

It is perhaps dubious whether this is the appropriate vehicle for delivering information to practitioners in such a complex and fast-moving field.

The forms which constitute the second part comprise the most common transactions in relation to computers and software. Each area includes at least two standard forms, one for the supplier and one for the customer. The origin of these forms is not indicated, and they may well be composites put together by the authors. Each such section also includes a useful checklist of things for practitioners to look out for.

The book ends with two final sections, one setting out the standard Government Information Technology Conditions (4th edn, 1991), and the other an Electronic Data Interchange ("EDI") Agreement. The latter form emanates from the EDI Council of Australia and, unlike the other forms, is accompanied by a commentary, though whether by the Council itself, or by the authors, is not immediately apparent. Both of these forms are apparently included for information only, since copyright is explicitly claimed for them.

Although the authors and publishers express an intention to keep the text updated, there is no clear indication of the intervals which are envisaged. This may have a vital effect on some parts of the text, which as indicated above deal sometimes with highly volatile areas. The forms themselves seem sound and should be a great help to practitioners. This is a work which can be recommended, both to practitioners and to academics, as a useful guide to drafting and to understanding computer contracts. It also provides a helpful starting point for further investigation of surrounding areas of law.

COLIN TAPPER

Professor of Law, Oxford University.

Review of Suzanne B McNicol, *Law of Privilege*, Sydney: Law Book Company Ltd, 1992. HC \$120.00.

Recent years have seen a constantly increasing number of cases and articles relating to the privileges. The need for a comprehensive text is clear and McNicol's detailed coverage of the privileges, including the public interest immunity, will provide a welcome text for practitioners and others.

Coverage of the privileges is carried out in depth. Understandably it is limited to the common law and statutory privileges available in some or all of the Australian jurisdictions. It might be suggested that the brief references to the position of journalists (pp 3-6, 364, 380) could be expanded into a separate chapter, having regard to a number of recent problems. They include the imprisonment for seven days and subsequent \$10 000 fine imposed on a *Sunday Times* journalist by a Perth magistrate and the District Court in 1990 for failing to reveal a source of information.

More recently, in March 1992, a Queensland journalist was jailed for 14 days for contempt for a similar offence. Since the publication of McNicol's book a former ABC journalist has been sentenced to four months' jail for similar reasons ("Jail for Contempt", *The West Australian*, 20 April 1993). The matter has also been examined by the Law Reform Commission of Western Australia (Discussion Paper on *Professional Privilege for Confidential Communications* (1991) 92–102). Of particular interest is the argument that the Commonwealth Constitution has an implied guarantee of freedom of speech protecting journalists in such situations.

The book contains numerous excellent analyses of specific issues. To take only a selection of examples, one might point to the third party rule (pp 50–51), the Law Council Guidelines (pp 64–65) and *Corporate Affairs Commissioner v Yuill* (1991) 100 ALR 604 (pp 117–127) on legal professional privilege. On self-incrimination some instances are, who can claim the privilege for a corporation? (pp 154–166) and penalties (pp 189–201). For the public interest immunity, one instance is the examination of *Aboriginal Sacred Sites Protection Authority v Maurice* (1986) 67 ALR 247 (pp 425–429) and for "without prejudice" communications, and the discussion of exceptions (pp 461–485). This is only a sample and an indication of the high standard of analysis throughout the book. It is particularly rewarding to read the expositions of the rationales of the privileges, having regard to major recent changes in the common law and their justifications by the courts.

Turning to some specific issues, the examination of the legal professional privilege search warrant cases (pp 56–63) suggests the need for an authoritative final decision to settle outstanding problems. Although the useful case of *Aydin v Australian Iron & Steel Pty Ltd* (1984) 3 NSWLR 684 is mentioned (p 76), the problems raised there of the purpose of a corporation might have been further expanded upon. Although reference is made to United States cases and statutes (eg, pp 77, 320, 338, 355) more detailed use might have been made of such examples as the 46 States protecting clergy privileges.

ITC Film Distributors Ltd v Video Exchange Ltd [1982] 2 All ER 246 is a useful English case on wrongful obtaining of documents and the discussion (p 85) might have expanded on the available remedies and also the effect of *ITC* on *Calcraft v Guest* (1898) 1 QB 759 and the possible adoption of *ITC* in Australia. The argument that copies for record-keeping or management information should be privileged, but not copies for other purposes (p 95), faces the problem that management will often use its information copy for other purposes and that it needs the copies in order to take further action which will frequently involve other purposes.

R v Bell; Ex parte Lees (1980) 146 CLR 141 is a most interesting case, especially since *Attorney General (NT) v Kearney* (1985) 61 ALR 55. Although *Lees* is discussed (eg, pp 100, 107–108), it would be useful to have a detailed examination and, in particular, a resolution of the wider impact of the case beyond the area of child custody. One must support the strong suggestion that Parliament should make a practice of expressly declaring whether the privilege against self-incrimination applies to statutes (p 150). It may also be asked why this is so frequently not done, especially since the necessary implication test looks to the intent of Parliament.

