

BOOK REVIEWS

SKYLARKS AND LECTERNS. A LAW SCHOOL CHARTER by Ron Lansing, New York, Huddlestone-Brown, Publishers, Inc. Port Washington, 1983. 236pp paperback.

This book's form is true to its subtitle being set out as a ratified charter with a preamble of 60 Articles with appropriate headings. In keeping with the legal theme of the book the author has positioned a caveat at the beginning declaring the fictional nature of the work.

"Skylark and Lecterns" offers an entertaining and, at the same time, thought-provoking view of law school. It covers a year at an American law school called Weldon Hall, following the experiences of first year students. The occasional disparity between New Zealand and American law and law schools does infiltrate the book but overall the people and law which inhabit this novel could be found in New Zealand law schools.

This novel is not solely about "The Law", rather it is a "charter" of the interrelationship of law faculty, students and administrators. All the familiar aspects of law school are there. For the students there is the terror of Socratic method lecturing, the worry and wonder of exams and the strain of awaiting exam results. A familiar conversation for many students:

I wish to hell these profs would get into the real world for awhile. How silly can you get? . . . I was severely distressed because a crocodile chased me around my trapeze net after the tatoood lady put it there as a practical joke . . .

Well, I don't know — I think it's all right. The law is all there. What difference does it make if the facts are a little wild. Keeps it entertaining . . . it's still a chance to talk about strict liability for dangerous animals. (p. 124)

For the lecturer there are the familiar scenes of battles with administrators, the memo-wars, research, endless committee meetings and the trauma of exam marking.

The author Ron Lansing is Professor of Law at Northwestern School of Law in Portland, Oregon. He brings an obvious love and understanding of the small world of the law school to this novel, and he combines it all with humour — a pervading part of his novel.

Professor Lansing has an apparent affinity with the law of torts and there is a good deal of tortious law incorporated in the book.

One of the main characters is Professor Laurence II, the terror of the first year law students, who teaches the law of torts using the dreaded Socratic method as a means to frighten his students into learning the

law and the skills of education. Through sorties into his classes, the lay reader learns some of the law framing the torts of battery and assault, the doctrines of negligence, contributory negligence and strict liability. The reader who is already versed in law has the chance to relearn or reaffirm their own knowledge.

This method of incorporating pure law into the novel works well and would not be off-putting to the lay reader nor to those with knowledge of the law. Indeed the author has injected the right balance of law which will ensure enjoyment for all his potential readers.

The torts class is not only one focused upon. The most popular class for students in the novel is that devoted to "Legal Theory" which does not seem to completely equate to an Auckland law course but seems to be a combination of Jurisprudence, Legal Systems and Legal Philosophy. The Legal Theory class is taught by a likeable character known to his students as "The Professor". He brings life to his class by using different strategies to obtain and retain the class' interest.

The law in this novel is shaped by the ideologies of lecturers and students. In this respect the author has created credible characters whose views are readily acceptable — of course some more so than others depending on the reader's own perception of the law.

The law school provides a forum for these viewpoints; it is a melting-pot for people of diverse backgrounds from various parts of the United States. Yet all these people could be easily transferred to New Zealand, and, indeed, are identifiable in law schools in this country.

What were they doing in law school? Escaping or chasing status? Postponing the confrontation with the world of jobs or seeking credentials that buy recognition with paper alone? There was no nobility in that. (p. 46)

The major student character is Daniel Stocles. He has an affluent background but genuinely wants to help people with the legal knowledge he learns.

But, professor, it does seem important for us to be talking about what the law ought to be and not just talking about what the law is. (p. 154)

Among the students there is Sandra Houghton — the straight "A" student; Sam Klein the class clown with hidden talents; "Poppa" Reicher, the older student with the right amount of "horse sense"; Jacob Morgan the family man with responsibilities; and Bogan Miller the student, with the ready lies and half-truths, who plays an important part in the subplot involving an altered exam grade.

The law faculty is comprised of equally diverse characters. Professor Lawrence — the story of his problems grading exams strikes a comical note and probably will find much sympathy from readers who are themselves members of a law faculty; Casey Doe, alias "The Professor", bemused by his popularity; Associate-Professor Webster, the champion of the memos; Assistant-Professor Alicia Smith, champion of the underdog; and Instructor Romain "Buzz" Johnson, one year out of law school and more at home on the basketball court than behind the lectern.

The administrators in this book are probably best represented by one Beatrice Cramshaw who acts under the grandiose title of Head Faculty Secretary and who insists on meticulous records of meetings, usually to the chagrin of those members of the faculty whose remarks are recorded for all time!

