners. Indeed, in the light of this work, the traditional treatment of the law of tort in existing textbooks becomes outmoded, if not actually misleading. Professor Williams has shown the need for a new textbook, based on the modern law as he here, in one special field, expounds it. It is to be hoped that he will one day find time to write such a textbook himself.

P.B.

Police Offences of Queensland. By W. K. A. ALLEN, B.A., Barrister-at-Law. Second edition. (The Law Book Co. of Australasia Pty. Ltd. : Sydney, Melbourne, and Brisbane. 1951. xxvii and 347 and (indexes) 45 pp. £5 5s. od.).

This reviewer is unacquainted with the first edition of this book, and is accordingly compelled to discuss it as if it were a new work. However, the author points out in his preface that the original edition

has been completely revised and much augmented, and so this procedure is not entirely amiss.

The book is an annotated text of *The Vagrants, Gaming, and Other Offences Act of 1931* (Queensland), with its amending measures (six in all) inserted; a selection of cognate legislation of Queensland is set out, without commentary, in two of the appendices, the third of which contains a number of forms.

Police legislation in the Australian States is based on the English police legislation. The latter is contained in a series of Acts, enacted, over a long period of time, to deal, as they arose, with various emergencies which at the time appeared to require legislative attention. It is therefore not surprising that the English legislation is completely devoid of any connected system, and that its language is often obscure and out-of-date. All the Australian States except Western Australia have in recent years consolidated and re-enacted their police legislation in an endeavour to make it more comprehensible. In Western Australia, a benevolent government has ensured that its citizens shall not be vexed by the incomprehensibility of the Police Acts, by making no arrangements for their reprinting.

A fairly simple pattern is discernible in police legislation. There is an exhibition of conduct thought to deserve repression and punishment; the police authorities, anxious to avoid criticism and doubtful of their powers, ask for a new Act to enable them to cope with the problem. An Act is accordingly passed in wide terms, Parliament being assured that the police will use their new powers with discretion. The 'emergency' passes, but the Act (of course) remains unrepealed—"You never know when it may be needed". Then a new problem arises, and the wide language of the Act is found to cover the situation, although Parliament never contemplated it. At this stage the judiciary joins in and endeavours to control the police by giving the Act a strained and narrow construction, with many fine distinctions being made. This gives rise to a demand for a new Act—and so the game goes on. A good example of the absurdities which result is to be seen in section 31(2) of the Queensland Act, enacted in 1949 after the Battle of the Bottles (which, according to Mr. Allen, took place between partisan spectators at a boxing contest in Brisbane in 1949); this makes it an offence (£5 or one month) to bring into, or have in, a stadium any 'bottle or container or other like article' on any day when boxing or wrestling is taking place. In Queensland one must choose between watching a boxing match and drinking a bottle of Coca-Cola—one cannot do both at the same time.

It will readily be seen that to attempt to expound this legislation in a coherent form, passing as it does from "two-up" and fruit machines through prostitutes to the unlawful possession of bottles in stadiums, would be to court disaster. Mr. Allen has wisely confined himself to a commentary on the Act, section by section; and so far as this reviewer can judge, he has carried out his task extremely well. He has included all the important decisions up to 16th October 1950, and has refrained from trying to reconcile the irreconciliable. Conflicting decisions are set out and expounded, the practitioner being left to take his choice.

What is really needed is a cleansing of the Augean stables. These Acts (in every State) should be repealed and replaced by a rational, connected, clearly-worded Code of minor offences, preferably uniform throughout the States. If such a Code is sensibly worded and sensibly construed, we shall be spared the spectacle of citizens fighting their way through milling crowds of queuers on the main streets, while the police are busy preventing street bookmakers from 'obstructing' no one in a side alley.

However, until such a millenium arrives, we must rely on such authorities as Mr. Allen to guide us on our way through the maze. It is perhaps a pity that the price of his help is so high—surely the publishers could produce a work of comparatively modest dimensions at a lower sum. Five guineas is a lot to ask for a book which must inevitably grow more and more out-of-date as each day passes.

However, the book should prove a boon to the practitioner in this field. Apart from its wide range of decisions and careful commentary, it is well indexed and provided with careful cross-references. It can be consulted with ease, and it will certainly instruct. Only one feature might well be reconsidered before the next edition—the Glossary. The translations there given are not always happy; for example, is the *ratio decidendi* really 'the *rational* principle underlying the decision'? If so, one will search for it in vain in many of the cases here recorded.

P.B.

The International Law Association. Report of the Forty-Third Conference held at Brussels, 1948. Published 1950. (cxxi and 318 and (annex) 8 pp.).

The Conference held in 1948 celebrated the seventy-fifth anniversary of the Association's formation, and its achievements were justly honoured by members at the Conference's inaugural meeting.

