

tions for the Chartered Institute of Secretaries who need an elementary introduction to the practical side of the law relating to companies, as part of a broad general business course.

The book contains a number of simple forms and precedents interspersed throughout the text and also in the appendices at the end of the book. Apart from their value as illustrations there seems to be little point in including these. As already mentioned it is doubtful whether the book will be used as a source and reference book by solicitors, and even if used in legal offices the forms and precedents are adequately set out in such standard works on company law as *Anderson and Dalglish* and *Morrison*. It is unlikely that the forms will be used by laymen.

The book is written in a clear and simple style. At times it appears in danger of over-simplification—such matters as ultra vires, protection of minority shareholders, priorities of charges, etc. are barely mentioned. There is a certain amount of repetition—for example a paragraph dealing with “proprietary companies” on p. 12 (not p. 11 as shown in the index) is repeated almost word for word on p. 56. The book however is well produced, and the reviewer noted only a few printing mistakes.

Within its limits this small manual provides a concise, simple and elementary introduction to the law relating to private companies, for non-professional readers.

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INTRODUCTION TO NEW ZEALAND LAW, by J. A. B. O’Keefe, B.A., LL.M., and W. L. Farrands, B.Com., LL.M. Wellington. Butterworth & Co. (N.Z.) Ltd., 1969. xxviii and 451 pp. (including index). New Zealand price: \$7.75 (hard cover), \$6.25 (soft cover).

People will quite commonly brush aside the mispronunciation of a word by facetiously suggesting that “it all depends on which school you went to”. There is nothing too facetious in the suggestion that in New Zealand the approach which academics take to introductory courses in law depends largely on the university to which they belong. It is the misfortune of Mr O’Keefe and Mr Farrands that their book *Introduction to New Zealand Law*, written no doubt with their own university’s courses in mind, should be reviewed by a member of one of the “other” universities.

As is reflected in the recent preparation by members of the Law Faculty at Canterbury University of a New Zealand edition of Derham, Maher and Waller’s *An Introduction to Law* (1968), there is a growing body of opinion that a student is best introduced to law and is best prepared for his future study of specific law subjects by having fully explained to him such things as: the history and development of our law and legal system; the sources of our law; the use of law as a social tool and the effect on it of economic and social influences; the role of the judiciary and the effect of judicial personality and temperament; the way in which cases are heard and decided; law reports, statutes and the correct method of citing them; the hierarchy of the courts; the doctrine of precedent; the method of analysing a case; statutory interpretation; legal reasoning; the use of the law library.

Some of these topics are briefly touched upon by Mr O'Keefe and Mr Farrands in their first three chapters, but none of them receives the full explanation which they warrant. Nor do the authors provide the abundance of examples and illustrations necessary to maintain interest and to ensure that the student fully understands what he is being told. From their second year onwards, law students are constantly required to analyse, interpret and apply statutes and judicial decisions. This presupposes full understanding of the doctrine of precedent and the rules of statutory interpretation. Accordingly the author's two pages on statutory interpretation and six pages on precedent are entirely inadequate to develop the skills and techniques required for the remainder of the law course. Unfortunately, this inadequacy is not remedied in the succeeding chapters on specific fields of law since the treatment of each field is too brief to permit any detailed discussion of authorities or any tracing of the development of a principle from case to case. Indeed, the authors give as their very reason for curtailing their discussion of the law of torts that "it is case law *par excellence*".

So much for the topics which this book does not cover. In their place, the authors promise a "panoramic picture" of our legal system. This turns out to be a series of short treatises on Personality, Status and Capacity, The Law of the Constitution, Contract, Torts, Property, Criminal Law, Social Legislation, Trusts and Succession. In this, their work is based on the sixth edition of Professor P. S. James' well-known *Introduction to English Law*. There would be some point to the discussion of all these different fields of law if the authors were able to identify some broad themes running through them; if, for example, they were able continually to say in discussing topics in trusts, "you will recognise that the courts are doing the same thing here as we saw them doing in property and contract", or "this is another aspect of the same problem we have already discussed in the Law of Contract and the Law of Tort". But the authors do not attempt to do this, nor to establish any relationship between the various subjects. Thus, contract and torts, like all the other subjects, are each considered in their separate, water-tight compartments, without any exploration of the relationship which might exist between them.

