

# REVIEWS

## THE COURTS AND THE DOCTOR

by D.J. Gee and J.K. Mason;  
Oxford University Press, Oxford,  
1990; 200 pp. plus appendices;  
\$46.00 (paperback).

The rise of the expert medical witness in legal proceedings has been facilitated by developments in scientific knowledge and techniques which have led to greater certainty in forensic and medical science generally.

The *Courts and the Doctor* is written by authors with experience as expert witnesses. It provides potential expert witnesses with a clear, concise and informative explanation of legal processes, including the laws of evidence, court-room techniques and the presentation of expert evidence.

A central concern of the book is demystifying the legal system for medical practitioners who are daunted at the prospect of giving evidence in court. Some of the explanations (such as that of the court structure and some specific medico-legal examples) are of limited use in Australia since the book is written for a British audience. However, the discussion of the difficulties facing expert witnesses in the adversarial system and the advice given are suited to a much broader audience.

In particular, the authors point out the way that the adversarial system leads to 'an inevitable tendency for the witness to identify himself [sic] with the side that has called him [sic] and, possibly without realizing, to deliver his [sic] evidence in such a way which lends support to that side' (pp.143-4). By subconsciously preferring one side over the other, the witness may 'ignore or reject alternative possibilities'. On the other hand, while agreeing with all possibilities may 'cause the court to wonder if he [sic] has any expert knowledge or ability at all' (p.145). In addition, the authors argue that the isolation of witnesses from those 'on the other side' furthers the tendency towards partisanship. Also,

the fact that witnesses lack a broader appreciation of the facts of the case frustrates the achievement of a 'scientifically correct solution' (p.147).

This is not a book designed to explain medical law to medical practitioners. It is rather a handbook for medical practitioners who may come into contact with the legal system (as expert witnesses, or as defendants) in the course of their profession. Yet, it does have broader appeal than is evident initially. The book will be relevant to all those who are expert witnesses, not only medical witnesses. Finally, the book will be relevant to those interested in the workings of the courts generally.

BELINDA BENNETT

*Belinda Bennett is a lecturer in medicine and the law in Sydney.*

## LEGAL STUDIES FOR UNITS 1 AND 2

by Peter Alderson and Jeanne Strong, McGraw-Hill, Sydney,  
1990; 290pp; paperback \$26.95.

## LEGAL STUDIES FOR VICTORIA (Volume 1)

by Nicholas Bates and Margaret Bates; Butterworths, 1990; 564pp;  
paperback \$25.00.

Recent newspaper headlines highlighted a uniform preference in the career choices of gifted school leavers. The top three VCE/HSC students in Victoria and the top two HSC students in New South Wales, with their perfect and near perfect scores, have earned their privileged positions of picking and choosing academic and career options. All five students said they would undertake law degrees and one already had his sights set on being an international corporate lawyer! Not so long ago, at least a couple of these talented students would have chosen a career in medicine or a science-related

area. Not surprisingly, smart kids look for intellectual rigour; clever kids look for intellectual rigour and financial reward.

Just as a career in law holds a fascination for these wonder kids, so too does 'the law' fascinate many ordinary teenagers. It is a fascination that is expressed through television and video watching habits and also through subject choice at school.

Legal studies has been offered to senior school students in each of the States for a number of years. Victoria was the first to offer it as an accredited HSC subject in 1974 and all other States have done so since then; some as recently as 1990.

It is a popular subject. In Victoria this year, about 25% of Year 12 students (roughly 14 000) will undertake Units 3 and 4. About the same proportion will undertake Units 1 and 2 (Year 11) level. The courses in each of the States are similar in content and in their aims of developing an understanding of the interrelationship of law, justice and society.

The VCE Legal Studies 'study design' is primarily distinguished from its HSC forebear by its emphasis on not simply passing on to students large chunks of content, but also in developing the skills of enquiry, research and evaluation of information. This is a central pedagogical aim of all the VCE study designs and one which fortunately has not been lost amongst all the 'fine tuning' that has been occurring in recent months to placate domineering universities.

Educational publishing, seeking to meet the needs of flexible course designs, has been something of a growth industry in Victoria in recent years. *Legal Studies for Units 1 and 2* (Alderson and Strong) and *Legal Studies for Victoria (Volume 1)* (Bates and Bates) are two unambiguously titled references, recently published, which seek to meet the needs of the new VCE requirements.

Both are weighty with content, covering all the basic introductory topics relating to Unit 1 — The Individual and the Law — as well as the vast ter-

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ritory of the 11 areas offered for study within Unit 2 — The Law in Operation. Of these 11 areas in the design, only three are covered in detail in class.

The texts assume a fairly high level of fluency and competence with the language and the ability to absorb sizable chunks of information, an assumption which cannot be over-relied on, given mixed-abilities classrooms often comprising students for whom English is not their first language.

Alderson and Strong make much greater use of the margins for concise summaries, definitions and the placement of information into a broader context. The authors are in tune with students' perceptions and understanding of their world, reflected through a narrative which directly engages their readers in the topics. 'What does the idea of marriage mean to you?' is a far better way of opening a chapter addressed to an adolescent readership than an exposition of what marriage is according to the law. It is a type of narrative which not only seeks to hook the student reader, but also assumes students may have a position on a topic, one which may be narrow and ill-informed, but a basis from which to proceed nonetheless. Similarly, Alderson and Strong address the VCE work requirements directly, both throughout the text, with clear directions for the collection and annotation of information from a variety of sources, and in the substantial reference and directory section. In this final third of the text, suggestions for and clarifications of work requirements are offered as well as a chapter on 'How to design and conduct a survey' and 'Handling data and constructing graphs'. Too often these skills are assumed to be dealt with somewhere in the curriculum, but are never actually addressed in the subjects in which they are required.

Bates and Bates have provided an authoritative and familiar text for teachers and students for nearly two decades. This text continues that tradition by offering a most comprehensive

reference for all relevant aspects of the design. Yet through its daunting layout of information (divided into numbered paragraphs and sub-paragraphs within chapter headings) and somewhat more legalistic narrative, the authors have done little to remove the mystique of the law for students. Indeed, the lack of application of the content to any of the work requirements has ensured that connection to the study design retains a certain mystique as well.

More than anything else, the curriculum developments in secondary schooling during the past decades demand a reappraisal of the familiar in teaching practices and especially in the way information is presented to pupils. This reappraisal is no less relevant to educational publishing and authors of standard classroom texts. Bates and Bates, in spite of their claim to have 'rewritten and restructured' their previous edition, could do well to consider to what extent they were prepared to address the change that VCE represents.

LINDA DALEY

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## RECENT REPORTS

### Discussion paper on provisional damages

The New South Wales Law Reform Commission has published a discussion paper (DP 25, 1992) the purpose of which is to generate comment and suggestions from interested parties as to whether a provisional damages scheme is a desirable addition to the current method of assessment of damages for personal injury in New South Wales. Copies of the paper (a slim volume) are available from, and all enquiries and comments should be directed to:

Peter Hennessy, Executive Director, NSW LRC, GPO Box 5199, Sydney NSW 2001. Tel (02) 252 3855; Fax (01) 247 1054.

The deadline for submissions and comments is 27 March 1992.

### Discussion paper on superannuation

The Australian Law Reform Commission and the Companies and Securities Advisory Committee are examining superannuation as part of a review of collective investment schemes. On 20 January 1992 they released a discussion paper titled: 'Collective Investment Schemes: Superannuation'. Contact: Jan Brennan at the Commission on (02) 231 1733.

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