The published Report has come to hand some time after the Conference was held. Some of the subjects dealt with at Brussels have since received considerable attention elsewhere, but it is nevertheless still interesting and instructive to refer to the discussions recorded in this publication.

The bulk of the volume is devoted to the report by Professor Lauterpacht and the Human Rights Committee, together with the text of an International Bill of the Rights of Man. In retrospect, this work appears now as one item in a series of such works with which Professor Lauterpacht has been involved. In 1945 he published his *International Bill of the Rights of Man,* and the draft brought forward by the I.L.A. Committee is based on that, with revisions. In a later book, *International Law and Human Rights,* published in 1950, his treatment of the subject is considerably extended and one or two further amendments to the draft Bill are made.

Professor Lauterpacht has devoted much thought to what he considers the two main problems of such an International Bill—its contents and its enforcement. One may agree that both problems are intimately connected, but it is precisely at this point that Professor Lauterpacht's views have met with severest criticism. He regards the question of implementation as *the* problem, and argues that an effective procedure is the prime essential. Signatory States must, he says, be prepared to sacrifice "some of their existing laws and practices, and some of their future freedom of action". On these grounds, then, he objects to the preparation of a mere Declaration of Human Rights which is not binding or internationally enforceable. Such a declaration had of course at the time of writing been adopted by the United Nations Human Rights Commission and was finally accepted by the General Assembly on the 10th December, 1948. He would object to declarations, as distinct from binding covenants, since, he says, they might well create the illusion of tangible achievement, and would be merely a substitute for a deed. He is prepared to go even further and assert his belief that a mere declaration would be a retrograde step, and by weakening the achievements of the Charter, which already provided for a certain amount of legal obligation and enforcement, would create disillusionment and cynicism. Professor Lauterpacht is here surely overstating his case. One may sympathise indeed with his view that there is an urgent need for something more than non-committal declarations, that decisive action is now more than ever desirable. Yet international lawyers cannot divorce themselves from a consideration of the international situation and the feasibility of enforcing a covenant in the present international atmosphere. As

long ago as 1947 Professor Schwarzenberger objected, in the *Year Book of World Affairs* of that year, that "in a world which is split on fundamental issues as much as our age is, can it be expected for a moment that the United Nations will do more in this field than limit itself to the passing of pious resolutions?" (p. 322). He suggests further that to insist on such an enforceable Bill of Rights is putting the cart before the horse. This is in fact the crucial point. Professor Lauterpacht himself admits that an instrument like the Declaration, lacking provisions for implementation, "is the outcome of the reluctance to assume obligations limiting the freedom of the State in relation to the rights of man" (Report, p. 130). The problem then is not to provide bigger and better machinery for enforcement, but the establishment of an international society in which implementation becomes a practicable proposition. This in effect is the thesis put forward by Professor Brierly. The international lawyer will always be able to provide the necessary machinery and in fact has done so frequently in the past. What is needed in the first place is the development of a greater sense of common interest and cohesion in international society, before the desired standards of conduct will be habitually observed and enforceable.

The Human Rights Commission of the United Nations has been continuing its work on an International Covenant, not without difficulties, and its draft, submitted to the General Assembly, was sent back to the Commission for revision in December, 1950. The material in this is very different from what was originally intended, so much so that Dr. Andrew Martin stated (*Year Book of World Affairs*, 1951, p. 39) that "the cause of human rights is being propelled with increasing velocity on the road to frustration". The reasons for this, he says, are political, and are bound up with the tensions causing the crisis in the United Nations.

In addition to the criticism that Professor Lauterpacht's approach ignores the realities of the situation, one may also join issue with him regarding the value of a declaration without binding obligations. It is true that no sacrifice of State sovereignty is implied in such documents. But even agreement on the listing of human rights (though there were significant abstentions from the Declaration of December, 1948) can be important as a beginning. Professor Lauterpacht would regard the doing of this and nothing more as a betrayal of the cause of human rights and freedoms, but if in the present state of affairs nothing more constructive can be achieved, and the United Nations Organisation is unable successfully to accomplish more, it could well be disastrous to attempt to force on international society legally bind-

ing obligations which some members would *ab initio* refuse to acknowledge.

Consideration of the question of Human Rights was continued by the Conference in discussion of fundamental freedoms in the Paris Peace Treaties of 1947.

A Report on Rights to the Sea Bed and its Subsoil was received from Jonkheer Feith. This is a subject which has been occupying the attention of international lawyers and others more and more for some years. New opportunities for exploitation, as the *rapporteur* says, are likely to be seized promptly by nations in search of fresh resources, particularly when it appears that oil in vast quantities is available in the regions of the continental shelves, and also, it is suggested, uranium. Since this exploitation is now a technical possibility, interesting developments can be expected, and it is at this point that international law finds itself deeply concerned. The Report and discussion concerned themselves with various points—freedom of the seas, the three-mile limit, the distinction, if any, between the legal status of the sea-bed and the subsoil.

