criticisms. There is only one case illustrating the principle that an annulment may be refused because of the petitioner's lack of sincerity.[2] There is no case illustrating the matters weighed by a court when it consents, despite the opposition of the parents, to the marriage of children under 21.[3] There is no discussion of the possibility of proving adultery or disproving legitimacy by the use of blood-tests.[4] There should have been more problems to test the reader's comprehension and the problems should have been more complex and searching. It must, however, be admitted that there is little in the book that could be omitted and it already runs to some 673 pages. Being both fair and realistic it should be conceded that the most the authors could hope to do was to please some of the people some of the time. They deserve praise both for their courage in breaking new ground and for the considerable success which attended their efforts.

D. J. MacDOUGALL*

An Introduction to Roman Law, by J. K. B. M. Nicholas, All Souls Reader in Roman Law in the University of Oxford. Oxford at the Clarendon Press, 1962. vii and 281 pp. (£2/6/6 in Australia).
Contract of Mandate in Roman Law, by Alan Watson. Oxford at the Clarendon Press, 1961. pp. 223.
Gaius, by A. M. Honoré. Oxford at the Clarendon Press. xviii and 183 pp.

It says much for the vitality of Oxford scholarship that, in the space of about one year, three such important books by its scholars have been published. Each of them, in its own field, is a major work.

Mr. Nicholas' book is what it purports to be, a general introduction to the whole of Roman Law written for the intelligent lawyer who is no specialist in Roman Law. It avoids the twin dangers of any introductory work, that is, patronising generality and over-detailed compression. It is comprehensive, illuminating, concise, accurate and always stimulating. The author is always careful to indicate what matters are controversial and what beyond doubt. The approach of Mr. Nicholas is to describe Roman Law as a rational development of legal thought (having both merits and defects) achieved against a background of certain fundamental ideas and institutions; and, to make the description more vivid, he constantly compares the Roman Law approach to legal problems with that of the Common Law, illustrating, where necessary, in what way the different ideas and institutions out of which the Common Law grew produce different practical results from those of Roman Law. As a result, after reading the book, not only a student, not only the educated reader, but even a legal scholar, gains a deeper appreciation of both Roman Law and the Common Law. It has been hailed as "a first-rate modern book on Roman Law". It deserves the compliment.

Amongst the outstandingly well written parts of the work are the analysis of natural law (56-7); the distinction between actions and rights *in rem*

[2] It is assumed that the interpretation given to s.49(2) of the Matrimonial Causes Act, 1959 (Cth.) will reflect the earlier case-law. A comparison of *W.* v. *W.* (1952) P. 152, *Slater* v. *Slater* (1953) P. 235 and *Pettit* v. *Pettit* (1963) P. 177 soon reveals that this apparently simple doctrine is quite complex.
[3] In Australia see *Re an application under the Marriage Act* (1964) V.R. 135; *Re an application under s.17 of the Marriage Act* (1964) Qd. R. 399; *Re an infant* (1963) 6 F.L.R. 12; *Re a Minor* (1964) 6 F.L.R. 129.
[4] In Australia see *Hobson* v. *Hobson* (1942) 59 W.N. (N.S.W.) 85, *Liff* v. *Liff* (1948) W.N. 128 and, on a doubtful power to order blood-tests, *R.* v. *Jenkins* (1949) V.L.R. 277.
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and *in personam* (99-103); the Common Law and Roman Law concepts of possession (107-114); the operation of the *actio Publiciana* (126-8); the Roman attitude to contracts (158-167); and the comparison between Common Law and Roman Law attitudes to the distinction between tort and crime (226-7).