It is the interrelationships of all these characters which provide light relief, and yet which offer the reader some insight as to why different people are attracted to the law.

If the style of the novel is a true indicator, the author himself would prove to be a "skylark" among the lecterns of his own law school. He has injected life and entertainment into his portrayal of law school and in so doing has not detracted from the book's legal aspects. This book is recommended reading for those who want an introduction to law and law schools and for those who want a break from law and small print law books. This novel is set in relatively big print with bold headings indicating the "Articles" and a mixture of long and short chapters. The occasional printing errors are a small flaw only.

The last words must go to David Stocles:

She asked again, between hiccups, what law school was like.

He thought to tell her it was boredom and fear, wisdom and wisecracks; thoughtful and thoughtless; galleons and scows; commands and skylarks that sing. But instead he said that it was simply an adventure.

She hoped that that would be true. (p. 236)

Andrea O'Brien

THE LAW RELATING TO NON-PROFIT ASSOCIATIONS IN AUSTRALIA AND NEW ZEALAND by Keith L. Fletcher. The Law Book Company, Sydney, 1986. xi and 380pp.

It is interesting to speculate on why one segment of the law of associations, namely company and partnership law, gets so much academic attention and the other, surveyed in this book, so little. Perhaps academia led by the profession is lured by the economic power in the hands of profit-making organisations. Less cynically it is perhaps that litigation in the area of non-profit organisations is less frequent and thus not as exciting to follow for the academic. Fletcher implies that the relative infrequency of litigation in the area on non-profit organisations is one reason why the law in this field is undeveloped — the modern law effectively only being two hundred years old.

The book is essentially a treatment of two topics related to non-profit associations — the law relating to unincorporated associations and incorporated associations. An incorporated association is a non-profit association incorporated under the Incorporated Societies Act 1908. An unincorporated association is more difficult to define — Fletcher provides a very general legal definition ("a residual miscellany of groups

not otherwise recognised or categorised by the law”) and then spends chapter three developing a working definition. The need to identify an unincorporated association arises because of the ease with which legal relations between an individual and an unincorporated association can be mistaken for legal relations between two individuals. This problem is due to the lack of corporate status and consequent lack of recognition of unincorporated associations by the courts. However the common law has developed practices to overcome the host of problems encountered by unincorporated associations. Fletcher looks at constitutional issues, the way in which property is held by such organisations, membership rights and obligations, and contracting with outsiders. Fletcher also devotes separate chapters to the tortious liability of unincorporated associations, gifts and bequests made to them, their dissolution and finally proceedings by and against unincorporated associations. Over half the book is devoted to the law of unincorporated associations, providing a very full coverage of an area that touches nearly all our lives and yet as students of the law we know so little about.

The other large section of the book deals with incorporated associations. Specialised society incorporation legislation appears to be primarily an Australasian phenomenon, with the exception of British Columbia in Canada and some U.S. jurisdictions. In other jurisdictions the incorporation option exists within companies legislation though it would appear from Fletcher’s comments that its position within such legislation is anomalous and unsatisfactory. New Zealand’s first attempt at enacting such legislation was the Unclassified Societies Registration Act 1895. However that Act and its amendments proved to be inadequate and the Incorporated Societies Act 1908 (N.Z.) was enacted in its place. This Act and its subsequent amendments are still in force today. The Act is not a code and like its Australian counterparts represents a twist on the corporation law base. However we are told that except to the extent of compatibility with the Act and other relevant legislation incorporated associations are structured and operate in accordance with the law and practices of unincorporated associations. It is suggested by the author that the similarity between the internal practices of non-profit associations and companies will continue to provide a fertile source of law for legislators seeking to further regulate non-profit associations.

Fletcher devotes eleven chapters to the treatment of incorporated associations — the topics discussed for unincorporated associations being analysed. The differences that exist are too numerous to detail but important areas include the existence of an incorporation process, statutory control over associations’ rules and of course their legal status as legal persons.

The book appears to be aimed at a wide readership. Fletcher was partly educated in New Zealand and presently lectures in law at the University of Queensland. Consequently he has attempted to cover all the Australian jurisdictions as well as New Zealand. At the same time while retaining a textbook presentation to appeal to students and practitioners it is sufficiently conceptual to appeal to academics. It contains a

very useful table of cases and a table of statutes, both of which are essential for serious legal works.

