v. Hawkins,[6] Jenkyn J. (N.S.W.) decided that the Court had no power under Rule 164(2) to allow inspection by one party of a discretion statement by the other prior to trial or custody proceedings. In *Carmen v. Carmen*,[7] Mitchell J. (S.A.) followed *Hawkins v. Hawkins*. However, in *Kubiak v. Kubiak*,[8] Lush J. (Vic.) declined to follow *Hawkins v. Hawkins*. In *Pertoldi v. Pertoldi*,[9] Smithers J. (A.C.T.) in refusing to give leave to inspect the discretion statement says: 'My decision in this case of course owes much to the comprehensive examination of the relevant authorities and the reasoning of Jenkyn J. in *Hawkins v. Hawkins*'. The divergence between the judiciary in the various States has been dealt with in this book by setting out the judgments given in some detail. In most instances the learned authors refrain with great wisdom from advancing their own opinions.

It would be a great pity if the work which has been done in unifying the divorce laws throughout Australia should be lost by the development of different practices in different States in the application of the Act and Rules.

This work must have been a formidable project. It is extraordinary to find that the authors have been able to inject some humanity into it. An example of this is found at page 626 of the book where the authors are dealing with the subject of injunctions. In dealing with a case of *Taylor* v. *Taylor*,[10] they say: 'Selby J. refused the injunction sought but ordered that the husband be restrained from molesting the wife, from using insulting, indecent or humiliating language to her and from entering her bedroom except at her express invitation. He ordered that the wife be restrained from provoking the Respondent by words or actions'. A footnote appears: 'The authors understand the parties were before the Court within a short time seeking attachment for non-compliance with these orders'.

Having said earlier that this book is modelled on *MacKenzie's Divorce Practice* it is worth noting that the structure of both commences with a table of contents followed by a table of cases. The developments that have taken place in the last 15 years in this field are illustrated by the fact that in *MacKenzie's* book the table of cases takes up 30 pages, and in the book under review the table of cases takes up nearly treble that number. In the present book there follows the Introduction, called a 'Historical Introduction', and then follows the Matrimonial Causes Act 1959-1966, annotated and explained section by section. At page 1074 at the end of the book there is a comprehensive index from which it is possible to find any subject matter contained in this book quite easily.

In most instances judgments are exhaustively set out and explained but when it is necessary to refer to a case noted at the foot of any page the case is directly relevant to the principle expounded. It may seem strange to compliment authors of a textbook on this ground, but unhappy experiences in some legal textbooks cause me to praise it.

In this volume one also finds that the authors have included, in addition to the Matrimonial Causes Act and Rules, the Marriage Act 1961-1966 and the Regulations to the Act, thus covering the subject of law relating to marriage and divorce.

There is one criticism I make and the fact that it is so minimal speaks for the general excellence of the book. I feel that when amendments to the original Act appear in the text it would be easier to follow if they were printed in darker letters. The learned authors of this work are to be congratulated that from their knowledge, industry and research they have produced an analysis of the divorce law and practice in Australia which will be of practical use as a standard textbook for students and of invaluable assistance to the legal profession.

JOAN ROSANOVE*

The Law Governing Employment in International Organizations, by M. B. AKEHURST, M.A., LL.B., Docteur de l'Université de Paris, of the Inner Temple, Barrister-at-Law, Lecturer in Law at the University of Manchester. (Cambridge University Press, Cambridge, 1967), pp. i-xxvii, 1-294. Australian price: $11.90.

6 (1968) 8 F.L.R. 92.
7 (1966) 9 F.L.R. 200.
8 (1967) 10 F.L.R. 64.
9 (1966) 10 F.L.R. 53, 60.
10 (1964) 5 F.L.R. 122.
* Q.C. of the Victorian Bar.

This century has seen a striking growth in the number and influence of international organizations. In the author's words: 'In every sphere of international relations, from the regulation of commodity prices to the protection of human rights, from technical assistance to the preservation of international peace, international organizations have a part to play which is constantly becoming more and more important' (p. 3).

The effective working of international organizations requires that the civil servants who run the secretariats shall be freed from national control and responsible only to the collectivity of member states. Most international organizations require from officials an oath or declaration of loyalty to the organization. It is important to attract permanent career officials to develop the necessary skills and experience in administration and to acquire the habit of loyalty to the organization and independence from national pressures. This means that they must be given effective legal guarantees against insecurity and unfair treatment. The theme of this book is 'to show how the law serves to protect the interests of officials, and thereby to facilitate the growth of an independent career service, while meeting the requirements of administrative flexibility' (pp. ix-x). In doing this the author has concentrated on principles of general application which are valid for all organizations.

Akehurst contends that the body of law which has developed is part of the internal law of the organization and is entirely independent of the municipal law of any country, 'An organization's power to establish such an internal system of law is an implied power which flows automatically from its constituent treaty, and in no way represents an assignment or delegation of legislative competence by the host state' (p. 5). '[T]he validity of the internal law of an international organization is derived from the constituent treaty of the organization, the validity of which is in turn derived from international law.' (p. 259). This law does not fit easily into any conventional characterization. Its legal basis is not settled but it is pointed out that 'international tribunals behave *as if* the internal laws of different organizations formed part of a single system of law' (p. 263). It may be treated as a form of international administrative law.

