maintain a neutral stance in their original contributions to the text, at times expositive and at times stimulative of further reflection. These contributions are most effective in maintaining continuity and in presenting the materials in an intelligible context, a feature noticeably lacking in many other books of the type. The reader may therefore obtain an understanding of a particular topic without necessarily resorting to collateral reading in text books.

The book is divided into 11 major parts. Part 1 deals with the nature of international law and with the debate concerning the effectiveness of international law; the approaches of new States and of the Communist countries are fairly represented. Part 2, which is devoted to the subjects of international law, includes a discussion of "transnational groups" such as governmental groups, private associations and corporations. Parts 3 and 4 are given to "bases of power"—territory and resources, and people. In these sections the law of the sea, acquisition of territory, air law, nationality and movement of persons are treated. These parts find their natural counterweight in "strategies"—treaties, diplomacy and coercion—which form parts 8, 9 and 10 respectively. The remaining parts concern such traditional topics as jurisdiction, state responsibility and peaceful settlement of disputes. The Australian perspective and practice is outlined and documented in every topic treated, as well as being reflected in the amount of space devoted to topics of particular concern to Australia, such as the law of the sea and the resources of the oceans. The authors have brought together an impressive collection of Australian policy statements and extracts from parliamentary debates, and in this service alone could have deserved the gratitude of all those who have hitherto found such sources to be elusive. In the presentation of essential data effective use is made of charts and diagrams.

The present reviewer might, if he were selecting the readings, have chosen some but not others, extended here and abbreviated there. But these cannot be points of substantive criticism since they reflect only personal predilections. The aims of such a book, after all, are to stimulate further reading and discussion and to present a balanced overall view. This the authors have undoubtedly done. It should also not go unremarked that the technical presentation of the work is of an exceptionally high standard reflecting credit on the publishers.

I. A. SHEARER*

Conflict of Laws in Australia, by P. E. NYGH, LL.M. (Syd.), S.J.D. (Mich.), Professor of Law, University of Sydney (Butterworth and Company (Australia) Ltd, 1971), pp. 1-19, 1-808. P/B $15.00, Cloth $19.50 ISBN 409 43750 6.

The first edition of the work was published in 1968, and was reviewed in 3 F.L.Rev. 307. The principal change made in the 2nd edition is that Professor Nygh is now the sole author with the result that the chapters on property matters and negotiable instruments previously written by

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Professor E. I. Sykes and Professor D. J. McDougall respectively have been completely rewritten. Apart from the above revision the statutory and case law developments which have occurred between the publication of the two editions have meant that other chapters have had to be substantially re-cast; in particular, chapter 5 on the jurisdiction of Australian courts takes account of the changes made by the Supreme Court Act 1970 (N.S.W.) and chapter 16, on torts, includes a full review of the House of Lords decision in *Chaplin* v. *Boys*.[1]

A more pervasive difference between the first and second editions of this book is that the current edition appears to be less critical of the present state of the conflict of laws in this country. Whereas the first edition included in the chapter on domicil a section entitled "Critique of the existing law of domicil", the second edition accurately summarizes the current state of the authorities, with little criticism of the existing law. Again, in the section concerning the law governing the capacity to marry, the first edition (at p.409) remarked on "the absurdity of insisting upon a single choice of law rule without inquiring into the policy underlying the substantive rule of law which allegedly should be applied". In the second edition, however, Professor Nygh apparently accepts without demur that Dicey's "dual domicil" theory is supported by the weight of authority and is to be applied in all except a certain, very limited, number of exceptional cases. A further illustration of the author's shift towards orthodoxy can be seen in the chapter on torts. In the first edition, (at p.352), Professor Nygh lamented the fact that "In the Anglo-Commonwealth jurisdictions the dead weight of precedent hangs heavier upon our judges and it cannot be expected that the *Babcock* v. *Jackson* approach will be applied as such." But in the second edition, (at p.406), it is stated that "Australian Courts so far have shown no enthusiasm for either policy evaluation or any lesser degree of flexibility" and no attempt is made to argue that this is not a correct attitude.

At pp.128-129, in discussing the common law inter-spousal immunity of suit in tort, the author refers to the New South Wales and South Australian legislation which makes considerable inroads on that immunity. He does not, however, complete the picture by referring also to the legislation in all the other States and Territories (with the exception of Western Australia) which has, since 1968, abolished the common law immunity of suit. Again, (at p.455), when dealing with "common law" marriages and the line of authority based on *Savenis* v. *Savenis*[2] and *Taczanowska* v. *Taczanowski*[3], Professor Nygh considers that Australian authority is "uncertain" on the question of whether such a "common law" marriage must be celebrated in the presence of an episcopally ordained priest. There is, however, no reference to *Hodgson* v. *Stawell*,[4] in which the Full Court of Victoria held that the presence

[1] [1971] A.C. 356.
[2] [1950] S.A.S.R. 309.
[3] [1957] P. 301.
[4] (1854) 1 V.L.T. 51.

of such a priest was necessary for the validity at common law of a marriage celebrated in Van Diemen's Land.

The only sin of commission, rather than omission, which this reviewer has noted is the oddly worded footnote 15 on p.594 which reads, *in toto*: "*Re Crook* (1936), 36 S.R.(N.S.W.) 186, following the English case of *Re Cutcliffe's Will Trusts,* [1940] Ch. 565." Since both the citations in the footnote are correct one can only assume that Professor Nygh has inadvertently endowed Long Innes C.J. in Eq. with remarkable powers of foresight!

Despite these minor criticisms Professor Nygh is to be congratulated on if anything improving on the very high standard he set in his first edition. Not only does the book show his breadth of knowledge and erudition but the addition of New Zealand authorities and some previously overlooked Australian cases results in the production of a book which can, with confidence, be described as a comprehensive, lucid and up-to-date statement of the conflict of laws in Australia.

The conclusion reached by this reviewer after reading this second edition, and using it for teaching purposes in 1972, is that Professor Nygh has thereby greatly enhanced the considerable reputation he made for himself by his pioneering work in bringing the first edition to fruition.

D. L. PAPE*

Arrangements for the Avoidance of Taxation, by Dr I. C. F. SPRY, LL.D., Barrister-at-Law, Editor, Australian Tax Review. (The Law Book Company (Australia) Ltd, 1972), pp. i-x, 1-141. $7.50. ISBN: 0 455 16490 8.

This book is a treatise in relatively short compass. It attempts to give a coherent analysis of some 50 Australian and New Zealand cases on section 260 of the Commonwealth Income Tax Assessment Act and, where relevant for comparative purposes, the corresponding New Zealand provision (section 108 of the Land and Income Tax Acts). The case law is often difficult to reconcile and one is given a sense of the tug of war between conflicting approaches. I know of no better or clearer exposition of the trend of judicial decisions in this area. However one regrets that Dr Spry did not also consider some of the articles and commentaries in this area, restricting himself solely to the case law. He also neglects a substantial body of South African case law on the equivalent of section 260 (section 103 of the South African Income Tax Act 1962) which provides some useful comparisons.

Beginning with a history of the origins of section 260, Dr Spry then analyses the subject matter of this section, its general scope in relation to different kinds of transactions, and finally the consequences of applying section 260. The grouping of subject matter is particularly helpful.

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