BOOK REVIEWS

The Conflict of Laws, by R. H. GRAVESON, LL.D., PH.D., S.J.D. 4th ed. (Sweet & Maxwell Ltd, London, 1960), pp. i-xliv, 1-587. Australian price £3 10s.

Professor Graveson's *Conflict of Laws* was first published in 1948. That it has reached a fourth edition in twelve years is a tribute to its excellent qualities. It is written simply and clearly, and it is a thoughtful, though not a polemical work, and it is an excellent text for students. Graveson is an original and lively thinker and his essays and articles on themes in the Conflict of Laws have explored many new fields in this difficult and fascinating area of the law. His experiences as a student and as a teacher in the United States have made him aware of federal problems in the Conflict of Laws, and this gives his book additional merit for Australian students.

The new edition follows the third after a space of five years. It takes into account the new case law and statutes, and it also discusses various proposals for amendment of the law which have not yet seen the light of day as statutes, as in the case of domicile and the formal validity of wills. The proposals of the Private International Law Committee on the Formal Validity of Wills are printed as an *excursus* on pages 318-321. This report has recently been under consideration by the Chief Justice's Law Revision Committee in Victoria which has itself furnished a report and recommendations on the subject.

Professor Graveson's comments on domicile in a federal context are of special interest in Australia in light of the recent use of the notion of a domicile in Australia in the recent Commonwealth Matrimonial Causes Act and Marriage Act. The author (pages 74-75) argues for a new and two-dimensional concept of domicile to give effect to the realities of a federal system. The Matrimonial Causes Act gives special point to this. Assuming for the purposes of the Act that a domicile in Australia may be acquired *without* at the same time acquiring a domicile within a State or Territory, will an English court be prepared to hold that a person may be domiciled in Australia for purposes of divorce jurisdiction, while he retains, say, his English domicile for all other purposes, because he has not acquired a domicile in a State or Territory? It is not clear that Graveson has appreciated this problem: at page 80 he states the hallowed rule that no person can at the same time have more than one operative domicile. *Sed quaere.*

The discussion of adoption has been expanded. For Australian readers, this is also timely because of the proposals to enact uniform adoption legislation. Graveson's stress on the importance of domicile in this area of the law is not very persuasive, particularly in the context of the recognition of foreign adoptions. It seems that the arguments of Gilbert Kennedy[1] in favour of unshackling the law from domiciliary requirements are very strong, and it is to be hoped that the draftsmen of the uniform Australian legislation will pay little attention to compulsory domiciliary requirements both for the purposes of local jurisdiction and for the recognition of foreign decrees.

In a field as open and speculative as the Conflict of Laws there is room

[1] G. D. Kennedy, 'Adoption in the Conflict of Laws' (1956) 34 *Canadian Bar Review* 507.

for much debate on many issues. Graveson applauds the judicial approach which produced *Travers v. Holley*,[2] and rightly so. But at pages 456-457 he is critical of the fact that that principle has been formulated and developed in terms of 'means rather than ends, with jurisdiction rather than the purpose of such jurisdiction', and that only incidentally has it dealt with the ends to be served. This may not be a persuasive argument. Is not the point that the doctrine gives expression to a judgment that particular jurisdictions other than the *forum domicilii* have a sufficient connection with the particular matter to warrant their reaching a decision that the marriage should be dissolved by application of their own law, and that such determinations be recognized elsewhere? And is that not a sound way of phrasing the matter? And one would not necessarily agree with Graveson that *Mountbatten v. Mountbatten*[3] was rightly decided. It would not appear to be a case of a 'logical extreme'; if it is conceded that a New York *decree* is entitled to recognition in England, does it not make sense that we should recognize a New York recognition of a foreign decree? The point of *Travers v. Holley*[4] seems to be that it reflects a judgment that a law district other than the domicile may properly decide that a marriage is dissolved. That law district can do it in two ways: by making a decree, or by otherwise (on terms consistent with natural justice) recognizing the marriage as dissolved. Why *Armitage v. Attorney-General*[5] must be anchored to recognition by the common law domicile is difficult to understand.

