

## Book reviews

**LABOUR LAWS OF MAURITIUS** edited by L. E. Venchard, Law Publishers Limited, Mauritius, 1983, x + 555 pp.

**CODES ANNOTES DE L'ÎLE MAURICE, VOL. 1 CODE CIVIL** edited by L. E. Venchard, Law Publishers Limited, Mauritius, 1983, xi + 789 pp.

Noted by A. H. Angelo\*

Much has been said and written in recent years about "small jurisdictions" and about their legal literature and publishing problems. Mauritius surely qualifies on a number of counts as one of the small jurisdictions in the world, and has an effective local market for law publications of perhaps three hundred inclusive of the various government departments with law related interests. What is not small in Mauritius however is the strength of its local legal tradition which dates back to 18th century French colonial times. It is in that tradition that Law Publishers Limited was established in 1982 with L. E. Venchard<sup>1</sup> as its principal. The firm's object is to produce high quality Mauritius law texts of both primary and secondary materials, and its first two publications are those noted here. They are hard bound, impressively presented and as much a credit to their editor as to their Mauritius printers.

*Labour Laws of Mauritius* brings together all the statutes and subsidiary laws relating to labour and industrial matters. It states, as at 1 January 1983, the relevant principles and the body of rules governing conditions of work and remuneration in all trades. The bulk of this material is not otherwise available in a published form, and is supported by equally important sections which contain a digest of relevant decisions of the Supreme Court, a digest of cases on unjustified termination of employment, and a list of the ILO conventions to which Mauritius is a party. The book is in English, the official language of Mauritius.

The *Code Civil* is published in French (the original language has been retained)<sup>2</sup> and states the law as it is, and will be, following the last of the major reforms to the Civil Code of 14 March 1983. The text contains a useful historical survey of the French Civil Code legacy to Mauritius which dates from 23 October 1805, and a chronological table, index and concordance of articles in the style of the Dalloz publications in France. The annotations give reference to the extensive Mauritius case-law on the articles of the code, legislative cross-

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1 Solicitor-General of Mauritius 1970-1982.

2 Unlike the Seychelles which was formerly part of Mauritius but which repromulgated the civil code in English in 1975. Cp. Chloros "Projected Reform of the Civil Law of the Seychelles: an experiment in Franco-British Codification" (1974) 48 Tul. L.R. 815.

references, cross-references to French and Quebec texts, and some comment, and a few cross-references to periodical literature (principally to articles found in the *Mauritius Law Review*<sup>3</sup>). This book is an exciting one for comparatists. Not only does it make a rich legal culture, at the cross-roads between French law and Common Law, more accessible, but it also makes available to a wide international audience the nature and extent of the substantial Mauritius reforms of recent years<sup>4</sup> to the original Code Napoléon.

With the appetite now suitably whetted by these two excellent tomes future publications of Law Publishers Limited are eagerly awaited.<sup>5</sup> One might hope too that the Mauritius example will be emulated by other small jurisdictions.



**LABOUR LAW — MATERIALS AND COMMENTARY** by W. B. Creighton, W. J. Ford and R. J. Mitchell. Law Book Company, Sydney, 1983, liii and 944 pp. Price Aust.\$49.50 (limp). Reviewed by Alexander Szakats.\*

This book joins the previous works bearing similar titles and intends to give “a balanced view of the totality of the relationship between law and labour relations in Australia”. Some critics, no doubt cynics, may say that to find a relationship between law and labour relations is a most difficult task not only in Australia, but also in New Zealand or in the United Kingdom. Such remarks, however, must be dismissed as frivolous. Labour relations are and should be regulated by law. The authors, as they state in the Preface, have endeavoured “to present the substantive rules [of law] in their historical, social, political and economic context”.

In order to build up the avowed “balanced view of the totality” the authors approach it from five different angles: the individual employment relationship, Australian labour law systems, trade unions and industrial organisations, industrial conflict and finally occupational health and safety. These are separate compartments, though they all affect individual employment.