Jonkheer Feith points out that as exploitation of the deeper ocean regions is not yet possible, there is no need for the moment to consider the legal grounds for annexation of the sea-bed beyond the continental shelf. As regards the latter he suggests that an unseemly rush to acquire these submarine areas might be avoided from the outset by the acceptance of a rule of international law that the continental shelf belongs to the littoral state, on the lines of the Proclamation by the United States in September, 1945.

This Proclamation leaves intact the United States' acceptance of the three-mile limit, since the character as high seas of the waters above the continental shelf — outside the three-mile limit—is left unaffected. The Conference did however discuss the question of interference with freedom of the seas, and Jonkheer Feith pertinently asks: "When the interests of international shipping come to be weighed against America's national exploitation of submarine petroleum sources, will shipping come out on the winning side?" (p. 201). With the development of new interests in the sea-bed, a revision of the doctrine of freedom of the seas may be necessary. Restrictions may have to be introduced in order to admit the interests of the oil-prospector. It is the task of international law to regulate the conflicting interests which will arise.

Madame Marcelle Kraemer-Bach presented a report on the subject of custody and maintenance of children. Difficulties created through the divergence of national laws were discussed and the

adoption of a uniform system of law was urged. It was suggested that a desirable universal rule would be the application of the law of the place where the child had been residing, if there was a real and close connection with this country, though it was agreed that above all the child's welfare must be consulted. That this was the paramount consideration in English law was pointed out in discussion. It seems unfortunate that nothing more effectual could be achieved by the Conference than recommending the Executive Council to ask the Divorce Committee to study the problems of custody and maintenance.

The Conference found time to turn its attention to several other matters. Dr. Yuen-li Liang informed members of action taken by the United Nations under Article 13 of the Charter to encourage the codification and development of international law, including the creation of the International Law Commission. A resolution was also adopted urging that international arbitration be used as a means of settling international disputes, and that recourse be had to the Permanent Court of Arbitration, or the International Court of Justice deciding *ex aequo et bono*. Here again one might question the value of such resolutions, however well-intentioned and nobly-expressed. Professor Philonenko pointed out that the success, for instance, of the Alabama Arbitration in 1871 was largely due to the fact that the two disputants, Great Britain and the United States, spoke the same language and shared the same juridical and moral concepts. He aptly remarked how much more difficult it would be to arbitrate between East and West when the most elementary concepts were a matter for disagreement.

Other subjects dealt with were the creation of universal companies with international status, the rate of interest on expenditure charged to general average under the York-Antwerp Rules, and a French propsal to establish a uniform practice in commercial arbitration.

The volume also contains a note on the history of the International Law Association, its Constitution, and full particulars of officers, branches and members. It is interesting to observe that the Australian Universities' Law Schools Association recently resolved to apply for membership.

L.J.D.

The Torrens System in New South Wales. By JOHN BAALMAN. (The Law Book Co. of Australasia Pty. Ltd. : Sydney, Melbourne, and Brisbane. 1951. xxiii and 457 and (index) 29 pp. £3 17s. 6d.).

The author, who is Examiner of Titles in New South Wales, has produced an excellent study of the principles underlying the Real Property Act 1900 of that State of real benefit to students of the Torrens System and to Australian practitioners generally.

The work is not, like Kerr, a comparative study, but following the method employed by Wiseman with the Victorian Act supplies annotations to the sections of the New South Wales Act. The work is divided into seventeen parts which correspond with the seventeen parts of the Real Property Act. In the author's treatment most of the parts commence with introductory observations and comments. The Schedule to the Act is given with forms and fees, and there is an index. The book is very strong in its relation of theory to practice, particularly in the section dealing with the Act's function and its interpretation.

The only criticism which a Western Australian is tempted to make is that our own Torrens Statute is inferentially referred to by an incorrect title, but this is no doubt an oversight and not strictly relevant to the purpose of the book. The sections on the measure of indefeasibility of title and the express and implied exceptions to indefeasibility are of particular interest, as are the decided cases set out and summarised on the necessity for dealing with the registered proprietor and on fraud. The author continually stresses principles. He quotes the dictum of Isaacs J. in *Perpetual Executors etc. v. Hosken,* (1912) 14 C.L.R. 286, at 294, that the addition to a mortgage of a verse of Omar Khayyam or an Egyptian hieroglyphic would not disentitle it to registration if the mortgage otherwise followed substantially the prescribed form. The author stresses the difference, however, between what instruments *can* be registered and what it is permissible to include in such instruments. Such inclusions are thereby given no special sanctity, otherwise, says the author, the poetical mortgagee of Isaacs J. could claim an indefeasible title to a jug of wine. The book is frank in exposition of the author's opinions and there is a pleasing raciness of style. There is even a suggestion that the guiding beacon to all students, *Gibbs v. Messer,* [1891] A.C. 248, is no longer good law.

