

turn had not received it from the publisher.

4. I referred to Mr Jacobs' discussion of the Sea Carriage of Goods Act 1924 (Cth) on pages 1875 and 1876. I pointed out that he did not refer to the Carriage of Goods by Sea Act 1991 (Cth) which will repeal the 1924 legislation. However, amendments to the International Arbitration Act 1974 (Cth), incorporating the Carriage of Goods by Sea Act 1991 (Cth), were also published in the same release in June 1992.
5. Mr Jacobs and I have had an extensive discussion about the international enforcement of arbitration agreements and awards. We both recognise that arbitral awards are more freely enforceable internationally than court judgments but that there have been instances where the international enforcement of awards has been very difficult.
6. I was critical of Mr Jacobs' frequent quotations from other sources. I now accept that Mr Jacobs' intention was to give Australian writers some knowledge of the views of overseas writers. He regards this as particularly important in a subject like international commercial arbitration.
7. Finally, my review did not deal with Volume 2 of his work. I say unreservedly that this contains a useful and convenient compilation of primary sources, particularly the rules of many international arbitration associations.

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Review of Griffith University Law School, *From Barter to Bargain: Introduction to Contract Law*, Video and Guide, Sydney: Law Book Company, 1992. \$200.00.

This review is not of a book but of a video and accompanying printed Guide. The opening words in the description of the "Aims of the Video" on page 3 of the Guide tell us that "This video was produced to provide students with visual illustrations of some common — and sometimes amusing — contract situations which focus on the nature of agreement".

The video comprises six "vignettes" each of which portrays a very simple contractual transaction. They are intended, according to page 3 of the Guide, to "demonstrate the development of the concept of agreement from its origins in the process of barter and exchange through to a complex modern commercial transaction". The first vignette, "Barter and Exchange", is of the process of barter (mangoes for bananas), the conclusion of which is an exchange of goods. The second, "The Road to Tipperary", is of a written offer conveyed from the offeror by a messenger on horseback, and a signed acceptance which is brought back by the same messenger.

The third, "The Kite", illustrates the familiar problem of the attempted withdrawal of an offer of a reward for an act (the retrieval of a kite caught in a tree) when the offeree is in the process of performing, but has not fully performed, the act (successful retrieval of the kite) called for by the offeror. The fourth, "Mangoes, Two for One Dollar", depicts the principles of offer and acceptance at work in a face to face sale of food, the emphasis being on the non-correspondence of the goods delivered pursuant to the agreement with those shown to the buyer prior to the making of it. The fifth, "The Mortgage", shows an everyday mortgage transaction in which an officer of a bank informs the customers that there is no possibility of the bank's departing from its standard form of mortgage when they request that it do so in order to confer a benefit (the right to make fortnightly rather than monthly payments) available from other banks. The sixth, "The Fax", shows the use of the telephone and facsimile in a more complex modern commercial transaction involving an international element (a seller in Papua New Guinea and buyer in Australia) and foreign exchange elements.

The video was produced by the academic and administrative staff at the Griffith University Law School in February 1992, the moving forces behind it being Marlene Le Brun and Alan Leaver. As the Guide makes clear, the video focuses on the *formation* of contracts, although it suggests that the same medium would be suitable as an introduction to other contractual topics as well.

One's first impression of the video may well be that it is simplistic, and not worthy of use at a tertiary level of education. However, if it is used in conjunction with the Guide as an introduction to the topic of agreement, it does indeed have a place. The Guide makes the point that it should be read before the video is shown. The writer viewed the video first, then read the Guide, then viewed the video a second time. It became clear that the advice in the Guide was well conceived — the point of the video is much better appreciated in the light of the Guide.

Another initial impression is that the acting is amateur and unconvincing. Yet, in one respect, this is an advantage: it makes it clear that the video's purpose is not to entertain but, as the Guide says, to "trigger discussion and debate in which both the student and the teacher play active roles in the teaching/learning process" (p 2).

The Guide contains, in respect of each of the six vignettes, a statement of "Key Concepts and Principles" for use by teachers, "Sample Questions for Discussion" and "Further References and Resources". This material gives depth to a study of the formation of agreement, interest in which would be stimulated by the use of the video in the hands of a teacher who understands its role.

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Review of H P Lee and G Winterton (eds), *Australian Constitutional Perspectives*, Sydney: Law Book Company, 1992. HC \$78.00, SC \$55.00.

This is a significant book of essays which may be compared in terms of its incisive analysis and likely impact on constitutional thought with R Else-Mitchell's *Essays on the Australian Constitution* (Sydney: Law Book Co, 1961) first published three decades ago. The contributors are not mere analysts of the constitutional text but have a lively understanding of the political and social context in which the text has to be applied. They are aware of the pertinent areas of constitutional dispute which must be canvassed by the constitutional adviser, teacher, practitioner and, most pertinently, the High Court whose method of interpretation has changed so dramatically in the last decade.

Appropriately enough, the first essay by Craven considers the role of the High Court. Craven states that literalism, which has been the method of interpretation adopted by the High Court since the *Engineer's* case (1920) 28 CLR 129, is faced with two new challenging theories each with a claim to legitimacy: progressivism, which emphasises an interpretation of the Constitution based on the aspirations of the Australian community, and the countervailing intentionalism (or originalism), which emphasises fidelity to the intention of the framers. The judgment of Brennan J in *Mabo v The State of Queensland [No 2]* (1992) 175 CLR 1 (which appeared after the writing of the book) suggests that progressivism may well have become the desired theory of the present High Court. According to Craven, the progressivists believe that the constitution amendment procedure in section 128 has failed. Intentionalism, the competing view which emphasises the constitutional compact, would wind back the expansive interpretation of Commonwealth powers which the High Court has espoused in the last 70 years. Craven proposes a bridge between the two methods which he describes as contextualism. In his opinion, the Court should continue to give authentic expression to the will of the Australian people as expressed in the text. However, where the text is ambiguous, an interpretation should be adopted which best mirrors the needs and values of the Australian people, but in doing so great weight should also be attached to the fundamental values of the founders. Thus contextualism represents both a moderate progressivism and a moderate intentionalism.

The difficulty with any theory which purports to be sociological in nature, that is, to represent the aspirations or needs of the people, is that it may well intrude upon electoral choice as well as the amendment process which requires ratification by the people. Two judges of the Court (Deane and Toohey JJ in *Nationwide News v Wills Pty Ltd* (1992) 108 ALR 681, 721–722) have recently stated that the principle of separation of powers is, together with federalism and representative government, one of the three major foundations of the Constitution. The Court therefore would seem to be required to abstain from exercising its function where it is invited to revise an established rule by reference to the aspirations of the Australian people. These aspirations surely are better able to be determined by the political process, namely, by triennial elections or, in terms of major revisions, by the ratification of a proposal