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BOOK REVIEWS

English Private Law EDITED BY PETER BIRKS [Oxford: Oxford University Press, 2000. Vol. 1: ccxxxi + 676 pp. Vol. 2: xviii + 1084 pp. First Updating Supplement 2002: xxix + 187 pp. Hardcover (Vol. 1 and Vol. 2), Softcover (Supplement): £175 (boxed)]

The English common law is becoming increasingly difficult to manage. There are several contributory reasons. First, the number of English law reports has, for various reasons, increased vastly. The *All England Law Reports* and the *Lloyd's Law Reports* can now be found in several flavours each. Specialist law reports are bountiful. Secondly, the ease and efficiency with which primary case materials (of the United Kingdom as well as other significant Commonwealth countries) can be readily made available for global online electronic access has led to an explosion of non-pre-selected and unedited case authorities available to counsel for use in arguments in court. Notable free-access websites include http://www.bailii.org/ (United Kingdom), http://www.austlii.edu.au (Australia), http://www.canlii.org (Canada), and http://www.hklii.org (Hong Kong). Thus, there is a Practice Direction directed at stemming the rising tide of case law flooding into the English courts (Practice Direction (Citation of Authorities) [2001] 1 W.L.R. 1001), by placing restrictions on the types of cases that may be cited in arguments in court. Thirdly, judgments are becoming more lengthy. There are progressively more and more precedents to take into account. There are also more academic writings to take into consideration, in part due to government policies pegging University funding to research output. There is a growing tendency to count too many trees before seeing the proverbial wood; this in turn can have insalubrious effects on real forests. In a recent note in the Law Quarterly Review, Professor Francis Reynolds Q.C. at (2003) 119 L.Q.R. 177 at 180 lamented the sad state of the common law: "There is a danger that the common law, already under some threat in England, may throttle itself by a mountain of paper."

All lawyers and law students in Singapore know that the law of Singapore is built upon the foundations of English law, historically through

the general reception of English law by virtue of the Second Charter of Justice 1826 and then through the much vexed provision for the continuous reception of English mercantile law now thankfully repealed from the Civil Law Act (Cap. 43, 1999 Rev. Ed., Sing.). Statute law generally received in 1826 has since been reduced to a closed list. The relevance of English common law in Singapore continues via the Application of English Law Act (Cap. 7A, 1994 Rev. Ed., Sing.). The rejection of the declaratory theory of the common law by the Singapore Court of Appeal in *Management Corp. Strata Title No. 473 v. De Beers Jewellery Pte. Ltd.* [2002] 2 S.L.R. 1 at paras. 50–1 (and see also *Info-communications Development Authority of Singapore v. Singapore Telecommunications Ltd. (No. 2)* [2002] 3 S.L.R. 488 at para. 107) raises fresh questions about the relevant cut-off date for the reception of English common law in Singapore. But whatever the theoretical position may be, as a practical matter, the tradition of the bench, the bar and the legal academic community in Singapore continues to be one of looking to English law as the first point of reference for common law issues which are not covered by local authority. Thus, whatever has been said above about the problems of English common law affects legal practice in Singapore as well.

Laws that are tough to manage, are even harder to learn. There are, of course, treatises and textbooks to deal with the burgeoning primary source materials. Today, numerous specialist textbooks provide the necessary detail for lawyers to deal with specific problems. *Halsbury's Laws of England* (4th ed.) remains the primary practitioners' reference work that claims to be a comprehensive statement of English law. However, it runs to Volume 56, and many of the volumes have in fact spawned sub-numbers. Moreover, quite apart from its magnitude, it is organised along the lines of Charles Viner's *A General Abridgement of Law and Equity: Alphabetically Digested Under Proper Titles with Notes and References to the Whole* (1742–1753). *Halsbury's* is a wonderful reference work for someone looking for detail. But what if one is looking for the big picture, the broad underlying principles that inform the rules of English law? Some common lawyers have cast sidelong glances at civilian jurisdictions and admired the seemingly less complex situation where legal reasoning could start from general provisions of a civil code. The first recorded attempt to try to spell out the principles underlying the jurisprudence of the English common law was in the classic latin work, Bracton's *De legibus et consuetudinibus Angliae* (*On the Laws and Customs of England*) (circa 13th century). Blackstone's *Commentaries on the Laws of England* (1766–1769), was the first compendious work since then to map out the principles underlying the English legal system. Blackstone emulated the style of civilian jurists by presenting the common law as system of rational principles underpinning the myriad of case authorities.

