

The Australian Law of Theft, by M. S. Weinberg and C. R. Williams, (The Law Book Company Limited, Australia, 1977), pp. i-xxxiv, 1-374 (inclusive of Preface, Table of Contents, Table of Cases, Table of Statutes, Introduction, Appendices and Index). ISBN 0 455 19586 2.

This book fills a gap for students, academics, legal administrators and, most particularly, practitioners active in the sphere of criminal law. It is the first textbook, which includes the Crimes (Theft) Act 1973, written specifically on the law of theft in Australia. The book gives a detailed and authoritative analysis of the way in which these provisions (substantially based on the Theft Act 1968 (U.K.) and themselves incorporated as provisions in the Crimes Act 1958-73 ss. 71-96 inclusive) have replaced and broadened the purview of the hitherto prevailing common law and statute offences relating to dishonesty. Further it has brought, as it were, legislative order into disparate legal chaos.

The title, itself, is perhaps a misnomer, since 'theft' in the technical sense forms only a portion of the areas discussed and it would be more appropriate to say this book covers the area of dishonesty offences in Australia. Indeed, the authors themselves tell us, on p. 1:

In the six Australian states, there are to be found three quite different sets of legal rules concerning crimes of dishonesty.

It is the area of criminal dishonesty which is covered in this book over an Australia-wide spectrum. The range is over theft, deception, conversion, robbery, burglary and associated offences, blackmail and dealing with unlawfully obtained goods in each of the three systems of legal rules: the common law states (New South Wales and South Australia); the various Code States (Queensland, Western Australia and Tasmania); and, of course, the Theft Act of Victoria.

The authors state also at p. 1, that the book has two aims:

The primary aim of this book is to present a reasonably concise but detailed exposition of the law as it exists in each of the Australian jurisdictions. A secondary aim is to make a call for reform of the law.

Readers will find, that even if they do not agree with each recommendation made in pursuance of the secondary aim, the criticisms levelled and the problems discussed are thought-provoking and concrete. They will certainly find the primary aim successfully achieved. This book provides a high degree of precision and detail in the collection of authorities, original legislation and case law, satisfactory compilation of relevant statutes, a broad and flexible statement of principles, and, as well, two useful Appendices, one a Table of Concordance between Victoria and English Theft Act provisions, the other, the actual Victorian provisions. The latter incidentally, is a useful piece of thoughtful detail, all too often overlooked by text book writers, who discuss interpretation of legislation without concise reference to the actual legislation, except in broken-down form. This table is, perhaps, typical of the care and attention paid by the authors to make this a 'handbook' type of text. For the Victorian reader the mere fact that this book is a 'first', as far as the Victorian law of dishonesty is concerned, makes it a useful addition to a legal library.

As indicated earlier, the book covers the range of dishonesty offences in all Australian jurisdictions in a particularly appealing and clear layout. The authors have set out, under the three appropriate jurisdictional headings, the essential elements and ingredients of each of the theft, theft-related and dishonesty offences. They use one chapter, sub-divided into the said jurisdictional headings, to deal with each such class of offence. The chapters are further sub-divided into each integral element. The legislation is included, where appropriate, discussion of case law is suitably incorporated, as are defences applicable (such as, *e.g.*, relating to theft: '*simpliciter*', the defence of 'claim of right', its limitations and application on p. 49 *et seq.*). Moreover, it appears that the authors have successfully avoided the all too prevalent pitfall of textual analysis on a comparison basis — the detailed and over pedantic discussion of

any one or more particular problem, which, although most worthy of consideration by the serious student, becomes, if too profound, detrimental to the overall precision and clarity of the book.

This is not to say that this book is shallow in its treatment of difficult areas, or that the technical analysis of dishonesty offences has been neglected. The reader will find that areas of complexity are well and thoughtfully presented (e.g. the analysis of 'false pretences' at p. 109 *et seq.* — one of the most difficult areas of what is known as obtaining by deception) but not so as to lose sight of the overall treatment of the offence.

The authors have, moreover, tackled what they consider to be the 'problems associated with overlapping concepts' (e.g. p. 334 *et seq.*) which embrace areas such as the relevant mental states in various offences, the use of the term 'dishonesty', the range of interests protected and the types of property capable of being acquired dishonestly.

The purist might argue, that to be complete, a textual analysis of dishonesty offences would need to include a wider critique of problems especially in the area of relevant *mens rea*, a subjective/objective test analysis and, possibly, a wider based level of criticism in the area of robbery and the handling of stolen property. Both of these areas have been recently subject to public, legislative and administrative scrutiny. Conversely the reader would find, that to have done so would have obscured the book's overall aim, which appears to be that of providing a 'working manual' of the law with a sufficient, but hardly over-drawn, discussion of what the law ought to be.

