BOOK REVIEWS

Torrens' Elusive Register, by THOMAS W. MAPP, (Edmonton, The Alberta Institute for Law Research and Reform, 1978), pp. xiv and 200.

Those who have been puzzled by recent development or interpretation of the existing systems of title to estates and interest in land by registration to be found in Australia are likely to find the title of Thomas Mapp's text, Torrens' Elusive Title, comforting. Whilst the text is volume one of the Alberta Law Review Book series and is the result of a fundamental review of both the basic principles and operations of the Torrens system in the Province, the observations are relevant to the systems in Australia, so universal is the basic principle that title to estates and interests in land can only pass on registration. And if this is not yet obvious in Australia the reader of this text will note that the text is written by reference to cases drawn from all countries using such a system in a manner that does not raise the question why the writer was relying on Australasian ones, when setting out the principles in Alberta. For those concerned with the review of the individual Torrens systems in Australia there is much to be garnered from the overview by the author of this book. For those who teach and learn by reference to policy issues the contents of chapter 10 provide a fund of questions that will start many a discussion. To them the book is highly recommended.

The effect of a system of title to estates and interests by registration on general law property transactions is wider than first appears and it may be said produces one set of rules for registered dispositions and another for unregistered dispositions; the example of gifts of land is cited as being but one. It is therefore a pity that the text is limited to 200 pages. But that does not in turn appear to justify the omission from the material on a caveated interests a reference to *Miller* v. *The Minister of Mines* [1963] A.C. 484; [1963] 1 All E.R. 109. Further whilst there is an examination of the decision in *Frazer* v. *Walker* [1967] 1 A.C. 569; [1967] All E.R. 649 (a case that complements *Miller* v. *The Minister of Mines*) it does not include a discussion of the measure of the rights *in personam* at law and in equity specifically excepted from the measure of the conclusiveness of the register. They contribute to its elusiveness. An understanding of the concepts upon which these rights are founded is essential to understanding the Torrens system. It is to be regretted that in a text that seeks to raise fundamental issues their review was omitted and other less important matters included e.g. general law priority rules. But of course that treatment will appeal to those (and they are many) who love their equity in preference to the simplicity of such a system.

Notwithstanding, all those who strive to understand land law should read this text. The Torrens system works but the meshing of the cogs is not always predictable. At present they appear to be worn by the corrosion of interpretation. If one of the teeth were to fail the system may cease to operate effectively. Both in Alberta and in Australia there is now a need to reinforce the simplicity of the original principles by legislative action. This needs to be appreciated by all lawyers lest nothing be done and one of the teeth break.

To this end Thomas Mapp's text is a very useful introduction to the problems of assessment of the present uncertain measure of the conclusiveness of the register. It is recommended to all lawyers. Without a secure and certain land law system—and this calls for a certain register—there can be no certain nest. An elusive nest is not sufficient if we are to survive biologically.

S. ROBINSON*

* Senior Lecturer in Law, University of Queensland.

Corporate Crime, by R. N. J. PURVIS, (Butterworths, Sydney, 1979), pp. xxxix and 806.

Recognition of the phenomenon of white collar crime is only a recent arrival in the consciousness of criminal law studies. Crime committed by the powerful and educated professional in the course of business is now gaining attention with the publication in Australia of a few recent titles. Andrew Hopkins' pioneering study, *A Working Paper on White Collar Crime in Australia* 1977 was followed by chapters in Wilson and Braithwaite, *Two Faces of Deviance* (University of Queensland Press, 1978), which was in turn added to by Timothy Hall's more journalistic study *White Collar Crime in Australia* 1979. What appears to be the first straight Australian law book on the subject, Rodney Purvis' *Corporate Crime*, is therefore to be welcomed.

