

the opinion of a law officer was opposed to a decision made by the responsible minister of a modern state.

Consequently, apart from a treaty which regulates the relations between any two or more disputants themselves, it seems that customary law is the real product for consideration, albeit that it will be evidenced perhaps by treaties and other ultimate source materials.

In assessment, the inductive approach, it is thought, has an outstandingly important function. Its disciplines necessarily involve the rejection of all sources but those which faithfully reveal acceptable international law which is recognized by most states in the international community, whether evidence of that recognition be in the form of treaties, decisions of courts or other forms. What is produced will have been induced from selected source material which has been analyzed and evaluated at the beginning and subjected to a stage of verification which is the constant assignment of any who truly apply a dialectic method of investigation.

In case any are tempted to think that international law is merely an academic toy, it may be pointed out that there are many situations, even in the administration of domestic law, when some principle of the international law of peace must be investigated and determined. For instance, it is a principle of statutory interpretation that every effort should be made to construe a statute so as to avoid breaches of international law: *Polites v. Commonwealth*.¹ Such a task cannot be undertaken without, either consciously or unconsciously, implementing some form of methodology.

So the formulation of ideas concerning methodology is a most important function and, in this field, is likely only to be performed by the text writers. The author's task, seen in this light, has been well achieved, and the book will be of considerable interest to any who are prepared to re-activate their thinking in a field where Professor Schwarzenberger is a skilled commentator.

R. G. DEB. GRIFFITH*

Manual of the Law of Income Tax in Australia, by K. W. RYAN, B.A., LL.B. (Qld), Ph.D. (Cantab.), Barrister-at-Law, formerly Reader in Law, University of Queensland (Australia: The Law Book Company Limited), pp. i-xxvii, 1-245, Index 247-251. Price \$6.50.

In the preface of his *Manual* Dr K. W. Ryan states that his book is designed to serve as a short and simple introduction only, and that it is not intended as an exhaustive statement of Australian income tax law nor as a treatise on its fundamental principles. His object he says is to discuss those provisions which are of most significance in every day legal and commercial transactions.

The present Income Tax Assessment Act was first enacted in 1936 and at that time contained two hundred and sixty-six sections and filled eighty-five pages of the statutes. Every year since then it has been amended, sometimes as many as three times and has now approximately five hundred sections and occupies four hundred and fifty pages.

To deal briefly and clearly with an Act as long and as complex as the Assessment Act and to select for discussion from its numerous provisions those only which are most significant in every day transactions could not be regarded as an easy task. There was a real need for a book which could do this and it is considered that Dr Ryan's *Manual* meets that need.

¹ [1945] 70 C.L.R. 60, 68.

* LL.M. (Melb.), Barrister-at-Law.

We have had for sometime two excellent publications which deal with the Assessment Act section by section with great thoroughness. Each is kept up to date with a loose leaf service and new editions appear from time to time. We now have in addition a book which is short and selective and one which can be read without undue effort. The reader is assisted by an excellent introduction and by the subsequent arrangement of the topics discussed. He is also assisted by the fact that for the most part the style of writing does not vary and there is uniformity in the manner in which and the extent to which each matter is analyzed and explained. Although many passages from the more important cases are quoted most of these are selected and introduced so as to assist in the explanation of some proposition and not merely as authority for some conclusion reached.

There are several places, however, particularly some of those dealing with the 1964 amendments where some variation in approach and style of writing occurs. The *Manual* was completed, of course, about the same time as the 1964 Act was passed and was published therefore before the effects of the new legislation had been fully considered and before the issue by the Commissioner of his Public Information Bulletins.

In his chapter on trusts Dr Ryan expresses the view that in the case of a specific legacy the assent of the executor relates back to death so that a specific legatee will be taken to be presently entitled as from the testator's death. It is submitted with respect that this is not the case under our Act. In considering whether or not a beneficiary in a particular year is entitled to the income the situation must be examined as it exists at that time. If in that year he could no have required payment then at that time he is not presently entitled.

In the section dealing with 'Isolated Sales and Special Ventures' it is stated that if a taxpayer incurs a loss on the sale of property, such property having been purchased for profit-making by sale, the loss can be deducted, but only if the taxpayer has notified the Commissioner within a limited time after acquiring the property of the purpose for which it was acquired. A minor qualification to this general statement might be mentioned. If the Commissioner is satisfied that the property was purchased for resale at a profit then he may direct that a deduction be allowed in case of loss even though no notice in accordance with the Section had been given.

It must be remembered, however, that the *Manual* is not intended as an exhaustive statement of income tax law and it is obvious therefore that in dealing with the complex provisions of the Assessment Act many of the refinements must be omitted.

Indeed, unless this course had been adopted it would not have been possible for Dr Ryan to achieve his main objectives as set out in the preface.

K. A. McL. EMMERSON*

* B.A., LL.B., Barrister and Solicitor.