The individual employment relationship is examined on the basis of what is called the Anglo-Australian contract of employment, in other words the English

3 Cited here as *Mru. L. R.* (4) 99 though the recommended and more typical citation would be (1982) *Mru. L.R.* 99.

4 The substance of these reforms are worthy of full comment elsewhere, but as a matter of interest mention might briefly be made of the family law provisions which make special accommodation for the plural society of Mauritius and Islamic personal law, and the juxta-position of the French article 2279 (now in Mauritius article 2282) with the English notion of *surétés flottantes* found in Book III Title 19 of the Code (articles 2137 to 2203-7).

5 Ideally more primary materials — perhaps a collection of leading cases — or a full digest of cases.

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Common Law of master and servant as developed by the impact of federal and state statutes, dissimilar socio-economic conditions and the emerging concept of the "right to work". The text reproduces, or at least refers to, opposing views on the true character of the employment relationship, whether or not it is based on contract. The authors seem to accept the contractual view, but do not firmly dismiss other opinions, leaving the reader to make up his or her mind.

A substantial portion of the book, about 350 pages, is devoted to the examination of the Australian labour law systems. The intricate problem of interlocking and sometimes conflicting federal and state powers, the concept of "interstateness", the definition of "industrial matter", and the status of federal awards are dealt with in the context of the Commonwealth Constitution. It is a distinctive feature of Australian labour law that most frequently before a substantive issue can be decided constitutional questions must first be settled. In this respect Australia resembles the United States, while in the United Kingdom and in New Zealand such problems happily do not arise.

The role of trade unions and industrial organisations is discussed in the next 180 pages. The problem of the unions' legal personality has assumed a special significance in Australia, because of the co-existence of the different legislative regimes — the federal and the states. Although registration under the Commonwealth Act makes a trade union a corporate body, the state branches of the union lack this status, unless they are separately registered under state legislation. In practice, nevertheless, branches in states assume a quasi-legal personality on the pattern of British trade unions.

Another point of special interest for New Zealand readers at the time of controversy about voluntary unionism is the long chapter (50 pages) on trade union security arrangements. In Australia different forms of preference exist, qualified, absolute and compulsory. Where the first type applies, the employer has to offer the job to a unionist only when there is nothing to distinguish his or her suitability from that of a non-unionist. This is frequently referred to as the "all things being equal" clause. Absolute preference means that a unionist must be given preference over non-unionists regardless of job qualification and skills. In the case of a compulsory clause any job applicant should already be a union member, it is a pre-entry closed shop. The Commission (the Australian Conciliation and Arbitration Commission which has replaced the Court of Arbitration and Conciliation) at its discretion can include any of these clauses in federal awards but as the authors comment "the power to do so has been sparingly used". The Commission's policy, however, changed in the seventies and such a clause now is more readily granted. It is a point to ponder that while New Zealand shifts towards abolishing preference, in Australia an opposite move is taking place.

Examining the "inevitable incident of industrial action in the capitalist mode of production", the authors look at the problem of criminal, Common Law and statutory liability together with available remedies. A chapter is devoted to picketing. A very brief section deals with the position of the individual caught up in the middle of collective industrial action.

The last part is on occupational health and safety. It examines Common Law remedies, statutory safeguards and also overseas schemes placing emphasis on prevention.

True to the book's title the authors have placed the emphasis on the "materials": extracts from statutes, judicial decisions, awards, union rule books, parliamentary proceedings, reports and to a great extent academic writings. This method results in what at first sight can be regarded as a mere expository approach, with very little analysis, but upon reading the copious quotations it will be obvious that they not only inform but also analyse. The authors manifestly prefer to provide second-hand analysis and their own comments merely join the bricks collected into a systematic whole. They modestly hide themselves behind the views expressed by others, but deserve praise for their diligence and skill in collecting the material, arranging it, dividing into parts, chapters and paragraphs, and supplementing the words with diagrams and charts in order to give a visual picture of structures and proceedings.

