

BOOK REVIEWS

Adams on Criminal Law

2nd Student Edition

(by Robertson J (consulting editor),
J Finn, R Mahoney, G Orchard (editors),

Brooker's, Wellington, 1998

The first *Student Edition* of *Adams on Criminal Law* was launched in 1996. Only two years later the book is now into its second edition which, according to Robertson J in the preface, is jointly attributable to the overwhelming success of the first edition and to a flood of legislative changes in 1997 to the Crimes Act 1961. Rather than focusing on the *specific* changes in the new edition, however, the purpose of this review is to make some *general* observations about the book.

The *Student Edition* is a distillation of material derived from chapters one, two and four of the loose leaf volumes of *Adams on Criminal Law*. Chapter one of the *Student Edition* comprises the full text of the Crimes Act 1961 and a commentary which, together, make up around three quarters of the entire book. In keeping with that, the majority of the following comments are addressed to the first chapter. Like its loose leaf parent version chapter one of the *Student Edition* begins at section one of the Crimes Act and works its way unswervingly through to the ultimate section 412. Many sections are accompanied by candid commentaries addressing the pertinent historical developments and present day analyses of the provisions. Cases are used to demonstrate the interpretations of the sections, and references to academic journal articles and other textbooks are also provided. Particularly in the case of those sections commonly subjected to judicial debate, the accompanying commentaries have all the appearance of "mini texts" in their own right and give sound explanations of the relevant law (see, for example, sections 23, 48, 66, 72 and Part VIII).

Given the large number of contributing authors the methodical section-then-annotation structure of chapter one has the advantage of ensuring a certain consistency of form. There is, however, significant variation in the substance of the commentaries - in fact, some sections are not annotated at all. This no doubt partly reflects the different interpretative problems encountered in the individual provisions of the Act. Nonetheless, it does lead to some unevenness in terms of the content within chapter one, and also between chapter one and chapters two and three (see later) where the commentaries are provided first, and are then followed by the relevant legislation.

The *Student Edition* mirrors the style of the more comprehensive loose leaf version. But bearing in mind that the book is targeted at students, there may be good reason to vary that style. The organisation of some of the material could be rather confusing to the student reader - especially until he or she gets a grasp of the concepts and principles of the Crimes Act 1961 and the criminal law in general. The information is not arranged in typical textbook style. Certainly, no

criminal law course could successfully convey the essentials of the Crimes Act by adhering to the King's advice to the white rabbit in *Alice in Wonderland* to "begin at the beginning, keep going until you come to the end, then stop". The possible difficulties inherent in such a structure are hinted at by the author of the commentary appended to section 20:

It is difficult to include both the statutory and the common law defences under the one head while preserving an orderly arrangement. Part III of the Act is set out in such a way as to win the approval of the connoisseur of crazy paving. Nevertheless for ease of reference the order of the Act will be followed, and the common law defences have been inserted where most appropriate. (at 32)

The commentary accompanying section 20 (general rules as to justifications) is a case in point. One might expect it to include (and it does) an overview of the relevance and availability of common law defences in New Zealand. But it then proceeds to provide an analysis running to thirty pages of the categorisation of offences and their elements, beginning with a detailed examination of mens rea offences, and moving onto strict and absolute liability offences. Similarly, such matters as superior orders, necessity, impossibility and entrapment are packed together under section 24 (compulsion). These, and other important matters may be better dealt with under their own discrete headings although such changes would, of course, necessitate a significant restructuring of chapter one. Relatedly, chapter one could be criticised as over-comprehensive in content in terms of the criminal law student's immediate educational needs. No criminal law syllabus would attempt to examine every section of the Crimes Act. To be fair though, no book should be regarded as a substitute for lectures and course materials, but more as a back-up for students confronted for the first time with the subtleties of a new discipline.

Some may consider that chapter one on its own contains more than enough information for the intended student audience. However, for the sake of completeness, the book contains a further three chapters, albeit rather slimmer than the first. Chapter two examines the general principles of evidence in criminal cases including the burden and standard of proof, and in this respect is a useful adjunct to chapter one. Chapter two also considers the more specific rules relating to evidence in criminal cases and, at this level, will have appeal not only to students of criminal law, but as well to those studying evidence. In a departure from the structure adopted in chapter one, unannotated texts of the Evidence Act 1908, the Evidence Amendment Act (No 2) 1980, and the Evidence (Videotaping of Child Complaints) Regulations 1990 are contained at the conclusion of chapter two.

In recognition of the importance of the New Zealand Bill of Rights Act 1990 to criminal law, chapter three of the *2nd Student Edition* now includes a detailed commentary on that Act, thereby building on the substantive content of the first edition. The format of chapter three is substantially the same as that of chapter two. The commentary begins by giving an overview of the legislation, and proceeds to consider its specific operational aspects with much of the discussion focusing on the provisions relating to search, arrest and detention. Finally, chapter four, entitled "General Principles", reviews the issues of corporate and vicarious

liability, and provides some additional information on the severance of offences and offenders which is already examined in some depth under section 340 of the Crimes Act.

