Statutory Interpretation in Australia by D. C. PEARCE, LL.M (Butterworths Pty. Ltd., Australia, 1974), pp. i-xviii, 1-165. Recommended Australian Price $12.00. ISBN 0 409 41820x.

This is the first comprehensive work on judicial interpretation of statutes in Australia, and should prove extremely useful.

It might seem at first that there are no distinctive features of the Australian legal system which would justify a book devoted to this subject, but the author draws attention to several. Some arise from the federal system itself (*e.g.* the reluctance of State courts to attempt fine analysis in areas of federal law that have been considered by the High Court, and the special deference shown by the courts of one State to the courts of another in the case of uniform law). Others are special Australian developments (*e.g.* a noticeable weakening in the tendency to construe a penal statute strictly in favour of the defendant without regard to its objects).

The book is, in any event, no mere Australian variation on the theme of well-known works like *Craies*[1] and *Maxwell*[2]. The author has chosen to explain the familiar avenues of approach by reference to modern Australian authorities rather than the classic English decisions wherever possible. Many readers will be surprised by the wealth and sophistication of the Australian material, and particularly of the earlier decisions of the State Supreme Courts and the High Court; the prophets have indeed gone unrecognized in their own country. As it happens, the traditional arrangement of the subject-matter of digests and noters-up leads to the great bulk of material dealing with statutory interpretation being buried under special headings, and this book would have justified itself if it had done no more than gather together what it has.

It does, however, do much more. The author has considered the whole subject afresh, and has divided the subject in a way that is original and pleasing. Moreover, he has not contented himself with simply describing judicial techniques, but has attempted to trace their development and examine them critically. He has tried to assess the relative importance of the various principles, and in many cases has forecast their waxing or waning in importance in Australian courts.

The author's general thesis is that modern courts approach the interpretation of statutes in much the same way as anybody sets about the interpretation of a complex document, that they do not accord the established 'rules' any undue respect, and that they often fall back on them to confirm an intuitive feeling stemming from a sense of justice rather than use them to reach a conclusion.

He discusses the case law and the Australian Interpretation Acts and Ordinances in considerable depth. The general content is undoubtedly sound, although there are some comments of speculative nature that might be thought unconvincing, and a few that might be thought incorrect. There is, however, one particular topic which is treated in a slightly confusing manner, namely the vexed matter of mandatory and directory provisions. The author attempts, rather unwisely, to deal at one blow with two quite separate questions. The first is whether a provision imposes a duty or merely confers a power; the second is whether, if it imposes a duty, any breach will be visited with fatal consequences. These have always been murky waters, and the older texts have navigated them more smoothly.

The treatment of the Interpretation Acts and Ordinances reveals the fascinating permutations and combinations of common provisions to be found in them. The purposes of all of them must surely be the same, yet nobody uses the same recipe to make the same pudding.

[1] *Craies on Statute Law*, (7th ed. 1971).
[2] *Maxwell on the Interpretation of Statutes*, (12th ed. 1969).

The final chapter (called 'Reinterpretation') roams at large over the entire subject. It is an elaborate essay in which the author explores ways of securing more faithful reproduction of the legislature's intentions in a system in which the judges suffer from human frailty and the enactments tend to be imperfect. As is perhaps inevitable, he finds himself torn in two directions, looking on the one hand for ways of encouraging timid judges to look beyond the letter of the law for evidence of what the legislature intended, and on the other for ways of constraining adventurous judges to give proper weight to the recognized conventions on which the draftsman and the legislature have relied. He does, nevertheless, make several suggestions worth considering, and points out very sensibly that legislatures could themselves do much to reduce the scope of the problem. A reader will be left with the strong impression that the high standing accorded the judiciary by our community is entirely fitting.

