

BOOK REVIEWS

Legislative, Executive and Judicial Powers in Australia, W. Anstey Wynes, 4th edition, Law Book Company Limited, 1970. Cloth \$17, Paper Back \$13.

The first edition of Dr. Wynes' *Legislative, Executive and Judicial Powers in Australia* appeared in 1936. The latest edition is the fourth. It adopts the same chapter titles as the third—published in 1962—and, with some variations, deals essentially with the same topics.

The reader seeking enlightenment in some areas of Australian constitutional law that were less prominent in the mid-thirties, or even in 1962, than in 1970, may be a little disappointed. If he wishes to bring himself up to date on the constitutional implications of recent Commonwealth legislation governing fishing rights and the exploitation of the natural resources of the sea bed, the reader will not obtain a great deal of assistance from the latest edition of Wynes. Of course, Dr. Wynes, like most legal authors, has been a victim of the Judicial Fates, which decree that the reporting of seminal judgements shall follow rather than precede the latest editions of standard texts dealing with their subject matter. The fourth edition of Wynes includes cases reported prior to 15th September, 1969, and, in obedience to this decree, it was not until 30th September that *Bonser v. La Macchia* appeared in the *Australian Law Journal Reports*: (1970) 43 A.L.J.R. 275.

The various implications of the less than unanimous judgements in this case illustrate the complexity of the constitutional problems surrounding the respective rights of the Federal and State governments over the sea and the sea bed within the three-mile limit. Naturally, had this case been reported before the new edition was prepared, much more would have been said on this subject. Nevertheless, the very reluctance of the State and Federal governments—at least until recently—to set sail on a collision course in the territorial sea despite increasing legislative intervention in the control of natural resources of the sea and the sea bed has indicated the presence of unsolved constitutional problems in these waters. Perhaps it is not unreasonable to expect that a new edition of a textbook on Australian constitutional law would propose solutions to them, or at least discuss them in depth. However, the method used in writing the book seems to have prevented such an approach, consisting as it does essentially of a detailed analysis of judgements of the High Court. And where there is little or no judicial direction available, as in this area, the method is seen at its weakest.

J. F. Hookey

Asian Contract Law—A survey of Current Problems, David E. Allan (General Editor) Melbourne University Press, 1969. \$9.60

This book is the result of a research project by the recently formed Law Association for Asia and the Western Pacific (Lawasia). The geographical area covered includes Australia, New Zealand, Singapore, Malaysia, Indonesia, Japan, Korea, India and the Philippines. The editors unfold their survey with historical and political backgrounds of the countries under review followed by a section on the reception of Western systems. The third part deals with specific features of contract law.

Western legal systems have made their impact on the municipal law of all the various states described. In some cases reception of either a common law system or

a Code derived from the civil law system was received during a period of dependence, or colonial rule. In other cases codified systems or parts thereof were adopted as a replacement of, or to coexist with multifarious customary laws. All of the countries reviewed are in a real sense developing nations, some achieving independent status only in recent times. The book however shows that, with the exception possibly of Australia and New Zealand, important aspects of the received law are unsuited to the foreign soil in which it finds itself replanted. As the editors point out, the book concentrates on areas where there are problems, it ignores fields in which the law works efficiently and well. The reasons for the unsuitability of the adopted law are variously explained as being the failure to give effect to useful features of the customary law, the Western orientation of members of the legal profession, and the retention of archaic principles of the received law no longer reflected in the State of its birth.

The book however reveals a paradox. Whereas the received law may be inept in certain of its features, the customary law is inadequate to cope with the intricacies of a nation thrust into an industrialized twentieth century. On first thoughts, marriage of the two would seem to be the answer but as the text makes clear, apart from specific problems this has not been achieved. For example, Indonesia's ADAT Law, specifically retained, maintains more of an uneasy concubinage with received codes, with no clear boundaries, rather than a marriage.

The book must have a particular interest to States approaching national sovereignty in the near future. The demand for a new national law has often led to the introduction, in its entirety, of foreign law under the guise of a national law, this having been done without adequate consideration. In some cases led to as great a confusion as existed previously. Each reader will, however, I am sure feel obliged to divert his eyes from an introspection of municipal law to the sea of differing legal systems which surrounds him.

The title of the book is inclined to be misleading. Contract here referred to covers a wide field of subjects which includes Security, Credit, Hire Purchase, Sale and Carriage of Goods, and aspects of the Law of Landlord and Tenant. The 'yardstick' by which the municipal law in these fields has been surveyed has been the received common law, or civil law, and the end product after its reception into the municipal law. With the great diversity of customary systems of contract throughout the area it would have been difficult to find some universal principles of customary contract on which to found a different yardstick. Had this been possible it would have been of great interest to view the subject from the other side of the coin. Nevertheless the book is particularly interesting where customs are expounded rather than merely mentioned, e.g. in the section on Hwei and Koottu in relation to Security.

With the increasing importance of, and communication between, the various countries of South East Asia and the Western Pacific, it behoves lawyers to learn a little of how their neighbours regulate their lives and dealings. This book provides for that need admirably in the field of contract law. The subject is logically expounded and does not lose sight of its object of reviewing the law throughout the region rather than becoming ensnared in local difficulties. The book contains no footnotes and only illustrative cases are mentioned. My only criticism is that I would have liked the print a little larger.

