

THE LAW OF CONTRACT. By G. H. Treitel. [London: Stevens. 1962. xli + 656 pp. (incl. index). £2 5s. 0d.]

One of Mr. Treitel's purposes in writing this book (and he adds modestly the 'excuse' for adding to the many books on contract) is to emphasise the connection between modern commercial practice and the general principles of the law of contract. As a result, this book departs from the common practice of drawing examples principally from the sale of goods, and makes use of illustrations from other commercial transactions. This is indeed a welcome change.

This book also represents a departure from orthodoxy in the arrangement and contents of the book. The traditional division into 'parts' has been abandoned because the author believes this raises "more problems than it solved". The principal merit of the traditional method was that the student was introduced to the subject in 'neat compartments' which were easy to grasp. Thus the grouping together of vitiating factors enabled the student to remember them all the more easily. Although Mr. Treitel rejects the 'parts' division, he does in fact arrange most of the chapters in the usual manner. Thus the vitiating factors though not arranged together in a separate part, are set out consecutively. The principal changes in re-arrangement are not in the chapter headings but in the matters discussed in them. Thus rescission and variation of contracts is discussed under the chapter on consideration. Also conditions and warranties are discussed in the chapter on performance, in order "to stress its relationship with the doctrine of substantial performance". It must be conceded that choices of this nature will always contain an element of arbitrariness. Nevertheless, it is surprising that a discussion of conditions and warranties is omitted from the section on the terms of a contract. The only advantage gained by Mr. Treitel's arrangement is to point out that a party guilty of a breach of warranty but not a breach of a condition can generally enforce the contract, though he must pay damages for the breach. But surely the distinction between conditions and warranties is, at least, equally important elsewhere, particularly in relation to implied terms and exemption clauses. Perhaps what is required in this book are 'cross-references' in the relevant places. There are other places where cross-reference are required. For instance, at page 25 in the discussion of acceptance unilateral contracts it is insufficient to refer to Chapter 3 for a discussion of consideration in relation to such contracts. Chapter 3 begins at page 41 and the point referred to is only dealt with at page 80 under 'special cases'.

Generally speaking, Mr. Treitel's treatment of the subject-matter is admirable. The text is divided into sections, sub-sections and paragraph headings which would be very useful to the beginner. This process is carried to the extent of classifying the points numerically *e.g.* three types of contracts must be distinguished in determining the core of the contract (p. 147), while section 6 of the Moneylenders Act, 1927 differs from similar provisions contained in the Statute of Frauds in five ways (p. 110). The material is well presented and there is a remarkable degree of clarity. Controversial issues are presented objectively even where as in infant's contracts the author has strong personal views.

One qualification must however be made. The author defends, on occasion, vagueness and confusion in the law. For instance, the lack of precision in the law relating to severance is not criticised because "no one relies, or at any rate should

rely, on the doctrine of severance when making an illegal contract". Even if this were true, this is not a satisfactory explanation, because, *inter alia*, persons other than the 'guilty' parties rely on the contract to regulate their conduct. Another example of this approach is found in the author's explanation of the doctrine of fundamental breach. After a most useful discussion on the subject, Mr. Treitel argues that the uncertainty of the law "is not necessarily regrettable". He says that "the very vagueness of the doctrine is....a useful aid to judicial control of exemption clauses". No one, he observes, acts or ought to act relying on the doctrine of fundamental breach. Yet parties act, and ought to act, relying on exemption clauses. The doctrine of fundamental breach affects the scope and validity of an exemption clause. The vagueness of the doctrine of fundamental breach inhibits the conduct of the parties. It further affects the rights and duties of the parties. A simple example will illustrate this. In a contract between A and B there is an exemption clause which excludes A from certain liabilities for loss of the goods, which are the subject matter of the contract. B believes that owing to the exemption clause (and thus relying on it) A is exempt, and insures the subject matter of the contract at his expense. Subsequently, A breaks the contract and relies on the exemption clause. It is held that A's conduct is a breach of a fundamental term and he cannot rely on the contract. Surely B's expense in insuring against A's conduct was unnecessary and greater clarity in the law would have avoided it.

As in the case of the doctrine of fundamental breach, the author often discusses controversial issues. Yet on some occasions, as in the treatment of frustration where the parties have foreseen or provided for the events, the subject is hardly touched except for the statement that they are controversial. This is to be regretted all the more because where Mr. Treitel discusses controversial issues his treatment of the subject matter is thoughtful, stimulating and sometimes novel. Often, the reasons and policy behind the development of the law are examined. There are also many proposals for reform contained in the text.

The author deals with the cases concisely. Only those facts which are indispensable for illustrating the point of law involved are included. As a result, one detects an increase in the number of the cases discussed. Some new light is shed on certain cases, e.g. *Felthouse v. Bindley* (p. 22), *Horsfall v. Thomas* (p. 222), *Maritime National Fish Ltd. v. Ocean Trawlers Ltd.* (p. 564), and they demand close attention.

The book contains extensive citations from English periodical literature, and references are made to articles as well as (some insignificant) case notes. These writings are not of equal importance and from the point of the view of the beginner some indication of their value might have been useful.

To sum up, it appears that Mr. Treitel need not have made any excuses for publishing this work. In its contents, in the arrangement and treatment of the subject matter the book meets the highest standards of scholarship. It is difficult to predict whether in this book the author's purpose of emphasising the connection between commercial practice and the law of contract will be realised. Nevertheless, this book will take its place among the standard works on contract useful both to students and research scholars.