Not only do the authors fail to consider any possible relationship between the various fields of law, but they do not bother to try to establish any unity within the various fields taken individually. Take their 60-page chapter on the "Law of Contract" (including limitation, quasi-contract, agency, sale of goods and hire purchase). The chapter starts with a very brief historical introduction (concerned largely with the ancient writs). Then, the authors move straight into a couple of pages on offer and acceptance, a page on intention, two pages on capacity and so on through the usual headings. No general patterns or trends are revealed. The people and purposes which the law of contract is intended to serve, the effect of economic and social influences on it, remain hidden. The reader is given the rules of contract but is not told how or why they developed. There is little re-evaluation of old concepts. The appropriateness to modern conditions of the "Freedom of Contract" gets only an oblique reference, two or three lines lost in a discussion on exemption clauses. The recurring fiction whereby the courts purport to resolve all manner of questions in accordance with the parties' unexpressed (and, in truth, non-existent) intentions receives no more than a brief smile. Having read the authors' chapter, the

student will not be left with any general impressions of the law of contract other than that it consists of a series of rules about offer and acceptance and other topics. If he likes he can learn by rote the rules which the authors give but this will not give him any worthwhile understanding of the subject, much less the law as a whole, nor any ability to apply those rules to new or different situations. As one who finds it difficult to impart any general understanding of the principles of contract in a full unit devoted solely to that subject, this reviewer finds it hard to accept that anything of lasting value can be achieved in a course which in one year discusses not just contract, but also a dozen or so different and largely unrelated subjects. The first year student just cannot comprehend so many subjects in such a short time and his learning of rules, without understanding them, could well give him a misleading impression of the law which will remain long after he has left his recollection of the content of the rules behind him in the Legal System examination room.

The authors have sacrificed clear exposition of principles in favour of an attempt at comprehensive coverage of almost the whole of our law. In places, one almost feels they are attempting to write a mini-Halsbury instead of an introductory text book. Nowhere is this better illustrated than in the chapter on Social Legislation in New Zealand. Here they entirely abandon the historical introduction provided by Professor James in the corresponding chapter of the English edition and instead substitute truncated summaries of various pieces of New Zealand legislation. A total of 19 legislative fields are covered in 24 pages of text. Complex areas such as Town Planning, Industrial Conciliation, Family Protection, Domestic Proceedings, Family and Medical Benefits, Legal Aid, Workers' Compensation are each despatched in a page or two. To make matters worse, the few paragraphs devoted to each field of legislation do not consist of a general evaluation of the purposes and aims of the legislation but rather of a summary of various sections in the Act, with undue emphasis on those relating to institutional, procedural, terminological and other largely mechanical matters. The only overall impression given by this chapter is that in New Zealand we have lots of complicated Acts to which the label "Social Legislation" may be applied. Parts of the chapters on Constitutional Law and Property suffer from a similar proliferation of statutory provisions.

In the chapter on the Administration of the Law, the authors spend too much time on summarising statutory provisions many of which could well have been omitted altogether. In this, too, their work contrasts unfavourably with Professor James' original chapter. For example, on page 32 of the New Zealand book, twenty different sections of the Summary Proceedings Act 1957 (relating mainly to procedure of preliminary hearings in the Magistrate's Court) are specifically mentioned. Is this a "panoramic view" of the Administration of Law? The whole chapter is cluttered up with isolated snippets of information which are of no use or educative value whatsoever. Thus, on page 35, sandwiched in between one paragraph which says that certain actions are tried by judge alone and another paragraph which says New Zealand is divided into Supreme Court Districts, is a paragraph which reads in full:

"Questions of foreign law are decided by the judge."

The first year student might spend many a happy hour pondering on the secrets which this piece of information reveals about our legal system, and on the relationship between it and the information given in the paragraphs which precede and follow it.

The authors have not been entirely successful in adapting Professor James' original material to the New Zealand situation. In some cases, differences in New Zealand law have been entirely overlooked while, in others, a clumsy "scissors and paste" method has been used to interpolate a New Zealand "correction" after a passage taken from the English edition. Examples of both these faults are not hard to find. It is difficult to reconcile the authors' assertion (at page 258) that money paid under a mistake of law cannot be recovered, with sections 94A and 94B of the Judicature Act 1908. Again, the suggestion on page 48 that the decisions of the Privy Council are only "persuasive" and are not binding on the lower courts seems more appropriate to the English than the New Zealand edition. One example of clumsy correction is found in the chapter on Criminal Law. Professor James' discussion of the common law rule that a person injured by the commission of a felony cannot bring a civil action until the felon has been criminally prosecuted, is reproduced as though it stated the law of New Zealand but then in the next paragraph which is introduced by the word "NOTE" it is said that section 405 of the Crimes Act 1961 probably abrogates this rule. Further, as section 405 expressly abrogates the rule, the caution which the authors show in inserting the word "probably" is so abundant as to verge on the excessive.

