BOOK REVIEWS

COMPENSATION FOR INCAPACITY, *by Geoffrey Palmer* (Oxford University Press, 1980), pp. 1-460.

Concern at the law's response to the plight of the injured has continued and increased. Consequently the question of how best to improve upon that response has been one of major legal and social interest and attention. During the past fifteen years few subjects have been investigated and analysed so intensely in common law jurisdictions – the Department of Transportation Inquiry in the United States, the Pearson Royal Commission in the United Kingdom, and careful reports from bodies in most of the Provinces of Canada and in Tasmania and Victoria. But no studies have excited such interest as the work of the Royal Commission in New Zealand and National Committee of Inquiry in Australia, both under the chairmanship of Mr. Justice Woodhouse. The boldness of their recommendations for the abolition of the common law and workmen's compensation schemes, the sweep of their proposals for replacing them by an earnings-related compensation scheme run by the public sector and the overall vision of their interpretation of the extent of community responsibility for the injured and the sick lent them an apocalyptic air that is reflected in reactions to the passage of New Zealand's Accident Compensation Act. It was greeted by the *American Journal of Comparative Law* as "an unparalleled event in our cultural history, the first casualty among the core legal institutions of the civilised world"; a distinguished American jurist thought of it as the "Consciousness Three" of the social response to personal injuries; and the most eminent Canadian commentator in the field sees it "not simply as a unique system in a small country of the southern hemisphere, but as a prototype that could be a model for reform elsewhere." The inspirational call of the Reports attracts attention and controversy across the world of scholarship, unabated by the fate of the Australian *Report* and by the subsequent refusal of the Pearson Commission to be beguiled by their charms.

Mr. Palmer has a long and close association with the work of the Woodhouse committees, not only as draftsman of the White Paper on the *Woodhouse Report* in New Zealand and as a Principal Assistant to the Australian Inquiry, but also as the chief academic publicist of the work of both committees. In *Compensation for Incapacity* he has made use of these positions to write an account of the genesis and development of the Woodhouse proposals in both countries from the point of view of a "participant-historian", recording "the dust and sweat of combat", acknowledging that his point of view is that of the "committed believer" in the type of reform about which he is writing and the impossibility of preserving the usual "scholarly detachment" of the social historian.

The point of the book is as much to assess the influences that came to focus on a problem and a policy designed to meet it in the course of implementing the initial proposals – the impact of politics on policy – as to analyse the full range of issues to which the Woodhouse proposals gave rise. So the book is written in two main parts: the first setting the background and offering a largely chronological account of the course of events in each country from the decision to set up an inquiry to the present state of the Accident Compensation Act in New Zealand and the abandonment of the National Compensation Bill following the change of government in Australia in December 1975, and the second explaining the difficulties of arriving at the detailed proposals for dealing with the many issues that the basic proposals generated. The pace of the book is often appropriately breathless, especially in the first part, and the

structure occasionally leads to topics appearing to be left hanging early and returned to late. But this merely reflects its concerns. It is also clear that it is not the concern of the author to analyse and defend the Woodhouse proposals as one among a number of proposals for dealing with the personal injury problem, though in the course of the book many comments are made on specific objections that were raised to the scheme, and these amount to a sketch of the defence and evaluation of it. Since the first part is a "contemporary history", the account reflects the arguments put in 1967-1975; this also explains, therefore, the somewhat dated air that the analysis sometimes displays, the account of the law of damages being a particular example.

The accounts of the progress from the notion that something should be done about personal injury law to the ultimate determinations of the fate of the respective Reports contain a great deal of fascinating detail (at least to those not hitherto privy to the events described) to go along with the analysis of what happened, and how. Some of it is of importance to the development of the theory of compensation schemes generally, as for example the account of the change from the Gair Committee's recommendation that the proposals should be confined to an earner's scheme and a motor vehicle scheme, leaving non-earners to the common law; the apparent inequities that this would create led to the scheme being made comprehensive. (The Pearson Committee ran into the same difficulty, but used it as an argument in favour of the retention of common law remedies generally, and it is by no means clear that the decision was due entirely to its construction of its terms of reference as excluding domestic accidents). A great deal more is of the genre of political intrigue, a notable example being the account of the effort of "the compensation team" in the Australian Public Service to remove the then Head of the Department of Social Security in the hope of finding a replacement who would put a higher priority on its activities. Yet one doubts whether the final analysis of these events will contribute much of lasting value to the general understanding of the process of generating policy and the techniques by which public policies are altered, as the author hopes in his prologue, and there are grounds for thinking that he might accept that conclusion, since his own final analysis is that reform situations differ from each other so much that it is very difficult to apply the lessons learnt from one to another. Certainly his basic approach and conclusions support that judgment. The processes which are described may be thought of as having a structural aspect and an aspect that depends on individuals, the one dealing with what committee and institutional structures exist and to what extent they influence final decisions and the other with the way in which they are established, how they work, who supports what cause, and so on. Viewed from the former aspect the account of the progress of the Woodhouse proposals is unexceptionable; having been adopted as government policy in unicameral New Zealand, and being supported in principle by both parties, they found their way into legislative form, with significant amendments to particular issues being most frequently determined in practice at the public service level. On the other hand in Australia the proposals did not have the support of both parties, and the Opposition controlled the Senate; in any event the dismissal of the Labor government came at the moment when the National Compensation Bill was ready to be presented. Perhaps inevitably, these conclusions lead to a concentration on the latter question, with its associated issues of deciding on the membership of committees, drafting their terms of reference, examining their operation and so on. In one sense the conclusions derived from this part of the analysis are clearly incapable of being carried over from one issue to another. The practical

issues resolved themselves essentially into how the National Party caucus and the National Party majority on the Parliamentary Select Committee examining the Woodhouse proposals could be persuaded to accept the scheme in New Zealand, given the existence of a body of opinion within the Party that was sceptical of or hostile to it; and how the Labor Party caucus in Australia was persuaded to overcome the opposition of the unions to various aspects of the scheme and the objections of the social welfare priorities lobby which had persuaded some members that the scheme was against Labor's redistributive policies. The impression left is that in New Zealand the Prime Minister was won over, and that at a crucial stage the most articulate opponents of the scheme were absent enabling its supporters to use their places within the Party and the assistance of the Opposition to influence the decisions; while in Australia the wholehearted support of the Prime Minister and the absence of any immediately available alternative were the crucial factors.

