BOOK REVIEWS

The Law of Intestate Succession in Australia and New Zealand, by I. J. HARDINGHAM, (Law Book Co. Ltd, Sydney, 1978), pp. xvii and 228. $16.00 and $11.50.

The rapid expansion of legislative controls over the devolution of an intestate estate in Australia has outdated the few pertinent books already published in this field. In this context Hardingham's text offers a readable and timely discourse on "statutory wills" in the eight Australian jurisdictions and New Zealand.

The book does not purport to be a comprehensive analysis of intestate succession. Its ambit is limited to an outline of the relevant legislation. Case law is kept to a minimum.

The book begins with a succinct discussion of the benefits of testamentary succession, the evolution of laws governing intestacy and the differentiation between *per stirpes* and *per capita* distribution. A lucid analysis of the legislative controls adopted in Australia and New Zealand over intestate succession follows.

The brevity and precision of the work do not prevent the reader from acquiring a comprehensive knowledge of the central concepts applicable to intestate succession. For instance, the doctrine of hotchpot, the position of spouses—divorced, separated, de facto and lawful—and the position of legitimate, ex-nuptial and adopted children on intestacy are given detailed treatment.

The text concludes with a useful discussion of miscellaneous matters, such as personal chattels and matrimonial homes, survivorship, contingent partial intestacies and the conflicts of law and intestacy. An appendix sets out the main legislative provisions governing the devolution of an intestate estate in Australia and New Zealand.

The format of the text is presented as an annotation to the relevant enactment. Annotative texts invariably neglect to provide the readers with some form of conceptual analysis and fail to give attention to the interaction between legislative provisions. Hardingham has overcome this neglect by integrating similar facets of various enactments and discussing them in terms of common law. It is only to this end that a detailed analysis of cases is provided. However, this annotative method has created significant problems. The approach adopted is to divide the material into a wide range of jurisdictional compartments and to sub-divide it into topical categories. This has sometimes culminated in a multiple treatment of the same topic. Indeed, occasionally, complete pages are duplicated without alteration except for changes in the relevant numbering of sections and Acts.

A problem in a book covering many jurisdictions is that any one reader will find a large part of the text of little practical use. For instance, a significant proportion of the text is devoted to hotchpot provisions. Readers in New South Wales, where the legislative framework excludes any requirement of hotchpot, may well disregard this aspect of the text. Unfortunately, for any single jurisdiction, the book is not comprehensive. In relation to Queensland, Western Australia and Tasmania, the material provided is particularly scanty although many of the principles applicable in those states are caught by the general conceptual analysis.

Hardingham's methodology and coverage is novel in this area of the law. But in attempting to deal with the law of intestate succession in the various Australian jurisdictions and New Zealand, a substantial intellectual cohesion is not achieved because of diversions into matters tangential to the point in issue or to the laws

applicable in jurisdictions with which the reader is not immediately concerned. Nevertheless, the book is timely and will serve as a useful addition to any practitioner's library. Students will find it of substantial assistance, although, in part, Hardingham has assumed that the reader has a working knowledge of the law of property and trusts.

R. J. SADLER

Textbook of Criminal Law, by GLANVILLE WILLIAMS, (London: Stevens and Sons, 1978), pp. xl and 973.

The appearance of a new major text on criminal law by Professor Glanville Williams is a major event indeed. Professor Williams' *Criminal Law: The General Part*, published in 1953, was an innovative and monumental work which has affected the thinking and writing of every commentator on substantive criminal law since. Since then Professor Williams has written voluminously in the field of criminal law, and indeed most other fields, maintaining a rate of productivity which in terms of both quantity and quality has certainly not been surpassed, and perhaps not even equalled, by any other legal academic. Although Professor Williams has written many books in the intervening years, it is only now that he has again set about the task of producing a complete account of the substantive criminal law of England.

Expecting so much, it would not be surprising if one were to experience disappointment upon reading this book. The opposite is the case. The book is clearly destined to become a classic, the equal of *Criminal Law: The General Part.*

A *Texbook of Criminal Law* explores a radical new method of presenting a legal textbook. It assumes no prior knowledge of the criminal law, or indeed any knowledge of the law at all. Yet it is in no sense a general or a simple book. All the complexities and major problems considered in any textbook are considered in this work. The book however is designed in such a way that a relative beginner can, with sufficient care and patience, proceed to a sophisticated understanding of substantive criminal law through this text alone. It is thus clearly the ideal work for academics in other disciplines (Philosophy for example) who wish to obtain an adequate understanding of the criminal law.