The author has no illusions about the inconsistencies of the judgments in many of the leading cases on the Torrens Statutes, or that

students could be said to have any equanimity of mind on this subject, and whilst he endeavours to explain the underlying philosophy he does not seek to rationalise conflicts of opinion. In this respect alone his work is of value in providing a clear exposition of different schools of thought and lines of approach to problems arising under the Act. For example, on the subject of fraud against an unregistered proprietor he deals first with the cases on "Notice amounting to fraud" commencing with *Loke Yew v. Port Swettenham Rubber Co. Ltd.*, [1913] A.C. 491, and then on "Notice not amounting to fraud" commencing with the New South Wales case of *Oertel v. Hordern*, (1902) 2 S.R. (Eq.) 37, and proceeding to *Waimiha Sawmilling Co. Ltd. v. Waione Timber Co., Ltd.*, [1926] A.C. 101, and others. His conclusion is that Dr. Kerr's observation that in future less inquiry will be made as to whether or not a caveat has been lodged and more attention given to whether or not the facts disclose a designed intention to become registered to the deprivation of another's known existing right must be reconsidered in the light of *Abigail v. Lapin*, [1934] A.C. 491. The Privy Council there made it clear that emphasis should be placed on the fact that the respondents had "neglected the well-known method of protecting their rights and interests by means of a caveat" and therefore could not complain of postponement.

The theory of indefeasibility is attractive, and philosophers of the Act, if they may be so called, are anxious to close the door on the old doctrine of notice in view of the Act's provision of the caveat. It is noteworthy in this connection that the Western Australian legislature last year amended our own Torrens Statute so as to require positively that where there is an option of purchase or renewal in any lease, either the lease shall be registered or the option protected by caveat.

The book is easy to read and is commended to all practitioners and students anxious to build up a good reference library.

I.G.M.

Apportionment Tables. By H. BOLTON. Third impression. (Stevens & Sons Ltd., London. 1950. vii and 367 pp. £2 9s. 6d.).

These Tables have been prepared for the purpose of simplifying the task of accountants, local authorities, solicitors and others in making apportionment of rates or charges for any number of days. They will be particularly useful, for instance, in apportioning amounts between income and corpus in the administration of deceased estates.

Since the book is an English publication, it has been arranged specifically for a financial year commencing on the 1st April, which is not likely to commend itself to Australian users. One page is devoted to each number of days from one to three hundred and sixty five, and each page indicates at its head the period covered, starting from the 1st April, or (in the reverse order) ending on the 31st March. Thus the page for 13 days is headed "From 1st April to 13th April, or from 19th March to 31st March." However, the compiler points out that the tables can be readily adapted to the requirements of a different financial year by appropriate redating of the pages. This would of course be a somewhat laborious task, and it is suggested that a future edition might well anticipate such difficulties by itself providing at the head of each page for the other two financial years most likely to be in use, that is, those commencing on the 1st January and the 1st July. For example, on the page setting out the proportions for 183 days, there could be printed, in addition to "From 1st April to 30th September", the periods "From 1st January to 2nd July" and "From 1st July to 30th December", and similarly for the reverse order.

Translation Tables are added in an Appendix in order that the book may conveniently be used for apportionments in Leap Years and in respect of charges made half-yearly.

The book will be most valuable to those who are in any way concerned with accounts and to those who delight in arithmetical manipulations.

L.J.D.

The Valuation of Shares. By ROBERT LONGFIELD SIDEY. (The Law Book Co. of Australasia Pty. Ltd.: Sydney, Melbourne and Brisbane. 1950. xii and 100 pp. and index. £1 5s.).

Mr. Sidey has produced an interesting book setting out the method of valuation of shares which he advocates, and argues ably in support of his thesis. He mentions the circumstances in which valuations may be required and goes on to discuss the factors which must be taken into consideration as being relevant to the assessment of a share value, viz., the earning capacity of the company, the value of tangible assets, and the nature of the company's business. The point of view of the purchaser, the author says, is the significant matter, and the question uppermost in his mind is the amount of the return he is likely to receive on his capital. It is the author's contention then that,

speaking generally, the profits over the preceding three to five years should be averaged, and this figure capitalised by regarding it as interest on capital at a rate of 8% to 12½% (or perhaps 15%), according to circumstances. The capital sum thus obtained is divided by the number of shares, and the result is the value per share, based on earning capacity. Mr. Sidey is careful to point out that various adjustments will have to be made depending on the circumstances. It may for instance be necessary to add or subtract certain items before the net profit shown in the company's accounts can be accepted as a basis for calculation. Similarly the capitalisation rate will be determined by the nature of the company and its operations.