A number of perturbing matters do arise from the account of the "dust and sweat" of combat. First, perhaps, the degree of ignorance, especially in the Australian Cabinet, of what it was that it had agreed to: Palmer "found it remarkable that any measure could become Government policy with so little understanding of its principal features amongst those who adopted it." But in a sense it is the pervasive atmosphere of heroes and villains, and the means by which the causes of right may triumph, that leave one most relieved of personal insulation from the battle. At various stages lessons for the reformers in seeking to implement proposals seem to be drawn. An independent committee of inquiry is to be preferred to public service examination of an issue if a government has a vague idea of what it intends, but no detailed policy. The goals need to be established in advance and a Royal Commission should write its own terms of reference, so as to be thoroughly conversant with the government thinking behind the establishment of the Commission; it should not, therefore, have an open mind about the goals to be achieved, only about the ways of reaching them. The committee should be small, and recruit all expert research staff and not rely on outside advice, even (or perhaps especially) from public service departments unless they are, or become, committed to a helpful policy. Written submissions from the public may be helpful, but public hearings and interim reports waste time and may help opponents to present their case at greater length or more effectively. If there are public hearings, there should be no cross-examination. Eventually a Bill is a necessary aid to clear thinking, provided it is a good Bill. Beyond this stage, when the matter is in the hands of the public service, secrecy has advantages, in being prized by public servants and eliminating the possibility of political embarrassment. Is it unfair to precis this as it being helpful to reduce the scope of independent advice, public participation, effective opposition and relevant material made available for discussion?

And yet there is much in the formulation of the Woodhouse proposals that would serve to justify generally suspicious and worried attitudes on the part of lawyers, administrators or politicians alike. Palmer acknowledges the ambiguity and open-endedness of such fundamental Woodhouse principles as "community responsibility" and "real compensation"; that beneath the Reports "lurks a definitely collectivist set of values [that] assume the legitimacy of a large area for state action, the justification for which was never argued"; that the proposals on benefits display "an antipathy to the award for intangible loss, based on the unarticulated view that there was no social justification for compensating pain and suffering in a no-fault system"; and that "the important, unstated point" of the proposals on indexing benefits was, partly,

"to remove the matter from political control". Of the inclusion of criminals among those covered by the New Zealand scheme he comments:

> "Silence brought its own rewards. It is hard to resist the conclusion that the government did not perceive the implications of its policy of compensating those injured in the course of committing crimes. The officials took care never to parade the horrible examples before politicians."

Faced with understanding a large scheme based so heavily on assumption, the unargued, the unarticulated, the unstated and the suppressed, it is perhaps no wonder that some groups found it hard to accept uncritically the purity of the vision splendid or, on occasion, those who bore it.

This *realpolitik* attitude is carried forward in other ways. One notable example is the treatment of the views of the Australian legal profession which, the author believes, fought the proposals in the most cynical way, from motivation of financial self-interest, to the extent of raising issues on the ethical position of professional organisations in policy formation on issues of vital concern to them. This view of professional opposition to particular developments is not uncommon and it would be idle to deny any connection between self-interest and preferred policy, but at least more sensitive commentators are able to identify among lawyers a genuine commitment to a rule of law ideology based on essential respect for the courts and the law *(c.f.* Arthurs, "Jonah and the Whale: The Appearance, Disappearance and Reappearance of Administrative Law", (1980) 30 *U.T.L.J.* 225, 229); and simply to regard the profession as dishonest is perhaps a political as well as an intellectual error. One wonders again whether the suppression of opposition is not being regarded as more important than the refutation of its arguments.

This basic attitude explains a good deal of the frustration felt by Australian lawyers at the Woodhouse proposals, but another comment revives another of their concerns at the time of the Inquiry. The Woodhouse Committee in Australia rejected any allegation or implication that it was prejudiced in favour of the New Zealand scheme, and no-one has cast doubts on the integrity of its claim. Except, perhaps, Palmer, who follows his account of this by commenting on the tactics of the Victorian lawyers' submissions, which were critical of the New Zealand *Report:* "Whatever might be said about the submission it was hardly likely to endear the Victorian lawyers to an Australian Inquiry headed by the same man who had headed the New Zealand one." That, presumably, was precisely the difficulty felt by the Australian lawyers, and the assurance that the Committee had a genuinely open mind about the scheme needed to fulfil its terms of reference was designed to say that that difficulty did not exist. Attitudes such as that comment displays do more to justify the continuing resentment of the profession at the conduct of the Inquiry than the perfectly proper rejection of the demand to cross-examine witnesses or allegations of wounded self-interest could ever do.

For all that there must be an abiding interest in a case-study exposition of a reformer with an idea and wishing to implement it. From this point of view ends are all and means no more than a method of reaching them. The machinery of government and politics are essentially viewed as stumbling blocks and it is as well to know how to manipulate them and avoid their worst quicksands. There is, in a sense, nothing to object to in this and the notion that governments may use Royal Commissions for their own purposes is not new. But the use of the prestige and authority of judges in the pursuit of an overtly independent inquiry as part of the overall manipulative scheme (as Palmer

advocates) would do a great deal to justify the refusal of Victorian judges to allow themselves to participate in such processes, simply because it would amount to abuse of the public respect in which they are held and might well reduce the respect and authority on which the judicial function depends. And while it is obvious enough that too much consultation and discussion can easily lead to an ultimate failure to reach any decisions or take any action the systematic reduction in the opportunities for expressing other views, for obtaining material on which they may be based, and perhaps restricting the range of people who should feel able to express views appears to favour *realpolitik* to the point where untutored outsiders, not conversant with this particular structure of reality and possessing deluded views as to the breadth of the requirements of fair procedures or the democratic process, may harbour such doubts as to the legitimacy of the adoption of the reform proposal as to put its eventual stability at unnecessary risk.

There is, however, one episode recounted in the second part of the book which begins to explain the frustrations experienced by the reformers. The Australian *Woodhouse Report* contained only tentative proposals about the financing of the scheme; the National Compensation Bill introduced by the Government in 1974 contained none. The reason in each case was that the Treasury encouraged the Committee to leave the matter to it, and thereafter recommended that nothing be done until the reports of all the Committees dealing with social welfare were available. It proceeded to act upon that advice, apparently in defiance of express instructions from Cabinet, until given deadlines for the production of proposals. The world of bureaucratic *realpolitik*, we are reminded, cannot be thought of as the exclusive province of the reformer.