The book certainly points the way towards other works which could serve the purpose of combining an introduction to the law with a substantive law subject. The practice in most Australian law schools is to have a first year law course designed to introduce students to the study of law. This course is usually the subject of endless disagreement between staff who are unable to agree upon what basic information is a pre-requisite to further study, and is often disliked by students who see it as lacking any definite content. Professor Williams' book demonstrates admirably that it is possible to design a book which combines the material necessary for achieving an understanding of the basics of our legal system with that needed to achieve mastery of a substantive law subject.

In style and format a *Textbook of Criminal Law* combines many features which, while not strictly innovations, are sufficiently novel to contribute to making the book in total quite different from any other legal text. The text is throughout interrupted by objections, questions and comments of the sort which one might expect from a highly intelligent layman or student. These are then answered as the text proceeds. The style of interruption is natural and even "racy" (Professor Williams' description), and the effect is to make the work highly readable. The text is made even more readable by the practice of printing material which is esoteric and complex, yet not of major significance to the thrust of discussion, in smaller type. Thus such passages may readily be skipped over by the reader concerned to follow the major theme of the argument being presented. At the end of each chapter (save the first) there is a summary of the chapter, together with a reference to the section of the chapter at

which full discussion of the point summarized is to be found.

At the commencement of each chapter the subject matter of the chapter is introduced by a quotation often selected with delightful humour and aptness. Thus the following diverse "authorities" find mention in the work: Shakespeare, Lewis Carroll, O Henry, Conan Doyle, Milton, Kipling, Seneca and the cartoonist for the Daily Telegraph.

Although the above features make this book far less heavy going than is commonly the case with legal textbooks, it should not be inferred that this book is therefore in any sense "light" reading. It reflects the outcome of decades of thinking and writing about the complexities and fundamental principles of criminal law. All the problems dealt with in any criminal law text are treated here with a full measure of scholarly precision.

Perhaps the key to the measure of this work is the quotation with which Professor Williams commences his book:

> Whatever views one holds about the penal law, no one will question its importance to society. This is the law on which men place their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and institutions. By the same token, penal law governs the strongest force that we permit official agencies to bring to bear on individuals. Its promise as an instrument of safety is matched only by its power to destroy. Nowhere in the entire legal field is more at stake for the community or for the individual.
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> Herbert Wechsler, *The Challenge of a Model Penal Code.*

It is Professor Williams' achievement to have encompassed this most important branch of human knowledge in a single, highly readable and enjoyable volume.

C. R. WILLIAMS

Family Law and Social Policy, by J. EEKELAAR (Weidenfeld and Nicholson, London, 1978), pp. xxix and 334. $26.25.

Mr Eekelaar's book is one of the exciting series, entitled "Law in Context", edited by Robert Stevens and William Twining. The aim of this series is to encourage the writing of legal works which treat social issues more immediately than do traditional text-books on law. It is sought to produce books that are comprehensible to experts in other fields, and perhaps suitable for interdisciplinary studies.

The writing of books of this *genre* calls for special skills, the most important of which is an ability to translate legal terminology and thought into everyday language. Sir Richard Eggleston's book in the same series does this in a masterly fashion. Mr Eekelaar does not succeed to quite the same extent, the terminology of the book still being essentially that of a lawyer. Nevertheless, he has produced a work of great readability and interest.

The sections dealing with the protection of children are particularly impressive. The English laws which impinge on the tormented children of unhappy families are bewilderingly diverse. Mr Eekelaar has ploughed through the morass with rare skill. He has been able to translate the legislation and case law into a meaningful scheme, albeit with many imperfections. Nevertheless, no-one coming freshly to this area would fail to perceive that England is in radical need of comprehensive children's legislation (as, indeed, is this country).