Mr. Sidey also discusses the valuation of goodwill, which in his view, is incidental to the valuation of shares. It is arrived at simply by subtracting the net value of tangible assets from the total value of the shares ascertained by capitalisation as above. The balance is then the value of goodwill.

Besides these matters, the book also deals with stock exchange valuations, cases where values because of losses are below par, the effect of restrictions on share transfer contained in the Articles, statutory provisions for valuation contained, for instance, in Stamp Duties Acts, and the provisions of the Income Tax Acts.

On the accountancy side, Mr. Sidey argues his case convincingly. It is to be doubted however whether his suggestion that in the cases under discussion assessors should be added to the Bench, as in Admiralty jurisdiction, is of any value. His complaint (which is quite just) that expert accountants, when called to give evidence, often conflict considerably, would still apply to assessors, also presumably accountants, appointed to assist the judge, with the added disadvantage that they could not be subjected to close questioning by Counsel for each litigant. In Admiralty matters, the questions to be determined by the assessors are presumably less controversial and less a matter of personal opinion.

It is regrettable that, like many other professional men, Mr. Sidey makes use of a literary style which can only be described as repulsive. His handling of prepositions is careless in the extreme, and many phrases are used quite inaccurately—for instance, "on the contrary" (p. 22), instead of "on the other hand", "this is not to consider" (p. 25), instead of "this does not mean", "ex-Australian readers" (p. 65), instead of "non-Australian readers". On p. 68 he speaks of Undistributed Profits Tax as being "an incalculable sum, until assessed". If the sum is truly incalculable, then it can *never* be assessed. Mr. Sidey is attempting to say that it is an "unknown"

sum, until it is assessed by the Income Tax Department, which alone is able to do this. We are also offered expressions like "to consider the considerations" (p. 8), "quasi extra capital" (p. 29), and "always freely given gratuitously" (p. 53). It is doubtful whether Mr. Sidey fully understands the use of the word "empirical", which appears several times in the text. One gains the impression that he regards it as referring to mere rule of thumb procedure. Since in normal philosophical usage empiricism (i.e., observation and experiment) is contrasted with scientific theory, his reference on p. 46 to a formula which "is merely an elaborate but empirical theory, of no practical value" makes pure nonsense.

One's difficulties are increased by the use of a syntax which it is always a strain to follow. At times the meaning is obscure. On p. 36 we have the sentence "Proprietary Companies, when the Articles leave the fixing of the fair value to the Annual General Meeting, it is to be emphasised that they throw an important onus on the Company in General Meeting, when fixing the fair value." The third paragraph on p. 62 is so awkwardly expressed and incorrectly punctuated that it has to be read several times before sense can be made of it. Further examples of clumsy language could easily be produced. This particular matter is emphasised since it is important that any author should be able to put forward his ideas clearly and attractively; confused expression merely serves to offend the reader and to detract from the force of the argument.

Mr. Sidey's thesis has apparently won the approval of the profession and has also been favourably referred to in judicial decisions. If a new edition is contemplated, it is to be hoped that steps will be taken to improve the language in which it is expressed.

L.J.D.

The Australian Commercial Dictionary. By R. KEITH YORSTON. Second edition. (The Law Book Co. of Australasia Pty. Ltd.: Sydney, Melbourne and Brisbane. 1950. viii and 383 pp. £1 2s. 6d.).

The Editor's statement that this book is more than a mere dictionary is fully justified. The businessman, the economist, the accountant or the lawyer will find his questions competently answered in concise form. For its convenience of reference the dictionary will be most welcome, and it has besides the merit of a remarkable comprehensiveness. The compilers have found room to include information

on ship's time, the Greek alphabet, correction of proofs, and sizes of books, in addition to a not inconsiderable assembly of legal and commercial terms. There are also entries giving brief accounts of the British Empire and of Australian political parties. One cannot help being impressed by the wealth of material which has been so ably brought together, and it is clear that much labour has been expended in searching for any words or phrases which are at all relevant. The Dictionary is indeed in its field an encyclopaedia in miniature.