English Private Law, a magisterial work in two volumes edited by Professor Peter Birks Q.C., Regius Professor of Civil Law at the University of Oxford, presents the modern answer to Blackstone. As explained in the Preface, the book is intended to take a step towards meeting the modern challenge of information overload facing English law: "Precedent has to yield more ground to principle, information to understanding." The book is intended to paint a broad picture of English law. It is not a layman's introduction to the law. Rather, it is intended to plot the contours of English private law, and to present a concise exposition of the principles and doctrines that undergird the private law.

Drawing upon his earlier work, Professor Birks emphasises the need for conceptual road-mapping in the understanding of the law. The map that he proposes is similar to that found in the civil law. This two-volume work begins with a survey of the Sources of Law, and then divides into the Law of Persons, the Law of Property, the Law of Obligations, and Litigation (the last is presumably a modern take on the Law of Actions). While the map itself may be a matter for controversy, most would agree that some conceptual framework must be necessary. Even if one disagreed with the civilian slant of the structure, the chapters themselves can stand on their own conceptual grounds. They are quintessentially common law in their approach and analysis. It is reported that in 1388, the English Parliament declared that the realm of England never has been and never shall be "ruled or governed by the Civil Law" (J. Baker, *An Introduction to English Legal History* (3rd ed., 1990) at p. 112, fn. 4). This book does not attempt to turn the tide. The unique characteristics of the common law shines brilliantly through the text.

It is notable that there is no Section or Chapter on "Equity". But a look at the index indicates that principles of equity are in fact discussed in assorted places. This is a salutary lesson in classification itself: equity jurisprudence is undoubtedly a highly significant aspect of private law, but it refers to a historical jurisdiction and a methodology; and in a book organised on conceptual grounds, this jurisprudence is rightly dispersed across diverse topics. The conceptual structure works for the most part. The section on Litigation, however, appears to function also as a kind of miscellany. While the chapters on Civil Procedure and Judicial Remedies find a natural place there, the positioning of the chapters on Insolvency and Private International Law in that section appears somewhat contrived.

The contributors are eminent scholars, all of whom have distinguished themselves in their own fields. While the quality and style of writing is a little uneven, the standard is generally very high throughout. The materials are presented with enviable succinctness. In the main, underlying principles are expertly teased out of the law without overbearing the reader with details.

English Private Law is a boon to civil lawyers coming to grasp with the fundamental principles of English law for the first time. For this purpose, the civilian framework in the table of contents of the book gives it a special appeal. But the book will prove useful to anyone who wants to get an authoritative overview of English private law and a distillation of the essential principles forming the infrastructure of the law. This book can serve a useful role in providing the first point of reference for lawyers from the United Kingdom, in the Commonwealth and elsewhere. Judges are likely to find the book useful as an aid to cut through the jungle of mounting volumes of case law, and to cut to the chase of the principles of English law. The book will edify the novice reader looking for a bird's eye view of English law, and satisfy the cognoscenti reading to learn from other experts in specific subjects. Students can also benefit from reading the accounts of the law from the leading authorities in the respective subject areas. It is clearly aimed at the practitioners' market as well; the first supplement updating the main text is sold together with the main volumes in a boxed set, and by the time this review is published it is expected that the second cumulative supplement will have been made available. While *English Private Law* will not do the work of *Halsbury's Laws of England*, or Sweet & Maxwell's *Common Law Library* collection, it stands on its own as a distinctive compendium of the private law of England, and will be a useful aid to busy practitioners who need to acquaint themselves with general principles of specific areas of English law.

Every law library should own at least one copy of *English Private Law*. The individual volumes are handsomely bound, if they are a little on the expensive side, but they will add stature to any shelves they stand on. They will also sit elegantly on a writing desk. But they are not designed to stand or sit still for too long; they should be read, and will repay close study.

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