It is something of a relief to turn to the second main theme of the book: the design of detailed provisions that will fulfil the basic overall Woodhouse proposals. The account here contains less of the chronology of the difficulties encountered and is much more analytical in form. It becomes thereby of general interest and importance to anyone with a concern for the problems of designing improved personal injury compensation schemes, since a great many problems are common to any scheme and are by no means confined to Woodhouse-type proposals. And there is no doubt at all as to the quality and value of this part of the book. The work of the various bodies that analysed the initial Woodhouse proposals as they sought to draft a practical Bill provided both an experiential base and a refining process for the theoretical work that already existed or was being developed during the 1970's, and Palmer's account must now be indispensable material for any reformers in the field. To deal with even a substantial number of the issues raised and discussed would extend the length of this review inordinately, so these comments are confined to a very few topics and reflect Australian concerns, though the discussion of particular New Zealand provisions is helped by an analysis of the work of the Accident Claims Commission and the Appeal Authority. Despite the intrinsic interest of the account of the constitutional bases on which the National Compensation Bill in Australia was based, the issues of the most general interest where valuable material is contributed are probably those of compensation and financing. The discussion of benefits for permanent partial incapacity is the most sophisticated available with respect to issues that have long been regarded as the most difficult in the field of compensation for personal injury. In a scheme based on earnings-relations the most obvious choice is the difference between pre- and post- injury earnings or pre- and post- injury earning capacity. The former was the originally used in the New

Zealand Accident Compensation Act and recommended by the Senate Committee *Report on the Clauses of the National Compensation Bill* in Australia; there is now the practical experience of the Accident Compensation Commission to endorse the predicted administrative problems of difficulty and expense in fixing the relevant figures, the consequences for rehabilitation and the possible absence of any compensation at all for non-earners (if damages for non-pecuniary loss were to be abolished). Nor has the change to the latter helped much in New Zealand; the need for tailor-made assessments in each case results in delays, insoluble difficulties in assessing the loss of earnings capacity, and administrative expense. To remove these problems a table of degrees of impairment and a fixed sum unrelated to loss of earnings in the individual case are needed; so the Australian Woodhouse proposals based on the American Medical Association's impairment guides and average weekly earnings were reached. Palmer acknowledges the force of Luntz's criticism (*Compensation and Rehabilitation* (Butterworths, 1975), 82) that in compensating for disablement rather than lost earnings this scheme provides the equivalent of damages for pecuniary loss where the injury does cause lost earnings or earning capacity, but the equivalent of damages for non-pecuniary losses where it does not (as in the case of an accountant or judge who loses a leg), and defends the proposals against the charge of inequity of treatment on the basis that they give everyone at least enough to compensate for pecuniary losses without delays or adverse effects on rehabilitation and these benefits must offset any such inequities of result. This is a more subtle and honest appraisal of the problem and its suggested solution than Ison's (*Accident Compensation* (1980), 56-57), whose faith that this is a more accurate system of measuring actual loss of earning capacity for labourers than applying a percentage to pre-injury earnings (and should therefore be extended so as to cover cases of permanent total incapacity) overlooks the point that since most earners earn less than average weekly earnings the proposals in fact involve an explicit form of income redistribution to the permanently disabled that might be thought to require further justification while ignoring the criticism of windfall benefit to the professional person.

The discussion does, however, raise one point which Palmer does not deal with in any detail. The Woodhouse proposals were for an earnings-related income maintenance scheme; but this leaves the question of damages for non-pecuniary losses and damage for extra expenses incurred by the injured person or a member of the family (an area which the common law has been exploring rapidly of late). He records the antipathy to non-pecuniary losses as having no social justification and being likely to deflect attention from recovery of pecuniary losses (to which one may add the concern at the high ratio that damages for non-economic losses bear to those for pecuniary losses, especially in cases of minor injury); and expresses the view that essentially similar considerations apply to the cases of extra expenses. But there is no argued defence of these positions, which are far from uncontroversial. Lawyers occasionally claim that economists are concerned only with matters readily measurable in money, yet I know of no economist who has advocated excluding non-pecuniary losses from the scope of common law damages or of cost-benefit analyses. And where there are unusual and heavy expenses income maintenance does not enable living standards to be maintained; deliberately to ignore them is to defeat the stated principal objective of the scheme. The Woodhouse tactic was to point to the generally increased sums that the injured would receive overall. The point is legitimate (though recent movements in the law of damages prejudice the claim), but the omissions merely left opponents of the scheme extra ammunition.

There is one last issue which is of importance with respect to compensation. The indexing of periodic payments to keep pace with movements in prices or wages is obviously of major importance, and of crucial importance to the Woodhouse schemes. The explicit refusal of the High Court in particular to consider the effect of inflation on damages clearly led to a decade in which plaintiffs were undercompensated, and probably sometimes grossly undercompensated, for their pecuniary losses. The indexing of benefits avoided this injustice, and it was important to ensure that it was guaranteed. Two things have happened since 1975 which have a bearing on this. First, whatever the ultimate effects of *Pennant Hills Investments Pty. Ltd.* v. *Barrell Insurances Ltd.* prove to be, it is clear that Australian courts in particular (perhaps influenced by the compellingly lucid analysis by Luntz (*Assessment of Damages for Personal Injury and Death* (Butterworths, 1974), ch. 7)) have taken a much more realistic view of appropriate discount rates in the assessment of damages, and that in most States awards have increased as discount rates have diminished. Meanwhile, in New Zealand, the value of benefits has steadily been eroded by inflation. The national wage index has lagged behind the consumer price index, and the rate of indexation of periodic payments has lagged behind that again. There have been delays in increasing the maximum amount of compensation and the maximum lump sums available for intangible losses have not been increased since 1974. It appears that the New Zealand Treasury refused to allow indexing to be removed from political control; there is little reason to believe that the Australian Treasury would be more willing to permit it. But without it the ability of the Accident Compensation Commission to fulfil the Woodhouse aims and promises must become increasingly and more grievously impaired. The *Woodhouse Report* in Australia deliberately designed its proposals to remove the question of indexation from political control, recognising Ison's principle that: "if periodic payments to disabled people are to be maintained at a constant value, the protection against inflation must be entrenched rigidly in the originating legislation, and not be left to subsequent political or administrative processes." (*Accident Compensation* (1980), 63-64.) Many Australian lawyers doubted that a national compensation scheme would accept this principle; the New Zealand experience goes some way to justify those fears.