The Editor does not claim to have covered everything, but among the items included there are one or two curious errors and inconsistencies. The explanation of the initials "w.f." as *wrong fount* might have included as well the alternative *wrong font,* and one might also have expected a few words in definition of this term for the benefit of readers who would not know to seek its meaning under "proofs". Similarly, *ignoranti juris* on p. 175 must be corrected to *ignorantia juris.* One must disagree on the use of the letters U.N.A.—they are used to mean United Nations Association rather than United Nations Assembly. Again, there is a strange insistence that AS (and not A.S.) means Anglo-Saxon and that OE (and not O.E.) means Old English. This statement needs qualification. AS and OE are normally (but not always) used by scholars when referring to the languages; on other occasions it is frequent practice to use A.S. (or A.-S.) and O.E. when quoting, for instance, titles of books, such as *Second A.S. Reader, An O.E. Miscellany.* Further, PS is glossed as *postscript;* P.S., surely the more usual abbreviation, is not mentioned.

It is difficult to understand why it was found necessary to point out, under the heading "American law", that American decisions are not binding on Australian courts, or to record that "fathom" means "to get to the bottom of". Under "particular average" the reader is given a brief definition of the term, but on looking up "general average" is referred to "average", under which, in addition, "particular average" is again explained. Further, "glossary" does not include merely unusual, obsolete, dialectal or technical terms; it also means a vocabulary to assist translation from one language into another. As additions, one might suggest D.L.R. (Dominion Law Reports of Canada) for insertion in the list of abbreviations used in reference to Law Reports, and also the word "ream" which appears only incidentally in the definition of "quire".

The above suggestions are only some of those which arise from a rapid investigation of the terms recorded, and indicate that some improvements could be made. But it cannot be denied that the dictionary is a most valuable production and will be a source of

pleasure in particular to those who are interested in strange linguistic growths like orebody, contango, ligan, stoping and inchmaree, or who are curious to learn the meaning of oncost, multiplier, odd lots and pyramiding. It can be strongly recommended to all whose professions are concerned with legal and commercial terms.

L.J.D.

Studies in Accounting. By W. T. BAXTER. (The Law Book Co. of Australasia Pty. Ltd. : Sydney, Melbourne and Brisbane. 1950. xii and 455. £1 13s.).

Accountants, it seems, are remarkably human. This is the impression which perforce arises from reading this collection of essays gathered together by Professor Baxter. They are not the work of stuffy bookkeepers or dull jugglers with figures, but of men to whom accountancy is something real and vital. This is a book which makes most attractive and refreshing reading, and one is grateful that the Editor allowed himself, as he points out in his introduction, to be guided in his choice of material as much by the manner of writing as by the matter itself. A layman might perhaps in the first place have reserved his judgment on being told that accounting theory is exciting stuff; this book, however, should go a long way towards convincing him of the truth of the statement. At least no-one should quarrel with the assertion that there is no reason "why our writers should suppress their high spirits or turn a deaf ear to style" (p. iv). The standard of writing, then, is one of the chief merits of this work. Having said this, one might therefore be forgiven for drawing attention to a curious mixture of figures of speech in the footnote to p. 411, where reference is made to "residential rents, temporarily frozen below free market levels by ceilings".

The Editor stresses also the need for controversial and critical writing, and this is present in abundance. The genesis of this book lies in the desire of the Association of University Teachers of Accounting in England to publish several volumes containing reprints of appropriate articles. This volume is the first and deals with general accounting. The various components have been selected from many different sources, including United States publications, and range in time from 1923 to 1949. Any fears that such a heterogeneous collection of reprints might fail to hang together successfully are quickly dispelled. The choice has been capably made, and the result is as interesting and representative a selection of scholarly views on

accounting problems as one will find. The subjects dealt with include among others History, Law, Final Accounts, Management, Depreciation and Price Level.

For many readers, the opening contributions on the history of accounting may well prove the most captivating, and it is encouraging to learn what a respectable parentage this dark art has. Hence it is disappointing to be told by the Editor that in this field there is a lack of material, since it is always a salutary thing to impress on students and practitioners that the present has grown out of and is intimately connected with the past. The article on "The Greatest Accountant in the World" (p. 49), after promising well, rather loses its force in the end since the reader is left with only a hazy idea of the nature of Raymond Marien's financial wizardry. The lawyer will be interested in particular by Mr. B. S. Yamey's remarks in "Aspects of the Law Relating to Company Dividends" (p. 59). He refers to the rather wide permissive rules of the Courts which have allowed dividends to be paid without insisting on the maintenance in value of fixed assets or the replacement of losses sustained in previous years, and have also permitted abnormal earnings to be drawn on for distribution of dividends. Mr. Yamey's criticism is that in any case the application of these rules is rather uncertain, that company managements are left free by the law to act almost as they please, and further that the Courts have failed to consider adequately the many problems involved in the matter—for instance, the effect on the rights of preference shareholders in the event of a dissolution. It is pointed out, however, that the rules of accounting, though not always clear-cut, are stricter than the rules deducible from legal decisions, and in practice most calculations of the dividend fund are made in accordance with such accounting rules, which would not neglect provisions for depreciation.

