MODERN TRADE UNION LAW. By Cyril Grunfeld. [London: Sweet & Maxwell. 1966. xii + 503 pp. £2. 5s.].

To review a book, judging by examples that abound in every journal, apart from some few which seek solely to introduce and advertise, is apparently to find fault and criticise. And admit praise only when compellingly due. Faced with such host of 'precedents', the apprentice cannot help but to feel 'bound' to apply the strictures of those 'high cannons' on the work of though an old hand. And so it shall be with "Modern Trade Union Law" which seems to be the antique British way of presenting an aspect of what is commonly taken as industrial law. But not quite really. British trade union movement began round about 1850 with the craft unions, followed by unskilled workers unions and white collar unions, and through a century of development the 600 odd unions of today, with the Trade Union Congress at the apex, have formed themselves part of the constitutional, administrative and economic structure of the country. As such, this book which purports to set out the trade union law as at the end of February, 1966 — applicable to all trade unions, whether of small, medium or giant size — finds itself delving into matters which are notionally beyond the province of industrial law. Professor Grunfeld has one of his five-part book, devoted to the discussion of the political activities of the trade union. In the rumination of these interesting issues, he however, confines himself as far as is possible to a strictly legal perspective. Similarly, in another 'Part', Professor Grunfeld examines from the same legal plane the network of the British trade union movement and inter-union relations, disputes, agreements and merges.

The rest of the book — Parts One, Two and Five — brings us back to more familiar grounds. Is the trade union a purely voluntary institution? It is. It appears not in 3 senses. One, the terms of association are unilateral — the "trade union rule book is a type of imposed standard contract". Two, the existence of the closed shop policy (though the legality of it is an open question) in certain employments makes union membership compulsory. Three, the Bridlington Agreement which applies to the 172 affiliates of the Trade Union Congress, regulates memberships and transfers of membership between the affiliates in order to check disorderly inter-union competition.

The 'jurisprudential sport' of whether the registered trade union is a corporate entity receives from Professor Grunfeld the safe and wise reply that it possesses both the features and characteristics of the unincorporated as well as incorporated association. The House of Lords by a majority of 3 to 2 in *Bonsor* v. *Musicians' Union* [1] established the membership contract as a multilateral one between members and not between member and union. The property of the union is held by not the union but by appointed trustees. On the other hand, the property is held "for the use and benefit of such trade unions and the members thereof" — section 8, Trade Unions Act, 1871. Also, as a result of the interpretation of the same Act by the House of Lords in the *Taff Vale* case,[2] the registered trade union is capable of suing and being sued in its own name. Again, from the *Taff Vale* case and also *Bonsor's* case, it would seem that the trade union is vicariously liable for acts of its servants and agents, and further their (servants') individual immunities and defences are not available in a suit against the union with judgment for damages and costs leviable against the union funds. The trade union is liable to penalties for failure to make annual returns — sections 15 and 16, Trade Union Act, 1871.

10. *Journal of Criminal Law.*

1. [1956] A.C. 104.
2. [1901] A.C. 426.

The same Act by section 4(4) also speaks of "any agreement made between one trade union and another." These all support Professor Grunfeld's view. Their scatteredness also indicate clearly that neither the judiciary nor the legislature has directed its mind squarely to the question and consider decisively whether the entity should be this or that or the intermediary.

In the chapter on "Internal Union Discipline," the author states that wrongful expulsion of a member can be invalidated on broadly two grounds, *viz.,* where expulsion was not authorised by the rule book or where there was a violation of the rules of natural justice. To these must now be added a third — expulsion contrary to public policy *e.g.* on grounds of sex as in *Nagle* v. *Feilden.*[3]

What is the legal effect on the contract of service of a strike? The position so far has been that a strike though lawful results in the termination of the employment relationship. However, the manifest purpose of the strike action, as Professor Grunfeld points out, is not the permanent severance of the industrial relationship but the stepping up of bargaining pressure by its suspension. So far the concepts of common law do not admit of a strike notice that merely purports to suspend the legal relationship. This divergence between law and practical intention has drawn a wave of judicial opinion[4] on the subject. Professor Grunfeld recognises the need for a "special unilateral suspensory notice" for strike but contends that such an innovation would have to be introduced by legislation. He regarded the judicial opinion[4] as unsound precedent-wise. It is submitted that the learned author has taken a too restrictive view of the role of Her Majesty's judges in the development of the common law. The common law is not a conglomeration of rigid concepts and rules and which is not subject to change save by the legislature. Those rules and concepts were in the first place judge-made and it is high duty of the judge to unmake or remake them where both reason and logic so require in order to keep alive this great body of unwritten law. So far as binding precedents are concerned and the unsoundness of the mentioned judicial *dicta,* Professor Grunfeld will perhaps agreeably change his view in the light of the recent announcement of the House of Lords that "Their lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restricts the proper development of the law. They propose therefore to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so."[5]

The book winds up with a detailed consideration of the civil liabilities of a strike and their statutory defences including those of the new Trade Disputes Act, 1965, social security laws and government emergency measures.

The publication is a new bottle for old wine — but a welcome one.

TAN PHENG THENG.

3. [1966] 1 All E.R. 689.
4. *Dicta* of Lords Dennings Devlin and Donovan in *Stratford* v. *Lindley* [1966] A.C. at p.285; *Rookes* v. *Barnard* [1964] A.C. at p. 1204 (H.L.) and [1968] 1 Q.B. at pp. 682-683 (C.A.) respectively.
5. The Times, July 27th, 1966.