The fire and thunder turned onto juvenile delinquents, house-breakers, TAB bandits and other petty criminals never reaches the criminals alleged to cause the real damage. For a start, white collar crime, by its very nature involves professionals and experts. This type of crime can really only be revealed by peers because no-one else will be in a position to have access to the necessary information. A conventional Profit and Loss Statement or Balance Sheet will not reveal missing funds beyond perhaps a decrease in fixed assets; an audit may detect irregularities, but a successful operator will leave no traces of his movements. Because the crime will have been successful, there will be no complainant to report it. Nor is there any overall deterrent like the policeman on the beat, as law enforcement agencies, such as they are (Corporate Affairs Commissions, C.I.B.s, Fraud Squads) vary in strength and scope. Perhaps the advent in 1980 of the National Companies and Securities Commission, with administration of what might be called national corporate law backed up by stiff penalties for corporate offences, may have some effect. But at present any crime detected by law enforcement agencies stands a good chance of fizzing out on technicalities as in the hypothetical case outlined by New South Wales Attorney-General Frank Walker in University of Sydney Institute of Criminology Paper No. 37 *White Collar Crime* 1979 at 18-20. Committal proceedings involving the few rich and famous who are caught are reported dryly in the media as the proceedings unwind, and their true impact is lost in the public mind. Criminologists are now recognizing that white collar crime makes up a major slice of criminal activity in terms of loss to the community.

In the past this type of crime has either gone undetected; where it has been detected, figures indicate that it has been treated more than leniently by the courts, often because of the importance of first offenders' character references. Indeed, the treatment meted out to "professional" offenders indicates some imbalance, in the view of the law, between the media stereotype of the petty thief, and the professional or executive criminal: businessman released on bail of $5,000 while facing fraud charges of $260,000 (*The Age* 7 September 1978); accountant, convicted of theft of $19,000 from his firm, $3,600 fine and released on $1,000 two year good behaviour bond (*The Age* 29 November 1979); priest charged with thefts and deceptions totalling $603,000 sent for trial but released on bail (*The Age* 19 February 1980).

Mr Purvis' book is a timely addition to studies of this area. Its 25 chapters and 800 pages could have well placed it in the position of the definitive legal authority, with its wide ranging chapters covering such matters as the nature of corporate crime, the corporate way of life, offences under the *Companies Act*, the *Crimes Act*, the *Trade Practices Act*, the *Securities Industry Act* and the *Income Tax Assessment Act*. Common law offences, computer crime, the criminal process (investigations, the role of the Corporate Affairs Commission and the C.I.B.), apprehension, trial and conviction receive chapter length treatment.

The author's itemisation of categories in building up a concrete picture of white collar crime is useful. It has been previously aired by the author (as reported in the *Financial Review* of 17 August 1977) but is here expanded in the introductory chapters to cover quite a wide range of activities that one may not always consider to be "crime". There are the individual operations, such as tax evasion, credit card frauds,

insurance (arson, malicious damage) and social security frauds. Then there are the crimes committed in the course of business, such as commercial bribery and kick-backs to inspectors, false travel expenses and profits from conflicts of interest (involving company personnel, or real estate agents). There are the crimes committed in the furtherance of business operations such as false financial statements to obtain credit, fictitious or over-valued collateral, *Companies Act* and *Securities Industry Act* breaches, not to mention deceptive advertising. A fourth class rears its head in Consumer Affairs Annual Reports and consists of such classes of outright commercial criminality as home improvement schemes, brick cladding, directory advertising and false mail order businesses. However, the analysis given in the book itself hardly exceeds the summary form just presented. Although each of the items is listed, only a few are analysed later in the book. For example, the author's text on one of these headings reads in toto: "*Consumer Frauds* [310.5] Typical schemes involve advertising frauds, repair swindles, and mail order sellers that don't deliver. Land sale frauds (sic) are common". And that's it. In other words, the author often whets the appetite for details but leaves it unsatisfied. Indeed, no more is said on important subjects so often and so briefly encountered.