The other general area in which Palmer's analysis marks a notable advance in the study of compensation schemes lies in his account of the attempts to look at the demands of Calabresi's theory of general deterrence in the context of designing a compensation scheme. (Since attention is focused on the deterrent effects of particular financing systems on people who cause injuries the analysis is applicable to the writings of Posner and the other writers from the school of the Chicago Economic Analysis of Law). In principle there is no need, in the theory of general deterrence, for damages to be paid to victims (that is justified on other grounds) so long as injurers are made to pay the costs of the accidents they cause; hence they could pay them to any social welfare fund or their contributions might reflect their accident record. There have been a number of theoretical objections posited to this idea, expressed in the most sophisticated fashion by Atiyah and Englard (Atiyah, *Accident Compensation and the Law* (Weidenfeld and Nicolson, 3rd ed., 1980), ch. 24; Englard, "The System Builders: A Critical Appraisal of Modern Tort Theory", (1980) 9 *Jo. Legal Studies* 27), based on the difficulties of identifying which activities can be said to cause particular consequences, the division of liabilities when several activities contribute to a given set of consequences, the extent to which it is possible to divide a set of activities (*e.g.* driving) into practicable sub-sets that reflect the cost of each (*e.g.* driving cars of a given model, or age,

or colour, by day or at night, by male or female drivers or by young or older drivers) without excessive administrative expense, whether the statistics available to insurers and their practices generally reflect these possibilities, and so on. The New Zealand scheme does not try to reflect the principles of general deterrence, since only employers and road users contribute directly to the funds, the supplementary funds coming from general revenue; hence manufacturers, occupiers, sportsmen and so on do not pay the costs of the injuries their activities cause directly. But within the categories of employers and motor vehicle owners the possibilities exist to some extent. The Woodhouse proposal for a flat rate levy on employers was rejected in favour of a differential rate for different industrial activities with different risk potential, so as to avoid (for example) professional groups subsidising freezing workers, there being 21 rates in all. Yet the scheme does not appear to be particularly successful and there is a good deal of doubt as to whether the classifications are based on sufficiently reliable information to reflect real distinctions. Moreover, the experience with differential rates for even obviously different categories of vehicle shows that the temptations for political intervention may become irresistible; hence motor cyclists pay lower levies than the Commission would wish. All in all the New Zealand experience bears out the predictions that general deterrence as a goal of accident law can be carried only into the most imperfect operation, certainly in the context of an overall scheme of accident protection and probably in the context of any kind of legal structure. One modification to the present basis of funding personal injury compensation schemes would make the object of general deterrence even harder to achieve. Given the existence of liability insurance the notion of general deterrence operates not through a particular firm paying the costs of the accidents it causes, but through its insurance premiums. This at least presupposes that the premium income of any one year (suitably augmented by investment) will pay the costs of accidents in the year, and amounts to a pooling of risks among groups operating in that year. But if the change is made to pay-as-you-go schemes (as recommended by Woodhouse for Australia, and by both Harris and Minogue in Victoria) contributors may cease to pay for injuries they have caused by going out of business, ceasing to drive, and so on, while new contributors find themselves paying the costs of their predecessors. Palmer acknowledges that he began as a firm believer in the theory of general deterrence, but has ended up a sceptic as to whether any scheme capable of implementation attached to a compensation scheme will achieve much by the way of economic deterrence. The evidence he presents amply supports this change of view.

Beyond these issues which arise in the implementation of the Woodhouse idea, however, there remains the general issue of its ultimate purpose, and here the book (reflecting the scheme) suffers from a certain ambivalence. Palmer says of the Woodhouse reform movement, that "it started life as a reform of personal injury law; meeting success there it has progressed to an attempt to refashion the whole of the income maintenance system along the same lines." But clearly in this progression it has hitherto met failure at every turn; the extension of the terms of reference to sickness in Australia led to hostility to the whole scheme from a "welfare priorities lobby", of which the most important members were the Chairmen of the Poverty Commission and Social Welfare Commission, and the Priorities Review Staff, and a committee set up in New Zealand to consider the extension of the Woodhouse scheme to sickness in 1975 was abruptly dissolved upon a change of Government in 1977. The pattern of events thus indicated is reinforced at every turn. The Accident Compensation Act was introduced in New Zealand as a matter of law reform,

designed to replace common law rules and remedies that were no longer adequate for any discernible purpose; it was a "foundation stone" of the Act that personal injury compensation did not impinge on social welfare, which is described elsewhere in this general context as a "dangerous minefield". Now in one way it is unfair to describe Palmer's attitude to this matter as ambivalent; his basic position is that the inclusion of sickness in the Australian scheme probably hindered the passage of the provision for injury and might therefore have been tactically undesirable, but that there is no doubt that the Woodhouse schemes should be extended to the sick and congenitally incapacitated. In the course of so doing it is desirable to reintroduce the provision of a floor of notional earnings for non-earners – a proposal not taken up in the Accident Compensation Act. And yet in his discussion of the proper provisions for widows and survivors, and in his general discussion of the extension of the scheme beyond personal injury there are indications both of unease and of a failure to analyse the proposals, and the criticisms they generated, against any background of serious consideration of the function of social welfare provisions and their success or otherwise in attaining their ends: his general attitude is sufficiently conveyed by his reference to them as "trusty but rusty". And yet an attempt to restructure social welfare and income maintenance programmes fundamentally without looking at either the theoretical or political base for them must at least run the risk of being misunderstood and opposed unless it can become the subject of a political auction at election time, as age pensions did in New Zealand.

