BOOK REVIEWS

Contract Law in Australia, by K. E. Lindgren, J. W. Carter, D. J. Harland, Sydney, Butterworths, 1986, pp. lxxvii-815.

Until 1986 there was a considerable gap in the legal literature in Australia, with no comprehensive survey of the law of contract in this country apart from a local adaption of the well-known English text by Cheshire and Fifoot. This gap has now happily been filled with the publication of a monograph entitled *Contract Law in Australia* by Dr. K. E. Lindgren (now of the New South Wales Bar but formerly Professor and Head of the Department of Legal Studies, University of Newcastle), Dr. J. W. Carter and Professor D. J. Harland (both of the Faculty of Law, University of Sydney). In addition, another text on the law of contract by Professor D. W. Greig and Mr. J. L. Davis of the Faculty of Law of the Australian National University is currently in the Press and should appear early in 1987, while a new edition of the Australian edition of Cheshire and Fifoot is in the course of preparation, so that law students and legal practitioners will in the future be well served in respect of commentaries on contract law in this country.

Contract Law in Australia follows the usual pattern by dealing first of all with formation of contract and then discussing in turn the terms of the contract, the parties thereto, matters affecting contractual assent, illegality, performance and breach, termination and remedies. The table of contents is unusual in that it indicates which of the three authors is (or are) responsible for individual chapters and from this it appears that the bulk of the writing was undertaken by Dr. Lindgren and Dr. Carter. There is a table of cases (with, however only dates and not full citations) a table of statutes and a bibliography and comprehensive index.

In the preface to the book (at p. xi) it is described as having been written "primarily as a text for students in universities and colleges of advanced education who are undertaking, for the first time, a substantial study of the law of contract operative in Australia". The result is that the law of contract is painted with a fairly broad brush and the text lacks the incisiveness of, say, Treitel's work on the subject. Much that is controversial or demands detailed analysis appears to be relegated to a footnote and the reader is left to explore for himself the nuances in the judgments in a particular case. For example, the references in Chapter 2 to *MacRobertson Miller Airline Services* v. *Commissioner of State Taxation (W.A.)* (1975) 133 C.L.R. 125 (par. 208), *Butler Machine Tool Co. Ltd.* v. *Excell-O Corpn. (England) Ltd.* [1979] 1 W.L.R. 401 (with which case *Tywood Industries Ltd.* v. *St. Anne-Nackawic Pulp & Paper Co. Ltd.* (1979) 100 D.L.R. (3d.) 374 could usefully have been compared) (para.

224), *Godeke* v. *Kirwan* (1973) 129 C.L.R. 629 (para. 267), *Hall* v. *Busst* (1960) 104 C.L.R. 206 (Para. 268) and *Fairline Shipping Corpn.* v. *Adamson* (1974) 2 W.L.R. 824 (para. 229) could have been profitably expanded. Uncertainty of contract is always a difficult area to expound, but the problem raised by *Meehan* v. *Jones* (1982) 56 A.L.J.R. 813 of how to prove that a purchaser is not acting honestly when he says the finance available is unsatisfactory to him, could have been discussed, and reference could have been made to a number of articles in Australian and New Zealand law journals on the topic of "Subject to Finance" clauses and uncertainty of contract generally—apart from those cited. The juristic nature of option contracts is not explored as being outside the scope of the work (para. 248), but this reviewer would have liked to have seen some discussion on how there can be said to be a conditional contract of sale in the case of an option contract when the offer to sell has not yet been accepted. In the discussion on the rule that an offer is not effective until communicated (para. 217) there is no reference to what the position might be if the offeree is away on business when the offer arrives at his office and is expressed to be open for only a limited time, although the position in the case of an acceptance is discussed (see para. 234). In para. 232 it is suggested that acceptance is complete when a letter of acceptance is handed to a courier for delivery, but it could equally cogently be argued that the courier is the agent of the offeree who has engaged him to deliver the letter and that accordingly the contract is not made until such delivery is effected.

Again, in Chapter 3, while there is a passing reference in a footnote at the beginning of the chapter to this reviewer's study on consideration and promissory estoppel in Australia published in 1974 (*Consideration Reconsidered*), there is no attempt made to discuss the points raised in that study or to deal with the suggestions for reform there put forward. Indeed, reform of the doctrine of consideration would not appear to be even mentioned. The view is taken in para. 381 that there is a clear distinction between proprietary and promissory estoppel, whereas it has always been this reviewer's contention that there is no real distinction between the two concepts and that cases of proprietary estoppel are really examples of promissory estoppel operating as a sword and not only as a shield. (Cf. *Amalgamated Investment & Property Co. Ltd.* v. *Texas Commerce International Bank Ltd.* [1982] 1 Q.B. 84, 122.)

In the discussion on Mistake (Chapter 12) there is very little analysis of the important Australian case of *Porter* v. *Latec Finance (Qld.) Pty. Ltd.* (1964) 111 C.L.R. 177 (para. 1253) and no discussion on to what extent, if at all, the subsequent decision in *Taylor* v. *Johnston* (1983) 151 C.L.R. 422 has affected the situation in relation to mistaken identity. It would be interesting also to know what was the basis for distinguishing *Svanosio* v. *McNamara* (1956) 96 C.L.R. 186 in *Lukacs* v. *Wood* (1978) 19 S.A.S.R. 520 instead of being left with the bare statement that the former case was distinguished in the latter decision (para. 1233).

But these criticisms are minor ones. There are references at least in Chapter 2 to the American Restatement of Contracts and to the Uniform Commercial Code, as well as to some American decisions and the citation of Australian authority throughout the book appears to be exhaustive. This work is what it aims to be—a comprehensive student text and it looks as if it will admirably serve its purpose. It is well-written and it fills an acknowledged gap in the legal literature. It deserves to become an indispensable aid for succeeding generations of law students.

KENNETH SUTTON*

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* Professor of Law and Dean, University of Queensland.