Fletcher achieves his stated objective of providing a study of the law relating to unincorporated and incorporated non-profit associations. The scope and depth of his treatment of the past, present and future state of the law (the latter to which he devotes the concluding chapter of the book) creates an excellent survey of the law. My only criticism is of the price. Although the comprehensive treatment afforded by this book warrants a high price, at \$75 it is becoming inaccessible, particularly for students, something I am sure Dr Fletcher would find disappointing.

Andrew Body

HIGGINS AND FLETCHER: THE LAW OF PARTNERSHIP IN AUSTRALIA AND NEW ZEALAND by Keith L. Fletcher. Sydney. The Law Book Company Limited, Sydney. 1987. lxxi and 394pp.

Owing to the death of Mr Higgins in May 1981, Mr Fletcher is solely responsible for this the fifth edition of *The Law of Partnership in Australia and New Zealand*. Notwithstanding the title which includes New Zealand, this text has a pronounced Australian focus. This is borne out by several omissions in the text, omissions which are of great significance to practitioners on this side of the Tasman, and also by the title of the tenth chapter — "Taxation of Partnership Income in Australia". Admittedly, reference is made to New Zealand legislation dealing with partnership in chapter ten, but the references made are consequential to the Commonwealth taxation statutes.

As for the omissions: pages 70-75 deal with limited partnerships. In New Zealand these are known as special partnerships. The unfortunate thing about these pages is that they fail to deal with the new legislation regarding special partnerships announced in the New Zealand Budget of 1986. A footnote to Appendix 1 (page 357) is the only reference to the announcement. This omission is further compounded by the fact that chapter ten makes no reference to the tax ramifications of the Budget announcement. Chapter eleven — "Regulation of Firm-Names", makes reference to the Trade Practices Act 1974 (Cth), but fails to allude to similar developments on this side of the Tasman. Both of these omissions are the product of events which occurred after the author sent his manuscript off to his publishers. However, they are significant and should be noted by students and practitioners who consult this text.

As regards chapter ten: taxation of partnership income is a subject not specifically dealt with, in a specifically New Zealand text on the law of partnership. As such the author of this work has missed an opportunity to provide such information for New Zealand readers. Such readers will still have to consult specialised tax and revenue texts for

information, although Australian readers will have the information at their disposal.

Technically the text has much to recommend it. There is an excellent comparative table of Partnership Acts which covers the six States of Australia, the ACT, New Zealand and the United Kingdom. Equivalent sections are cross-referenced to the page/s upon which they appear in discursive form. The table of statutes is similarly cross-referenced to appropriate pages. The appendices provide draft precedent forms such as a general business partnership deed between three persons — a precedent which could be of great use to the law clerk.

Generally speaking this text should find a home for itself on the shelves of most New Zealand law libraries. Due to the comparative approach of the author, concepts and legal principles concerning the law of partnership in both Australia and New Zealand are accessible. With the harmonisation of the economies of both countries there is a greater need for practitioners and students in New Zealand to be familiar with Australian legislation, and vice versa. Therefore, there are advantages to be had in legal texts which have a trans-Tasman flavour.

Grant D. Poulton

NEW ZEALAND IN VIETNAM. A STUDY IN THE USE OF FORCE IN INTERNATIONAL LAW by R. G. Glover. The Dunmore Press Limited, 1968. 69pp.

To many who remember the Vietnam war the topic remains a sensitive issue; opinions were fiercely held, families were divided, and as so often happens in politics, few really understood just what was going on behind the scenes. It appears that only as we approach the end of the eighties are people able rationally and objectively to examine just what occurred and why.

In this context "New Zealand in Vietnam, A Study in the Use of Force in International Law" will no doubt help those who read it to understand New Zealand's involvement in a war which apparently had nothing to do with us. However this book goes beyond merely analysing New Zealand's role in Vietnam; it also attempts, in a very concise manner, to consider the wider questions involving the use of force by countries within the context of International Law.

The book consists of six brief chapters. The first sketches very briefly the background of the Vietnam war, tracing the French withdrawal from Indochina, the Geneva Agreements and the failure of the parties to adhere to the Agreements. The second chapter concentrates on New Zealand's decision to become involved; no book dealing with the use of international law between countries can provide a complete picture without a consideration of the politics involved.

International Law is not the same as municipal law; no world enforcement agency exists, hence motives and politics become all important. This chapter may come as a surprise to many of those people who deplored American involvement. In fact initial pressure for allied involvement came not from the Americans but from Australia, gripped by the Cold War and believing firmly in the Domino Principle; after Vietnam, Thailand would be the next target and then the Indonesian archipelago and finally Australia and New Zealand.