The other areas catalogued hardly receive fuller treatment. Tax evasion, for example, is covered in Chapter 12 in eighteen pages consisting of a reputable 69 paragraphs. That sounds quite thorough, until one notes that 60 of the paragraphs consist of verbatim sections (or section summaries) of the *Income Tax Assessment Act*. The paragraph is headed with the Section's marginal note and then goes on to quote the full section, finishing with a colon followed by the section number of the Act. In other words, chapter 12 on Tax Evasion only contains nine paragraphs written by the author. These nine paragraphs are again written in summary style, with a proposition being stated followed by an authority and two pages of text, i.e., two pages out of the eighteen in the chapter. Lengthy direct quotation may be relevant in a book of cases and materials, but the style makes a mockery out of this book's sub title, "A Consideration of Crime Corporations and Commercial Morality in Australia". Some ten chapters are made up of this method of direct quotation without discussion.

In addition to this vast amount of reprinted statutory material, the last 200 pages of the book are made up of twelve appendices, of which nine consist of lengthy quotes from sections of the relevant Acts which have not already been quoted verbatim in the text. The arithmetic of the book goes like this. From a total of 800 pages, deduct 200 pages of appendices. From this balance of 600 pages, subtract 400 pages of direct quotation of statute within the text to leave 200 pages actually written by the author.

These two hundred pages do, however, cover a lot of material albeit in summary form. This style, or lack of style, results in little analysis of points or principles with the material tending to be of the fixed proposition type i.e., a one liner followed by a case name. The fact that a case can stand for more than one proposition is not recognised by the author and unfortunately the text provides little overall analysis. Recent criminological studies are not investigated and the nature of the book does not seem to prompt investigation into this most complex area of modern society. For example, some of the author's most important general comments are tucked away in an eight page chapter, (Chapter 4) headed "Significance of Corporate Crime in the Totality of Crime". Although two of these pages are direct quotations of text or tables, reducing the author's contribution to six pages, his comments on the social consequences of corporate crime, the financial loss to the public and defects in complaint statistics are of major importance in any study of this subject.

Various important topics are pulled together under the title of this book, and the range of chapters indicates the scope, importance and significance of corporate crime. The author's chapters on Commercial Criminality, Crime and Business, and the Significance of Corporate Crime are important, as are his chapters on Corporate Crime and the Accountant and Corporate Crime. Fairly sketchy summaries of significant material are presented in the criminal process chapters (involving a summary of the position on investigations, apprehension, trial and conviction) and further discussion would have been of relevance and assistance to the legal or

financial adviser. Overall, then, it can be suggested that this book has failed to reach its true potential. Its two hundred pages of text (not counting its 600 pages of direct quotation) are insufficient for anything like adequate treatment of one of the most significant realisations of modern criminological studies, namely, the fact and the existence of white collar crime.

PAUL LATIMER*

Bailment, by N. E. PALMER, (Sydney, The Law Book Company Ltd, 1979), pp. i-cvi, 1-1056.

Much of the legal profession remains ignorant of those complex commercial and private relationships which constitute the law of bailment. One reason for this ignorance may well be that there has been a lack of textual material to explain the scope and technical details of the bailment relationship. Palmer's book succeeds in filling this gap.

The aims of the book are stated in the Preface as being, first, to act as a guide and source for practitioners and students and, secondly, to "place the bailment relation within its proper perspective in the modern sphere of obligations". On those occasions where these objectives conflict Palmer has given priority to the second. This has enabled him, whilst concentrating on Australia and England, to cite liberally from American and Commonwealth sources.

Nevertheless, the book's primary function appears to be as an aid to practitioners. To this end Palmer has successfully stated and analysed obligations arising under bailment relationships side by side with tortious and contractual obligations.

The scope of the book is comprehensive, dealing not only with those considerations traditionally regarded as within the ambit of the law of bailment but also matters which, although not yet encompassed by it, are governed by basically the same principles as the expanding sphere of bailment obligations. Palmer, for instance, has not only examined in detail such concepts as possession, permission and knowledge but has also discussed finders, innkeepers, boarding-house keepers, third parties and bailment by attornment. By analyzing contract and tort within the singularly diverse field of bailment (for instance, by discussing both the common law and statutory obligations of innkeepers) Palmer has extracted the full significance of cases and legislation which have hitherto been incompletely examined.