Notwithstanding the inclusion of many English cases and academic writings the resulting volume is as Australian as the kangaroo or the koala. Like a road through the outback the book is long and signposts are most important. Australian readers will be on familiar territory and will find this work useful to guide them through the mass of material. New Zealand readers, however, unless their only purpose is to learn the system on the other side of the Tasman Sea or they are comparatists, should exercise great caution when using the book as a reference. The bibliography and the notes on further readings in each chapter should serve as signposts to find the way of doing their own research and going further than the text presented. Otherwise they may bog down in the quicksand of special Trans-tasman problems not relevant to our labour law.



**THE SOLOMON ISLANDS LAW REPORTS 1982.** Published by authority of the High Court of Solomon Islands, 1983, x + 152 pp. including tables and index.

It is a pleasure to be able to advise readers that the second volume of the Solomon Islands Law Reports is now published. The reports are in the same format and follow the same arrangement as the first volume. The period covered is 4 December 1981 to 5 January 1983 and 22 judgments in all are reported.<sup>1</sup> As the Chief Justice notes in his Foreword to the volume, 1982 was notable in Solomon Islands legal history for the establishment of the Court of Appeal for Solomon Islands. The first judgment of that court is appropriately reproduced in the 1982 volume of the report at page 128.

<sup>1</sup> The 1980/1981 volume reported 26 judgments; not the higher number mis-stated in 13 V.U.W.L.R. 331 and 10 N.Z.U.L.R. 307.

POSTSCRIPT: SOLOMON ISLANDS LAW REPORTS 1983 IS NOW AVAILABLE.

**PUBLIC ORDER AND THE LAW** by Andrew Hiller. Law Book Company Ltd., Sydney, 1983, xx + 230 pp. (including index and table of cases). Reviewed by G. S. Orr.\*

This book is in seven parts which respectively concern processions and other public assemblies; unlawful assemblies and riots; offences against public order such as offensive and disorderly behaviour, trespass, obstruction of traffic and obstruction of police; recent legislation as to threats of violence and dangerous weapons; some Commonwealth legislation to protect diplomats and aircraft and lastly, military aid to the civil power. An uneven effort is made to cover relevant New Zealand statute and case law.

The note on the back cover suggests that the book will be most useful to the judiciary, the magistracy and practising lawyers and "will be of inestimable value to police officers . . .". Substantial parts of the book consist of a recital of the relevant Australian state legislation and sometimes that of New Zealand. The author then tends to repeat certain provisions by way of emphasis and at times draws attention to differences between state and New Zealand legislation. Cases are cited often with a generous account of the facts and a summary of the judge's findings. There is rarely any critical analysis of these decisions. For the most part they are recited with no indication of their soundness or otherwise. The book is more in the nature of a hand-book than a text. It is apparent that it is primarily addressed to police officers. I very much doubt whether judicial officers or lawyers would find it of great assistance except perhaps as a ready reference to certain current statutes and some relevant case law. It is altogether too descriptive and uncritical to be of use to students. Indeed no claim is made that it is intended to assist students.

A New Zealander will notice various deficiencies. A few examples must suffice. A brief opening chapter on human rights discusses the Commonwealth Human Rights Commission Act 1981. The absence of a provision making the incitement of racial hatred such as exists in the United Kingdom Public Order Act 1926, as amended, is noted. No reference is made to the New Zealand Race Relations Act 1971, section 25 of which creates the offence of racial disharmony, nor to the valuable decision on this section of the New Zealand Court of Appeal in *King-Ansell v Police*.<sup>1</sup> Some eight chapters with much tedious description of detailed statutory provisions are devoted to rules on processions and public assemblies. Chapter 10 then makes a nod in the direction of New Zealand by describing the provisions of the by-laws of one New Zealand city. No mention is made of the relevant New Zealand statute, the Local Government Act 1974, nor is *Hazeldon v McCara*<sup>2</sup> cited. Although the book was not completed until September 1982, chapter 18 refers to the New Zealand Police Offences Act 1927 which was repealed and replaced with modifications by the Summary Offences Act 1981.

Enough has been said to indicate that this book, with its heavy emphasis on Australian statutory provisions, will be of very limited use in New Zealand.

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1 [1979] 2 N.Z.L.R. 531.

2 [1948] N.Z.L.R. 1087.