paint in spaces which the judges may have noticed only in the most impressionistic way.

Sir Arthur Underhill's objective was to produce a book of a "really practical, but concise, character". The Thirteenth Edition comes closer to this ideal than any produced since the author's death, and is warmly commended.

One final parochial, but disturbing matter must be mentioned. It arises from the reviewer's investigation of *Underhill's* history. In 1913 a Special Australasian Edition of *Underhill* was produced by H. S. Nicholas (later to become N.S.W. Chief Judge in Equity). In his Preface he deplored the considerable differences in State legislation concerning trusts and called for the adoption of comprehensive uniform Acts. It is truly a scandal that discrepancies of State legislation have become worse in the ensuing 67 years. The editors of the Fourth Edition of *Jacob's Law of Trusts in Australia* (1979) have described the situation as intolerable, and have attributed many of the discrepancies to legislative caprice. How much longer must we endure this confusing and irrational regime?

R. P. AUSTIN*

The Law of International Business in Australia, by P. J. O'Keefe and Mark A. G. Tedeschi, Sydney, Butterworths, 1980, 220 pp.

This book is a short but very worthwhile and useful contribution to international business law. The authors state its purpose succinctly:

> . . . to present an analysis of those laws, either Australian or international, which affect a person engaged in international business either in Australia or from Australia. We have examined those laws which peculiarly affect an Australian doing business overseas or an overseas person doing business in Australia.

The work relies primarily on Australian and international law, with useful references to the laws of other countries. The work then can clearly be categorized as *transnational.*

In a book of this size, the authors must necessarily be selective as to content. Having regard to the dichotomy of the subject matter, namely, Australians doing business overseas, and overseas persons doing business in Australia, the authors have defined the scope of their work by commencing with an introductory chapter on the nature of

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international business, and then following this with eight additional chapters each dealing with specific subject areas. Whilst their choice of subject areas would not necessarily have been that of the reviewer, it is on balance more than satisfactory.

The authors have an easily comprehensible style, which is assisted by the division of the work into numbered paragraphs, and all citations are retained within the text, there being brief footnotes at the end of the book. Without sacrificing the precision necessary for jurists, there are a number of eminently practical highlights in the book which should make it comprehensible, not only to practitioners, but also to students and business men. The latter, at least in a number of European countries will quite often have been trained in the law; in Australia, the proliferation of business degrees and diplomas from both Universities and Colleges will assure that a considerable number of our business men and managers have some background in business law. In relation to students, the work could be a text or reference in courses in this subject area, not only in law schools, but also in business schools. There are a number of examples of the authors' practical approach: at paragraph 125 there is a detailed check list of legal considerations in foreign trade and investment which covers the best part of five pages; at paragraph 405 there are two figures which diagramically illustrate those transactions which are caught by, and escape from, the provisions of regulation 8 of the Banking (Foreign Exchange) Regulations (Cth.); in addition at paragraph 516 there are figures which diagramically illustrate the workings of the Foreign Takeovers Act 1975 (Cth.).

The specialized subject areas chosen by the authors are: International Business contracts, International Transport of Goods, Exchange Control, Foreign Takeovers and Investment, Taxation, Recognition of Foreign Regulations, Extraterritorial Control of Business, and Dispute Settlement. It is not possible in a brief review to comment on each chapter, but some specific comments on selected areas follow.

In considering the so called "choice of law" clause in international contracts, the limiting effect of two Queensland decisions might have been considered: *Golden Acres Ltd.* v. *Queensland Estates Ltd.*;[1] *Queensland Estates Ltd.* v. *Collas*[2]. On the question of State contracts (paragraph 226) a brief reference to two recent and most important arbitrations might have been of some utility to readers; *Texaco Overseas Petroleum Company* v. *Libya*;[3] *B.P. Exploration Company Limited* v. *Lybia*.[4] At paragraph 656 *et seq*, the concept of the joint venture is discussed. The reviewer would prefer one of the definitions of a join

1 [1969] St. R. Qd. 378.
2 [1971] St. R. Qd. 75.
3 (1980) *I.L.M.* 1.
4 (1979) 53 *I.L.R.* 297.

venture offered by the Louisiana Supreme Court[5] where it was described as "a special combination of two or more persons, where in some specific venture a profit is sought without any actual partnership or corporation designation". Admittedly, the separate category of incorporated partnerships has already achieved judicial recognition; *Ebrahimi* v. *Westbourne Galleries Ltd.*[6] But in relation to unincorporated joint ventures, that is joint ventures properly so called, it is suggested that a species of association, which is distinct from, although similar to, a partnership is being established. For example West[7] states that some suggest that the authority of joint venturers to bind their associates is different to this authority in a partnership. It may well be that in the mining area joint venture agreements are so arranged that there is no joint selling or selling for joint profit. These do not go beyond the scope of production and each party disposes of the minerals at the minehead in accordance with its own policy and exercising its own taxation options.[8]

In relation to the chapter on taxation, it is unfortunate that at paragraph 659, there was not more space to present some detail on s. 260 of the Income Tax Assessment Act 1936 (Cth.) but having regard to the limitations of space the decision to omit this aspect is understandable.

