

To date the business community and its legal advisers have been principally concerned with examinable agreements, their identification as such and their subsequent registration. In the process it has been found that the restriction of examinable agreements to those which are "horizontal" in nature has in many instances done little to reduce the volume of agreements requiring registration. A typical "vertical" agreement, not requiring registration, is one between a manufacturer and distributors but if, as is often the case, the manufacturer supplies direct to government instrumentalities and other large consumers, a "horizontal" element may be introduced because of the actual or potential competitive situation as between manufacturer and distributor which may or might exist. This, together with the difficult question of competition not for markets but for a limited labour force in conditions of full employment or for scarce raw materials—see definition of "competitive" in s. 35(2)—, might call for further treatment in any later edition.

Again, the possibly far-reaching operation of the collusive tendering provisions of s. 85 of the Act seems to require more detailed exposition. Those examinable agreements which are exempted from the need for registration by s. 41(2) may nevertheless readily give rise, unless registered, to conduct which will be an offence under s. 85 if "tender" in that section is to be given a wide meaning and if intending customers or clients request a written quotation of the fee or commission to be charged for professional or other services. This may mean that the exemption from registration accorded by s. 41(2) should often not be availed of; difficult questions may also arise as to whether registration under s. 41, taking advantage of the beneficial provisions of subsection (7) and the regulations which give effect to its terms, is sufficient to enable the defence of registration to be raised in answer to a prosecution for breach of s. 85. These too are matters which a second edition might deal with.

The index, while comprehensive, is occasionally time-wasting and laborious; it contains a number of circular references and some errors; the item "Holding Companies" is an example of both these defects, "Onus of Proof" leads the cross-reference follower on a fruitless journey, while the searcher for material on agreements which have expired must learn to look for "Dead Agreements" in the index but for "expired agreements" in the text.

These are, however, minor complaints indeed and Australian Trade Practices Law can certainly be regarded as the standard text on a topic which is, as yet, only beginning to make its large presence felt in the commercial and legal life of Australia.

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Psychoanalysis, Psychiatry and Law by Professors JAY KATZ, JOSEPH GOLDSTEIN and ALAN M. DERSHOWITZ (The Free Press, New York, 1967), pp. i-xiii, 1-822. Australian price \$15.75.

In 1962 a Yale-based collaboration between two professors of law (Richard C. Donnelly and Joseph Goldstein) and a leading sociologist (Richard D. Schwartz) produced a thousand-page collection of cases and interdisciplinary materials entitled *Criminal Law: Problems for Decision in the Promulgation, Invocation and Administration of the Law of Crimes*. In order to fill out the bare legal bones of the criminal

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process, the authors included in the work not only cases, statutes and a generous collection of writings from other disciplines—political science, psychology and psychiatry, criminology, philosophy and theology—but also trial transcripts, probation and parole reports, prison classification files, pre-sentence assessments and similar materials. The work was exceedingly well received and widely acclaimed as one of great originality and merit and as an excellent teaching medium.

In 1965 one of the members of this team (Joseph Goldstein) joined with a psychiatrist (Jay Katz) to produce, in similar style, a book of readings called *The Family and the Law: Problems for Decision in the Family Law Process*. This publication was even more favourably received than the first and, thus encouraged, Goldstein and Katz, now aided by another lawyer (Alan M. Dershowitz), set to work to produce the third in the series—*Psychoanalysis, Psychiatry and Law*—said by the authors (more correctly, the editors) to be “a new effort by lawyers and psychoanalysts to achieve understanding by studying and challenging the experiences, assumptions, and knowledge of their different disciplines”.

This volume, like its two predecessors, is considerable in size—835 pages to be exact. It is divided into two chapters each of which may be considered as a separate unit. Chapter I is designed to be taught by an interdisciplinary team of lawyer and psychologist (or psychiatrist) while chapter II may be taught alone by a law teacher. Chapter I—“Psychoanalysis and the Law: Theories of Man”—seeks to present the basic concepts of psychoanalytic theory and to explore their relevance to law and the legal process. The chapter opens with materials centred on the question “Should Lawyers Search for a Psychological Image of Man?” followed by lengthy extracts from the works of Freud, which present an overview of the origins and teachings of his theory of psychoanalysis. The third part of chapter I focuses on the concept of the unconscious both as a theoretical construct for the purposes of psychoanalysis and as a pragmatic consideration for the lawyer. The legal material presented on the significance of unconscious motivations in human behaviour is not limited to the context of criminal law and procedure but extends to cases concerning errors in testamentary dispositions, unconscious breaches of copyright and constructive desertion in marriage. The final part of chapter I continues with a detailed and lengthy examination of the concepts of id, ego and super-ego, the ego defence mechanisms and their operation, and concludes with questions such as: Should law ask is psychoanalysis a science? Are the various psychoanalytical theories compatible? Is it relevant to talk about free will and determination? Again generous segments of the original writings of Freud are reproduced and extracts from numerous other writers are included. All are linked to the law by way of court judgments, trial transcripts, reports of legislative commissions, studies of crime and delinquency, probation and parole reports and so forth. Even Australia is represented by extracts from *Lang v. Lang* [1955] A.C. 403 (P.C.) on constructive desertion and the extraordinary case of *R. v. Cogdon* reported by Norval Morris in 1951 in the predecessor of this law review, *Res Judicatae*.

