

CASES AND MATERIALS ON THE LEGAL PROCESS. By F. K. H. Maher, P. L. Waller and D. P. Derham. [Sydney: The Law Book Company. 1966. xlii + 457 pp. A\$7.50].

AN INTRODUCTION TO LAW. By D. P. Derham, F. K. Maher and P. L. Waller. [Sydney: The Law Book Company. 1966. viii + 226 pp. A\$6.30].

“The most productive form of learning is problem-solving. The traditional method of confronting the student not with the problem, but with the finished solution means depriving him of all excitement, to shut off the creative impulse, to reduce the adventure of mankind to a dusty heap of theorems.”

With this quotation from Koestler the editors introduce the reader to “Cases and Materials on the Legal Process” and with it they set the tenor of their text. “The essential task of the lawyer is problem-solving; [. . .] students need to acquire that capacity;”¹ what better way to introduce them to the technique than by exposing them to a series of problems and their judicial solution. And so the editors take the first year student on an exploration of the judicial decision-making process.

Part One of the casebook contains material that has become virtually standardized in introductory texts — the history of law reporting, the process of litigation, the practice of precedent. The presentation of this material, even bearing in mind that it “has been adapted to the needs and capacities of Australian students, about

1. Cases and Materials on the Legal Process, viii.

eighteen years of age, coming directly from their secondary schools and colleges into University Law Schools² seems rather over-simplified. The editor's intention is that Chapters One and Two of *Cases and Materials* be studied in conjunction with Chapters One, Two and Three of the companion volume, *Introduction to Law*. The materials presented in these chapters, to the reader's disappointment, does not elaborate on chapters one and two of *Cases and Materials*, but discuss the Australian parliamentary system and the sources of Australian law. The focus on the Australian system makes these chapters of marginal value to a first year student outside Australia.

However, these objections are minor; the real excitement of *Cases and Materials* begins when the student turns to Part Two and encounters "Law Making through the Cases." For it is here that the editors introduce the student to the legal process. Chapter Four takes the student through the development of the law from the case of *Rylands v. Fletcher* and presents to him the difficulties confronting the court when it has to apply the so-called "rule" to the facts before it — what is an act of God, what constitutes natural or non-natural user, does an action for personal injuries lie? The editors make a judicious use of notes and questions to guide the student in his reading.

The next chapter plunges the student into what would seem a more difficult concept for beginning "students about eighteen years of age," the development of the notion of duty of care. Yet, this is probably the most exciting chapter in the book. The editing is excellent; the student watches the concept evolve from the supremacy of the contract to the grand *obiter* of *Hedley Byrne*; the different avenues of choice and the problems of decision-making are put squarely before him; the student is made to relive the creative process.

The remaining four chapters of Part Two introduce the student to some of the fundamental concepts in the doctrine of precedent, concepts which the trained lawyer takes for granted, but which to the first year student are baffling. The elusive notions of *ratio decidendi* and *obiter dicta*, the difference between binding and persuasive authority, the idea that judicial statements can be more or less persuasive are presented to the student, not as abstruse jurisprudential theory, but as tools for him to work with as he embarks on his legal career. The accompanying material is the *Introduction* is presented in the same manner; the notional framework of judicial decision-making is discussed in simple outline; the confusion of its complexities are postponed until the student has acquired a measure of competence in analyzing cases.³ The materials compiled by the authors and editors in the section entitled "Law Making through the Cases" should go a long way towards alleviating the beginner's bewilderment.

Part Three of *Cases and Materials* is devoted to "The Interpretation of Statutes" and in this section the editors manage to improve upon the excellence of Part Two. Over one-third of the casebook is allocated to this topic, beginning with a good, if rather over-simplified introductory chapter on the structure of statutes, through the main "rules", maxims and presumptions that abound in the area of statutory interpretation. Each new topic in Part Three is introduced by editorial discussion followed by well-chosen cases to illustrate the way the courts use the various maxims to assist them in reaching a decision. The emphasis at all times is that these maxims and presumptions are tools to be used in problem-solving, not "hard and fast rules" to be mechanically applied. The editors are to be commended for this fresh approach to what is normally a dry subject. It is unfortunate that chapter nine in the *Introduction* does not measure up to this standard. The authors could not be faulted if *Introduction* were designed just as an introductory text, but if its main purpose is to serve as a companion volume to *Cases and Materials*, surely the authors could have provided a more detailed discussion to match the quality of the casebook. However, any student who is required to work through the materials in *Cases and Materials* will have a solid grounding in statutory interpretation and will be quite prepared to cope with the phenomenon of rules "hunting in pairs".

2. *Cases and Materials on the Legal Process*, vii.

3. The intricacies and finer arguments with respect to the operation of the theory of precedent where general propositions or *rationes decidendi* of cases are concerned must remain for more advanced study. [...] Before more advanced work can be undertaken profitably, practice in the analysis of judgments and cases, and the acquisition of skill in identifying what is and what is not involved in the course of legal reasoning supporting a decision, are required. *Introduction* 121.

The concluding Epilogue in *Cases and Materials* and chapter 12 in *Introduction* introduce the student to some of the fundamental jurisprudential notions about law and the role of law and lawyers in the shaping of society. No analysis or extensive discussion of the issues is attempted. These concluding chapters are designed to raise in the student's mind some of the basic ideas and problems of legal theory — ideas and problems which, hopefully, he will bear in mind as he becomes involved in the study of substantive law.

A lack of adequate teaching materials has long kept this subject on the periphery of the first year courses. Now it can move to the forefront.

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