

*Criminal Law* by Peter Gillies (The Law Book Company Limited, Sydney, 1985) pages 1-668. Price \$66.00 (hardback), \$54.00 (soft cover). ISBN 0 455 205981, ISBN 0 455 20599 x.

In his preface the author states that 'following quite a few years of teaching the subject, the criminal law in Australia, for whatever reason, has tended to attract less attention from academic text writers than the other fundamental branches of the law'. This comment is of course very true and apart from the fundamental text books such as Kenny and Archbald, the latter clearly written for the benefit of prosecutors and members of the police force who want to prosecute, there is a need for this book by Mr Gillies.

There are many superior beings in the law who disparage criminal law and consider it a kind of contradiction in terms. In fact the criminal lawyer, if that term is a correct term, has to be a mighty good lawyer; and if he does not have a very good background and knowledge of the current law relating to the particular offences with which his client is charged, and particularly a very good knowledge of the law of evidence, he really should not be practising.

I was a victim of the kind of thinking which permeates lawyers even in this day about criminal law, and in my library, which I admit I selected primarily with the size of the book in mind as I had few books and mighty large bookcases, there was a volume the origin of which I am quite unaware, but it was big, and it turned out to be the *Queensland Annual Rainfall for 1864*. This greatly intrigued the late and very much missed Mr Peter Brusie who impounded it to enable him to emphasize the story about my library.

Although written for the student market, practising lawyers who need a well organised reference to criminal law in Australia will find it here. The splurge by the publishers indicates 'that the book comprehensively covers the law in New South Wales, Victoria and South Australia will also be of relevance to the Australian Capital Territory where much of the New South Wales law is still applicable'. I might add it also covers some aspects of Commonwealth legislation.

There are problems. The book covers the law available up until the end of March 1985 according to Mr Gillies. It therefore misses the crucial and important decision of *He Kau Teh v. The Queen*.<sup>1</sup> This case was heard by the High Court in December 1984, the decision was given on 11 July 1985. The case finally puts to rest *R. v. Bush*, *R. v. Rawcliffe*, *R. v. Ditroia and Tucci*, *R. v. Parsons*, *R. v. Kennedy* and *R. v. Gardiner*. *Bush* survived years of criticism from its inception in 1975, unfortunately generally extra judicial, and from lawyers who felt that people charged under the Customs Act (Cth) sections 233B(1)(b) and (c) were the victims of a very narrow and conservative interpretation that was clearly wrong. The decision in *Bush* permeated all States and certainly the Full Courts of New South Wales, Victoria and Queensland enthusiastically followed it.

Accordingly, this present edition of Mr Gillies' book will have to be read subject to it — particularly the chapters on Possession (page 606 ff.) and the chapter on Reasonable Cause, Lawful Excuse (page 168 ff.). Furthermore, in view of the re-establishment of the importance of *mens rea* in *Kau Teh's* case, the author may have to give some attention to other chapters such as the Defence of Mistake of Fact related to *mens rea* (page 241 ff.).

It should be pointed out that special leave to appeal to the High Court was refused in *Bush's* case and in *Kennedy* as late as 1979, so it is not surprising that the author wrote the text on the basis that *Bush* and the cases which followed it, were the law and were likely to remain so.

So the book illustrates the importance of checking the date of a text book which can obviously only take into account the law as at that date and which may not be authoritative even six months later!

The book covers a very large expanse of common law offences and is most readable and unusually practical. Perhaps this is a criticism, but in common with most other books on criminal law, the index could be improved. I recommend it and hope that the second edition will be published pretty shortly.

JACK LAZARUS\*

<sup>1</sup> (1985) 157 C.L.R. 523; (1985) 59 A.L.J.R. 620

\* Barrister at Law