It should be noted that approximately one-tenth of the book, namely those chapters on carriage by sea, air, rail and road were written by independent contributors. Those chapters dealing with carriage are themselves comprehensive and serve a special purpose for Australian readers who have been neglected by other sources. Of particular significance in this context is a timely discussion of International Conventions. The comprehensive nature of the text on carriage is illustrated by the material on carriage by rail, written by Mr J. D. Livermore of the University of Tasmania, which includes an erudite discussion, in 40 pages, of the general conditions of carriage of goods of the British Railways Board, the English background, relevant international conventions, federal responsibilities toward carriage by rail in Australia and finally, a discussion of the law in each of the Australian states.

Diplock L.J. once noted that the beauty of the common law, and in particular that of bailment, is that "it is a maze and not a motorway". (*Morris* v. *C. W. Martin & Sons Ltd* [1966] 1 Q.B. 716, 730). Palmer has not only successfully negotiated this path but has also shown that an archaic maze can be transformed into a contemporary commercial minefield. He has shown that one can beat the bushes of the law and frighten out several rabbits of decision which thrive in the new environment of

* Lecturer in Law, Department of Accounting and Finance, Monash University.

reason (cf. *Zilka* v. *Sanctis Construction, Inc.* 186 A. 2d 897, 905 (1963) per Musmanno J., dissenting).

Very little can be said in criticism of the book. Although of minor significance one may well suggest that readers would have greatly appreciated some comment on the numerous statutory instruments of 1977 passed pursuant to the *Consumer Credit Act* 1974 (U.K.).

ROBERT J. SADLER*

Administration of the Estates of Deceased Persons in Victoria, by L. McCREDIE, (Sydney, Butterworths Pty Ltd, 1979), pp. i-xxiv, 1-214.

The author states, in the preface to the book, that:

> "The aim of this book is to consider the authorities, powers, duties and liabilities of executors and administrators in relation to the estates of deceased persons within Victoria." (p. vii).

The death of a person sets in motion a process which is designed to provide for the administration of a deceased person's estate by a personal representative in accordance with the testator's/testatrix's wishes or as required by statute. The book takes the reader through this process, from its beginning to end.

The book, inter alia, explains who can be a personal representative and what the personal representative must do to effectively carry out his duties. Problems encountered in the process of administration are expounded, especially those which occur when a gift in the will fails. In this way the book allows the reader to appreciate the procedures and problems which go to make up each step of the process of administration. The book provides a practical guide to the steps involved, and, as the process is amenable to this form of presentation, the author is to be commended on his approach.

The book more than adequately deals with each step of the process. The necessary requirements and associated problems are outlined fully. Both statute law and case law are presented in a coherent and cogent manner, often supported by hypothetical illustrations. However, sometimes an example can be used effectively to illustrate certain requirements, but one is not used, for example, when the author deals with the order of applying assets in the payment of debts. This leads to difficulty in fully appreciating what is required. Finally, where the law causes some problems, the author points this out and offers suggestions in an effort to improve the situation.

Although the author assumes that readers have a knowledge of the law of property and trusts, the style and structure of the book enables the reader who has little knowledge of these areas to comprehend fully the nature of the process of administration and to appreciate and be wary of the problems which may be encountered during the administration of the estate.

This book goes a long way towards unravelling the technicalities and obviating difficulties in this area of the law. It contains information that can be readily understood and called upon when needed. It should prove successful in achieving its stated aim, and it is to be commended to the student, practitioner and personal representative, who will find it a useful tool when involved with this area of the law.

F. CAMEROTA*

* B.Ec.
* B.Ec.

Drugs and the Law, by MATTHEW GOODE, (Research Paper for the Royal Commission into the Non-Medical Use of Drugs, South Australia, 1979), pp. xv and 198.

