

Book reviews

THE LAW OF EMPLOYMENT by James Macken, G. J. McCarry and Carolyn Sappideen. Second edition, Law Book Company, Sydney, 1984, xix + 351 pp. Reviewed by A. Szakats.*

The first edition of this book published in 1978 bore the title "The Common Law of Employment". The authors, very properly, realised that although the Common Law of master and servant is still relevant, it cannot be entirely separated from statutory material and therefore the adjective "common" did not sound true. Despite adding further material and references to both federal and statute law the authors disclaim having produced a complete treatise on employment law. Indeed, one must agree, such an undertaking would require a book of immense length — and still some topics may not be covered.

The authors, a Judge of the Industrial Commission of New South Wales and two Senior Lecturers of the University of Sydney, no doubt have the best qualifications to write a relatively short but still comprehensive work on this topic. They start with an outline of the relationship between master and servant distinguishing it from other relationships. This part is based primarily on Common Law quoting English decisions with a fair peppering of Australian cases, and where necessary referring to statutes. The problem of "contract or status" is briefly touched but without any elaboration in depth. Similarly, the chapter on formation of the contract of employment reiterates the well known Common Law principles on consideration, capacity, mistake and illegality as they are applied in Australia.

The chapter on performance is a valuable one. It gives a clear picture on the effect of mutual promises and implied duties both of the master and the servant. The discussion on the aspects of the relationship is specially well presented. Termination and remedies available to either party have received a detailed and reasoned analysis. In dealing with redundancy, besides Commonwealth legislation, the Acts of the states are examined with their somewhat different approaches. In respect of remedies the text mainly analyses the principles of Common Law on damages based on the House of Lords' decision in *Addis v. Gramophone Co. Ltd.* [1909] A.C. 448. Remedy can be granted only for wrongful dismissal. The concepts of "unfair" dismissal as in the United Kingdom, or "unjustified" dismissal as in New Zealand, have not been recognised in Australia.

Two chapters deal with the rights of third parties and interference with contract. Here again the Common Law is analysed through English and Australian cases. The part discussing interference by its very nature is a treatise on industrial torts mentioning briefly the effect of the Trade Practices Act 1974.

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Chapters 9 and 10 on federal and state statute law describe the framework of conciliation and arbitration as a background. Strictly speaking these parts relate to trade union law and the process of wage fixing rather than to the law of employment. In a federal state the power of the Commonwealth and of the different states must be clearly defined and the delicate aspects of this interrelation are examined. As far as contracts of employment are concerned it is of paramount importance to explain the effect of industrial agreements on individual service contracts.

The last chapter is entirely statutory. It analyses sections 88E and 88F of the New South Wales Industrial Arbitration Act 1940, inserted in the Act by later amendment. The concepts introduced are "deemed employees" and "unfair contracts". The names are self explanatory and the enactments intend to provide remedy to persons who would come under the ambit of either section.

In general this book is a concise presentation of the law of employment as it exists in Australia, and particularly in New South Wales. Despite the alteration of the title and the addition of the last three chapters it essentially still gives the Common Law of employment. For this reason it can be useful for the New Zealand reader in respect of employment contracts which are not covered by awards or collective agreements. In New Zealand, however, the majority of employees work under the provisions of industrial law and therefore the book in fact will be only of limited usefulness.

As a scholarly work and as a practical guide for Australians this work, nevertheless, can be recommended.



DISPUTE RESOLUTION IN AUSTRALIA-JAPAN TRANSACTIONS by
Pryles & Iwasaki. Law Book Company Ltd., Sydney, 1983, xxix + 185 pp.
Reviewed by A. H. Angelo.*

This book deals with matters of jurisdiction and competence, choice of law rules in the international commercial context, and recognition and enforcement of foreign judgments, in all about equal length in the first two-thirds of the book. The final third is devoted to arbitration. The impression is that this distribution of material achieves about the right balance within the text. The book has not been dated although it was printed in 1983. Given that the Common Law at least has shifted slightly¹ since the publication of the book, it would have been helpful to have had a statement of the date to which the law was correctly stated.

Overall the book is excellent and it is a mine of information for Common Lawyers on Japanese conflicts practice. If there is any complaint it is that the book does not always read very easily. The presentation is good but not excellent. On several occasions, although the material produced is all that is necessary and

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1 E.g. *The Abidin Daver* [1984] A.C. 398.

the conclusions advanced (in this reviewer's mind) correct, the line of attack is not always clear. Sometimes chapters begin with the presentation of minority views rather than the main rule and with others unusual terms or theoreticians' arguments are interpolated. The consequence is that though the book is always excellent for reference it is not always good for reading. The special value of the book is in its up-to-date presentation of Japanese law for Common Law readers and the presentation of the practical relationship of that data to the relevant Common Law. Available data in this important area is not always readily accessible or where it is assessible is often badly dated by the time it becomes available to the English reader.

The use of the word "domicile" in respect to Japanese law is unfortunate as the Japanese term translated is not the domicile of Common Law but rather more akin to the lay understanding of domicile. At least the term when used other than in the Common Law sense should have been indicated by inverted commas. There is no denying that the translator of *juusho* has a difficult problem to deal with but the textual presentation of the matter is not made as easy for the reader as it could have been. One way, which may have been better in this context, would have been to retain the Japanese term and give an English description of its meaning in Japanese law.

There is no indication of who the translator of the various pieces of Japanese legislation given in English was. Was the translator the authors? Reference to the existence of other available English translations² would also have been helpful as alternative translations frequently aid the understanding of foreign laws and would also assist where proof of foreign law in places remote from Japan can be made by provisions like section 40 of the Evidence Act 1908 (N.Z.).

The book is particularly strong in the contract areas — those that cause most frequent concern in practice.

One has wished that a text such as this were available. Now that that goal has been achieved it is perhaps unreasonable to wish that in terms of style and organisational balance the authors had taken more thought in the interests of the reader. This, however, should not detract from the fact that the book will be most useful and will be frequently used by all Common Lawyers involved in cases with Japanese elements and will supplement materials currently used in comparative law classes and comparative conflict of laws programmes.

2 E.g. those of the Supreme Court of Japan; those in the E.H.S. series.