The first hint of personal discomfort comes in the analysis of the provisions for widows. If (as is frequently said) the object of the scheme is income maintenance, then presumably the first proposal should be (as the Senate Committee proposed in Australia) to continue support at the previous levels of dependency. But this involves a complicated tailor-made assessment in each case, and was rejected on the grounds of likely delay and administrative expense. Abandoning the idea on that ground, therefore, the simplest alternative is simply to offer the widow, and dependants, a proportion of the earnings-related compensation that would have been available had the victim of the accident not died. But here other considerations intervene; it is thought to be both expensive, too generous, and socially unjustified to continue to support a young, childless widow at such a level until she attains 60, or remarries. So the earnings-related benefits are offered to widows over a specified age, or to widows with dependants, or widows fulfilling other specified qualifications having the effect of withdrawing them from the workforce; but are only available for a year to widows who do not meet these requirements. Palmer recognises that there is an inconsistency here between the pattern of compensation paid to those who are injured but do not die, and the families of those that do, and that it might be thought anomalous "to use a social welfare approach based on needs in one part of the scheme and an automatic earnings-related approach in another." Still, faced with competing demands of social policy, the technique was "to avoid analyses of the competing approaches, take a deep breath, adopt a bold approach, and present it as persuasively as possible." Given that all this reflects a conflict of policy considerations that afflict social security systems one may appreciate the forces which give rise to the anomaly. But two other problems call for attention too. First, there is the not unexpected problem arising from an earnings-related scheme that in New Zealand the widows of low earners having a child have to rely on income-tested social security widow's pensions to "top-up" the Accident Compensation payment to meet a needs test. Then, in order to avoid this the Australian scheme introduced a "floor" beneath which the

level of benefit should not fall, an amount which was fixed at about $50 in 1974. This method is in principle approved by Palmer, but it raises its own problems. First, the widow of a low earner but with several children might well have found herself worse off than under the Social Services Act (the break-even point is three children); problems of need are harder to solve than the scheme allowed. Secondly, the minimum for a young, childless widow would have exceeded the maximum for age pensions or unemployment benefit quite considerably – a point that would have been brought forcibly home to any such widow failing to find employment within a year. But no reason or justification is ever advanced as to why base levels should be so high. Then Palmer's own suggestion that all widows should be paid a flat rate pension related to average weekly earnings rather than the deceased's earnings as a possible solution to all this is breathtaking, as is the proposal that all children be compensated with flat-rate benefits. The social justifications for abandoning the earnings-related, income-maintenance programme have no bearing here; yet the anomaly which it creates is blithely extended, presumably on other (unarticulated) grounds. If the notion of maintaining previous standards of living is not to apply to widows and children, as well as to cases of permanent partial incapacities, what becomes the rule and what the anomaly? The Woodhouse defence of the earnings-related principle depends on the notion that different people have different commitments and different losses, which cannot be dealt with by a system which ignores lost earnings in favour of general average assistance. Why should this apply to families with injured breadwinners but not to families with dead ones? Apart from the incentives to return women to the workforce (which must have a hollow ring in 1981 that it did not have in 1974) no reason is offered. The edge at which payments based on need, or something else (never specified), should limit the earnings-related scheme is so arbitrarily drawn as to prejudice the main proposals.

The other main question which this analysis raises, and which the proposed extension of the Woodhouse proposals to sickness brings into more vivid focus, is what we want of a social security scheme. The extension of the injury scheme to cover all injuries, and then sickness, raises this social issue in a more acute form than a scheme designed to cover traffic and employment accidents. These extensions cannot be financed from petrol or vehicle levies, or taxes on employers; they have to be financed from general revenue. (Social insurance is not used in Australia and New Zealand, and is merely a smokescreen, anyway). So the question becomes more starkly: what kind of benefits should we finance from general revenue? Now perhaps it is absurd to ask for a consistent answer to a question that has never elicited consistent answers; but the kinds of answers that are most often considered are those which talk of minimum living standards (Beveridge), participation in the community standards (McCarthy, Townsend) and earnings-related standards. But the latter are not often used to justify payments at levels such as 85 per cent of prior earnings; certainly the U.K. example referred to in support did not. It was primarily differences on matters of this sort that brought the Woodhouse Inquiry into such violent disagreement with the Poverty Commission. Henderson, the Chairman of that Commission, has put the point bluntly ("Social Welfare Expenditure" in *Public Expenditures and Social Policy in Australia* (eds. Scotton and Furber), (Institute of Applied Economic and Social Research, 1978), 160, 175): that the clash of principle between the earnings-related scheme and the traditional Australian practice of flat-rate benefits according to needs was such that he could see no way of harmonising his *Report* with that of Woodhouse J. (nor *vice versa*), and that the decision between the two principles is so basic to social security that it must be taken at

the highest political level. An extra reason for this is given by Donnison in his review (in *Poverty*, December 1979, p. 24) of Townsend's magisterial work on *Poverty in the United Kingdom*, discussing the distinction between absolute and relative definitions of poverty:

> "The difference between the two views is fundamental. If poverty is hardship – hungry babies crying – we can put an end to it by raising the living standards of the whole nation till even the poorest have enough to eat, but without making any change in the distribution of resources among different groups within the country. But if poverty is relative disadvantage – not being able to enjoy life like everybody else – then we can only put an end to it by creating a more equal society. Poverty in the first sense can only be eliminated by economic progress. In the second sense, it can only be eliminated by social revolution."

Issues of this kind are foreign to the thinking of the Woodhouse reformers; and if we can forgive the Australian *Report* for not justifying its terms of reference (though Palmer tells us that the Government's commitment to a new scheme for injury was included at the request of Woodhouse J.) Palmer's continued refusal to deal with the issue in this book is a considerable disappointment. The matter is dealt with at the "contemporary history" level; the account of the Woodhouse reformers' attitude to the needs/earnings relation problem (which simply asserts that social security deals adequately with the former so that no social priorities problems exist) suggests that none of the reformers ever read anything issued by the Poverty Commission, and that he has not been interested enough to do so since. But if the Woodhouse proposals are to be seen as a blueprint for the future of social security it is no adequate base to emphasise their warm-hearted nature (as Palmer is wont to do) while ignoring this major dimension of the matter.

The extension of the Woodhouse proposals to sickness leads to other social and political issues, too. One reason for the political difficulties that Donnison identifies in adopting the full-blown "belonging" theory of social security is that the lowest earners paying income tax resent contributing to payments that may exceed their own earnings. And Palmer identifies it as a corollary of extending the scheme to sickness that a National Health service of some kind is created. He discusses the New Zealand health services and the impact of extending the Accident Compensation Act to sickness upon them; but it must be an advantage enjoyed by a participant-historian that, in the Australian situation, he can ignore the history of Medibank and health insurance since 1975.