On the application of the privilege to corporations (pp 166–172), it is somewhat difficult to separate the arguments for and against from the descriptions of the cases. Considerably more space is given to *Caltex Refining Co Pty Ltd v State Pollution*

Control Commission (1991) 74 LGRA 46, at first instance, than to the decision on appeal. The provisions of the Corporations Law giving a company the legal capacity of a natural person are referred to (p 170), but might have been assessed for their specific relevance to the debate.

Brehner v Perry (1961) SASR 177 might have been criticised. The argument that forfeiture extends to deprivation of a public office is noted (p 201). In the light of its potential for use this point might have been examined in some detail.

On the clergy privilege, the decision of the majority of the Canadian Supreme Court in *Gruenke v The Queen* (1991) 67 CCC (3d) 289 that such a privilege may be found on a case by case basis is of wide significance. The general principles upon which this decision is based would, in theory, enable common law privileges to be applied to confidential relationships, with suitable safeguards. One of the relevant policy considerations was the constitutional guarantee of freedom of religion. This might be significant in Australia should the High Court reconsider its approach to section 116 of the Commonwealth Constitution.

On the doctor/patient privilege, the somewhat lengthy statement of the common law position (pp 339–340) might have been abbreviated in view of the clear position that no such privilege exists. Criticisms of the many uncertainties and definitional problems of the Victorian statute (p 348) are put forward as an argument for abolition of the privilege. This can be disputed. It could be contended that the Victorian statute can be clarified and also that legal professional privilege (for example) is similarly hedged with uncertainties. On waiver (p 364), more might have been added on implied waiver.

In view of the rapidly increasing number of decisions on the public interest immunity the substantial chapter on this topic is particularly to be welcomed. On the rationale of the privilege, one could question some of the claims to national security and other vital interests of the state (p 375). It would have been interesting to see more on effective waiver by decision of the relevant authority that the public interest has ceased to apply (p 381). *Greyhound (Aust) v Deluxe Coachlines* (1986) 67 ALR 93 (p 424) seems to go beyond the English authorities and open up a possible wide area of claims of public interest.

McNicol's book is an excellent and much needed volume which should prove invaluable to practitioners and all concerned with the law of privilege.

FRANCIS AUBURN

Associate Professor, The University of Western Australia.

Review of David Solomon, *The Political Impact of the High Court*, Sydney: Allen & Unwin, 1992. \$24.95.

Not uncommonly, the lead up to a propitious national anniversary is a time to assess what has been done and to review the alternatives, on this occasion with the benefit of centennial hindsight. The methods by which disputed provisions of the Commonwealth Constitution and legislation are defined will inevitably come under national scrutiny. The High Court, a creation of the Constitution and, amongst other things, delineator of disputed sovereign powers, will inescapably share centre stage. The composition and role of the Court will feature prominently in any re-appraisal of the federal constitutional framework. The political significance of its decisions will be explored and not simply the legal principles which underpin them. This in turn will raise questions about the independence of the Court and the process by which its members are appointed. *The Political Impact of the High Court* is an admirable and timely contribution to this debate, for as the author states (p 193):

The Court's previous reluctance to acknowledge, except on rare occasions, that what it decides will or may have a political impact makes it imperative that others should highlight the political consequences of what the Court is being asked to do, be they the lawyers who appear before the Court, the clients they represent, or academic or journalist observers. The citizens who have no say in choosing the Court have a right to know what it is doing and what effect its decisions will have on them.

I have taken this excerpt to include a call for the translation of legal principle into political effect, a provocative exercise often eschewed in legal texts. This book is not, nor indeed was it intended to be, a technical legal text. It is rather the "biography" of a legal institution casuistically constructed but with an eye to historical, social and political context.

The book is divided into three parts. The first contains an overview of the historical, constitutional and political foundations of the High Court touching on issues covered in greater detail in the second part, which is headed "Problem Areas". These include the conservation and protection of the environment; the freedom of trade, commerce and intercourse among the States; human rights; taxation; industrial relations and the "federalisation" of company law. The third part is headed "Institutions" and is, broadly speaking, devoted to the constitutional relationship between the High Court on the one hand and parliament and executive government on the other. Of particular interest are those sections of chapter 12 dealing with the judicial review of executive acts and those instances where the Court has adjudicated legal disputes between the government and the opposition.

The style of this work may be illustrated by the following random examples. In chapter 7, the author has chosen the High Court's treatment of certain provisions of the Income Tax Assessment Act 1936 (Cth) to demonstrate how the Court may become involved in the political process through its interpretation of legislation. There was a popular perception in the 1970's and 1980's that the Court's approach to the interpretation of the Act facilitated the avoidance and evasion of tax liabilities, which in turn led to a wide ranging legislative reform of the tax system. This well