

AN INTRODUCTION TO BUSINESS LAW. By B. J. L. SHTEIN & K. E. LINDGREN. [Sydney: Law Book Co. 1970. xii + 236 pp. (including index) A\$3.75].

This book is meant primarily for students of Accounting, Commerce, Economics or Business Studies as preliminary reading "to give them a conspectus of business law." As such, it is clear that it can only give but the barest fundamentals of "Business Law", defined by the authors to be "those parts of general body of law which regulate business transactions and business organisations", at the same time supplying the reader who is fresh to the law with such an amount of background material as is sufficient to enable him to know what the law is all about in the first place.

In some ways, the book fulfills its intended purpose admirably. Part I deals with Introductory Matters. The authors define what they mean by "Business Law" and give a panoramic sweep of Jurisprudence, mentioning some of the leading thoughts on the subject. They also give an account of Australia's common law system, the origins and development of the common law, the doctrine of precedent, statute law, interpretation of statutes, equity and law reform, and quite inappropriately, the law of property. The aim is to give a general backdrop to the subsequent discussion of specific branches of the law relating to business, and this was done shortly but comprehensively.

Part II then takes the reader on a general survey of the legal environment of Australian business, and includes a treatment of the Australian legislative and judicial system, followed by a rudimentary survey of the law of procedure and evidence, industrial law, taxation and bankruptcy.

Parts III and IV form the meat of the book, the former relating to the law regulating business transactions, and the latter the law controlling business organizations. The separate treatment of business transactions and business organizations is a fresh and rather ingenious approach, enabling the students of law to have an overall picture of a business entity indulging in business activities, and the basic concepts and rules regulating each aspect of it. However, one basic criticism may be made of the authors' admittedly cursory treatment of contract and company law. The authors seek to justify this cursoriness on the ground that since there would be a study in depth of these subjects, the reader should refer to specialized texts. The fallacy of the argument is rather blatant. Business law arguably consists in the main of contractual law with different and specific incidents as agreed by the parties in particular contexts. Thus the law of consumer credit (e.g. hire purchase law) and consumer protection (e.g. sale of goods) is but specialized contract law. So is the law of negotiable instruments. Contract law is therefore basic. And with to-day's businessman exploiting to the fullest the shield between themselves and creditors set up by the House of Lords in *Salomon v. Salomon & Co. Ltd.* (1897) A.C. 22, a slighting of company law in a book meant as an introduction to business law is well nigh inexcusable. One would have expected that whether subjects are treated in greater detail or not depends on their respective practical importance, and not on whether there are specialized texts available. Indeed the basic assumption of books introducing a branch of the law is that the reader unfamiliar with it must have some preliminary knowledge thereof before attempting to understand the specialized texts, available in most cases in abundance.

As to treatment, in each section dealing with one branch of business law, the authors seek to present the underlying principles and concepts, with a brief summary of the relevant Australian legislation and illustrative or leading cases. The emphasis is not on an exposition of the specific rules as embodied in legislation or formulated by case law, though in some cases these are indicated. An admirable exposition of taxation law, brief but effective, is given in § 15, where the authors outline Adam Smith's four principles of good taxation, continue with the scheme of the Australian Income Tax Assessment Act of 1936, and then elaborate in greater detail the concepts of income and deductibility. By the time the section is read the reader will have acquired a broad view of income tax law, the relevant Australian legislation and the twin pillar concepts of income and deductibility.

The book includes a useful section on "The Law in Action". This is a demonstrative treatment of *Mutual Life & Citizens' Assurance Co. & Another v. Evatt*, (1968)

42 A.L.J.R. 316, which is the *Hedley Byrne & Co. Ltd. v. Heller & Partner* (1964) A.C. 465 of the High Court of Australia. The case, it will be remembered, turned on the precise question, decided by the House of Lords in the latter case, relating to liability for negligent mis-statements. The authors give the factual background of the case, a summary of the plaintiff's declaration, observe that the cause of action is in tort and not contract, raise issues of fact and law, explain what a demurrer is and show the doctrine of precedent at work in that case. Questions relating to evidentiary proof are also stated. The judgment of Barwick C.J. is then reproduced.

The idea of commenting on a decided case and showing how litigation arises, how lawyers and the court go about resolving a dispute and how a dispute is ultimately decided, is of course a laudatory attempt to illustrate the working law to the new comer. However, the choice of *MLC v. Evatt* is rather inappropriate. In the first place, the case was decided both in the Supreme Court of New South Wales and the High Court of Australia on a demurrer, and this is not at all typical. Part of the case was also fought on pleadings on the question whether, if an action does lie at common law for damages resulting from negligent mis-statements, the pleadings are sufficient to establish the cause of action. This again is not typical and further more quite difficult of comprehension for a new comer to the law, especially since the authors do not at all explain the nature, function and working of pleading in the process of law in action. In one aspect, however, the judgment of Barwick C.J. which traced the development of the common law on the subject from a sociological point of view does help to substantiate the authors' attempt to treat law as a branch of humanities. But this section of the judgment can be extracted and placed in the appropriate context in the book. In the second place, *Evatt's* case has been the subject of controversy in the Privy Council, although the book appeared earlier.

For the local business law students, the book may in some parts require addition or adaptation, else it may be irrelevant altogether. Thus in the Appendix giving the major law reports, local law reports must be noted. Local legislation should replace the Australian equivalents cited in the book. Those sections relating to Australian institutions and systems peculiar to Australia may be safely ignored except for comparative purposes.

As a final note, the binding of the book leaves a great deal to be desired. After a few readings, the cover takes ready leave of the book, which itself disintegrates into pieces.