Keith Ross

Legislation in Force in the Territory of Papua and New Guinea, Audrey H. Edwards, Canberra, A N U Press, 1968. Price \$2.00

This volume is of a type that has been eagerly awaited by practitioners and academics alike in the Territory. It was produced as a result of a request by the New Guinea Legal Research Council in 1966 for an index to all current legislation of Papua and New Guinea. The need was obvious, it is twenty five years since the last consolidation, and the annual volumes of the *Laws of Papua and New Guinea* no longer provide a comprehensive index to all legislation in force.

Mrs. Edwards has divided her book into two parts. Part I divides the legislation into categories. The categories adopted are those used in Halsbury's *Statutes of England*, 2nd edition, with such amendments as were thought necessary. The legislation noted under these various headings includes not only the Ordinances and Acts dealing principally with the topic, but all legislation which in section or part affects the law relating to that particular area. Part II is an alphabetical list of legislation with section by section analysis of the more important statutes.

The book does not include legislation which may apply by virtue of the *Courts and Laws Adopting Ordinance 1889-1951* (Papua) and the *Laws Repeal and Adopting Ordinance 1921-58* (New Guinea), but it does include the Acts of the Commonwealth of Australia where they apply and Acts of the Australian States and United Kingdom which have been adopted by the respective Territories.

Preparing an index of this nature is a precise, exacting and involved task and with such a huge volume of varied legislation it is easy to overlook some pertinent material. For example, the *Corrected Titles to Land Act of 1882* (Q.A.) (Papua) has been included in the index, although this adopted Act was specifically repealed by the *Land (Corrected Titles) Ordinance 1951*. Again, at the date of publication of the volume, 1968, the *Wills Probate and Administration Ordinance 1966-1968* was not in force (although it had been enacted) and in fact it was not brought into force until May, 1970.

In some instances it may not be quite clear whether or not an Ordinance or Act still applies; for example, parts of the *Distress, Replevin and Ejectment Act of 1867* (31 Vic. No. 16), adopted from Queensland, may still apply, even though parts of it may be superseded by the *Summary Ejectment Ordinance 1952*: the former Act has not been specifically repealed.

A similar situation may apply with respect to the *Interdict Act 1867* (Q.A.) and the *Trustees and Incapacitated Persons Act 1867* (Q.A.) both of which have been adopted in Papua.

Despite this, Mrs. Edwards' work is a commendable one, and it is hoped that she will issue an annual supplement for the benefit of all practitioners and academics interested in the legislation of the Territory.

Carolyn Moloney

Stamp, Death, Estate and Gift Duties, D. Graham Hill, Sydney, Law Book Company Limited, 1970; permanent volume and loose-leaf supplement to April, 1970. Permanent volume and releases numbers 1-3 \$26.75.

The principal defect in the works which this book is designed to replace was that they became outdated very shortly after publication. To some extent this defect has now been overcome by the use of a loose-leaf supplement, in the first issue of which are contained some valuable notes and comments on the case of *Western Australia v. Hamersley Iron Pty. Ltd.* (1969) 43 A.L.J.R. 399. The judgement in that case had not been handed down by the High Court at the time the permanent volume went to press, and its effect has been of great importance in the field of stamp duties. No doubt the resultant changes in the legislation of the various States will be promptly noted in future issues of the supplement.

The field of State revenue is one in which the law has undergone many recent changes, so the appearance of this book will be most welcome to practitioners, all of whom are concerned with the impact of stamp duties legislation, which now applies in all States, the Australian Capital Territory and Papua and New Guinea. While the Acts in each State vary, the content and principles are basically the same, and the annotations which Mr. Hill has made to the Acts would make the book valuable to practitioners throughout Australia and its Territories, even if the book did not also contain excellent and up-to-date annotations of the *Commonwealth Estate Duty Assessment and Gift Duty Assessment Acts*, which are of concern to all practitioners.

Some practitioners may feel that the annotations in this book are a little too full for easy reference, but it is suggested that in a field where legislation is to be construed strictly, with the result that fine distinctions are often drawn, this is by

no means a defect. The material contained in this book should enable the practitioner to form an opinion on the duty aspects of most of the transactions with which he is likely to come in contact, as the annotations are sufficiently full to enable him to apply the existing decisions to the facts before him.

The book has the added advantage of drawing on the officers of the N.S.W. Stamp Duties Office for information regarding the practice of that office in respect of matters which have not yet been decided by the Courts and, where possible, similar information has been obtained from the officers of the Commonwealth Taxation Department and included in this book.

The index is clear, and arranged by reference to subject matter, so that practitioners in States other than New South Wales will have no difficulty in finding material related to their particular problems. The material is in the form of annotations to the various statutes, and thus comparisons are facilitated.

John L. Goldring

Tutorials in Contract, John Collinge, Law Book Company Limited, 1970. \$6.50.

This slim volume serves a special purpose for the student. The author stresses that its purpose is to enable the student to do independent preparation for tutorials, and that the book be used as a basis of a tutorial programme in the law of contracts.

The method by which the book proceeds is firstly to state a general principle of law. This principle is then illustrated by a leading case on the subject by way of extract. The area study is then concluded by questions designed to provoke the student to further reading on the topic.

This book has a definite place on the shelves of every student. The position that it should occupy is between the case book and reference book, for the volume has elements of both. It enables the student to obtain a general grasp of a particular area of the law and the problems involved in it in a fairly short period of time.

The limitation of this book, if it be a limitation at all, is that it is primarily a student's notebook to be used to understand a general area, and above all to be used in conjunction with the case book on the subject.

This book is particularly suitable to students for whom English is not their first language, and therefore should be very useful at the University of Papua and New Guinea.

Carolyn Moloney