A comprehensive dealing of the law relating to the non-medical use of drugs was lacking until Matthew Goode undertook this research for the South Australian Royal Commission. While the focus of the research was South Australia, all State and Commonwealth legislation is examined and foreign experience is compared where appropriate. The result has been a thorough exposition of the law in this area.

As Mr Goode points out in his introduction, the present law often contravenes the basic tenets of the criminal law which concern the liberty of the individual. The complexity of the law brought about in part by imprecise statutory definitions results in an inability to state exactly what behaviour the law proscribes. The extremely high penalties and stigma attached to breaking the law underlines the seriousness of this situation.

The work is arranged into chapters dealing with definitions, offences of possession, mens rea, possession in general, possession of minute quantities of drugs, trafficking, possession for the purpose of trafficking, and property offences. Each chapter contains excellent citation of the relevant statute and case law, and draws heavily from English and Canadian developments.

Mr Goode examines the law critically and highlights the many inconsistencies. He also points to possible ways in which the law could develop. The offence of possession, for example, being a penalization of status, may come to operate upon guilt by association (p. 39). In the area of mens rea Mr Goode has some interesting things to say in regard to the policy of excluding mens rea where the social purpose of the offence requires strict liability. Predicated as this is on judicial conceptions of what the community considers is sufficiently evil to overturn the normal criminal process, Mr Goode questions whether judges are qualified to determine what the community thinks (pp. 52-53). The author also questions the inference that is made that the accused knows the nature of the substance he or she possesses. He states that:

> ". . . it is apparent that in drug cases, conservative judges make inroads into principles of justice underlying the criminal process." (p. 74).

The obsession with stamping out the "social evil" pervades all the law in this area, the best examples being the trafficking offences where the myth of the distinction between the user-addict and trafficker has resulted in much higher penalties for the latter. Mr Goode illustrates how the definition given to "trafficking" by the courts catches those outside the stereotype and who in fact are better described as "users" (p. 110).

In the area of attempted trafficking Mr Goode perhaps too briefly deals with the situation where it turns out that no illicit drug was existent. He submits that without proof of an illicit drug there should be no conviction for attempt. Mr Goode here seems to be suggesting that one cannot attempt the impossible, citing in support *Haughton* v. *Smith* [1975] A.C. 476 and points out that that case was applied by the South Australian Supreme Court in *R.* v. *Collingridge* (1976) 16 S.A.S.R. 117. In fact only Bray C.J. expressly adopted *Haughton* v. *Smith* in that case; besides that one can question whether notions of "impossibility" come down to determinations of proximity in the final analysis.

One other problem bears mention. The statutory presumption, that possession of a certain quantity of drugs is possession for trafficking, reverses the onus of proof by placing a civil burden on the accused to rebut it. Mr Goode criticizes this for requiring the accused to present evidence and so watering down one of the usual protections of criminal procedure (pp. 153-156).

While a non-lawyer may find this work heavy going, a reading of it would still repay anyone who is interested in this area of the law. It is not intimidatory and often humorous. For example, there is an amusingly entitled section "A Brief Guide on What to Avoid at a Party" (p. 127) which emphasizes the absurdities to which the law can, and has, been taken. The author also refers to "he or she" throughout,

a practice which does not detract from the work and is one which should be more commonplace.

This work has shown the need for reform of the law in this area and it is to be hoped that Mr Goode has not provided this important analysis in vain.

BRIAN SIMPSON*

Law of Sentencing, by A. W. CAMPBELL, (The Lawyers Co-Operative Publishing Co., N.Y., 1978), pp. xiii and 422; App. 423-484.

