

BOOK REVIEWS

TRADE PRACTICES LAW, Vol. II DECEPTIVE AND UNFAIR CONDUCT, CONSUMER PROTECTION, SHIPPING, ENFORCEMENT AND REMEDIES, by *B. G. Donald and J. D. Heydon* (Law Book Company Limited, 1978), pp. i-iii, 509-875.

This work is the second and final volume of the authors' treatise on the Trade Practices Act, 1974-1977 (Cth.). Volume I was reviewed in Vol. 6 of this journal, pp. 496-497.

The greater part of Volume II is concerned with the provisions of Part V of the Act, dealing with undesirable trading practices and consumer protection. There is a short section (20 pages) on overseas cargo shipping. The final section (106 pages) deals with the enforcement procedures under the Act and remedies under the Act.

This volume deals with material published up to August, 1978. Like Volume I it has a detailed table of contents and index, a table of cases, a table of statutes and a bibliography. These aids are of considerable value to the researcher as well as to the practitioner. The table of statutes should be of particular value to busy practitioners. The table for the Trade Practices Act is broken down into individual sub-section references. Those who have lost valuable time thumbing through a text looking for references to a specific provision will know the value of such a table.

The general approach taken by the authors is the same as that adopted in Volume I—a detailed treatment of the Act and case law with extensive use of examples and factual illustrations. The use of examples and illustrations is especially helpful to one who has to advise on the application of the Act, and for those wanting some light (intellectual) relief the portion of the text dealing with television advertising and mock-ups (pp. 557-560) and ss 53 and 53A (use of terms in relation to goods) have their moments: e.g. "down" does not refer to chicken feathers; "swansdown" does not include marabou feathers.

In the section which deals with consumer rights, the authors make a detailed study of the substantive provisions and also grapple with the relationship between the provisions of the Act, common law remedies and State legislation.

It is, perhaps, in the portion dealing with remedies and enforcement where the book seems less helpful than in its other parts. No doubt, as the authors say, this is an area where the law has developed slowly and will develop slowly and there is less material with which to work.

Overall, Volume II maintains the high standard of Volume I. Together the two volumes constitute a work which any person involved in the more intricate aspects of trade practices law will find invaluable both as a reference work and as a source of analysis and ideas.

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TEXTBOOK OF CRIMINAL LAW, by *Glanville Williams* (Stevens & Sons, 1978), pp. i-xi, 1-973.

This is an imaginatively conceived textbook of top rank. *Textbook* is not intended as a substitute for a third edition of *Criminal Law: The General Part* nor as a first edition of *Criminal Law: The Specific Part*, but provides a comprehensive coverage of general principles and most specific offences of any importance (victimless crimes, public order offences, national security offences, and offences against the administration of justice are excluded). Although aimed primarily at the beginner, it nonetheless challenges old hands as well as new.

The pedagogical contribution of the book is that it provides a superbly structured account of English substantial law (Chapter 5, "Judge and Jury", deals with unseverable matters of evidence and procedure) in all its contemporary degeneration. Simplicity and clarity is achieved by extensive use of a socratic method as well as by clear explanations in standard form. It is this socratic method which makes the text outstanding, for it enables even complex material to be presented in a clear but critical, sound but stimulating, way. As outlined in the introduction, the method is as follows:

"Since a beginner's threshold of boredom tends to be low, my efforts to enliven the discussion include the interruption of the text by questions and objections. Some of these are merely convenient sub-headings, but may represent the challenges that may be expected from a shrewd, critical and irreverent reader. My interlocutor is allowed to talk naturally, and indeed racily (since even grave and experienced lawyers, when they doff their gowns, do not always address each other in the language of a statue or judgment). I have endeavoured to satisfy him that the law is mainly rational; but when it is not I join in the effort to expose its shortcomings. I would suggest to the student that he consider for himself whether an objection put into the mouth of my critic is valid, or whether a question raises a good point, before reading the observations I offer in reply." (*Textbook of Criminal Law* (1978), v.).

Possibly the interlocutory style may grate a little at times, yet it is no bad thing to be made to wash one's preconceptions in conjectural acid.

As to substance, an initial feature to be noticed is that this is a textbook about English criminal law. Little Australian material has been included, whereas in *Criminal Law: The General Part* the bent towards comparative law is much more pronounced. As with Smith and Hogan's text, therefore, the Australian buyer also needs to have a local text. Of course there is much in common between English and Australian criminal law but, as ever, the English go off on many frolics of their own (e.g. *Majewski* [1977] A.C. 443; Criminal Law Act, 1977 (U.K.)). So clear and merciless is the author's exposure of silly frolics it would be surprising if the book did not induce Australian law-makers to learn from English error. *Textbook of Criminal Law* may thus be a force conducive to greater disparity between English and Australian criminal law, whereas its title possibly evokes the value of greater similarity.

Australian preoccupations aside, what a delight the flesh of this book provides! A very wide range of substantive matters is covered yet information, critical assessment, ideas, interest and humour are all combined in nice proportion. If only the discussion were pressed further; but that would

be to ask for a different kind of book. As it is, *Textbook* reaches into so many dark places of the criminal law that forensic explorers soon find themselves consumed. Doubtless further references could be added at various points (e.g. ch. 1, s.10 (justifications of punishment)) and at a more general level, it may be wondered whether understandable concern to lay down the concrete rather than to rise to the abstract has sometimes tied discussion too closely to the *status quo*. Thus, the offences of robbery and burglary, as defined under the Theft Act, 1968 (U.K.), leave much to be desired because the framers of the Theft Act were too constrained by the piecemeal nature of the English program of criminal law codification to re-shape the law in accordance with coherent policy; although robbery and burglary traditionally have been treated as offences against property, they are better regarded as offences against the person, because bodily or psychic well-being is the main interest protected and it is misleading and prejudicial not to bring this out plainly as a matter of definition (see S.A., Criminal Law and Penal Methods Reform Committee, *Fourth Report, The Substantive Criminal Law* (1978), 72-74, 171-172, 217-218). More importantly, the Theft Act, 1968 (U.K.) warrants deeply skeptical reception (Elliott, "Theft and Related Problems—The Position in England, Australia and the U.S.A.", (1977) 26 *I.C.L.Q.* 110). Complex and technical as the present law of theft undoubtedly is, at least it is relatively discriminating and parsimonious in its application. The vice of the Theft Act, 1968 (U.K.) is that, instead of re-casting theft offences so as to cover only those invasions of property interests where there is a clear need to invoke the criminal law, it creates sweeping, vague offences which, in the name of simplicity and ease of understanding by the layman, expand the reach of the criminal law in this area to an unprecedented extent. In an age of sexual liberation, perhaps moral rearmers of the criminal law have found a new crusade, a crusade against dishonesty, the new unspeakable crime. It is ironical that, for all the modernity they profess, those who support the Theft Act seem no less tainted by moral imperialism than were the eighteenth century legislators who "set new standards of legislative industry, as they passed act after act to keep the capital sanction up to date, to protect every conceivable kind of property from theft or malicious damage" (Hay and others (eds.), *Albion's Fatal Tree* (1977), 22).

To conclude, *Textbook of Criminal Law* is a work of towering excellence. In criminal law it is book of the decade.

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