The second book listed above is very different in scope from Mr. Nicholas' work, but equally outstanding. It is a detailed study of the development and importance of the contract of mandate in Roman Law. It is the perfect monograph on the subject. In Chapter 1, Dr. Watson examines carefully what evidence there is on the origins of the contract and concludes that it was more likely an invention of the *praetor urbanus* than of his colleague the *praetor peregrinus*. Chapter 2 analyses the construction of Digest Title 17.1. Chapter 3, an exceptionally perceptive work, is an endeavour to explain how *mandatum* and *procuratio*, originally quite distinct, came to overlap each other and eventually be integrated—in my opinion, an endeavour which succeeds brilliantly. Chapter 4 is a comparatively straightforward and conventional (but nonetheless sound) treatment of mandate as a consensual contract: when did it arise? Could a *mandatarius* be bound by silence? How and when could the contract be revoked? In Chapter 5, we have a discussion of the object of the contract, and in particular of the circumstances in which a third party may sue the *mandator* or be sued by him. The author, in Chapter 6, next turns firstly to the requirement that the contract be gratuitous and nextly to the problem of the *interesse*, demonstrating the coherent relationship between Gaius' *Institutes* 3.155, the Digest Title 17. 1. 2, and Justinian's *Institutes* 1. 3. 26 pr., and incidentally distinguishing the *interesse* required in a stipulation. In Chapter 7 the maxim *mandatum morte solvitur* is examined, Dr. Watson concluding (surely correctly) that, in classical law at any rate, it only operated while the contract was *re integra*; he also says what little can be said of the anomalous *mandatum post mortem*. In Chapters 8 and 9 the obligations of the *mandator* and the *mandatarius* are respectively analysed. In the former chapter Dr. Watson ultimately accepts Stein's view that the *mandator* was liable not only for the mandatory's expenses but also for any financial loss suffered by the mandatory as a result of the mandate; one would wonder how any other view would be possible were it not for the views of Kübler and Heldrich. In the latter he rejects Donatuti's improbable theory that the mandatory cannot delegate his mandate. Finally, in Chapter 10 Dr. Watson makes a brave attempt to unravel the contentious texts on the standard of liability in mandate. How is it that texts of both Paul and Ulpian state that the liability was for *dolus* only and also for *culpa levis*? Dr. Watson's novel solution is that the standard of liability varied with the position of the parties, a solution which to the reviewer carries more conviction than any other solution ever suggested.

The third of the works to be reviewed, Mr. Honoré's work on Gaius, is different again. It is a polemical manifesto designed to rehabilitate Gaius in the academic world. Up till recently, Gaius has been unfashionable. Poor Gaius has been derided as "second-rate", "worthless" (Asher), "unoriginal" (Jolowicz), "obscure" (Lee); all argue that he did not have the *ius respondendi*; no classical jurist quoted him; Mommsen and his followers found him so depressing that they thought he was a provincial; how such a despicable fellow ever gained the soubriquet "noster" could only be explained by the intellectual decadence of legal thought in the later Dominate. Mr. Honoré will not have it: Gaius was a Roman, although he spent much of his life in the provinces; he was an original thinker who absorbed, clarified and transmuted Aristotelean philosophy into Roman legal thought; he fled Rome in order to thumb his nose at the bureaucratic Emperor Hadrian; he was

the originator of three types of legal literature: the "Institutes", the "*Res Cottidianae*" and the commentary on the provincial edict; he had many other virtues besides. As a final gesture, the book is dedicated to Gaius!

Mr. Honoré does not prove his points. In our present state of knowledge, no proof is possible. Mr. Honoré is aware of this. He says (xvii): "I do not think we should be afraid of the word 'speculation'. . . . If the conclusions are wrong, they are at last refutable." His book is, therefore, a brilliantly argued piece of speculative special pleading. The most that can be said of many of his conclusions is that they are often as possible as any other and sometimes more likely. (An example of the latter is his treatment of the influence of Aristotle on Gaius.) On some points, however, the author's penchant for "speculation" runs away with him: for example, there is no more reason for connecting Gaius' (supposed) flight from Rome to the East with Hadrian than with the hypotheses that he was pursuing a lover or taking a rest cure.

The greatest virtue of Mr. Honoré's book, in the present reviewer's opinion, is the number of interesting points which he makes from a careful study of the usages of juristic language. He argues, with complete conviction, that much can be discovered from a precise analysis of the idiosyncratic jargon of the various classical jurists. Thus he points out: "We have less than eighty fragments of Venuleius Saturninus but even so we can pick out his marks: *videbitur* for *videtur*; and *natura* as a ground of decision." To this end Mr. Honoré has compiled a large number of immensely valuable Tabulae Laudatoriae, to be used in conjunction with Lenel's *Palingenesia*, showing the number of citations and mode of citation by the principal jurists of the age of Gaius, of the emperors and of other jurists; and to the Tabulae he has appended various linguistic notes covering such topics as the number and frequency of citations, the use of tenses, the frequency of Greek words, the mode of introducing and disposing of legal problems, the arguments relied on, the use of the first person and the place names mentioned.

Among the book's many incidental virtues is a stimulating discussion of the differences between the Sabinian and Proculian schools.

The only serious misprint the reviewer was able to discover is "the imperfect *negavit*" (30).

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