fallen within the first two paragraphs. But paragraph two is expressed in the widest terms: 'Any instrument declaring that the property vested in the person executing the same shall be held in trust for the person or persons mentioned therein'. In terms this is apt to catch a purely commercial declaration of trust, and indeed many instruments which do not fall within the concept of 'gifts' or 'settlements'. However, the better view, and it may perhaps now be said to be the authoritative view, is that this paragraph is to be read down by reference to the words of the Heading, and to catch only instruments declaring trusts which are trusts in the nature of a gift or settlement: *Castlemaine Brewery Company Limited v. Collector of Imposts*;[12] *Collector of Imposts v. Peers*;[13] *Scott v. Comptroller.*[14] But from time to time suggestions to the contrary have been made—*Kelly v. Collector of Imposts*[15]—and it does seem that such an interpretation leaves no independent role for paragraph two to play. Further, such an interpretation makes it a question of the greatest difficulty whether the requirement that the consideration be 'pecuniary', as expressly stipulated in the first paragraph, must also be read into the second paragraph. Although there is a brief reference in *Anderson* paragraph three (p. 164), nothing at all is said about paragraph two. It is thought that it would be desirable to put at rest the doubt raised by the wide words of the paragraph, even if only to re-assure the startled student who reads it for the first time and wonders how to avoid such a sweeping provision.

No book has yet been written which is sufficiently comprehensive to satiate the appetites of reviewers; and if it were, it would of course attract the most pejorative comments on its unmanageable complexities and unreasonable tedium. Therefore, the above comments must not be taken as more than suggestions of difficulties in the law of stamps which will continue to arise and perplex the profession notwithstanding the useful assistance which this new edition will give to the whole of the profession, and indeed to many others in the community.

N. H. M. FORSYTH*

The Concept of Obscenity, by RICHARD G. FOX, LL.M. (Melb.), Dip.Crim., Barrister and Solicitor of the Supreme Court of Victoria. (Law Book Company Ltd, Melbourne, 1967), pp. i-xix, 1-193 Price: $4.75.

The stated aims of this book are 'to expound the Australian law relating to obscenity and to articulate and analyze some of the principles and assumptions which underlie this legal concept' (p. 165). As such, a more suitable title for the book might well have been 'The Legal Concept of Obscenity' for, as the author himself indicates, the law's view of obscenity does not necessarily accord with that of the community at large. A substantial proportion of the community would no doubt agree, for instance, that irrespective of context, certain four-letter words are inherently obscene. But in law, whatever the community judgment may be, no word or subject matter is regarded as obscene *per se*. In Fox's own words, 'to the lawyer obscenity exhibits a chameleonic quality—legally its presence or absence in a publication is always ultimately determined by the time, place and circumstances of dissemination and the audience to whom it is directed'. (p. 32).

Despite its chameleonic quality, Fox tracks his prey with considerable skill and expertise. His review of state and federal legislation and judicial decisions in the field of obscenity provides a valuable source of reference for student and practitioner alike. So too does his critical analysis of the *raison d'etre* of this branch of the criminal law—an analysis which might also fruitfully be consulted by those who frame and administer obscenity laws.

Fox demonstrates that traditional justifications, such as the danger that obscene material will give rise to impure thoughts or overt sexual behaviour, are based largely upon subjective assumptions and prejudices. In particular, the popular belief that an offender's exposure to obscene material is often a causative factor in a sexual offence, tends to be rebutted by the empirical evidence available on the subject.

Seeking a more rational justification for obscenity laws, Fox seems to cast his

12 (1896) 22 V.L.R. 4. 13 (1921) 29 C.L.R. 115.
14 [1967] V.R. 122, 130. 15 (1907) 13 A.L.R. 613.
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lot with those who would prohibit obscenity because it is grossly offensive. While admitting that if this offence is given in private, no criminal action should lie. Fox argues that citizens have a right to be protected from blatant displays of obscenity in public because of the physical discomfort or mental distress such displays may cause.

An important point, which is not considered in sufficient detail by Fox, is how one distinguishes private from public offence. For instance, are displays of nudity in a theatre or cinema setting to be regarded as matters of private or public concern? Fox acknowledges that in answering a question of this type the nature of the audience must be considered. He also asserts that where different groups clash over an issue of obscenity, the immediate function of the law is to seek a possible compromise in order to keep the peace. 'Too often it is forgotten', he says, 'that the law of obscenity also serves as a social lubricant and buffer to *keep the foundations and framework steady*.' (p. 179).

The trouble with the approach suggested by Fox is that it leads all too easily to community censorship in its worst form. His own analysis of the administration by the courts of Australian obscenity laws shows that the compromise most frequently made favors stability rather than change. Little, if any, lubricant tends to be applied to conservative community and judicial attitudes, and a buffer continues to block the train of liberal thought which has relaxed the administration of obscenity laws in countries like the United Kingdom and New Zealand. In Australia, the regime insures that the philistines almost always win in their battles with the *literati*.

Of course, these criticisms are based, in essence, upon value judgments and it is most unfair to condemn an author simply because he may not make the same judgments as the reviewer of his book. Nonetheless, in such a contentious area as the legal control of obscenity, it is important to test the law against such fundamental concepts as freedom of speech and freedom of the press. Fox has not, in the reviewer's opinion, given sufficient attention to these matters and to this extent his analysis of the legal concept of obscenity is weakened.

Another rather surprising omission from Fox's analysis is a reference to a variety of laws controlling the licensing of theatres and cinemas and public halls. These laws can be used to control the performance of both plays and films which are regarded by the authorities as containing obscene materials. The recent restrictions imposed by the Chief Secretary in New South Wales upon performances of the play 'America Hurrah' illustrates the importance of these particular statutes. Indeed, throughout his book Fox concentrates largely upon obscenity in its written manifestations. In practice, probably the most frequent exercise of powers to control obscenity in Australia occur in relation to film for televisions and cinema screening, but these powers are only mentioned briefly by Fox.

Despite these gaps, all of which can readily be filled by consulting Campbell and Whitmore, *Freedom in Australia* (1966), Fox's book provides a welcome and generally balanced study of a controversial area of law in contemporary Australian society.

DUNCAN CHAPPELL*

Company Law, by R. KEITH YORSTON, C.B.E., B.Com., F.C.A., and S. R. BROWN, LL.B., F.C.A., 3rd Ed. (Law Book Company Ltd, Sydney, 1968), pp. i-xviii, 1-594. Price: $10.50.

The writers of texts in an area as complex as company law must make a series of decisions about the nature, scope and content of their work. What sequence should be followed in the presentation? Should the content of and variations between the several State Acts be reported in detail? How is case law to be integrated with the discussion of the legislation? To what extent should the historical background and the underlying principles of the law be explored? It would be quite impossible to prepare a volume which would be satisfactory for all purposes, and the author who attempts to cover all aspects of company law is likely to suit none of his readers.

There are available in Australia two tomes which deal with the Act with great

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