

the extent to which judges should be essentially political appointments. On this matter, the reviewer is in total sympathy with the demurrer expressed by Professor Mathews—that the appointment of political judges “would seem to be especially damaging to the concept of judicial impartiality, and likely to bring the party political system into the judicial branch of government in a way that has been tried, and found wanting, in the U.S.A.” (page 97). The line between the judiciary and legislature breaks down in the case of politically appointed and activist judges, and it is difficult to envisage the survival of the judiciary in any long-run battle with the legislature. It neither should nor could win. The tragedy would be that the crucially important, disinterested, objective, interpretive role would also have been lost.

In conclusion, I would like to express my enthusiasm for and appreciation of the task undertaken by the editors and the manner in which it has been carried out. The book is, one hopes, the first in a series of important, bridge-building operations between professionals with distinct, but interdependent roles. Through the channels of communication developed across such bridges the opportunity exists to develop and elaborate the crucial concepts—the public interest (in terms of income or welfare more broadly defined? in the short run or long run?) equality (of opportunity or of result? in the short run or long run? in what relation to absolute, as distinct from relative measures of welfare?) and, ultimately, justice itself—of issue determination in the monitoring, regulation and interpretation of social and economic change.

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Conflicts in Matrimonial Law: Cases and Text by MICHAEL PRYLES, LL.B. (Melb.), LL.M., S.J.D. (S.M.U.); Senior Lecturer in Law, Monash University. (Butterworths, 1975), pp. i-xii, 1-148. Recommended retail price \$7.00 (ISBN: 0 409 45563 6).

As the author indicates in his Preface, this work is a collection of cases and materials on the private international law aspects of marriage and divorce. The separate treatment of these topics of the conflict of laws has been made necessary by the passage of the Family Law Act 1975 (Cth) which has wrought considerable changes in the conflicts rules, as well as in the domestic law, relating to matrimonial causes. Dr Pryles deals very fully and competently with the whole subject matter, often raising penetrating questions about, and giving new insights into, the meaning of the common law authorities and the Family Law Act. This reviewer was particularly impressed with the discussion of the classification of marriages as either void or voidable (page 92) and alarmed by the thought that the rule in *Travers v. Holley*¹ applies to the Family Law Act (page 112).

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¹ [1953] P. 246.

The only major criticism of the book is the treatment of nationality as a connecting factor in the recognition of foreign divorces and its applicability to federal systems (pages 107-109). The materials set out, and the author's comments, on the general topic of nationality maintain the high standard evident throughout the rest of the book. But after almost three pages, comprising both the author's views and extracts from learned articles devoted to the particular question of nationality in relation to federations, Dr Pryles comes to the following conclusion:

the problems of conflict of laws arise between different "legal units" rather than between sovereign entities in the international law sense. The relevant area must be that where private law prevails and if the national unit in the international law sense extends beyond that of a particular private law unit, the principle of nationality as a connecting factor can have no application. In the United States the relevant private law unit in divorce is a state and hence a central connecting factor not co-extensive with that area but greatly exceeding [it] should be rejected (page 109).

While one might agree with Dr Pryles's statement as an abstract proposition, it is suggested that it has no relevance to section 104 of the Family Law Act, sub-section (2) whereof provides:

For the purposes of this section, a person who is a national of a country of which an overseas country forms part shall be deemed to be a national of that overseas country.

Applied to the situation in the United States, this sub-section means that a person who is a national of the United States is deemed to be a national of each of the constituent States. It is surprising to find that the author makes no reference to this provision throughout the course of the book. The subsidiary point might also be made that Dr Pryles is surely not correct in saying, as he does both in the Preface and on page 94, that the Family Law Act is the first statute in which nationality has been employed as a connecting factor in the Australian conflict of laws. The legislation of Victoria, South Australia, Tasmania and Western Australia of 1964 and 1965 which amended the various States' Wills Acts also uses nationality in the same way.

The choice of materials for any casebook, and the decision on what to include or exclude, must be to some extent personal and there is little in Dr Pryles's choices at which any reader could cavil. There are, however, some matters in which it is considered that the author's omissions give a misleading impression of the law. First, when discussing the formal validity of marriages celebrated at a time when compliance with the *lex loci celebrationis* is impossible (pages 11-17), the author sets out only that part of the judgment in *Kuklycz v. Kuklycz*² which deals with the requirements laid down by the common law for the formal validity of a marriage. One might have expected to find a reference to the fact that earlier in the same judgment Norris A-J. expressly prefers *Savenis v. Savenis*³ to *Maksymec v. Maksymec*⁴ in deciding whether to

² [1972] V.R. 50, 52-53.

³ [1950] S.A.S.R. 309.

⁴ (1954) 72 W.N. (N.S.W.) 522.

look to the common law or to the *lex domicilii* to determine the formal validity of the marriage. Secondly, Dr Pryles states in his own words the effect of part of section 10 of the Marriage Act 1961-1973 (Cth) (page 39). In view of the detailed discussion which is devoted to so many of the topics dealt with in the book, it is surprising to find that nowhere are the provisions of section 10 set out, nor is there any discussion of the meaning of paragraph (2)(b) thereof, which is not generally regarded as being entirely free from doubt. Thirdly, this reviewer would have welcomed further elucidation on the meaning of section 104(8) of the Family Law Act than the scant paragraph devoted to it (page 109). In particular, one would be interested to know whether sub-section (8) applies to the grounds of recognition set out in section 104(3)(b) and (e), and what is the combined effect of section 104(2), (3)(d) and (8).

It must be confessed that at times the style of writing tends to strike a jarring note. In the Preface, for instance, it is said that the Family Law Act makes "novel changes" to the law, and brings in "new innovations". Another comment, relating both to style and to substance, is that Dr Pryles writes:

A literal reading of [section 42(2) of the Family Law Act] indicates that it is primarily designed to enable reference to be made to the laws of another country (page 18).

The wording of section 42(2) is:

Where it would be in accordance with the common law rules of private international law to apply the laws of any country or place (*including a State or Territory*), the court shall apply the laws of that country or place [*italics added*].

One would have thought that a literal reading of this provision indicates that it permits reference to be made to the *lex fori* when a State court is seized of a matter under the Family Law Act.

For all these minor quibbles, the conclusion arrived at on reading this book is that it is highly successful in setting out a wealth of detail on the conflicts rules relating to marriage and divorce. Such a book is certainly necessary with the coming into force of the Family Law Act, and Dr Pryles is to be congratulated on fulfilling that need so ably.

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Principles of Income Taxation by REGINALD BARRETT, B.A., LL.M. (Syd.); a Solicitor of the Supreme Court of New South Wales, formerly Lecturer (Part-time) in Income Tax at the University of Sydney. (Butterworths, 1975), pp. i-xx, 1-236. Paperback, recommended retail price \$10.50 (ISBN 0 409 45790 6).

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