The *2nd Student Edition* deserves to feature on any criminal law student's "recommended reading" list. Despite the specific reservations expressed earlier, overall, it is comprehensive, useable, and, by today's standards, relatively inexpensive. Furthermore, the book will likely have a wider catchment audience than just university students. Its portability, the curious mix of academic textbook and practical working manual styles, and the inclusion of chapters two, three and four must commend it to those who practise criminal law. Word also has it (see B Davidson, *Law Talk*, 4 November 1996 at 22) that a certain prison inmate renowned for conducting his own defence keeps a well-thumbed copy in his cell - high praise indeed.

Principles of Criminal Law

A Simester, W Brookbanks and G Orchard,

Brooker's, Wellington, 1998

After so long in criminal law textbook limbo, New Zealand is now exhibiting the symptoms (if the reader will excuse a mixture of metaphors) of a new disorder. The Francophile might call it an *embarras de choix*. Not only does 1998 see the publication of the *2nd Student Edition* of *Adams*, but it also witnesses the entry onto market of *Principles of Criminal Law*. However, according to the authors of the second-mentioned, "[t]he distinction from *Adams*...[is] immediately obvious, in [the departure] from a format of annotating the Code laid down in the Crimes Act 1961." (Preface, at vii) *Principles of Criminal Law* is a textbook in the conventional sense, both in terms of structure and content. Because the authors are not constrained by an annotative approach they have been able to provide a fuller discussion of the general criminal law, as well covering the key substantive areas contained in the Crimes Act 1961. There is also more room to explore the rules, underlying principles, and policies governing criminal responsibility and fault (see back cover).

Allowing for local variations, the central substantive offences and defences of the Crimes Act 1961 and the case law arising from those provisions, form the backbone - or at least several of the vertebrae - of criminal law courses taught at New Zealand universities. In addition, teachers of this course have the complex task of weaving the general principles of criminal law and the general defences not touched by the Crimes Act 1961 into the course structure. In the past, and without an appropriate text to help augment lectures and course materials, the lecturer had to make difficult decisions about what material ought to be included in the syllabus and what could safely be omitted. The arrival of *Principles of Criminal Law* has, to some degree, helped lighten that load.

The book is divided into five parts, each containing distinct chapters. Part one is by way of introduction and considers such imponderables as the definition and application of the criminal law, as well as its ambit in terms of the Rule of Law. This part is written from a theoretical point of view for which the authors make no apologies suggesting, rather, that those readers more interested in the substantive principles move straight on (at 1).

Principles of Criminal Law then embarks upon a rigorous analysis of the general principles, and the core modes of inculpation and exculpation that shape our criminal law. The structure is logical, and presented in a way that a lecturer might impart the critical aspects of the criminal law to a class over the course of a year's study. Part two examines the general principles of criminal responsibility including the actus reus and mens rea elements of offences, strict liability and the burden of proof. The remainder of the book then focuses on more specific areas. Part three considers the different ways in which a person can be inculpated including derivative liability and the inchoate offences of attempt, conspiracy and incitement. Part four examines the exculpatory defences - both statutory and common law. Finally, part five concentrates on various specific offences such as culpable homicide, non-fatal offences against the person and the diverse offences against property.

In each chapter *Principles of Criminal Law* investigates the issues that have troubled the courts and commentators alike over the years. Areas where problems have arisen are clearly identified - sometimes with the aid of hypothetical examples either drawn from other commentators or constructed by the authors themselves. The law is examined closely, both from an historical perspective and with an eye to the most current developments, and opposing sides of the argument are set out where relevant. The merits of the respective points of view are then carefully evaluated before the authors endeavour to reach their own conclusions. This process of determination also often involves an examination of the rationales traditionally offered to explain particular definitions or rules and in this way, the theoretical quality of part one is continued, albeit in diluted form, throughout the rest of the book. Not all will necessarily agree with every conclusion reached (nor indeed, would one expect complete unanimity), however, the reader has the benefit of explanations which go beyond the purely descriptive. This is particularly evident in part two of the book where the authors go to considerable lengths to explain the intricacies of the general principles (see for example, the helpful discussion on intention in chapter three). Careful explanations at this early stage are important for setting solid foundations that can be drawn on in the later parts of the book.

The book achieves an overall consistency of style despite there being three contributors. The authors do a thorough job in ensuring that the audience is made aware that the criminal law is not simply an unwieldy collection of dubiously linked prohibitions but rather, that in many respects it is a cohesive body of rules based upon a relatively few underlying policies and rationales.

Principles of Criminal Law is acclaimed as the first authentic textbook-style analysis of the law on crimes in New Zealand (see back cover) and, as such, it will serve to fill a gap in the jurisdiction's legal literature. But because the book is the advance guard of its type, it is difficult to know what to compare it with. Anything more than mere superficial comparisons with the *Student Edition* of

Adams may be counter-productive since it would seem that the two books are designed with different aims in mind and, in practice, will achieve different things. *Adams* is a book that can, for the most part, be accessed and consulted with relative speed, and for that reason alone will be popular with students and practitioners. By contrast, *Principles of Criminal Law* requires a more paced approach by the reader. In order to appreciate the book, one needs to spend some time working through the individual chapters. The “big picture” begins to unfold as the reader delves deeper into the book. On that basis it could prove to be a more useful resource to those teaching the criminal law course in terms of selecting relevant course materials and deciding on how best to approach a given issue than to the recipients of lectures (ie, the students) themselves.

**Margaret Briggs,
Faculty of Law,
University of Otago.**