In dealing with this matter one is inevitably faced with the problem of how profits are made up. Indeed one of the most striking features of this book is the constant reference made by the contributors to the nature of profits, and how they are to be calculated. There can scarcely be said to be agreement as to the meaning of the word, and discussion as to its determination is long and various. The question arises not simply from a conflict as to what items might justifiably be credited to or charged against income, but chiefly from the fact that asset values will vary according to the state of the market, and goods costing £100 at the beginning of a year may well cost £50 more, or £50 less, at the end. The amount of profit will obviously be affected according to the value which is placed on

closing stock, and—which is equally important—the figure for depreciation may be understated or overstated if the replacement value of fixed assets, such as buildings, has significantly risen or fallen. It is with this problem of valuation that many of the writers are, at one time or another, concerned. Mr. MacNeal enumerates on p. 217 five principles of accounting procedure—such as the valuation of stock for resale at cost or market price, whichever is the lower; the valuation of fixed assets at cost (less depreciation), without regard to market price—and points out that these principles will often give results totally unconnected with the true situation. The accountant is apt to attend to the bookkeeping without regard to how the figures represent—or misrepresent—the facts. He does not regard himself as a valuer, and this may be largely due to what Professor Edwards calls "the limitations of statistical technique" (p. 227), which to some extent is still mediaeval in character. In dealing with the measurement of income, Professor Edwards urges that the most satisfactory way of valuing a business as a whole is to estimate its future receipts and payments, difficult task though it be. On the specific question of stock valuation, in times when replacement values fluctuate, the last-in first-out method is both commended and criticised, but defended most capably by Mr. David Solomons in his lucid article on "Income—True and False" (p. 363), which answers most of the possible objections well, though it cannot be denied that its application by his system would add appreciably to the task of bookkeeping.

Calculation of profit will always be affected by depreciation figures, and it is gratifying to have this matter treated at some length in several places. Fluctuations in values, and the varying types of assets, make this not an easy problem, though as Professor Edwards indicates, it has at times been oversimplified through failure to attend to the variety of factors which may be involved. Here again the responsibility lies on the accountant, in Dr. Scott's words, "to adjust depreciation methods to a never-ending variety of changing conditions under which assets are used" (p. 359). The question is not so simple as Lord Melchett would seem to suggest when he speaks (p. 150) of the value of fixed assets in most cases as being merely a scrap value, even immediately after formation of a company, for the substantial writing down of fixed assets is usually a means of creating secret reserves. Finally, in a vigorous and entertaining article (p. 337), Professor Hatfield exposes the remarkable inaccuracies of language of which scholars have been guilty in their writings on the subject.

It is not surprising, then, that doubts should be expressed as to what final accounts may be said to reveal. At least six of the learned contributors refer to the way in which these accounts may actually be deceptive. "The items on which different views can be taken . . . are legion, and . . . I would almost undertake to draw up two balance-sheets for the same company, both coming within an auditor's statutory certificate, in which practically the only recognizable items would be the name and the capital authorised and issued . . . It is possible within the law to present a more or less truthful but entirely misleading position of affairs" (p. 203). This throws an obligation on shareholders to take active and intelligent interest in their affairs, which however is not always easy for one who is untrained in matters of accountancy. This statement is taken from a chairman's speech included in the volume (p. 211): "I have said enough to show you that an auditor—however able and however conscientious—is no no more able than the staff or anyone else to fix a definite value, from which there can be no escape, on every item, and I would undertake to present figures for this company—which no man on earth, and certainly no auditor, could say were wrong—and which would show our profits to-day to be at least £25,000 more than you see them, and I would equally undertake to put forward figures equally unchallengeable, showing them to be £14,000 less." Differences of technique in valuing stock, allowing for depreciation, providing reserves, and charging (or not charging) expenses, besides the declaration of dividends with or without maintaining capital intact, make it difficult for one not possessed of all the facts to make an accurate and independent appraisal of a concern's financial position. Problems of this kind receive full and interesting treatment in the studies selected.

A short article by Sir Frederick Alban (p. 429) gives a concise account of nationalisation in Great Britain, and the effect this is likely to have on the accountancy profession.

Professor Baxter has undoubtedly done an admirable piece of work in selecting the material for this book, and it is encouraging to find such a collection of attractive and readable works on the subject. The further volumes in this series will be awaited with interest.

L.J.D.

The Elements of Drafting. By E. L. PIESSE; second edition by P. MOERLIN FOX, LL.B. (The Law Book Co. of Australasia Pty. Ltd.: Sydney, Melbourne, and Brisbane. 1951. xii and 133 and (index) 9 pp. 14s. 6d.).