The book has been set up and printed at a high standard, and there are several interesting innovations as regards style, but the more conservative reader may find some of them disturbing. Both the names of cases and their references are taken into the text in running, with the result that the text is rather cluttered, but that there are few footnotes. Abbreviations are not marked by stops, even in the case of initials of names and references to law reports. Anyone who needs spectacles to read a telephone book will certainly need them to read the extremely fine print in which extracts from judgments are set out. Most of the unusual features are, nevertheless, of the kind to which anyone can adjust readily.

This book is introduced by a foreword written by the Right Honourable Sir Garfield Barwick, G.C.M.G., Chief Justice of Australia, who has had occasion to consider the process of statutory interpretation from positions of high responsibility in all three arms of government. The foreword commends the book warmly. It seems fair to say, respectfully, that the Chief Justice's commendation appears well-earned. The writing of this book was an ambitious project, and it has been undertaken with skill, imagination and enterprise.

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The Law of Trusts, by GEORGE W. KEETON and L. A. SHERIDAN, (10th ed., Professional Books Ltd., London, 1974), pp. i-xci, 1-524, ISBN 0 903486 04 0.

The first edition of Keeton's *Law of Trusts* was published in 1934. The success of the book is measured by the fact that since that date ten editions have been published. The format of the tenth edition, by Keeton and Sheridan, remains unchanged from the previous edition. The book is divided into four parts, the first dealing with the formation of the trust, the second with the administration of trusts, and the third with breach of trust. The fourth part is an appendix containing the Trustee Act 1925, as amended until August 1974 and the Trustee Investments Act 1961. This division is generally useful, particularly for the purposes of students, but it creates some difficulties in Chapter XIV which deals with Constructive Trusts. The authors do not really grapple with the problem of the applicability of the duties of a trustee to the special case of the constructive trustee.

The book deals in some depth with a number of matters frequently omitted or dealt with very briefly in standard works on trusts (*e.g.* trusts and the conflict of laws, and trustees and the statutes of limitations). Since the body of the work is comprised in some four hundred pages, the comprehensive and detailed treatment of a number of difficult areas is admirable. For example, Chapter XIV entitled Constructive Trusts outlines the history of the constructive trust, discusses the perennial debate as to the fundamental nature of the constructive trust, and describes the situations in which constructive trusts have been held to arise. It would provide a student with a very good introduction to a difficult area. Chapter XII on Charitable Trusts has similar virtues. Without reviewing the hundreds of cases defining charitable purposes, the chapter provides an excellent basis for an understanding of the principles governing charitable trusts.

On the other hand, the book is curiously patchy, and its brevity means that a number of important areas are dealt with superficially. At times this superficiality makes the treatment of the subject matter quite misleading. For example, why do the authors consider that Constructive Trusts deserve thirty-seven pages[1] and the Modern Law Against Perpetuities only five pages.[2] The section of the book dealing with perpetuities and accumulation is poor. It simply states the common law rule and describes the provisions of the Perpetuities and Accumulations Act 1964. No examples of the operation of the common law principle or of the application of the Act are given. No reference is made to the difficulties of interpretation which may arise under the Act. As for the selection of the life in being for the 'wait and see' period, the authors simply say this:

> When it is necessary to wait and see if a fixed period is not chosen as the perpetuity period, the lives in being are specified in section 3(4)(5) of the Act of 1964. But in determining validity *ab initio* any life in being may be selected and it has been the practice to select all the issue of Queen Victoria living at the time when the instrument comes into operation. This practice is not now generally followed owing to difficulty of proof, but if an example arises at the present time, the inquiry will be undertaken and the limitation is valid.[3] Issue of George V may be preferred, since if it is in fact impracticable to discover when the selected life ended, the trust is void. Thus, in *Re Moore*, the settlor selected the survivor of all persons then living.[4]

The last sentence of the paragraph is positively misleading, as it omits to point out that in that case the limitation was invalid.

A number of other tantalizingly brief references are made to complex problems,

[1] pp. 191-218.
[2] pp. 124-128.
[3] This proposition is, to say the least, debatable.
[4] p. 197.