However, the controversial issues have been raised, concisely dealt with, and will give food for thought and discussion particularly amongst those actively engaged in the practice of the criminal law. These persons invariably find that each given set of facts and circumstances requires its own specific analysis and gives rise to its own peculiar problems. It is here that the comparative basis of the book becomes of such immense assistance to the practitioner. It provides for him a broader base from which to consider the problem of dishonesty offences within his own jurisdiction. Moreover, the setting-out of the intermarriage of codes, common law and statutory provisions, provides him with a wider field from which to draw material to assist him, in areas ill-defined, or not yet delimited, by case law, or statute in that jurisdiction. This enables him to achieve and consider more than a 'face-value' interpretation of obscure technical areas.

In short, the 'federal', if not 'federated' nature of this book is of benefit to the practitioner, the student and the legal administrator. Indeed, the call for uniform theft legislation, which the authors send out, might well be answered once this book and others like it reach more Australian legal bookshelves. The excellent breakdown of the Australian law of dishonesty provided indicates clearly that, in an area of such complexity, it is less than desirable that what may be a defence in one Australian state is irrelevant in another, or that a pattern of behaviour proscribed in Victoria is legitimate in New South Wales. Moreover if, as appears to be indicated, the criminal law intends to extend its purview into areas of hitherto unsanctioned, but unproscribed activities of commercial shady dealing (here, especially, the Victorian provisions relating to obtaining financial advantage by deception spring to mind; see p. 141 *et seq.*). It would surely be desirable that uniform Commonwealth or federal level legislation be enacted to cover it.

However, this is but a side issue; irrespective of whether any changes in legislation are made, or not, it is certain that the authors have written a good book.

The criticisms that might be levelled are minor ones. Apart from analytical matters already referred to, the Index section, although generally helpful, is a little sparse in its attempt to be restricted to important sub-headings, and to avoid duplication of references. Also, interstate readers might well think that the book in form and content is weighted rather heavily to a Victorian oriented analysis. This, of course, is only natural and, conversely, all to the good for Victorian lawyers and students.

In sum, the book fills a Victorian need. Considering that the dishonesty offences form a large, if not major, part of the criminal law, the book covers areas of complexity and technicality, as well as of practical difficulty, is concise and written with clarity, precision and a good deal of carefully directed thought.

It is a book which no practitioner active in the criminal law sphere, student of criminal law, or criminal law administrator, should be without.

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Federation Under Strain, Australia 1972-1975, by Geoffrey Sawer, (Melbourne University Press, Melbourne, 1977), pp. i-viii, 1-237. ISBN 0 522 84130 9.

Of the plethora of books which followed the untimely end of what was most probably Australia's greatest period of legislative zeal and centralist innovation, this book stands alone.

It is free from the partisan hysteria of those books which, for want of a better term, may be characterized as socio-political dissections of the Whitlam era. As Professor Sawer prefaces his work:

This book is intended as a legal companion to studies of Australian Federal Government in the Whitlam period. It is assumed that the reader is familiar with the political history of the period, or will acquire it from chronicles such as ones by political journalists mentioned in the references to chapter 8. The writer does not claim, even by inference, any access to the secret history of the times. The matters dealt with are in principle publicly available rules of public law, although even in this area there are matters — such as some of the working rules of the Australian Loan Council and the Federal Executive Council — which have to be inferred when they should long ago have been published to the world.

The book is exactly that: encyclopaedic in scope, but strictly a legal reference to the so-called 'crises' of the most recent Labor governments. Unfortunately, probably only those already familiar with Professor Sawer's work will refer to this latest book; unfortunate, as anyone interested in the political and legal history of Australia would surely enjoy the lucid exposition of the constitutional background to the more startling events of the years 1972-75. The 'Gair affair' and casual Senate vacancies;¹ overseas borrowings; the double dissolutions;² the assertion of Senate supremacy in the Parliament by means of the deferral of Supply — all are covered in great detail and placed in their legal and historical perspective. Yet, for all the purely legal discussion, the book is not heavy reading, as it is touched throughout by Professor Sawer's own humour. Even if one disagrees with his views, and his conclusions so obviously based upon his opinion as to the viability of our federal system of government, one cannot but be impressed by the clarity and simplicity of his style. He has a peculiar art of juxtaposing concepts in a quite unexpected manner and a novel method of relating elements of the system by which we are ruled; for it appears to be the system which rules, and not the will of the people.

One chapter of particular interest is that entitled 'The Whitlam A.L.P. Government 1972-5, and the Federal System'. This chapter is without a doubt a three year coverage of parliamentary and judicial business in the same vein as his magnificent

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¹ The original McLarty documents, the precedent for the convention that a Senator be replaced by a member of the same party, are published, I believe, for the first time.

² The communications on the second double dissolution of this period are collected in Appendix 2. Although these are generally well known to people at present, their collection in a book of this kind will surely be an invaluable reference in the future.