

BOOK REVIEWS

The Law of Criminal Conspiracy by P. Gillies (Law Book Co. Ltd, Australia, 1981), pp. xviii, 1-212, Index 213-215. ISBN 0 455 20079 3. Price \$25.00.

In recent years there has been a trend away from the preparation of general legal texts which purport to cover a broad area of substantive law. An age of specialization is increasingly reflected in the publication of monographs which deal exhaustively with more narrowly defined subject matter. As the volume of judge-made law expands, and becomes more readily accessible through increasingly diverse series of reports, it becomes apparent that even the seemingly modest goal of expounding the basic principles of specific criminal offences takes on a difficult aspect.

The author of this text is no stranger to the preparation of such specialized monographs. A previous work dealing with the law relating to criminal complicity met with mixed reviews. This work, its successor, is undoubtedly a better book. A problem with any text of this nature is its tendency to fall between two stools. In presenting a detailed but wholly uncritical exposition of a particular body of law, a book loses much of its attraction as a potential student text. On the other hand, the needs of most practitioners would involve no more than a concise statement of the principles of the area under consideration with references to the leading authorities in point.

Gillies' text goes much further than simply satisfying these latter needs. It grapples with many issues which are intellectually demanding, not all of which are of any great practical importance. To a considerable degree it deals with its subject matter in depth, and with thoroughness. Yet the author holds himself so rigorously in check that he rarely departs from his avowed aim of exposition in order to permit himself to express an opinion about the soundness or otherwise of particular common law doctrine. This is a pity, for clearly his views on these matters could be persuasive in shaping future developments in the law of conspiracy.

The manner in which the book is structured detracts from its overall coherence and clarity. After a perfunctory historical introduction, the first three chapters throw up a number of disparate themes. These range from the rationale and function of the offence to a number of matters of a procedural and evidential nature (such as the requirement that sufficient particulars be given, the problem of duplicity, and the so-called 'co-conspirator' exception to the hearsay rule).

There is nothing wrong with commencing a work of this nature with adjectival matters. Indeed, these may be of greater moment in the area of conspiracy than the substantive elements of the offence. However, it is not conducive to clarity of analysis to have these matters dealt with initially in a preliminary and incomplete fashion, followed by a series of chapters dealing with the heads of conspiracy (chapters 4-11), and concluded by three additional procedural chapters going over some of the same ground again. The result is substantial duplication, and on some issues it is necessary to go back and forth between the early and later chapters to attain complete coverage.

Descending to particulars, a number of specific criticisms may be noted. The author's manner of dealing with the 'co-conspirator's rule' defies credibility. He accepts at face value the utterances of the courts as to the logical distinction inherent in its two-stage process. The circularity underlying the concept rates virtually no mention, and the gibberish-like effect which it must have upon juries is totally ignored.

In dealing with the mental state required for the offence of conspiracy to defraud, and the apparent disagreement between the views of the House of Lords in *Welham*

v. *D.P.P.*,¹ and a differently constituted court in *Scott v. Metropolitan Police Commissioner*² no mention is made of the analogous debate in the context of the law relating to larceny at common law, or theft under the Theft Act. The parallels are, in fact, quite striking.

One can forgive the omission of any reference to the important case of *R. v. Mitchell*³ in dealing with the topic headed 'Order of Verdicts' (p. 202). However any author who purports to deal with the ancient common law doctrine that where two or more persons are charged with conspiracy with each other, and with no-one else, if one is acquitted, then all must be acquitted, and omits any mention of the leading binding authority on the subject, must be regarded as having failed in his professed aim of accurate exposition. The decision in question is that of the Privy Council in *Dharmasena v. R.*⁴ The author relies instead upon conflicting minority dicta in the House of Lords in *D.P.P. v. Shannon*,⁵ a case which turned largely upon whether the *Dharmasena* doctrine should continue to be followed in England.

Matters of style deserve mention as well. Is it really necessary for the reader to be told in some detail on no less than eleven occasions that their Lordships in *D.P.P. v. Withers*⁶ rejected the existence of a common law offence of conspiracy to effect a public mischief? Such repetition is tedious in the extreme. The proof reading has not been done as carefully as one might wish. Ignoring the numerous typing errors, one matter of moment is the mistake on page 151 where the reference to the offence of conspiracy to corrupt public morals should clearly have been to the offence of conspiracy to effect a public mischief.

In summary, Gillies has written a book which undeniably makes a useful, albeit flawed, contribution to the understanding of a difficult subject.

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The Taxation of Property Transactions — including land and share dealings by Lilian Horler (Butterworths, Australia, 1981), pp. x, 1-161. ISBN 0 409 300330. Price \$27.50. (hard).

I found this an interesting and in parts thought-provoking little book. The author's principal concern, as is obvious from the title of the book, is to analyse the income tax consequences flowing from the acquisition and disposal of various types of property. This involves a detailed examination of ss. 25(1), 26(a), 26AAA and 52 of The Income Tax Assessment Act 1936 (the Act) in particular.

One of the difficulties facing anyone writing on the subject of Australian income tax law today is that it is highly likely that before their work is off the printing press, or at least before a reviewer has had a chance to read it, significant changes in the law will have been brought about by legislative enactment and/or judicial decisions. This book is no exception and thus anyone consulting it must be careful to check for subsequent developments. Thus, for example, the discussion of the deductibility of rent for home offices (para. [211]) must be read subject to the High Court decisions in *Federal Commissioner of Taxation v. Forsyth*¹ and *Handley v. Federal Commissioner of Taxation*;² the interpretation of s. 26AAA(5)(a) adopted by the Board of Review in Case 28 as discussed in para. [411] has been doubted by Campbell J. in the

¹ [1961] A.C. 103.

² [1975] A.C. 819.

³ [1971] V.R. 46.

⁴ [1951] A.C. 1.

⁵ [1975] A.C. 717.

⁶ [1975] A.C. 842.

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¹ (1981) 81 A.T.C. 4157.

² (1981) 81 A.T.C. 4165.