

## BOOK NOTES

*The Law Making Process* by Michael Zander (Weidenfeld and Nicolson, 1979), pp. i-xxv, 1-309. Price, hardback \$15.00, ISBN 0 297 7750 5, paperback \$6.95, ISBN 0 297 77751 3.

As the author remarks in his preface, this is 'something between a book of cases and materials, on the one hand, and a textbook on the other'. It forms a part of the excellent *Law in Context* series and provides a companion volume to *Cases and Materials on the English Legal System* (3rd ed., 1980), also by Professor Zander. Professor Zander indicates that the book owes its genesis to the apparent gap in legal literature exposed in teaching a course on the English Legal System at the London School of Economics.

Two comments seem relevant. Since the work is concerned with the *English* legal system, one might expect that there would be comparatively few references to material from Australasian sources. In this respect the book outstrips expectations. References to Australasian sources are negligible. Since much of the book is concerned with judicial law making, that may reflect the author's view of the widening gap between English and Australasian judicial practice and ideology. The second comment concerns the balance of topics within the book. Though it is concerned with law making, only thirty-three pages are devoted to the legislative process. The section devoted to the interpretation of statutes by the judiciary is nearly twice as long. More than half of the book is devoted to materials on the doctrine of precedent, law reporting and the nature of the judicial role in law making. It concludes with a short section on subsidiary sources of law and another on the process of law reform in England. As a work on 'law making', it still displays a very considerable, if not overwhelming, emphasis on the work of the judiciary.

Aside from the false expectations engendered by the title, the book can be commended as a valuable reference work. The text, as one might expect, is clear and cogent. The extracted material contains much that is familiar of course. It also contains some useful extracts which are not otherwise easily accessible. There are selective references for the purpose of further research.

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*The Protection of Trade Secrets* by W. R. McComas, Mark R. Davison and David M. Gonski (Butterworths, Australia, 1981), pp. i-xiv, 1-98. ISBN 0 409 30028 4.

Modern technological advances in the communications field, together with increasing concern for the protection of privacy, have served to emphasize the importance of the action for breach of confidence. In view of these developments a book which is designed to 'provide assistance and understanding of the basis of and uses for the

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action for breach of confidence<sup>1</sup> should fulfil a useful function.<sup>2</sup> Unfortunately *The Protection of Trade Secrets* does not achieve either of these purposes.

The authors make little attempt to analyse the jurisdictional basis of the action; after a laconic review of the various theories advanced, they state that they 'wonder whether finding a satisfactory jurisdictional basis or ground for the action really matters',<sup>3</sup> and they conclude that perhaps the action is properly explained as *sui generis*.<sup>4</sup> This conclusion may be correct; however, the authors' failure to analyse the various theories means that a number of issues are not resolved in any coherent form. In particular, the questions of the liability of an unconscious user and of a bona fide purchaser for value without notice, cannot be answered satisfactorily without some examination of the basis of the action.

In Chapter 2, the authors list the elements which must be established to succeed in an action to protect confidential information. Chapters 3, 4 and 5 then deal with each element. The authors' approach in these chapters does not facilitate their second objective which is to provide assistance and understanding of the uses for the action. The authors' discussion of each element is, in fact, little more than a digest of some relevant cases, under headings. The authors rarely attempt to rationalize the cases or suggest any definite principles which may be applied generally; often they state that the answer 'depends on the facts of the case before a court'.<sup>5</sup> Although the book will be of some assistance to practitioners who hope to 'find a similar case', the same information, in a more coherent form, is available in other works.<sup>6</sup>

The book includes a chapter<sup>7</sup> concerning other means of protecting confidential information. This chapter contains some interesting ideas, but because of the nature of the book, the treatment is generalized and the reader is left with little more than an indication of some additional forms of protection. One would expect the authors to provide an extensive list of relevant textbooks and periodical articles dealing with these additional forms of protection, but the authors' references are incomplete.

The authors' discussion of remedies is also deficient: there is no reference to Anton Piller orders, which originated in breach of confidence cases<sup>8</sup> and which have found acceptance in Australia.<sup>9</sup>

This reviewer can find little positive to say about the book. Overall the reader is left with the impression that the book has been written quickly, and that insufficient attention has been given both to the question of overall coherence and to matters of detail.

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<sup>1</sup> McComas W. R., Davison Mark R. and Gonski David M., *The Protection of Trade Secrets* (1981) vi.

<sup>2</sup> The expression 'trade secret' is usually confined to information of a technical, commercial nature. Although the book is entitled *The Protection of Trade Secrets*, the authors do not confine themselves to information of a technical, commercial nature but, instead, deal with confidential information generally.

<sup>3</sup> McComas, Davison and Gonski, *op. cit.* 5.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.* 23.

<sup>6</sup> For example Finn P. D., *Fiduciary Obligations* (1977) ch. 19; Meagher R. P., Gummow W. M. C. and Lehane J. R. F., *Equity: Doctrines and Remedies* (1975) ch. 41; Turner A. E., *The Law of Trade Secrets* (1962).

<sup>7</sup> Chapter 7.

<sup>8</sup> *Anton Piller KG v. Manufacturing Processes Ltd* (1976) Ch. 55.

<sup>9</sup> *EMI (Australia) Ltd v. Bay Imports Pty Ltd and Anor* (1980) 6 F.S.R. 328.

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## BOOKS RECEIVED

*Irish Land Law; First Supplement (1975-80)* by J. C. W. Wylie (Professional Books Ltd, Oxford, 1981) ISBN 0 86205 024 3.

*Australian Citizenship Law* by Michael Pryles (Law Book Co. Ltd, Sydney, 1981) ISBN 0 455 20359 8.

*The Right to Strike* by L. J. Macfarlane (Penguin Books, Harmondsworth, 1981) ISBN 0 14 02.2072 0.

*The Consumer, Society and the Law* by Gordon Borrie and Aubrey L. Diamond (Penguin Books, Harmondsworth, 1981) ISBN 0 14 02.0647 7.

*Australia in Figures* by W. G. Coppell (New edition, Penguin Books, Ringwood, Victoria, 1981) ISBN 0 14 022381 9.

*The Law Relating to Parents and Children* by Helen Gamble (Law Book Co. Ltd, Sydney, 1981) ISBN 0 455 20254 0.

*Labour Law in Australia Volume I; Individual Aspects* by E. I. Sykes (Butterworths, Australia, 1980) ISBN 0 409 43852 9.

*Civil Liberties in Australia* by Geoffrey A. Flick (Law Book Co. Ltd, Sydney, 1981) ISBN 0 455 20084 X.

*Search and Seizure: Powers of Private Security Personnel. A study prepared for the Law Reform Commission of Canada* by Phillip C. Stenning and Clifford D. Shearing (Montreal, 1979) ISBN 0 662 10451 X.

*Criteria for the Determination of Death; Report No. 15 of the Law Reform Commission of Canada* (Montreal, 1981) ISBN 0 662 51265 0.

*Commonwealth Grants Commission; Report on State Tax Sharing Entitlements Volume I — Main Report, Volume II — Appendixes, Volume III — Reports of Consultants* (Australian Government Publishing Service, Canberra, 1981) ISBN 0 642 06716 3 (full set) 0 642 06613 2 (Vol. I) 0 642 06614 0 (Vol. II) 0 642 066159 9 (Vol. III).