to a civil action for defamation that the statement was true. But in New South Wales, the Australian Capital Territory, Queensland, Tasmania—'and possibly Western Australia'—truth is no defence unless publication was for the public benefit.

Fair comment, too, is a safeguard with geographical variations. It is a defence still governed by common law rules in Victoria, South Australia, the A.C.T. and the Northern Territory. Elsewhere, State code provisions prevail. Under common law, the comment must concern a matter of public interest, must be fair, based on true facts, and be published without malice.

Professor Sawer reminds us that actions are nearly always tried by juries, so that the average taste and moral values of one's contemporaries enter into the verdict. This can make it dangerous to assume that a phrase which was not held defamatory in the past is still safe to use.

One of the author's particular warnings is that, in Victoria, a 'fair and accurate' report of a public meeting is not necessarily privileged. Here, some clarification by statutory provision is long overdue.

Overall, the Sawer tale is a cautionary one. The writer itching to be a fearless critic is warned to say, for example, that a particular painting is bad, not that the painter is incompetent; that the company director's fees are too high, having regard to the dividend rate, not that the director is defrauding the shareholders. But the temptation to libel a class of persons may be indulged, providing that the qualification 'some of' is attached to the libelled group.

There are sections on the complex and anomalous rules for publishing advertisements and results of lotteries, on obscenity, and on requirements for the registration of printers. A large glossary of legal terms amply covers the needs of most court reporters, with a surplus of Latin for those who want to play one-up-man-ship.

By and large, it is a valuable and very readable little book which will persuade most people with responsibilities in the publishing world of the need to keep in touch with a good lawyer.

FREDERICK HOWARD*

Matrimonial Causes and Marriage Law and Practice of Australia and New Zealand, being the fifth edition of *Joske's Law of Marriage and Divorce*, by THE HON. P. E. JOSKE, C.M.G., M.A., LL.M., Judge of the Commonwealth Industrial Court and Judge of the Supreme Courts of the Australian Capital Territory, Northern Territory of Australia and Norfolk Island. (Butterworth and Company Ltd, Sydney, 1969), pp. 1-951. Price: $22.50.

The winds of change are sweeping through the fields of Anglo-Australian family law. Within the last few years all Australian States have enacted legislation, for the most part uniform, dealing with adoption and with the maintenance of children and married persons. There seems to be a gradual acceptance of community property notions in determining the respective property rights of husband and wife.[1] It even may be that the law relating to illegitimate children, so rooted in the hypocritical morality of an earlier age, is on the verge of substantial reform.[2]

Despite these winds of change, there is widespread satisfaction with the present state of Australian divorce law. The preface to Toose, Watson and Benjafield's recent work, for example, refers to the Matrimonial Causes Act 1959-1966 (Cth) as reaching 'a peak of legislative excellence unequalled in the countries which hace inherited the English tradition as to marriage and divorce'.[3] Notwithstanding this unabashed admiration, it is inevitable that the winds of change will finally reach even the Matrimonial Causes Act. This is not to deny that the Act represented a very great advance in the previous position, when the various states controlled the law of divorce, nor that portions of the Act are very sensible. The suggestion simply is that a system based upon contradictory premises (compare the goals of the counselling

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1 See, *e.g.*, Married Women's Property Act 1964, s. 1, Marriage (Property) Act (U.K.) 1962. But *cf.* *Pettit v. Pettit* [1969] 2 W.L.R. 966 (H.L.).

2 See *Report on the Law of Succession Relating to Illegitimate Persons* (1966) Cmnd 3051; Status of Children Bill presently before the New Zealand Parliament.

3 Toose, Watson and Benjafield, *Australian Divorce Law and Practice* (1968) vii.

processes encouraged by part II of the Act with the assumptions behind the fault concept of divorce[4] and which denies married persons the opportunity of giving a dead marriage a decent and dignified burial cannot last forever, in spite of the apparent indifference of the legal profession to the need for reform.