It should perhaps be emphasised that the embroilment of the Woodhouse Committee in Australia in the welfare priorities battle was not its fault. Palmer says of the Whitlam government that it might have accomplished more had it tried to do less, and rightly points out that the Woodhouse Committee was only one of many investigations being carried out for the government with overlapping, and often incompatible, terms of reference, which were bound to lead to a plethora of reports lacking in a coherent social policy. The political guidance as to the function of social security provisions that Henderson saw as a necessity was therefore lacking. But one need not be surprised if there is cause for doubt as to whether the Woodhouse schemes are appropriate as the basis for all income maintenance programmes as distinct from proposals confined to personal injury. Those schemes are constrained by two fundamental points; first, the need to destroy the common law remedies and secondly, the need to provide benefits which match them in the great majority of cases. The former is required in order to provide the funds for the new

benefits without having to raise new sources of revenue; the latter in order to gain political acceptance for the proposals. In Australia, the constitutional problems attendant on achieving the former led to the inclusion of benefits which the reformers themselves thought to be intrinsically unjustifiable. The latter necessarily leads to a scheme that can match the benefits offered by a body of law theoretically committed to the idea of full restitution in reparation for a wrong. It can surely only be a matter for amazement if that structure is also that most appropriate for social security benefits. Moreover, the common law never explicitly concerned itself with problems of need; so the most elementary discussion of what that concept means, or the ways in which it is best fulfilled, are no part of common law thinking. Even within an injuries scheme, these issues were never fully analysed; in a general social security scheme there is no escape from them. As soon as the Woodhouse proposals depart from the essentials of income maintenance for an injured earner they show signs of floundering. Palmer's book underlines this, rather than offering any escape from the mire.

The immediate future of the Woodhouse proposals must lie, in Australia at any rate, in the reform of personal injury law, where it began. And it is likely that the reform of personal injury law will be left to the States, rather than the Commonwealth – a point which in itself imposes certain restrictions on the scope of available possibilities. The States will be hindered in producing a comprehensive scheme covering all personal injuries by the issues of financing accidents apart from employment and motor vehicle accidents, and will have to be careful of the impact of proposals that cover medical and hospital expenses on Commonwealth-State financing agreements. They may feel that they have to pay attention to the redistributive effects of pay-as-you-go schemes and the extra difficulties of allowing for general deterrence in them (though the violently redistributive effects of the present flat-rate premiums paying benefits that vary with the victim's earnings – which, curiously, Palmer does not mention – should minimise the impact of the former consideration). If they feel unable to produce a comprehensive scheme, then they may find (like the New Zealand Parliament and the Pearson Commission) difficulty in abolishing the common law with respect to some injuries, but not others. Yet clearly the common law cannot be left to itself, mainly for the reasons that have been eloquently expressed in the Woodhouse Reports, but also because of the increasing stresses that the insurance system is coming under as inflation continues and the courts go even further in refining the methods by which they calculate full restitution. In the consideration and analysis of the problems and possible solutions to this pressing social issue the Woodhouse proposals will remain of major importance, and we must be grateful for this book which contributes significantly to our knowledge both of the working out of those proposals and of the issues that arise in the evolution of any new scheme.

*John Keeler**

THE CREATION OF STATES IN INTERNATIONAL LAW, *by James Crawford* (Oxford University Press, 1979), pp. 1-498.

This book is a revised and condensed version of the thesis presented by the author for the degree of Doctor of Philosophy at the University of Oxford. It is not surprising then that the book is written in a "scholastic" style. The argument is close and detailed and the footnotes are extensive.

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The state is that type of legal person recognized by international law which has plenary competence to perform acts in the international sphere. States are not the only type of legal person recognized in international law, for it is clear that certain international organizations also possess international personality, *e.g.*, the United Nations. The author also refers to certain other bodies with international personality that are not states, *e.g.*, the Holy See and recognized belligerents.

There are two basic theories as to how statehood is determined:

(a) the constitutive theory, which provides that the act of recognition by other states is the criterion for the establishment of a state, and

(b) the declaratory theory, which provides that statehood is a state of facts independent of recognition.

The author basically supports the declaratory theory both because the constitutive theory in its effect denies any formal coherence to international law and because state practice affirms the existence of states even when those states are unrecognized. However, the author does consider recognition as a valuable aid in determining the question of statehood in those various borderline situations where the existence or otherwise of a state is difficult to determine, having regard to the formal criteria for statehood.

The classical criteria for statehood are (1) defined territory, (2) permanent population, (3) government, (4) capacity to enter into relations with other states, (5) independence (this is discussed at some length by the author), and (6) sovereignty. To these classical criteria the author argues that there are added other criteria based upon the concept *jus cogens* (a peremptory norm). The author argues that one such criterion is based upon the principle of self determination where territorial units are distinct political geographical areas whose inhabitants do not share in the government of the region. The author argues that a self determination unit has a right to self determination on the basis of "one man one vote" of the population of that region. An entity established in breach of the norm of self determination (*e.g.*, Rhodesia or the South African bantustans) will not be recognized as a state. It is suggested that, at least in the Rhodesian situation, it is difficult to avoid ascribing some legal personality to a body which not only fits the classical criteria for statehood, but has the capacity to maintain armies in the field, and indeed to engage in intervention on the territory of its neighbours with some regularity. However, in view of the manner of settlement of the Rhodesian dispute, it would no longer appear arguable that Rhodesia was a state after the U.D.I. It is doubted by this writer that this could be based on a principle of "one man one vote" which principle would not appear to be enshrined in international law (as the author also accepts) but rather perhaps on a *jus cogens* principle in respect of racism. This is not to deny that the author's reference to and consideration of the principle of self determination in this context provides a valuable insight into the operation of this criterion in the determination of statehood. Another such peremptory norm referred to by the author is the illegal use of force. The author discusses in some detail the effect of this norm where a "state" is created or extinguished by the use of such force (*e.g.*, Bangladesh).

The author then considers the means by which statehood is created. Of particular interest is the discussion on original acquisition in the Australian situation. The author points out that only Australia and the South Island of New Zealand were unoccupied territories at international law so that those territories might be acquired by occupation rather than cession or conquest.

