BOOK REVIEWS

AN INTRODUCTION TO THE CIVIL LAW. By K. W. Ryan, B.A., LL.B. (Q'ld), PH.D. (Cantab.). [Sydney: The Law Book Co. of Australia Pty. Ltd. 1962. xiv + 294 pp. £A2 18s. 0d.]

Dr. Ryan has selected a most unassuming title for his book. In fact he has written a book the need of which was felt for quite some time, *i.e.* a treatise comparing the elementary concepts of civil law systems, in civil matters, to their counterparts at common law. Four systems are, generally, under discussion, namely Roman law, French law, German law and Common law.

The book comprises eight chapters. The first one, entitled "The Development of the Civil Law", covers a fairly wide area. It commences with Justinian's Condification and leads up to the enactment of the two codes discussed in the book, *viz.* the *Code Civil* and the *Buergerliches Gesetzbuch.* One chapter is, no doubt, a small canvas for so large a subject. The learned author has however managed to include all that is, in fact, relevant. The only subject which could, probably, have been added to the discussion is the influence of Roman law on common law, and especially its revival in the old English Universities.

The second chapter of the book discusses the Law of Contract. It is extremely well written. The author clearly shows the development which lead to the general concept of contracts in modern civil law. The comparison of the development of French and German law to the evolution of assumpsit at comon law is commendable (pp. 38-42). So is the section on offer and acceptance. It is, however, felt that a few additional authorities regarding the time of which an acceptance becomes effective (at pp. 43-44) could have been added.

A few observations can be raised with reference to the next section, *i.e.* "Consideration and Causa". The author is, of course, right in pointing out that the BGB does not include special provisions requiring *causa.* At the same time, a contract can, in German law, be avoided if a Rechtsgrund (i.e. *causa)* fails. (See Palandt, BGB, (14th ed., 1955) at p. 72). Even in the case of an abstract promise (s. 789 BGB) the failure of the *causa* can lead to avoidance of the contract, *i.e.* through the enrichment provision in s.812 BGB (see RGRK-BGB (11th ed., 1559) vol. II at pp. 989-995, especially at p. 994). In fact, the whole concept of abstract promises is highly relevant in connection with any discussion on *causa* and could have been profitably included. The section should, perhaps, also have included a reference to Capitant, *De La Cause Des Obligation,* which is still often quoted as an authoritative work on the subject of *causa.*

The next two sections in Cap. 2 are on "Mistake" and "Supervening Impossibility Frustration and Revision of Contract". Both of them can be recommended. The discussion of the maxim *pacta sunt servanda* and the *clausula rebus sic stantibus* is very neat and thorough. The section on "Contractual Liability" is, too, very good. In the discussion of "Putting Into Default" (at pp. 65-66) however, an explanation of the nature of *"Fixgeschaefte"* might have been included. The section on "Contracts for the Benefit of Third Parties" raises an interesting point, *i.e.* the similarity between contracts for the benefit of third parties in Germany and the English concept of trusts (p. 71). The remaining sections of Cap. 2 are, too, well written.

The third chapter of the book deals with "Particular Contracts and Quasi Contracts". The author has selected sales, gifts, tenancy and *quasi contracts.* All of them are well discussed. The addition of bailment to a further edition of the book might, however, be considered.

Cap. 4 deals with the law of torts. Here the similarities and dissimilarities between the French and German concepts are most ably explored. For a basic work the learned author has done extremely well. The section on "The Duty of Care" is, in particular, most interesting. The author explain the German limitations of the duty of care, *i.e.* that a wrongdoer cannot be held responsible for a mere pecuniary loss. He is, of course, right in stressing the similarities on that point between the German attitude and the French view at 1962. In view of the recent decision of the House of Lords in *Hedley Byrne & Co.* v. *Hellers & Partners* the position in English law would, now, seem more similar to the French concept, *i.e.* that any fault can lead to an action in negligence.

The fifth chapter on "The Law of Property" is the one this reviewer found most stimulating. The author discusses Patrimony and Real Subrogation in a most convincing manner. His sections on "Moveables and Immoveables", "The *Numerus Clausus* of Real Rights", "Possession" and "The Legal Effects of Possession" should be read by any lawyer interested in legal concepts of the law of property. In fact the chapter on property, far from being a mere introduction, includes a fine analysis of legal concepts and as a contribution to corporative law is, no doubt, the most important one of the book.

The sixth and eighth chapters of the book, *i.e.* "The Law of Succession" and "Family Law" concern branches of the law which are altogether unfamiliar to the reviewer. In view of this it is felt advisable only to state that they offer very pleasant reading.

An interesting attempt of the author is to compare, in Cap. 7, the English law of trusts to Continental fiduciary institutions. His discussion of the continental fiduciary institution, though convincing, does not show, on the whole, that trusts are dispensible. Apart from the passing of property to the trustee, the rights of the *cestui que trust* are an important feature of the whole concept. In fact, the special position of the *cestui que trust* in the event of the bankruptcy of the trustee is of major importance, and continental law is, in that respect, not very similar. The commercial trust, in particular, has no counterpart in civil law countries. This short-coming is often lamented by French authors, *e.g.* Stoufflet, Le Crédit Doconentaire (Paris, 1957), who have, so far, not managed to find a useful substitute for "trust receipts".

It should be stressed that, despite the above remarks, as far as substance goes the book is very ably and well written. It should most certainly be recommended for teaching purposes. It could well guide common lawyers to an understanding of the elements of civil law. The comparative method, selected by the author, is very suitable for that purpose.

A few observations should, however, be raised about the technical side. The learned author does not quote many authorities and does not give many references to French and German sources. One instance (*i.e.* pp. 44-45) has already been pointed out. The same observation can be made in connection with other topics, *e.g.* at pp. 53, 61-64 and in many other places throughout the book. At p. 66 for example, the author quotes a view of Staub, without giving a reference. It is not suggested that over citation is a good feature in a book, but, even in an introductory work, a sufficient number of authorities is an advantage. In a comparative work, in particular, authorities can often assist a reader who might be interested in pursuing a subject. In some place, in addition, the author uses what can hardly be described as the best authority, *e.g.* a reference to Roman Dutch law text in connection with a discussion of *causa,* in French and German law (at p. 48). On the whole the incorporation of further references to German and French authors in a new edition is strongly recommended.

Another technical point concerns the mode of giving references in the book. In many places the author deviates from the common English standards of citations. References to the L.Q.R. and other periodicals often do not include the year (*e.g.* at pp. 46, 101, 129, 133, 147), the titles of books are often not fully set out and invariably not in italics and year and place of publication are not included (*e.g.* at pp. 46, 50, 76, 150, 153, 158, 178). French cases are often quoted in a non-French manner, *i.e.* including the names of the parties, and the references to Dalloz vary from the practice common in France (*e.g.* at pp. 65, 84, 68, 103, 120). These may, of course, be described as minor matters but, on the whole, a proper mode of quoting

references makes reading easier, especially since printing principles are becoming well settled. Although these technicalities cannot detract from the value of the book, improvements would be very useful. A revision of the mode of citations would bring the book within the range of a "class one printing job". In fact, apart from the references, the book is set in pleasant print and seems free from errors.

Finally, despite all the above observations the author should be congratulated for a good, well written and stimulating book. So should the publishers who have, again, assisted in filling in a gap in legal literature.

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