The first edition of this book was a reprint of addresses to students on some of the elements of drafting legal and business documents. It was concerned, as the author made clear, with expression rather than with substance; and even then it did not pretend to be in any way comprehensive. It was, however, a very useful little handbook of aids to good draftsmanship. It was very well received not only in Australia but also in England, where it was championed by Mr. R. E. Megarry. As a result, an English edition was published under the editorship of Mr. J. Gilchrist Smith. A second edition has now been prepared by Mr. Fox, who has retained much of the material added in the English edition and has himself made some further contributions.

The publishers' note states that Messrs. Smith and Fox have made many "improvements" to the first Australian edition. This is a matter of opinion; this reviewer has not, unfortunately, been able to compare the new text with the English edition, but he has compared it with the first Australian edition, and he certainly would not choose the word "improvements" to describe the editorial work. Mr. Fox has added a new chapter (Chapter 2) entitled "Some Rules Relating to Deeds." This is so scrappy as to be hardly worth including; anyone who has sufficient knowledge of the law to want to buy the book will almost certainly have acquired long ago the driblets of information here given.

Other passages, attributable to one or other of the editors and requiring reconsideration, are the final paragraph on page 78 which suggests that mortgages in Australia are made by demise, not by conveyance; the final sentence of the first paragraph on page 93 (on the use of commas in enumeration), which serves merely to cast doubt on what has just been said; and the misleading passage on pages 115 and 116 concerning the effect of the phrase 'subject to contract.' A careful perusal of *Chillingworth v. Esche,* [1924] 1 Ch. 97, and the numerous other cases on this and similar phrases, shows that the use of 'subject to contract' does not make the *contract* conditional; it makes the *offer or acceptance* conditional, with the result that there is no contract.

The editorial italicisation of the opening words of the first text-sentence on page 71 leads the reader to think that the italicised words are a sub-heading; the words should therefore be reset in the original type. Again, there seems to be no good reason for the substitution of "question" (for "interrogatory" in the original text) on page 91. *Doe d., Bedford v. White* (page 83) should have its offending comma excised, Sir Edward Coke ("Lord Coke" on page

51) should be restored to his correct social status, and Sir J. Gorell Barnes P. (on page 9) should be honoured with the correct spelling of his name. So much for the editorial changes. An equally serious criticism is that the editor has failed to make a careful revision of the wording of the original text. It is perhaps churlish to criticise minor errors and sloppy English in a learned monograph, for the author is directing his mind to abstruse legal points and may be forgiven if he overlooks other matters. But this is a book whose theme is the need for writing good English and for being brief, clear, and accurate. The reader is therefore entitled to demand that the author and editor should practise what they preach. The following inaccuracies require attention in the next edition:

> The Judicial Committee of the Privy Council does not give *judgment* but tenders *advice* (p. 87); and the members of the House of Lords do not give *judgments,* they make *speeches* (page 103).
>
> Throughout the text, judges of the various courts are referred to as "Blank J."; Baron Alderson (on page 95) should therefore become Alderson B.; in any case the correct form, in speech, is *Mr.* Baron Alderson.

Finally, here are some examples of indifferent writing which should be reworded:

> Page 73. "If .... there seems any room for doubt, it can usually be avoided ...."
>
> Page 78. ".... there are documents which traditionally are in a frame that involves the use of provisoes. Doubtless they could be framed without one." (Some of these documents, on page 15, leave their involving frames and fall into two classes).
>
> Page 96. ".... If you are a draftsman who has in mind that his client's rights may depend on the language ...., and you may be held responsible."
>
> Page 109. ".... the application of some old decision."
>
> Page 121. "This confusion happens surprisingly often; in this case the error may frequently arise ...."
>
> Page 78. "The last paragraph is addressed .... to the "ordinary draftsmen"—such people as work in lawyers' offices" (This after two pages on the 'such' habit in the earlier chapter).

It is a pity that the book should be marred by matters of this kind, for it is a useful work and deserves a wide circulation. The new edition is much easier to handle than the first Australian edition. The index and table of cases are full and accurate. Further editions

will doubtless be required, but before another edition is produced much more careful editing and revision will be required.

A word is needed on one theme which is developed in this work. Mr. Piesse's clients, who in this respect appear to resemble the lady whose mother was frightened by a canoe, are apparently easily upset. He accordingly advises his readers to beware of using words like "whereas" and "hereinafter" for fear of annoying the client. The acceptance of this advice is likely to lead the "ordinary draftsman" into trouble; it is suggested that the various passages on this matter might be deleted. This reviewer's experience runs counter to that of Mr. Piesse. And it would appear from a recent article by Mr. Justice Devlin in (1951) 14 *Modern Law Review* 249, on the drafting habits of business men, that some laymen at least, far from being upset by abstruse phrases, take a positive delight in them.

P.B.