This distinction noted by the author has not been realised by some writers (*cf.* Jonathan Brown, "Proposed Treaty between Aborigines and the Commonwealth", (1979) 53 *A.L.J.* 743). Similarly, the author's discussion of the creation of statehood by devolution has particular significance in identifying the date at which Australia became a state. The author expresses the view that the Balfour Declaration in 1926 was the critical date of the independence of the Dominions. Adopting this view it is suggested that if Mr. Justice Murphy's views as to the inapplicability of Imperial Legislation to the former colonies (see *China Ocean Shipping Co.* v. *State of South Australia* (1979) 54 A.L.J.R. 57, 78ff.) ever became generally accepted the proper date for determining such inapplicability would be 1926 rather than 1901. Of more practical significance is the relevance of the date of independence to the issue of the indivisibility of the Crown. Whilst the Crown appears to be indivisible within the Australian Commonwealth *(Bradken Consolidated Ltd.* v. *B.H.P.* (1979) 53 A.L.J.R. 452) and was once indivisible throughout the Empire *(China Ocean Shipping Case, supra)* it is clear that the Crown is now divisible throughout the former empire *(Tito* v. *Weddel (No. 2)* [1977] 2 W.L.R. 496, 610) so that in municipal law the Crown in right of Canada is a distinct legal person from, for instance, the Crown of Australia. The author suggests that the date of the divisibility of the Crown so far as the Dominions is concerned is 1926.

Also of more than passing interest is the author's consideration of the continuity of states. This topic deals with the question of whether the presently existing state is the same legal person as that state existing on generally the same territory at some previous time. The author points out, for example, that the Soviet Union is a continuation of Imperial Russia. The various facets of the rules of continuity of states can be vitally important to private persons in respect of such matters as the continuation of contracts in a newly independent state or a revolutionary state, although it is pointed out that the remedy remains one of international law, *i.e.,* for states rather than individuals.

This work is very detailed and discusses in some depth the various indicia of statehood, the methods of creation and extinction of states and the effect thereof. It is not possible in this review to give any satisfactory precis of these various matters.

It is suggested that the book is intended to be read by those reasonably well-versed in international law. The author appeared to this writer to assume that the reader has some working knowledge of the basic principles of international law and a reasonably extensive appreciation of international affairs over the past 150 years. A person intending to read this work, and not otherwise conversant with the principles of international law, may be well advised to read a more general discussion of statehood in a general text on international law (*e.g.,* Brownlie, *Principles of Public International Law* (3rd ed., Oxford)) before doing so.

It should also be pointed out that the matters discussed in the work are unlikely to be of any practical significance to most practitioners. Where proof or otherwise of the existence of a state in an Australian or British Court is necessary this is invariably achieved by executive certificate which is accepted by the Court as conclusive of the issue (see *Carl Zeiss Stiftung* v. *Rayner and Keeler Ltd. (No. 2)* [1965] Ch. 596; on appeal [1967] 1 A.C. 853).

The work should, however, be of considerable assistance to international lawyers. Both the author and Professor Brownlie in his forward to the book make mention of the absence of any monograph dealing with the topic of

statehood as such in the light of the substantial modern practice in the field. The number of states have more than doubled since World War II. A large number of these "new" states are former colonies or mandated territories. The interests of these states have qualified many of the classical criteria by which statehood has been determined and have led to (or are leading to) the establishment of new norms of international practice such as the principle of self determination. The recognition and treatment of these developments by the author only serve to highlight the need for this work. The range of matters covered by the author and his extensive footnotes also ensure that the work is a useful source-book in respect of a whole range of matters extending beyond merely the creation of states.

*B.M. Selway**

JUSTICE, *eds. Kamenka E. and Tay A. E-S.* (Edward Arnold, 1979), pp. i-viii, 1-184.

In these seven essays Professors Kamenka and Tay have collected the perceptions of justice of eight eminent thinkers, jurists or philosophers. In their widely different standpoints and consequently diverse conclusions, any legal practitioner might be agreeably surprised to discover stimulation on topics which, if not confronting a lawyer in daily practice, should exercise him or her as a "man of affairs".

The limitations of justice form the underlying theme of the book. Morality, charity, mercy on the one hand, and the realities of market forces on the other all have a role: justice should not be expected to play the part, or necessarily solve resultant problems for them. It is fair to point out at the outset that the limitations of justice are viewed in the first five essays in a context, be it "western", "Judaeo-Christian" or "common law" with which the average Australian lawyer will most readily identify. The final two chapters, by the marxists, Professor Lang, and Doctors Feher and Heller, are firmly based in marxist social and economic theory and offer a solid critique of "liberal-democratic" notions of economic justice, but may be of a complexity to deter a reader needing to work from precepts with which he or she is familiar.

These essays plainly illustrate that justice bears discussion in relationships which would not necessarily occur to a common lawyer. Not merely an imperfectly perceived notion of an existing legal system's ultimate goal, as reflected in Professor Barry's essay, justice is a concern in international resource allocation and indeed in allocation between ourselves and as yet unborn generations. This essay is of particular relevance as the Law of the Sea Conference hammers out concepts of trusteeship and distribution which transcend established property rights.

That justice should not be turned to as a panacea of last resort is most obviously the theme of Professors Passmore and Stone's complementary essays. Passmore compares civil justice (the preference for competence) with social, communal and formal justice. Implicitly taking as his touchstone (where Stone is explicit) the American reverse discrimination cases, Passmore attacks the woolliness of western thought on civil justice in the tones of an Old Testament prophet. Stone provides some redemption for this condition: the task of justice is not merely "The identification and explication of differences between human beings which are relevant to making justifiable

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discriminations between them" but also "the structuring of justice-rules corresponding to these differences".

Professors Tay on justice in the common law and Kamenka on justice in the abstract, but as a legal notion, provide the other complementary essays. Without Kamenka's introductory work on the necessary relativity of justice to other conditions in any society, Tay's essay might have lost definition in a rosy glow over the worthy flexibility of the common law. Thus the following:

> "The Cartesian ideal is not the Common lawyer's: for him, plain speaking and plain dealing, sound judgment and common sense do not require the belief that everything is or should be clear and distinct, transparent to reason and capable of logical analysis into simples. On the contrary, they require the recognition of flux, complexity and historicity and of a certain intractability of human affairs." (p.84)

reminded me of T. E. Lawrence's lines in *Seven Pillars of Wisdom:*

> "... the French remained incorrigible prose writers, seeing by the directly thrown light of reason and understanding, not through the half-closed eye, mistily, by things' essential radiance, in the manner of the imaginative British ..."

But Kamenka is able to put justice in historical and social perspective, a complex task lucidly performed, and all the more difficult for not assuming the marxist notions of property and means of production as the foundations of discussion. The essay, "What is justice?", is written entirely in general, without reference to specific cases, but Kamenka's discussion can hardly fail to draw attention to the current crisis in the Australian High Court.

