

## BOOK REVIEWS

*Australian Trade Practices Law*, by GEORGE C. MASTERMAN, M.A. (Oxon), LL.B. (Sydney), Barrister-at-Law, and EZEKIEL SOLOMON, LL.M. (Harvard), LL.B. (Sydney), Solicitor of the Supreme Court of N.S.W. (Australia: Butterworths, 1967), pp. 1-524.

Masterman and Solomon, as it is already known in the profession, is, from a practitioner's viewpoint, quite the most useful of the several Australian texts now available which examine and comment upon the Commonwealth Trade Practices Act. It is little concerned with the economic theory which must be presumed to lie behind and to have inspired the legislation, but as a thorough analysis of the Act and of its likely practical operation it is invaluable both to the lawyer and to those company executives and trade association officials whose activities call for more than a mere passing acquaintance with this important new legislative field.

Its scope is more restricted than its title page suggests; it is in no sense a work on "the law and practice relating to . . . State Acts" concerned with monopolistic and restrictive practices but is wholly confined to the Commonwealth Act. The text of five important State Acts is set out in an appendix but they receive no more than eleven lines of comment, at p. 75. There is, no doubt, some practical advantage in having, in one volume, reprints of this State legislation, but the prospective purchaser must appreciate that this is all there is about State enactments. The Commonwealth Act is itself set out in another appendix, occupying fifty-one pages (not twenty-one as the contents of appendices on p. 387 would suggest). It is no fault of the authors that other textbooks on this topic also reprint the Act, so that an adequate library on the Commonwealth Act is likely to contain some four expensive reprints, but if the Act must again be reproduced, and there are some merits in such a course, at least it should include at the end of each section a cross-reference to relevant paragraphs of the authors' text.

One aspect of the authors' task must have been of particular difficulty, that of determining which provisions in this novel legislation called for detailed examination and comment and which required only cursory treatment. Not only are obscurities often revealed for the first time only when the legislation is sought to be applied to actual fact situations but some provisions which appear to be relatively unimportant or of only limited application bear a new and perhaps unexpected significance when tested against commercial realities. So far as a reviewer can judge at this early stage in the life of the legislation the authors have been, in the main, successful in their choice of the space to be devoted to given topics. Perhaps more might have been said of the comparable U.K. legislation; its text appears in an appendix and this is useful (although curiously indexed under "State laws") but discussion of the important differences between its provisions and those of the Commonwealth Act is scattered throughout the work. A separate chapter on this topic would aid in the evaluation of the numerous U.K. decisions, references to which abound in the text and which will necessarily for some years to come be our chief source of judicial guidance in the interpretation of many provisions of the Commonwealth Act. Similar observations apply to the relevant U.S. legislation, also set out in an appendix.

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.

N. M. STEPHEN\*

*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

\* Q.C., Barrister-at-Law.