Some printing errors were noted: on page 51, line 5, 'trail' for 'trial', on page 106, note 1, 'Table V on p. 119' for 'Table V on p. 117'; on page 163, note 2, 'cause' for 'case'. To the uninformed, the listing on page 87, note 1, of Privy Council appeals from 'New South Wales' separately from those from 'Australia' may suggest that the former is a separate state independent even of the bonds of federalism.

J. D. FELTHAM*

Anson's Principles of the English Law of Contract, edited by A. G. GUEST 22nd Ed. (Oxford University Press, 1964), pp. i-xliv, 1-635. Price £3 15s.

'Elementary textbooks might be necessary to a student of Law, but not a rare edition of Littleton's Tenures for eight or ten copies of the present text-book.' This statement in the latest edition of *Anson*, in its section on 'Infants', involves an obscurity which is notably absent from the rest of the text. It leaves the reader unenlightened as to whether the editor considers that one copy of the textbook could reasonably be regarded as a necessary, and if so, whether it is by reason of its being an elementary textbook. But it is probably merely diffidence that makes him leave it to the reader to determine for himself that a copy really is a necessary, without its being elementary. Yet, when Sir William Anson first published his book in 1879, he proffered it as an elementary text book, and when he last edited it in 1906, the 11th edition, the conception had not altered.

The further statement that 'infants are liable for "necessaries" and not merely for "necessities"', not only draws attention to a very proper distinction sometimes obscured in this branch of the law of contract, but introduces a useful basis of comparison for the consideration of the place of *Anson* in law studies in recent years, at all events in Melbourne. Forty years ago, *Anson* was a necessity for the student of law in the University of Melbourne. That was because it was the only text book used in the law of contracts. Lectures centred around it, and were amplified only to the extent of introducing some of the most recent English decisions and a few of the local ones. Now, with the development of the case book method, and the availability of more textbooks on the subject, it has ceased to be a necessity. But a student who bought it for the purpose of using it to keep up his studies in Contracts, would almost certainly find he would have to pay a reasonable price for it as a necessary, and that a reasonable price would be that charged.

There was always a crispness in the statement of propositions in the book and it is still there. The selection of cases and of the excerpts from the judgments, to illustrate the propositions, have always appeared apt for the purpose. These are particularly useful qualities for the student, who is attempting to grapple with the subject, and they are satisfying for anyone concerned to remind himself of the principles applicable to some particular branch of it. But to the latter, there is also apparent an up-to-date-ness (if such a term can be permitted) which conduces to confidence that care has been taken of the most recent developments.

It has sometimes been suggested that the attempt to engraft on to the original structure of *Anson* the developments in the law of later times has resulted in the lack of homogeneity associated with plastic surgery.

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But, coming to the book again, without anything in the nature of an intensive study of the changes made in recent editions, that impression did not obtrude itself on this reviewer. Instead there was a reaction of appreciation for the clarity and orderliness of the main structure of the work skilfully refurbished by the labour directed to more recent developments. In saying that, it is not intended to assert that other treatments of the subject have not exhibited their own merits. But they are not such as to require that the virtues of *Anson* should be thrown into the discard.

In the general field of discussion, note has been taken of the area of statutory intervention into the field of consensus. One is provoked by the discussion to wonder how much freedom of contract exists for the motorist, who, having driven his car into a city parking station, is confronted with a ticket endorsed with various conditions of exclusion and limitation of liability, when his retreat has already been cut off by a queue of equally solicitous patrons. His position may be as dire and as worthy of protection as the indigent borrower from the money lender, or the customer on hire-purchase terms, or the housewife tempted by the door-knocker.

In the more particular field, the esoteric mysteries of the doctrine, of the 'breach of the fundamental term' and the 'fundamental breach' in their relation to the term of exclusion, have been uncovered under the light of the decisions of recent years. The illustrations provoke comparison between the activities of the courts and those of the legislature in the pursuit of the common objective of protecting the under-privileged contracting party against the oppression of freedom of contract. It is obvious, however, that while judicial action can operate on a broader front of contract, it will be constrained by the limits of the doctrine it can invoke, while legislative action is circumscribed by the necessity of selecting the subject matter on which it is prepared to operate.

In the discussion on the subject of exemption clauses and the immunity sometimes sought to be extended by them to third parties, such as so-called agents, it is a little disappointing to an Australian reader to find no reference to the part played by the judgment of the High Court of Australia (and particularly that of Fullagar J.) in *Wilson v. Darling Island Stevedoring Co.* 95 C.L.R. 43, in the overthrow of the authority of *Elder Dempster & Co. v. Paterson Zochonis & Co.* [1924] A.C. 22, so fully acknowledged in *Scrutton's Ltd. v. Midland Silicones Ltd.* [1962] A.C. 446. But perhaps this is assumed to be a mere matter of history, to be found in the last mentioned report. In this connection, however, the same could not be said of the contribution made to the subject of mistake by the judgment of the High Court in *McRae v. Commonwealth Disposals Commission* 84 C.L.R. 377, and it receives appropriate treatment.

Although when dealing with the subject of limitations in the contractual capacity of the Crown, reference is made to the consideration given to that matter by the High Court in *New South Wales v. Bardolph* (1934) 52 C.L.R. 455, the text passes on to the subject of the relationship between the Crown and its servants, saying that 'it is probably not one of contract at all but of status, as it is in the case of the armed forces', without any reference to the judgments of the High Court in *The Commonwealth v. Quince* 68 C.L.R. 227 (airserviceman) and *Attorney-General (N.S.W.) v. Perpetual Trustee Co.* 85 C.L.R. 237 (police constable) and that of the Privy Council on appeal in the latter case [1955]

A.C. 457, although it may have been supposed that the student may find his way to these authorities through *Inland Revenue Commissioners v. Hambrook* [1956] 2 Q.B. 161, which is cited.