Sentencing, the Cinderella of the criminal law, has finally come to the ball. In the last ten years, texts on this subject have proliferated. Thomas' seminal English text *Principles of Sentencing* which first appeared in 1970 and is now in its second edition (1979) has been emulated by Daunton-Fear in Western Australia (*Sentencing in W.A.*, 1977) and South Australia (*Sentencing in S.A.*, 1979), less successfully by Newton in Queensland (*Sentencing in Queensland*, 1979), by Potas in N.S.W. (*Sentencing Violent Offenders in N.S.W.*, 1980) and by Ruby in Canada (*Sentencing*, 1976). Campbell's book is a recent contribution to this growing and important literature.

Attention has not come before time. The myth of adversary justice culminating in the drama of the criminal trial has tended to obscure the fact that, in the United States, 80 to 90% of cases are disposed of by a plea of guilty or *nolo contendere* (p. 331). Australian statistics would not be dissimilar. To the ordinary defendant it is the question of disposition rather than liability which is paramount. The fact that the legal profession has only recently become aware of this says little of its understanding of the defendant's perspective on the criminal justice system.

An author writing about the U.S. faces the chaos of 51 jurisdictions. As Campbell writes, the problem is "to avoid the Scylla of oversimplification and the Charybdis of encyclopedic length" (p. 5). The result of this jurisprudential navigation is a work of some 422 pages divided into sixteen chapters devoted in large part to exposition and to too small an extent to critique. Campbell's stated resolution of the dilemma is to examine the basic issues and to illustrate, from various jurisdictions, the possible approaches to a solution, leaving the reader to consult the law in his or her own jurisdiction to ascertain the precise legislative and common law position. However, the heavy reliance on a limited number of sources, such as the various *Standards* of the American Bar Association (Appendices A, B and C) results in an insular discussion which ignores a great amount of relevant material from other jurisdictions which may have shed some light on the common problems of sentencing.

This "legocentric" approach is characteristic of much North American writing and is reflected in the contents of this book. It is understandable that lengthy and parochial consideration is given to constitutional aspects of sentencing, (Ch. 7) such as the effect of the provisions relating to due process, equal protection, right to counsel, double jeopardy and cruel and unusual punishment. However, the discussion of issues such as the factual basis of sentencing (Ch. 9) and disclosure of pre-sentence reports (Ch. 10) would have been significantly improved by an examination of literature and judgments in England and Australia. It is of interest to note that Victoria, without the constitutional protection of due process and the right to confront witnesses, requires disclosure of pre-sentence reports while most American jurisdictions deny this right.

The limitations of the expository approach are highlighted in those parts of the book dealing with sentencing rationales (Ch. 2). The recent flood of literature in the

* B.A.

United States which reflects a renaissance of the doctrine of retribution, is barely acknowledged by the author, whose sympathies seem to lie with the rehabilitative school. Legislatures throughout the United States are jettisoning indeterminate sentencing and embracing, perhaps with excessive zeal, determinate, mandatory, presumptive or "flat-time" sentences based on desert or punishment. The ramifications of these changes on parole, remissions, pre-sentence reports, prior conviction legislation and the role in sentencing of aggravating or mitigating circumstances are immense, but unacknowledged in this work. (Cf. Von Hirsch, *Doing Justice* 1976). A more conceptual approach may have avoided this problem.

For the Anglo-Australian reader, there are further limitations to this book. The lack of general appellate review of sentences in the U.S. has meant that no body of principles concerning control of judicial discretion has developed. The treatment of this topic is accordingly meagre. Similarly little attention is given to alternatives to imprisonment such as fines, restitution, compensation and work-release (see Ch. 2) although there is a satisfactory discussion of the often overlooked issue of the collateral consequences of conviction.

A more surprising defect is the lack of discussion of plea bargaining, to which a cursory four pages are devoted. In a country where this phenomenon is perhaps one of the major determinants of sentence, it is of little value to a reader to be told that the topic has been "exhaustively treated elsewhere" (p. 338). The topic deserves a better fate.

The lack of any text on the legal aspects of sentencing in the United States has been an obstacle to the study of sentencing on an international basis. The arrival of Campbell's book, though not comprehensive, is therefore a welcome event.

ARIE FREIBERG*

* Lecturer in Law, Monash University.