Glover's extensive use of interviews and Hansard and departmental memos paints a vivid picture of a reluctant New Zealand, mindful of our past relationships and pressing balance of payments concerns, being pulled into Vietnam on Australia's coat-tails.

In the third chapter, Glover moves away from the politics into the field of international law under which the participants justified their actions, principally the origin and nature of the South East Asia Treaty Organisation and the attitude towards the treaty. Again extensive use of original materials illustrates the perceptions held by New Zealand of its obligations under the treaty.

Chapter four leaves Vietnam, and moves into a more esoteric discussion about the concept of self-defence under Article 51 of the United Nations Charter and Article 2(4) on the use of force. This analysis is then related to the workings of regional arrangements such as SEATO and NATO and naturally ANZUS.

The following chapter considers whether the war in Vietnam was an international war at all or just a civil war.

Finally in the last chapter, Glover presents his conclusions on New Zealand's participation in Vietnam.

The New Zealand may have acted legally does not mean it acted morally. The relationship between morals and the law is a difficult jurisprudential question at any time, and never more than when it is interwoven with international politics. Those who condemn New Zealand for its role in the war on moral grounds, should nevertheless be grateful that illegality was not added to immorality.

— *Mark Kogos*

CANNIBALISM AND THE COMMON LAW by A. W. Brian Simpson. Published in Penguin Books, 1986. 323pp.

Humankind's greatest taboo has always whetted our appetite for the macabre and the bizarre. The sinking of the yacht *Mignonette* in 1884 and the strange sequence of events which followed have been of continuing interest to both laypeople and lawyers for over a century. Although much has been written about the episode this work stands out as a comprehensive survey of the background to the case. In his preface the author stresses that his purpose is to,

make it clear that no real understanding of the story of the yacht *Mignonette* and the leading case to which it gave rise is really possible without journeying well outside orthodox legal sources

Such journeying is proved to be exhausting and exhaustive.

This book contains a feast of information (much of it gleaned from original documents) about all facets of the story from the history of Victorian sailing and maritime disasters to the personalities and politics of the Victorian Bar. At times this deluge of information is almost overwhelming but the author ensures that the focus of the narrative is not lost by the strategic insertion of verses from contemporary sea shanties.

Good skipper, use him truly,
For he is ill and sad
"Hush! Hush!" he cried, then cruelly
He killed the little lad. (page 55)

It is a feature of this book that the tragic event itself and the question which it caused to be answered are relatively succinct. The detailed process by which the simply put question was answered is of most interest to readers with a legal background. The importance of viewing the case from its proper historical and socio-political perspective is reinforced for such readers when one takes note in particular of the vagaries of the then legal system.

Although the tragedy of the *Mignonette* came to be a leading case, its facts were by no means novel. However as the author notes, from the very first it was certain that this tragedy would be made "a lawyer's question." Letters to the editor and editorial comment from the columns of Victorian newspapers show that the public were taking an active and divided interest in the series of events. As was written in the *Daily Telegraph* in defence of the "cannibals",

Follow on till you come to the sunken eyes already repulsive with the fires of famine, to the gaunt and haggard faces, to the voices which can but whisper hoarsely as they seek to cast their accents the length of the boat . . . (page 87)

Such colourful anecdotes from the author's extensive use of newspapers as a source of information and comment shows us what a valuable resource and tool newspapers were in times before the advent of the electronic multi-media.

It is this contrast between the present day and the Victorian age which is most prevalent in this book, and in as far as the case is viewed against this total background the work succeeds. It is not (nor intended to be) a book which discusses the legal and ethical question of the defence of necessity as raised by the case, but is nonetheless necessary reading for those with such an interest. What this book demonstrates for the lawyer is that one must not forget that the law is but one thread running through the fabric of society, and thus that the law must always be viewed in its correct social and historical context.

The book is well laid out although discursive at times as the author suspends the "plot" to unearth more relevant background detail. The

prose is lucid but dense in places, although the temptation to skim is reduced by the fear of missing some of the delightful garnishings which the author uses to spice his tale. This book is compulsory reading for those who think that they are already familiar with the story, and for those who are not there must surely be the temptation to find out exactly what happened to those three poor sailors.

Although the central ethical question is left unresolved, there is one appropriate conclusion to be drawn,

God bless all poor seamen their children and wives,
 In trying to get their bread how they venture their lives,
 So now to conclude what I've mentioned is right,
 God protect all poor seamen by day and by night.
 — "Ballad of the Essex" (page 271.)

— James Elliott

BOOKS RECEIVED

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