Rogue Trader

by Nick L eson; Little Brown 1996; 256 pp; $19.95 softcover.

While there is no doubt a self-serving quality to this account of the fall of Barings Bank by Nick Leeson, the young man partly responsible for its fall and currently serving a prison sentence in Singapore, one must sympathise with many of his observations about the management of Barings. Even the rather lame report on the fall of Barings produced by the UK bank regulator, the Bank of England, referred to the serious failure of controls and managerial confusion within Barings leading to its collapse in February 1995 as a result of accumulated trading losses of £827 million.

Leeson was the manager of Barings Futures (Singapore). He managed to conceal these trading losses incurred as a result of his management of futures and arbitrage dealing on the Singapore International Monetary Exchange (or SIMEX) and the Osaka Securities Exchange by a combination of lies and forgery while at the same time keeping auditors, supervisors and the distant global treasury operations of Barings at bay by recording enormous false profits.

While there was every good reason to question the performance of the Singapore office as the largest profit centre for the Barings group with enormous daily financing requirements, Leeson's explanation is that nobody in Barings really wanted to know. Senior management at Barings were obsessed with the enormous bonuses they stood to gain as a result of Leeson's apparently profitable trading and this overcame their sense of prudence. The possibility that their hard drinking, jube chewing, football obsessed, youthful colleague could be fiddling the figures by a few hundred million was unthinkable.

Part of the reason Leeson was able to conceal trading losses resulting from the trading errors of his colleagues and adverse market movements was the unique position he occupied in the Singapore futures operation. Leeson was the manager controlling both the trading undertaken by Barings Futures (Singapore) on any one day in the various dealing pits of SIMEX (for example, the Nikkei pit where trading took place on futures contracts based on trading activity on the Nikkei stock index) as well as the settlement of those deals. Usually trading and settlement are strictly segregated to ensure mistakes made during the often frenetically paced trading day are accounted for, supervised and retrieved before accumulated losses become too large. Significant losses or errors (for example, buying instead of selling futures contracts for a client) would of course usually indicate negligence and require dismissal of relevant staff to preserve the bank's reputation as well as reduce risk to client funds but Leeson was anxious to preserve both his staff and his new position as recently arrived manager.

As controller of the settlement function Leeson was able to direct the creation of the ironically entitled '88888' error account (a lucky number in Chinese folklore) where losses and errors could be parked. However, as the futures contracts parked in 88888 were transparent to SIMEX (which had online computer access to Baring's trading positions) they also attracted margin calls from SIMEX. Margin calls are a form of risk management employed by SIMEX whereby SIMEX calls for funds from traders to cover any daily losses (also apparent because of the transparency of computer-based settlement systems) as well as estimated losses for the following day's trading. In this way an independent regulatory body can reduce risk for parties using SIMEX to ensure that counterparties to futures trading can honour their contractual liability.

Leeson had no funds to cover these margin calls and so at first used a combination of floating client funds and his own bonus payment to fund margin calls. When his loss position in 88888 grew too large to fund in this way he traded options (contracts whereby the buyer has the right but not the obligation to buy futures contracts during a certain period at a certain price) and used any profits he could gain from selling them at accounting time to reduce the loss position in 88888. This also exposed Barings to any adverse movement in the options market as Leeson failed to hedge his position (that is, counter adverse market movement by buying or selling in the underlying futures markets). Further funding came from Baring's central treasury operation in London which dealt directly with Leeson and which could not verify his calls for extra funding dressed up as legitimate client funding needs. The object was to reduce the 88888 account balance to nil thereby avoiding management scrutiny.

Leeson attempted to trade his way out of his loss position which increased from £23 million in 1993 to £116 million in 1994 to £208 million at the end of 1994 with a rapid acceleration in exposure in the first two months of 1995 to £827 million at 27 February 1995 when Barings was closed down by the regulatory authorities. As much of his trading was done in Japanese yen and shares his trading positions were significantly affected by the plunge in the Japanese stock markets following the Kobe earthquake as well as the market perception that Barings was carrying large overvalued positions. Leeson attempted to move the market by high volume trading but merely increased Barings' exposure.

When auditors or regulators turned up Leeson bluffed and used primitive forged documents cut and pasted to draw in fictitious third party transactions to explain away irregularities. Barings management and auditors, although troubled, bought the bluff and failed to verify Leeson's statements adequately.

In the end (February 1995) Leeson fled Singapore, was eventually arrested and extradited to Singapore on forgery charges where he is now serving his prison sentence. While the prudential regulatory requirements of SIMEX enabled most of Barings counterparties to suffer minimal loss as a result of Barings' collapse, Baring investors lost their £90 million investment in the bank. When they attempted to have their case brought before the UK courts to seek compensation as part of a civil fraud claim the Serious Fraud Office (SFO) used its statutory veto power to prevent the claim from proceeding arguing that issues of fraud were more properly dealt with by the Singapore courts. This was despite the fact that much of the fraudulent conduct by Leeson related to margin funding from London and the supply of false accounts to London. Given the possibility of UK jurisdiction and the SFO's gutting of the investor litigation, Leeson's lawyer was moved to respond to the SFO decision not to extradite Leeson to the UK by a media release stating: 'It makes no sense, unless there is some non-legal explanation and they are coming under political pressure to resist extradition here'.