It would not be unfair to say of the "majority" of the High Court (that is, all the justices except Mr. Justice Murphy) that its

> " ... model for all law is contract and the *quid pro quo* associated with commercial exchange, which also demands rationality and predictability. It has difficulty in dealing with the state or state instrumentalities, with corporations, social interests and the administrative requirements of social planning or a process of production, unless it reduces them to the interests of a 'party' to the proceedings, confronting another 'party' on the basis of formal equivalence and legal interchangeability." (p.8)

Think of Aickin J. in *Salemi* (1977) 137 C.L.R. 396, 459 describing a ministerial offer of amnesty to illegal immigrants as a political, not a contractual promise, and hence incapable of enforcement in the courts. Remember the *A.C.F.* (1980) 54 A.L.J.R. 176 decision.

How much more damning that Kamenka dismisses the following as "...the most patent results rather than the underlying principles ...":

> "... the right in serious matters to be represented by counsel, to have notice and detail of the charges made against one, to have officials state the powers under which they act and have them act within those powers ..." (pp. 13-14)

McInnes (1980) 54 A.L.J.R. 122, *Salemi* (1977) 137 C.L.R. 396 (on the general denial of natural justice) and *Church of Scientology* v. *Director General of A.S.I.O.* (1980) 54 A.L.J.R. 542 are explicit examples of High Court failure on these topics.

This loss of a relevant perspective takes one back to the reverse discrimination cases of Passmore and Stone's essays. In the first, *DeFunis* v. *Odegaard* 416 U.S. 312 (1973), Justice Douglas's dissent expressing dissatisfaction with the reverse discrimination technique rested on the Equal Protection Clause of the Fourteenth Amendment. Would a Bill of Rights in this country provide new horizons for our High Court "majority"? Would they raise their eyes to offer justice as Douglas so plainly sought to do? In words which go to the heart of administrative technique and the fear of revealed, personal discretions, Justice Douglas suggested the abolition of the general American Law School entrance examination. (The examination's "objective' exclusion of the disadvantaged had led to Washington Law School's introduction of reverse discrimination.) Douglas J. said:

> "The invention of substitute tests might be made to get a measure of an applicant's cultural background, perception, ability to analyze, and his or her relation to groups. They are highly subjective, but unlike the [existing examination] they are not concealed, but in the open." (340)

These essays should be widely read. They will provoke thought, sorely needed, on the administration of justice in the law of this country.

*Steven Churches**

ANSON'S LAW OF CONTRACT, *25th Centenary Ed., by A.G. Guest* (Clarendon Press, 1979), pp. xii-lviii, 1-709.

First published in 1879, Sir William Anson's *Principles of the English Law of Contract* has for many years been regarded as one of the standard English textbooks upon this area of the law. The book was originally written as a succinct outline of legal principles rather than as a "repository of cases for reference" and subsequent editions of the work have remained largely faithful to that concept. The present "centenary" edition by Professor A.G. Guest (Professor of English Law at the University of London) is no exception, providing a clear, concise and surprisingly readable account of the English law of contract.

There has been little change in the basic structure of the new edition, although the old discussion of quasi-contract is now included in a conceptually broader chapter entitled "Restitution" and there has been a slight rearrangement of the material on damages for breach of contract. The text now incorporates a number of new cases, including the decisions of the Court of Appeal in *Howard Marine and Dredging Co. Ltd.* v. *A. Ogden & Sons (Excavations) Ltd.*[1] (on the interpretation of the English Misrepresentation Act, 1967 and the tort of negligent misstatement), *Butler Machine Tool Co. Ltd.* v. *Ex-cell-0 Corporation (England) Ltd.*[2] (on offer and acceptance in relation to the exchange of differing standard forms) and *Jackson* v. *Horizon Holidays Ltd.*[3] (on recovery for mental distress and recovery of damages by a third party). The most substantial alteration in the text of the new edition, however, stems from the English Unfair Contract Terms Act, 1977, a legislative attempt to rationalize the pre-existing law in England on exemption clauses. In this context it should be noted, though, that while the discussion of

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1. [1978] 2 All E.R. 1134.
2. [1979] 1 All E.R. 965.
3. [1975] 1 W.L.R. 1468.

this Act is very good, much of what is said about the common law on exemption clauses has already been rendered largely obsolete by the decision of the House of Lords in *Photo Productions Ltd.* v. *Securicor Transport Ltd.*[4] (handed down in early 1980) – an unfortunate example of one of the hazards of textbook writing.

The one major drawback for the Australian student in using this book is, of course, the fact that it is a textbook of English law only. As such it contains very few references to Australian case law (aside from the odd High Court decision such as that in *McRae* v. *Commonwealth Disposals Commission*[5]) and no references at all to Australian legislation. Whilst the general principles of contract law in the two countries are for the most part the same, there are points of departure even at common law (compare, for example, the decision of the High Court in *Maybury* v. *Atlantic Union Oil Co. Ltd.*[6] on establishing a statement as a collateral warranty with what seems to be the English position in *City & Westminster Properties (1934) Ltd.* v. *Mudd* [7]); and the differences resulting from legislative intervention are considerably greater. Lack of reference to this material, therefore, leaves an important gap as far as the Australian student is concerned and constitutes a significant limitation upon the usefulness of the book.

While a lack of Australian cases and legislation can hardly be called a fault in an English textbook, however, there are a number of defects that do detract from the overall quality of the work. One is a tendency to be a little too succinct in places (especially in dealing with certain aspects of consideration and in discussing the *non est factum* defence at pp.313-318) and another is the unusually poor arrangement of the material on pp. 163-179 (dealing principally with the doctrine of fundamental breach of contract). By far the most noticeable deficiency, however, is a very limited discussion of the rules on the admissibility of parol evidence to establish the terms of a written contract. The parol evidence rule still raises questions of considerable importance in contract law today and deserves a far more detailed explanation than is provided by the couple of lines that it receives here.

For the most part, however, this "centenary" edition is clear, well written and above all, easy to understand (no mean feat in this area of the law). It compares favourably with similar English contract textbooks such as *Treitel* or *Cheshire & Fifoot,* though (in line with the original purpose of work) it does not attempt to match the almost encyclopaedic depth of *Chitty on Contracts.* As a starting point in attempting to learn the basic principles of contract law, therefore, it has considerable merit; provided that it is in fact used (especially in Australia) as a starting point only.

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4. [1980] 1 All E.R. 556.
5. (1951) 84 C.L.R. 377.
6. (1953) 89 C.L.R. 507.
7. [1959] 1 Ch. 129.

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