On the other hand, a praiseworthy desire to add an unmistakably local flavour to the book leads the authors to include a lot of unnecessary material. Sometimes the results are grotesque. Thus, almost one third of their page on discharge of contracts by agreement consists of a discussion of the Annual Holidays Act 1944. Again, in the discussion on tortious liability for negligent misstatement, more space is occupied in repeating Mr O'Keefe's previously published *précis* of *Smith v. Auckland Hospital Board* [1965] N.Z.L.R. 191 than in discussing the *Hedley Byrne* decision itself. Yet again, at page 89, custody of children is dealt with in 18 lines. The only indication of the way in which the court resolves custody cases is given in the first three lines. The remaining 15 lines are devoted to a New Zealand case and later legislation defining the court's jurisdiction to award a father the custody of his illegitimate child. Finally, in the chapter on Procedure and Evidence, the authors retain a paragraph which opens by saying, quite definitely and without qualification, that the rule that private documents must be produced in the original is an example of the "best evidence" rule. The remainder of the paragraph is taken up with discussions of secondary evidence, public documents and tape recordings. The next paragraph reverts to the best evidence rule for the sole apparent reason of permitting the authors to include a clumsy amalgamation of some of the text and a footnote from the New Zealand edition of *Cross on Evidence*. This is to the effect that the rule requiring the production of the original of a private document antedated the best evidence rule and that, in any case, the latter rule is no longer a general principle in the law of evidence. There is no attempt to explain, or even acknowledge, this manifest contradiction of the preceding paragraph.

While mentioning the authors' lack of discrimination in the choice of quotations, one wonders whether it was the originality of the thought

or the compelling quality of the prose which makes them feel that the hierarchy of the courts cannot be explained, at page 22, without quoting the following passage from the University of Auckland Law School Casebook, *Cases and Materials in the Legal System*:

The hierarchy of our Courts in New Zealand is quite a simple one. In ascending order, our Courts are the Magistrate's Court, the Supreme Court, and the Court of Appeal. Under certain circumstances appeal from the decisions of the Court of Appeal may lie to the Judicial Committee of the Privy Council.

This recourse to "authority" is all the more surprising when one notes at page 12 that the authors have already managed to deduce and formulate the same propositions without any apparent help from anyone.

Another criticism which must be made of the new material introduced by Mr O'Keefe and Mr Farrands is that it is not well-ordered. First, it is too common for one topic to be discussed in two or more entirely different parts of the book. Thus, the general discussion of precedent (including the attitude taken by our Court of Appeal to a conflict between decisions of the House of Lords and the Privy Council) is set out at pages 11 - 15 in the Introductory chapter, but it is not until the chapter on the Administration of the Law that one finds an examination of precedent in the Court of Appeal (pages 42 - 43) and precedent in the House of Lords and Privy Council (pages 46 - 47). Again, a few rules on town planning are given in the chapter on Constitutional Law and a few more in the chapter on Social Legislation. There is not even a cross-reference to bridge the 60-page gap between the two passages. A quick count reveals at least five other examples of unnecessary fragmentation of the discussion of topics. A second defect in the ordering of material is the use of misleading sub-headings. At pages 26 - 29, under the sub-heading "Enforcement of Judgments", one finds such diverse matters as commencement of an action, counter-claim and defence, service of documents, discovery, privilege, witnesses, evidence and procedure at hearings. There is also half a page on enforcement of judgments. A similarly disparate collection of topics is discussed later under the sub-heading "Jurisdiction".

The preface says that "as soon as a technical word or expression is encountered we have paused to explain it". This sounds admirable but the eschewing of footnotes makes it a difficult aim to carry unobtrusively into effect. It is somewhat incongruous to interrupt the two pages on statutory interpretation for a full page and a half with an explanation of the elements of case citation and the manner in which one refers to members of the judiciary and to the parties to various proceedings.

In this reviewer's opinion, the authors, like Professor James before them, have sadly misconceived the needs of students seeking an introduction to law. This book will do little to implant an understanding of the workings of our law or to develop the skills and techniques essential to the analysis and application of cases and statutes. Regrettably, the authors' lack of success in incorporating New Zealand material, makes it impossible even to suggest that those readers who favour Professor James' approach will find the New Zealand edition the equal of the original work.

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