In discussing the interesting question of the extra territorial operation of United States antitrust laws, some reliance might have been placed on the interesting decision of *J. Zeevi and Sons* v. *Grindlays Bank (Uganda) Ltd,* which is referred to in another context at paragraph 723, for this case strongly supports the proposition that recognition will be given to the act taken by a foreign sovereign within its territory, but not in relation to property within an American jurisdiction. In this case an Israeli corporation deposited with the defendant an amount of Ugandan currency to establish a fund on which the plaintiff, an Israeli partnership could draw money. The defendant established an irrevocable credit in a similar amount in favour of the plaintiff and issued a letter of credit to this effect guaranteeing the payment of drafts thereon. The negotiating bank was authorized to claim reimbursement from Citibank. Then, when the Ugandan authorities notified the defendant that foreign exchange allocations in favour of Israeli Companies and nationals must be cancelled, and ordered the defendant to make no payments pursuant to the letter of credit, the defendant informed Citibank who refused payment on the drafts issued. When the plaintiff commenced action, the defendant relied on various defences, including

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[5] Blake West, "The Business Joint Venture in Louisiana", (1951) 25 *Tulane Law Review* 382.
[6] [1973] A.C. 360.
[7] *Supra* n. 5 at 391.
[8] M. G. Chate, "The Structure of Joint Mineral Ventures" in *The Law of Mining in Australia* (1969) p. 2.

the Act of State doctrine. However the New York Court of Appeals held that since the debt was not located in Uganda, the Ugandan Government having no power to enforce or collect it, the Act of State doctrine did not apply.

In dealing with the difficult question of public policy (paragraph 707) it is of interest to note the practical advice of Professor B. Mercadal.[9] He strongly advises, *inter alia,* that when there is a fear that public policy might be violated by the contract, but the parties conclude that it is reasonably safe to go ahead, all the reasons and circumstances including the lack of prior judicial decisions, leading the parties to adopt the solution they have chosen, ought to be incorporated into the contract. This, he suggests, goes to prove good faith and an intention not to violate public policy and he suggests that courts are not indifferent to these arguments. Other useful suggestions may be found in the article cited.

At paragraph 723, it is of some interest to note that the French courts seem to continue to prefer the broader interpretation of the meaning of an "Exchange Contract" for the purposes of Article VIII of the *Articles of Agreement* of the International Monetary Fund.[10] Indeed, the decision in *Wilson Smithett & Cope Ltd.* v. *Terruzi*[11] to the extent that it relied on foreign decisions, is alleged by Sir Joseph Gold, to have been in error as to its understanding of the positions adopted by the French and West German Courts.[12] The time of the application of Article 8 is also a matter of some controversy, and it might be noted that the Counsel of the World Bank, Georges R. Delaume appears to prefer a third solution to the two offered in the reviewed book, namely that the article applies not at the date of making of the contract, nor by implication the time of enforcement, but rather the date of performance.[13]

The use of the "effects" doctrine in the European Economic Community's anti-trust law (Articles 85 and 86 of the *Treaty of Rome*) is well summarized in paragraphs 842-844. Since the manuscript of this book was completed, it is now interesting to note that the Court of Justice of the European Communities is conforming to the approach set out in this work.[14]

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[9] "Ordre public et contrat international" (1977) 3 *International Trade Law and Practice,* 457 at 464-8.

[10] *Daiei Motion Picture Co. Ltd.* v. *Zavicha,* La Semaine Juridique, No. 21 26th May, 1971, II — Jurisprudence 16751.

[11] [1976] 1 Q.B. 703 (C.A.).

[12] Sir Joseph Gold (1977) *Staff Papers* 193 at 220, 221.

[13] Georges R. Delaume, *Legal Aspects of International Lending and Developing Financing* (1967) at 296.

[14] Case 22/79 *Greenwich Film Production* v. *Societé des Auteurs, Compositeurs et Editeurs de Musique* (S.A.C.E.M.) (not yet reported); Casenote by Jonathon Faull, (1980) 5 *E.L.R.* 64.

Obviously, a reviewer will not always adopt the positions of an author and will refer to alternative material in relation to certain matters. This is to be expected. It does not in any way detract from the excellence of this work, which relates to a subject which hitherto has deserved greater attention. It is hoped that it will be prescribed reading, either as an introduction or a text or reference as may be appropriate, in both Law Schools and Business Schools. It ought also, in the reviewer's opinion, to be found on the shelves of the libraries of Government departments, as well as law offices both here and overseas.

DAVID FLINT*

nvironmental Law in Australia, by D. E. Fisher, St. Lucia, Queensand University Press, 1980, xxx + 197 pp. $14.95.

This book is one of those rare jewels in legal writing — a first of ts genre. It is the first to view environmental law in the context of he Australian legal system. For this reason alone it is an important ublication.

Dr Fisher claims, so he says in his preface, to have merely ttempted to put together a few ideas on the subject. At first glance he size of the book, a mere 183 pages, may well support his modesty. Iowever a reader perusing the contents and the case and statute lists vill soon appreciate the enormity of the author's task. What Dr Fisher as achieved is to condense, one suspects under pressure of his ublisher, what is a major thesis into a small, manageable book. resumably its size was also conditioned by the market place. The ook is quite expensive and for economic reasons alone this may well imit its clientele. However for those amongst us interested in this eveloping area of the law the book is essential reading. No other uthor has attempted such a wide ranging review of Australian environental law.

This is so because in the Australian context environmental law is ery much an embryo legal subject. While the concept of preserving he environment has always been inherent in the common law and later n statutory form its development to a stage where environmental conderations are a distinct and separate criteria for legal decision making a quite recent development. Australia is well behind its counterparts n the United States or Canada in the development of an environment onsciousness. Part of the reason for this is because in the post-war

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