There are many points in this very good book that call for discussion. One could have wished to see a fuller discussion of the view expressed in the context of recognition and enforcement of foreign judgments by Denning L.J. in *In re Dulles Settlement (No. 2)*[6] that:

> I do not doubt that our courts would recognize a judgment properly obtained in the Manx courts for a tort committed there, whether the defendant voluntarily submitted to the jurisdiction or not; just as we would expect the Manx courts in a converse case to recognize a judgment obtained in our courts against a resident in the Isle of Man, on his being properly served out of our jurisdiction for a tort committed here.[7]

That *dictum* was a precursor of *Travers v. Holley*;[8] how it squared with *Schibsby v. Westenholz*,[9] Denning L.J. did not tell. It has been disapproved in New Zealand, and now in the Court of Appeal in *In re Trepca Mines Ltd*[10] by Hodson L.J., who said expressly that *Travers v. Holley*[11] does not apply to such a case. It is an interesting and important problem and it seems that Professor Graveson's treatment (pages 543-544) could have been more extended. But the luxury of pursuit of every problem in the Conflict of Laws is denied to any writer of a textbook designed

[2] [1953] P. 246; [1953] 3 W.L.R. 507; [1953] 2 All E.R. 794.
[3] [1959] P. 43; [1959] 2 W.L.R. 128; [1959] 1 All E.R. 99.
[4] [1953] P. 246; [1953] 3 W.L.R. 507; [1953] 2 All E.R. 794.
[5] [1906] P. 135.
[6] [1951] Ch. 842.
[7] *Ibid.* 851.
[8] [1953] P. 246; [1953] 3 W.L.R. 507; [1953] 2 All E.R. 794.
[9] (1870) L.R. 6 Q.B. 155.
[10] [1960] 1 W.L.R. 1273.
[11] [1953] P. 246; [1953] 3 W.L.R. 507; [1953] 2 All E.R. 794.

primarily for students, and Professor Graveson in this edition, as in the previous ones, has done very well.

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The Concept of Law, by H. L. A. HART, Professor of Jurisprudence in the University of Oxford. The Clarendon Law Series. (Oxford University Press, Oxford, 1961), pp. i-x, 1-263. Australian price £1 19s. 3d.

It has already been said by some critics that this book wears too much the air of one revealing new discoveries for the first time, whereas most of what it expresses has been understood for many years—at least by sophisticates in the field. There is something in that criticism. In this reviewer's opinion, however, whether or not there are many new insights or new truths contained in it, this books deals with old questions with such clarity, and brings into balanced relation so many old puzzles about the nature of law, that it must be welcomed as a most valuable contribution to the literature. Further, it provides invaluable material for law students embarking on studies in jurisprudence. In the light of traditionally taught courses in jurisprudence in England, it is so nicely shaped to cover the opening problems of such courses[1] that it could well be taken as ten formal lectures to intelligent law students beginning a jurisprudence course. One may assume that its origins lie in ten such lectures delivered by the author at Oxford. If this is so it explains and justifies the air of revelation which is referred to at the beginning of this review. If those origins produce certain deficiencies in the book which will lead to its treatment by advanced scholars as a series of illuminating and stimulating articles rather than as a major work, at the same time they make the book much more valuable for students, and without doubt it will be read all over the world by English-speaking law students required to pursue courses in jurisprudence.

Although Professor Hart meets head-on the 'persistent question': 'What is Law?', and although he does review the more familiar answers that have been given to that question, he does not do it by attempting to describe or summarize the works of earlier writers—as has so often been done. He writes freshly and freely about the perplexities which have troubled others, and then sets out to make a 'fresh start' for himself. The book then falls naturally into two parts: The first brings the student to an understanding of the problems and puzzles about the nature of law which have been worked over in the past—brings him up to date as it were; and the second contains the author's lead for the resolutions of those problems and puzzles. In the course of that second part the relation of justice to morality, and of laws to morals are examined, and also the continuing arguments between natural and positive law theorists. In the last chapter the nature of international law is discussed as an illustration, in a well-argued field, of how the analytical method urged upon the reader works out in application.

The 'fresh start' referred to may be briefly described as another exercise by Professor Hart in the task of applying the lessons of linguistic analysis

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[1] In the past approached by a study of John Austin and by an introduction to the schools of jurisprudence.