A feature of the work is the readiness of the author to cite materials from other common law jurisdictions. He is impressed by family law in Australia. He may, however, be surprised to find that not merely is the family law business of courts of summary jurisdiction in no sense "transitional" (p. 152) but that, unfortunately, those courts are handling more business than ever—much of it very significant. His trenchant criticism of the ridiculous provision of the *Family Law Act* 1975, s. 75(2)(h)

["the need to protect the position of a [divorced] woman who wishes only to continue her role as a *wife and mother* (sic)"] should be borne in mind when the Act is revised.

It is pleasing to be able to give a favourable reception to a book like this, which succeeds admirably in emphasizing the interaction of the several disciplines involved in the family law process. There are, however, a few points of style and lay-out that may be acceptable in social science works, but are not worthy of imitation. The first is the lamentable practice of placing citations and references at the end of the book. This is anathema to lawyers, who regard the date of a case and the court in which it was decided as essential to an appraisal of the standing of the case as a precedent.

Even more irritating is the adoption of the practice, common in the literature of social science, of referring to some obscure writer without initials or Christian name. Such an omission properly should signify the highest compliment, and be reserved for a select and famous few—Maitland, Winfield, perhaps—Titmuss in the social science field—but certainly not Wald (p. 97). These small stylistic flaws, however, do not detract from the substantive merit of a work which is a considerable contribution to the growing literature of contextual family law.

J. NEVILLE TURNER*

Meetings—Procedure, Law and Practice, by MERVYN G. HORSLEY, (Sydney, Butterworths, 1978), pp. i-xxii, 1-290.

This is a very sensible book and although it was not written by a lawyer, it will be of considerable use to lawyers, as well as to other people concerned with meetings. And who is not? for voluntary organizations of one sort or another proliferate in our society and manifest themselves in committee meetings, annual meetings and other sorts of meetings. Most of us choose, or are obliged, to attend meetings from time to time and know that questions of procedure constantly arise. Periodically, lawyers are consulted professionally on points of procedure and sometimes matters of great moment turn upon them.

Fortunately, the law and practice of procedure do not have to be scrupulously followed in full detail at all meetings and at all times; but frequently in some organizations, and occasionally in others, they do. Where strong feelings are involved, as is quite often the case, a proper use of the rules of procedure will keep the meeting under control. Moreover, a group of members familiar with the rules is more likely to achieve its object than a group which does not keep them in mind.

The author, who died before his book was published, was Australian Secretary of the Institute of Chartered Secretaries and Administrators. Clearly, he had considerable experience of preparing for meetings and guiding them through their business. This experience is made available to the reader. The author does not simply rely on propositions derived from court decisions or repeated from other texts. He explains the reasons which lie behind the rules. He explains the derivation and meaning of many technical terms—his explanation of the procedural motion known as the Previous Question is excellent. He emphasizes the care needed in preparing for a meeting—compiling the agenda, assembling material with which likely questions can be answered, planning for a possible poll. He sets out at length the desirable attributes of the chairman and of the secretary; and the advantages and disadvantages of various courses of action—e.g. appointing a large committee as compared with appointing a small committee.

There is no assumption on the part of the author that the only meeting worth discussing is the company meeting—an impression given by some of the other books on this subject. Nor is there an assumption that the only worthwhile body of knowledge

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about meetings is to be found in decided cases, though some 250 cases are cited. Nor is there an assumption that the law and practice of meetings are only concerned with resolving disputes. The author emphasizes again and again that the purpose of a meeting is to reach a decision on one or several matters; and that both law and practice are designed to facilitate that.

The first two-thirds of the book (18 chapters) is concerned with matter of general application: notices, quorum, motions, amendments, procedural motions, adjournment, voting, poll, proxies, minutes and so on. Five chapters on company meetings follow, largely a summary of provisions in the Companies Acts of the Australian States and Territories, including regulations in Table A, and of provisions in the listing requirements of the Australian Associated Stock Exchanges. These chapters are of less value to the practising lawyer than the earlier chapters.

The final chapter, "Defamation in Relation to Meetings", is contributed by Associate Professor Robert Hayes of the University of New South Wales. He summarizes general principles of defamation and, less successfully because in a very condensed form, the defamation laws of the various Australian States.

The book is well arranged and is straightforward and clear in style. The author has however been less well served by the printer than he deserved. The compositor has made very few slips, but the spacing of letters is erratic and too many pages have a smudgey, uneven appearance or are marred by the impression of uprisen leads. It is a pity that these defects were not avoided but the text shines through them nevertheless.