Given a body of law which prescribes his rights, the international civil servant needs recourse to an independent tribunal willing to enforce those rights. Most international organizations are today subject to the jurisdiction of such a tribunal. Two notable examples are the U.N. Tribunal and the I.L.O. Tribunal. In the experience of the U.N. Tribunal there are echoes from English constitutional history of conflicts on the independence of judicial tribunals. In the early years of the U.N. Tribunal the U.S. Government was seeking to have removed from the U.N. Secretariat American officials whom it suspected of communist sympathies. The Tribunal's attempts to protect these officials led the U.S. Government to obtain a reduction in the powers of the Tribunal, to attempt to secure the non-execution of its judgments and to threaten its abolition.

The jurisdiction of the tribunals is limited to claims by officials arising out of the employer-employee relationship. The relief available includes annulment of administrative decisions, specific performance of an obligation and damages. The difficulty which tribunals encounter in deciding whether an employee is an official or not (p. 18) probably grows from international imprecisions similar to those criticized by Day J. 'We are now in 1893, and not in 1855. This is an age of exaggeration and humbug; we do not now, even in Acts of Parliament, use the same language as we did a hundred years ago. No doubt in those days, these plaintiffs would have been called "servants" and not "officers" and very properly so too. I must, however, read this Act in the sense of our time'.[1]

Whether an official holds office by contract or appointment the express terms of the employment are set out in the contract or letter of appointment and in staff regulations and rules. It has been said in relation to James I that the rights of Kings and peoples never agree so well together as in silence. In similar vein Akehurst remarks that 'a detailed set of rules, consisting largely of obligations and prohibitions, has a bad effect on the staff's morale; at least one senior official has already stated that it constitutes the biggest obstacle to the recruitment of a devoted staff' (p. 265). In order to do justice international tribunals have frequently proceeded on the basis that there were no gaps in the terms of employment or in the

[1] *Stroud's Judicial Dictionary* (3rd ed.) 1915.

statute granting the tribunal its jurisdiction. When tribunals invoke general principles of law to cover that which is not expressly covered it is seldom made clear whether these principles are treated as an independent source of law or as an aid to interpret the express terms. Similar uncertainties pervade the common law of contract in the area of frustration and the area of fundamental breach and the four corners rule.

The method of resort to general principles of law is reminiscent of the earliest development of the common law. Where a principle exists in most systems of municipal law this is treated as evidence of a general principle of law. The development of general principles of law in this area is encouraged by the reliance placed by international tribunals on precedents established by earlier decisions of their own or other tribunals. The U.N. Tribunal has given over 100 decisions and the I.L.O. Tribunal over 90 and there is a growing body of case law in this field.

General principles have sometimes been modified by the practices common in international employment. A body of practice has developed that holders of fixed term contracts are treated as entitled to be considered for continued employment. It has been held that this practice is a relevant factor in interpreting contracts and may lead to an interpretation which confers rights which go beyond the express words of the contract.

In a world peopled by such proper sounding employers as I.C.A.O., I.M.C.O., I.T.U. and B.I.R.P.I. there is a reassuring human touch about the case which dealt with the right to dismiss an official for being drunk and throwing wine glasses at a group of journalists from the balcony of his office.

Upon general principles of law the tribunals will review abuses of power by the administration and the misuse of procedure. They apply the rule that an employee must be heard before a decision of dismissal or non-renewal of contract is made against him. The rule that a man may not be a judge in his own cause has not been applied to any extent although it has been stated to be a relevant principle. One decision however establishes that the rule exists only to protect officials. If the Administration empowers an official to decide which members of the staff are to be maintained *en disponibilité* during the war, it cannot complain if he includes himself in that group (p. 173). The tribunals act on the principle that a procedural irregularity invalidates a decision only if the decision would have been different if the procedural requirement had been observed.

In interpreting the statutes or staff regulations of an international organization a tribunal applies a strong presumption against unilateral amendments of conditions of service, interference with acquired rights and retrospective amendments.

In this clear and readable book Akehurst does much more than state the basis and principles of a novel and unique system of law. In a world in which dismissal from employment or deprivation of promotion can amount to a severe punishment of an employee, cases occur where this punishment is imposed for reasons unconnected with his ability and reliability as an employee. Although the law of industrial arbitration may sometimes give a remedy, the common law seldom does. Even when an employee is entitled to a hearing before a domestic tribunal before dismissal there is often grave reason to doubt the objectivity of the tribunal. In emphasizing the importance of defining the rights of officials and ensuring through an independent tribunal that those rights are respected the internal law of international organizations appears to be in advance of many fields of municipal law. Akehurst rightly says of the case-law of international administrative tribunals on the judicial review of administrative action that: 'Built on general principles of municipal law, it has now reached a stage of development sufficient for it to be able to cross-fertilize its original source' (p. 269).

R. E. MCGARVIE*

* Q.C. of the Victorian Bar.