Rogue Trader is a quick and sometimes embarrassingly frank read. Leeson portrays himself as the working class boy made good surrounded by aristocratic and greedy incompetents. There are no real excuses for his conduct-his physical and mental deterioration from the stress of living a lie for over three years are described in detail. Those who want more technical detail should consult the report of the Bank of England and more recent assessments. Hopefully such post mortems will have a pervasive influence on organisational culture and corporate governance in the financial markets. One succinct assessment by the UK tabloid the *Daily Telegraph* is a worthy conclusion:

> The report reflects badly on the Bank of England, badly on Mr Leeson, but worst of all on the senior management of Barings. It defies the comprehension of an outsider that a single individual could have wreaked such havoc for almost three years without detection. Mr Leeson is neither victim nor hero, merely the latest in a long history of young men entrusted with responsibilities for which they proved unfit. But it is those who sat on the board of Barings who emerge from the story as almost sublime incompetents, blithely counting their own booty on the promenade deck, oblivious of the current cascading into their ship below the waterline . . . if Mr Leeson goes to prison while the former board of Barings continues going to Glyndebourne, this sorry saga will leave the bitterest of tastes.

CHRIS DELLIT

Chris Dellit is a Sydney solicitor.

Indigenous People and the Law in Australia

by Chris Cunneen and Terry Libesman; Butterworths Legal Studies Series, 1995; $32.00 softcover.

In teaching the law relating to indigenous Australians, I'm constantly confronted by the endlessly varied ways in which racism and a lack of understanding of history and Aboriginal and Torres Strait Islander people limit my students' ability to understand the operation of the law. I was looking forward to the publication of Chris Cunneen and Terry Libesman's *Indigenous People and the Law in Australia* for two reasons: first, because it might be expected that these authors would have the nous to address their subject matter in its cultural and colonial context, and second, because I had been led by the publisher to believe that the book would be suitable for use by law students.

I was disappointed on the second count. The book is suitable for use with early year university students — although in law schools like my own it is highly unlikely to displace the 'essential' Anglo-Saxon tribal material. However, it is not generally suitable (nor is it intended) for use in more detailed teaching of the law relating to indigenous Australians, although some chapters, for example those on removal of Aboriginal children and public order offences, are suitable for that purpose. This means that, notwithstanding the excellent *Majah: Indigenous People and the Law* (Bird, Martin and Nielsen (eds), Federation Press, 1996), there is still no reliable, up to date, comprehensive (*Majah* is a collection of essays), culturally sensitive, historically informed university level teaching book on indigenous legal issues in Australia.

Having said that, it should be acknowledged that the project undertaken by Cunneen and Libesman (writing a comprehensive secondary legal studies text) was probably more important than production of a university teaching book. As my students' ignorance consistently demonstrates, if 'reconciliation' is to be brought about by educating other Australians about indigenous people, that education will need to start before the university level. No such education would be complete without a study of the impact of law on Aborigines and Torres Strait Islanders over time.

In this context, the book strikes a good balance between information and analysis. It has a refreshingly critical edge. Unlike the dozens of writers who have spilled ink over the *Murray Islands* case, the authors do not give the impression that a vast gulf of cultural fascination (or fear, longing or piety) separates them from their subject matter: they write out of an apparent familiarity with indigenous people and indigenous issues. The extracts and discussion questions canvass issues of practical importance for Aboriginal and Torres Strait Islander people: child removal, the nature of 'crime', adults and kids in custody, relationship with the police, use of public space and public 'order', alcohol, violence against women, child custody, housing, work and unemployment, consumer remedies, racism in the media and racial discrimination and vilification, as well as land rights, native title, sovereignty, self determination and the prospects for a 'treaty'. Good use is made of material from disciplines other than law, the work of bodies like the Royal Commission into Aboriginal Deaths in Custody and well-structured interviews with indigenous people.

Racism is discussed not only where it has been egregious (for example, within the colonial police forces or their successor organisations), but also where it is insidious (for example, in the ethnocentric definition of offences or the social Darwinism of the native title debate). However, although an early chapter attempts to explain the origins of racist ideas justifying Australia's colonisation, what constitutes racism is nowhere clearly *defined*. I would have preferred much clearer definition, if only to avoid the problems which can arise from bad teaching. Many of my students seem to think that racism is confined to 'boong-bashing'; since this is true of some university teachers I expect it is also true of secondary teachers. Every year students raise half-baked theories about Aboriginal weirdness — the mysteries and brutalities of 'customary law',[1] the 'fire water' theories about grog, the idea that culture slips on and off like a Lifestyle condom.[2] They bring to classes on indigenous people and the law their dreams and anxieties about who *they themselves* are: what do these 'ancient people' mean for 'our young country',[3] what is the personal moral import of 'all that'[4] past violence and dispossession? Answering these questions requires the teacher to refocus the lens on our own culture, in particular on the durability and mutability of racial stereotypes. This is not an easy task, but it would be made easier by a teaching book which employed a comprehensive definition of racism in its critique of the law.

The four history chapters of the book canvas topics neglected or glossed over by lawyers (who usually don't know the details): the military and 'child stealing' heritage of the police; the calculated recruitment of 'native' police as a killing machine in Queensland; the use of summary procedures for trial of Aboriginal people on serious offences; the relationship between graziers, the police and the NSW Protection Board; the absolute power of Queensland reserve superin-