It might also have been thought that the discussion in the High Court of acceptance by post in *Tallerman & Co. Pty. Ltd. v. Nathan's Merchandise (Vict.) Pty. Ltd.* 98 C.L.R. 93 might have earned it a reference, particularly having regard to its challenge to the generality of the proposition that an offer by post is turned into a contract by the posting of a letter of acceptance.

For these omissions, the answer is no doubt open that the book does not purport to be an encyclopaedia of references. But a book which is offered to the Australian market is at a risk of losing some appeal because of them.

The *High Trees Case* (*Central London Property Trust Ltd. v. High Trees House Ltd.* [1947] K.B. 130) receives substantial treatment and adequate references to cases in which it has been applied, including New Zealand decisions.

Hedley Byrne & Co. v. Heller & Partners Ltd. [1964] A.C. 465 has a place in the work, in spite of its recent date. It is said in the preface that 'it is too soon to state with any confidence the precise effect of this case in the law of contract', and it is added that 'it may be well that others will not feel able to accept that the decision can have so far-reaching an effect on, say, the law relating to misrepresentation'. The implications of the case are discussed at various points. One statement made is this: 'The remedies for negligent misrepresentation are therefore now very similar to those for fraud. The party misled may elect to affirm or rescind the contract, and may in any event sue for damages for negligence.' But is the significance of the *Hedley Byrne Case* really in the area of the law of contract, or is it not rather in the field of tort, in that it recognizes the creation of a duty to take reasonable care where a 'special relationship' exists between the parties, the breach of which duty constitutes negligence founding a claim for damages? Granted that such a 'special relationship' may exist between parties contemplating entry into a contract, is that more than an accidental association? May not the necessary 'special relationship' exist quite independently of any contractual relationship existing or contemplated between the parties? Does negligent misrepresentation give any right to recission, or ground of defence to specific performance greater or different from that given by an innocent misrepresentation to the same effect? If the answers to these questions are as they are thought to be by this reviewer, Hedley Byrne is put in its proper place, which occupies a relatively small area of the field of contract, and a much more important part in the law of tort; and if so, statements of the kind quoted are more prone to obscure than to elucidate principle.

The subject of the tax element in damages introduced by *British Transport Commission v. Gourlay* [1956] A.C. 185, is brought up to date as at the time of publication; but it is controversial and shifting ground. To include the last minute case references on this and other subjects must have involved feats of industry in various respects.

The copious references in the footnotes to contributions to professional periodicals on topics which have evoked discussion, are a very useful feature of the work, but I regret that resistance is maintained to the inclusion of report references in the table of cases.

The over-all virtues of the work, however, justify its being given a place in libraries much more sophisticated than those of the students of the elementary principles of the law of contract.

GREGORY GOWANS*

The Law Relating to the Sale of Land in Victoria, by L. VOUMARD, Q.C., LL.B., (The Law Book Company of Australasia Pty. Ltd., (1965), pp. i-lxxv, 1-608, Index 609-680. Price £8 15s.

In reviewing the first edition of this work, published in 1939, Mr A. D. G. Adam, now Mr Justice Adam, remarked that its publication was a notable event. The acceptance of the book by the profession, and its constant use as a reliable statement of the law, has confirmed that learned reviewer's opinion. The publication of this edition, twenty-six years later, will undoubtedly be hailed with pleasure by those who have to deal with the many problems arising from contracts of sale of land—and what lawyer does not in the course of his daily practice have to consider such problems? The course of legislation over that long period, and the delivery of many judgments by the courts in England, by the High Court, and by the State Supreme Courts have provided much new material. Merely on the ground that the earlier edition has been brought up to date, the book is a valuable one. But the new edition does much more than that.

The learned author is well known to the Bench and to the profession as a leading authority upon this difficult branch of the law. His clearness of thought, his clarity of expression, his experienced judgment and reasoned conclusions have been made available to us. We can feel assured that any opinions coming from so qualified a source cannot very readily be shown to be erroneous.

The scope of the work remains unchanged. It will be found from a comparison of the Table of Contents with that of the first edition, that the topics treated remain almost exactly the same. But what does impress one is the vast range of topics included, many of them being such as might not have been expected in such a work. Thus, in the section dealing with options to purchase, there is a full treatment of this difficult topic and of the cases, many of them decided since the first edition was published. There is even a discussion of options created by wills. Incidentally, the text on the subject of options, which formerly occupied four pages, now occupies twelve. Another matter which receives full consideration is the effect and operation of the little understood, and somewhat neglected, Settled Land Act 1958. The forty pages devoted to this Act are, so far as I am aware, the fullest treatment it has received in this country. One would not have expected this in a work on Contracts of Sale, but its value is great.

The effect of the far-reaching provisions of the Sale of Land Act 1962 (amended in 1963) seems to me to call for separate and indexed treatment. The provisions are referred to in scattered portions of the text, but many of these are not referred to in the General Index. Under the heading 'Requisitions on Title' at pp. 488 and 489 will be found some valuable advice to solicitors acting for a purchaser who is purchasing from a vendor who is himself purchasing under an uncompleted contract of sale. The general index, under the heading 'Uncompleted Contract' does not refer to these pages, nor indeed to other parts of the work where the legislation

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