PETER BALMFORD*

Consumers and the Law, by ROSS CRANSTON, (Weidenfeld and Nicolson, London, 1978), pp. i-xxxvi and 1-514.

The purpose of Weidenfeld and Nicolson's Law in Context Series is stated by the publishers as being the desire to broaden the study of law by reference to wider matters. As the publishers put it, the series seeks to proceed beyond the exposition of legal doctrine to consider critically the law-in-action in its social and economic context with the use of material from other social sciences and business studies thereby explaining the operation in practice of the legal subject under discussion. In compliance with this aim, *Consumers and the Law* goes much further than providing a mere statement of the legal rules the likes of which are to be found in the essential texts in this area like Taperell, Vermeesch and Harland, *Trade Practices and Consumer Protection* 1978 or Goldring and Maher, *Consumer Protection in Australia* 1979. To that extent, *Consumers and the Law* will have less relevance than have these two texts to the legal or marketing practitioner and to the student seeking an answer on a point of law. This is not to detract from the scope, cover and depth of *Consumers and the Law*, for it is a fine narrative on this topic.

The book is divided into four main parts, with the first and last containing one chapter and each of the others containing five chapters. Part I (Business Self-Regulation) examines the codes of practice approved by the United Kingdom Office of Fair Trading and the United Kingdom self-regulatory codes of advertising practice. For Australian readers, this chapter must be considered merely academic in view of its total Australian content being reflected in three footnotes out of a count of ninety one. Part II (Private Law) in its five chapters covers "private law in perspective" (the failings of traditional contract law), retailers' liability, manufacturers' liability, a mixture called "title, risk and performance" (performance of the contract under the *Goods Act*) and consumer credit. Part II's Australian content is reflected in a dozen

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or so Australian references out of a total of 260.

Part III (Public Control) in its five chapters examines the legislative prescription of trade descriptions, food quality, food labelling, hazardous products, motor vehicles, trade practices controls and licensing (for example, of moneylenders and of pharmacists). In Part IV, a Conclusion of eight pages, the author restates his case that government controls provide the best protection for consumers on the basis that other techniques such as free operation of market forces, business self regulation and private legal remedies are of only limited effect. But, as he pointedly states, government controls are only as effective as the government sponsoring them, and to that extent the real question in consumer protection is whether government control has political support. Political support may derive from community awareness and pressure, and as we are at a stage where community perceptions do not even rate consumer protection offences with petty criminal offences, such community awareness lies, in the author's opinion, well in the future.

Within this framework there is a lot of useful reading and reference material. Some is well known—for example, standard form contracts and unconscionable contracts (pp. 68-79)—with the author apparently offering little that is new until one notes that even these eleven pages contain thirty five references to English statute and case law; American, English and Australian academic writings; Law Reform Commission papers (both British and European); a Consumers' Association newsletter; a comparison with the Israeli scheme of prior approval of standard form contracts by an administrative board and a final note that pre-vetting of (standard form) insurance contracts by public agencies is well accepted in some American jurisdictions. Some of the material presented is far less well known and is appropriately recorded in the context of comprehensive references: the Thalidomide tragedy (pp. 152-6); class actions (pp. 95-101) (although no Australian material is footnoted on this subject beyond the pre-1977 *Trade Practices Act* s. 87(2); recognition of Order 16, Rule 9 of the *Supreme Court Rules* [Victoria] and other state equivalents may have served to place this discussion in context for the Australian reader). Also the legal position of food additives and contaminants (pp. 319-24) and of food hygiene requirements (pp. 330-4)—both areas of law not widely known—are discussed in the social and economic context, a style ideally leading to extensive non-legal source material. The author's discussion of food and hygiene law, for example, is footnoted to chemistry journals, food and drug reviews, the *New Scientist*, the *British Food Journal, Science, Nature* and *Euvironmental Health*. Admirable as this cross fertilization is, the law in context style must lack in discussion of the law and this is illustrated by comparison to Goldring and Maher who cover food and hygiene in twenty-two pages of statutory and case law analysis. Overall, then, this English book by an Australian author places the law in a most thoroughly footnoted (116 pages) context of most enduring quality.

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