In chapter II of *Psychoanalysis, Psychiatry and Law* the editorial focus is changed from expounding theories of personality to examining the process of deciding who should be labelled “sane” or “insane”,

"mentally ill" or "healthy", "normal" or "abnormal" and to the problem of determining what legal consequences should flow from being so labelled. In order to set the problem into a meaningful context, part one of chapter II reproduces the entire record of a psychiatric patient from the time of her committal until the date of her release. This is followed, in part two, with materials relevant to the question "To what extent and why are 'mental illness', 'dangerousness', 'need for treatment' relevant to decisions concerned with institutionalization and deinstitutionalization?" Part three takes up for discussion the suggestion made to the English Royal Commission on Mental Illness (1957, Cmnd. 169) that because all mentally disordered patients are in some degree helpless and may need protection against ill-treatment, special legislation is required to ensure proper standards of care through a special system of inspection of hospitals and other procedures different from those which apply to other ill or disabled people. Those who doubt the need for such protective legislation will do well to examine carefully the table at pages 701-2 comparing the punitive measures applied at a psychiatric treatment centre in one American state with those administered in the local state prison. The chapter concludes with a further shift in focus from decisions concerning general competency to remain at large in the community—decisions related to commitment, custody, care, treatment and release of the mentally ill—to decisions about the specific competency of individuals to engage in certain activities or perform particular functions e.g. to dispose of property, execute instruments, enter into contractual relationships, vote, hold a driver's licence and so on.

Katz, Goldstein and Dershowitz are to be congratulated on their industry in compiling this volume. The reader is treated to a vast view of the theories of psychology and psychiatry and their significance to law. If he is not overwhelmed by the enormity of the task of assimilating this material he will find that he has been given a rather challenging invitation to re-examine the relationship between two disciplines, one old and one new, each long plagued by ignorance, wariness and, at times, outright distrust of the other. The materials presented, especially those in chapter II, are a powerful illustration of the fact that while both law and psychology have man as their central concern, their methods of approaching him are quite distinct and their lines of communication with each other are exceedingly poor. Indeed law students first faced with the psychological theories presented in chapter I will be delving into a new almost incomprehensible world. It is understandable that the editors advise that this section be taught by a team, at least one of whom is trained in psychiatry or psychology.

The psychological material extracted in chapter I is taught, in only slightly more detail, to psychology students in Australian universities over a period of three or more years. The aims of a psychology department and a law school in teaching psychological theories of human behaviour are obviously diverse but it is important to recognise that there is a world of difference between a course which teaches students at a cognitive level to "understand" a theory of human behaviour in the sense that they can describe its main features when called upon, and one which not only gives students an intellectual appreciation of a theory but by providing practical experience of its relevance leads them to incorporate it into their own lives as a working theory for daily life and professional use. This book only caters for the former type of course

and while this may not be a criticism from a law teacher's point of view, it is relevant as a warning to those conducting post-graduate courses in criminology or forensic psychology who decide to prescribe this admittedly excellent work against expecting it to have too great an impact on their students.

Looking over the work as a whole one cannot help but express one's disappointment that the editors saw fit to present so little of their own views by way of direct comment on the cases and materials presented. No doubt the editors' art is primarily expressed in the selection, editing and ordering of the text, but this reviewer for one would have liked to have had the benefit of a little more of the editors' experiences as teachers of five successive drafts of this book than the few broad questions posed at the beginning of each chapter and part. While this criticism may be met by the answer that to provide more by way of editorial comment would diminish the utility of the work as a teaching tool, it is submitted the work would not suffer if a little more were provided by way of signposting in the poorly charted field covered by this work. As a text *Psychoanalysis, Psychiatry and Law* is certainly of no more than general interest to the practising barrister or solicitor and is most probably too advanced for undergraduate law students in Australian universities. It is, however, a publication whose best use is to be found in interdisciplinary studies at post-graduate levels. It would be invaluable for use in post-graduate courses such as Diploma in Criminology or Diploma in Psychology as offered here at Melbourne University and it could also be considered as a possible text by those law schools in Australia which now allow the degree of LL.M. to be earned by course work instead of thesis.

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BRETT AND HOGG, *Cases and Materials on Administrative Law* (Second Edition of Brett's Cases and Materials in Constitutional and Administrative Law).

The first edition of this work entitled *Cases and Materials in Constitutional and Administrative Law*, under the sole authorship of Professor Brett, was published in 1962. The second edition, as the Preface points out, was prepared mainly by Mr. Hogg, Senior Lecturer in Law at Monash, with Professor Brett acting as "consultant and critic".

One major change has been the omission of the chapters on constitutional law and the second edition is accordingly entitled "*Cases and Materials on Administrative Law*".

The authors state that an understanding of basic constitutional concepts such as the Rule of Law, the Separation of Powers, and the Supremacy of Parliament is presupposed and for this reason they have decided not to include extracts on these matters in the present work. This is a decision which is, in some way, relevant to decisions which have to be made by public law teachers in organizing the content of their courses on constitutional and administrative law. Some teachers would consider that the first encounter of a law student with public law should be in terms of the basic constitutional concepts—derived initially from the British legal structure but modified in the light of

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