Whilst the present system remains there is of course a need for a practitioner's text. *Joske* does not purport to be anything else, although the author is no stranger to the cause of matrimonial law reform, being in large measure responsible for the enactment of the Matrimonial Causes Act in 1959. As a practitioners' text, the book cannot justly be criticized either for its failure to evaluate the present law or its lack of proposals for change. Yet perhaps it might be suggested that practitioners would find useful a short account of the proposals for reform of divorce law made by bodies such as the Archbishop of Canterbury's Group[5] and the Law Commission.[6] Such an account would at least make information concerning important moves for reform readily available and might encourage members of the profession to re-examine the present system in Australia.

The basic requirements of a practitioners' text book are stated by Sir Garfield Barwick in the foreword to the fourth edition to be 'that it should be comprehensive, accurate and up-to-date' (p. 8). In this edition of *Joske*, in which the two separate volumes of the fourth edition dealing with marriage and divorce have been amalgamated into one, but with the emphasis heavily upon the law of divorce, these requirements are met adequately. It must be said, however, that the work pales by comparison with the exhaustive and periodically supplemented text by Toose, Watson and Benjafield.[7]

The main defect of the book is that it tends to read as a collection of headnotes, interlaced with paraphrased legislative provisions, devoid of any real attempt to discriminate between cases on the basis of their authority or persuasiveness. Thus recent Australian cases interpreting the specific wording of the relevant legislation and cases of fundamental importance such as *Gollins v. Gollins*[8] and *Williams v. Williams*,[9] are buried in the footnotes along with a multitude of long-forgotten cases that are relics of their time and hardly of any use as aids to interpretation today. One would think that a more meaningful approach for practitioners would be to concentrate upon the wording of the Acts and more recent decisions interpreting them (including at least some exposition of the courts' reasoning in important cases), relying upon older cases to fill in gaps. Such an approach would require an analysis of the possible interpretation of doubtful or ambiguous sections, rather than a mere repetition of the words of the section. Too often *Joske* expounds upon law now rendered wholly or partially nugatory by statutory provisions. Thus there is only a cursory reference to section 6A Matrimonial Causes Act 1959-1966 (Cth) (p. 133) dealing with polygamous marriages, although the law prior to its enactment is treated in some detail. The analysis of the poorly drafted section 41A concerning trial reconciliations and condonation is quite unsatisfactory (p. 469). Again, space is devoted to the intention previously necessary to establish constructive desertion (pp. 387-8), learning now irrelevant because of section 29 of the Act.

The author's approach produces other irritations some perhaps minor, others of considerable importance. There is constant repetition. Thus, for example, the significance of a refusal of sexual intercourse in the law of desertion is considered on three separate occasions, the treatment varying on each occasion (pp. 392-3, 398, 408-9). A sentence (p. 335) is repeated, very nearly *verbatim*, six pages later. It is also apparently thought that contributors to periodical literature have nothing to offer the practitioner, since there cannot be more than a dozen references to journals throughout the entire volume. It is difficult to follow a judgment that references to cases decided one hundred years ago in quite different social conditions are worthy of citation, but learned articles perhaps considering complex questions of statutory interpretation are not. There is also no doubt that the value of the book would be greatly enhanced if the text of the Marriage Act 1961-1966 (Cth) and the

4 Of course there are non-fault grounds of divorce, notably the separation ground in s.28(m), but the doctrine of matrimonial offence still predominates in the Act.
5 S.P.C.K. *Putting Asunder: A Divorce Law for Contemporary Society* (1966).
6 *The Field of Choice* (1966) Cmnd 3123.
7 Toose, Watson and Benjafield, *Australian Divorce Law and Practice* (1968).
8 [1964] A.C. 644.
9 [1964] A.C. 698.

various Rules and Regulations made under that Act and the Matrimonial Causes Act were included as well as the text of the Matrimonial Causes Act itself.

Despite these criticisms of *Joske* it is quite clear that Australian practitioners in the field of matrimonial law are well catered for in the way of text books. It is no reflection on the distinguished authors of those books to express the hope that much of what they have written will be relegated to the pages of legal history in the not too distant future.

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