

BOOK REVIEWS

CRIMINAL LAW. 3rd Edn. By J.C. Smith & Brian Hogan. [London: Butterworths. 1973. xciii + 678 pp.]

The third edition of *Criminal Law*, by Professor Smith and Hogan has now been published after a short period of four years from the second edition. It is interesting to note that the period between the first and second edition was also four years; the first edition being published in 1965, and the second edition in 1969.

The value of this edition does not lie in the treatment of new legislation, as during the last four years the only notable legislation concerning substantive criminal law is the Criminal Damage Act, 1971; and the only important legislation on procedural law (including punishment) is the Criminal Justice Act, 1972, which came into force on 1st January, 1973. Its real value lies in the treatment of new case law between 1969 and 1973 especially with regard to what might be called the "breathalyser test" now continued under the Road Traffic Act 1972, and the various decisions regarding the Theft Act 1968.

The Criminal Damage Act, 1971, has been well-treated in this edition. In fact the authors have found it necessary to completely re-write Chapter 16 of the second edition, then entitled "Offences Against Property involving Malice". This Chapter now appears as Chapter 17, and is appropriately described as "Offences of Damage to Property". However in view of the newness of the Act, the authors have been able to quote no case regarding the Act itself. The case of *Bentham* [1972] 3 All E.R. 271 C.A. referred to by them, appears to be connected with *mens rea* regarding "possession offences" under s.3 of the Act; but it is unfortunate that they have not made it clear that it is a case relating to "possession" under the Firearms Act, 1968, and is merely useful as an analogy in connection with the Criminal Damage Act.

Regarding the Criminal Justice Act, 1972, it is rather strange that the authors have not mentioned it either in the Preface or in the body of the book, especially as it is relevant to the first Chapter dealing with "Crime and Sentence". Perhaps this is because the Act came into force only on 1st January, 1973, and by that time this edition had probably gone to the press.

It is also heartening to find that the authors have included in this edition certain offences which have not been dealt with in the previous editions. Thus, in the Chapter on "Offences Against Public Order" the authors have included a new section on the crime of "Forcible Entry and Harassment". This is justified in view of recent developments. The case law relevant to the subject like *Brittain* [1972] 1 All E.R. 353 (C.A.); *Mountford* [1971] 2 All E.R. 81; *Robinson* [1970] 3 All E.R. 369, *Luganda v. Service Hotels* [1969] 2 All E.R. 692 (C.A.) and *Norton v. Knowles* (1969) 1 Q.B. 572 have been ably noted.

The authors also claim in their preface to this edition that "the whole of the text has been re-considered and re-written and expanded or diminished where this seemed necessary or advantageous". This claim is substantially justified. It is interesting to note that certain portions of the second edition, especially those clarified by later rulings, and those subject to the criticism of the reviewers of the previous edition, have been modified. A good example is that with regard to the views of the authors in connection with the "reasonable relationship rule" in respect of provocation and the mode of resentment. In criticising this rule, which was formulated by Viscount Simon in *Mancini v. D.P.P.* [1942] A.C. 1, the authors

expressed scorn in the previous edition by stating "This seems to presuppose that the reasonable man, even after he has lost his self-control, will continue to behave reasonably". The Privy Council refused to be associated with such scorn in *Phillips v. R.* [1969] 2 A.C. 130 (P.C.), and was of the opinion that there are degrees of loss of self-control and there are intermediate stages between "icy detachment and going beserk". In the previous edition the authors were not sure of the effect of *Phillips v. R.* and posed the question: "Is the 'reasonable relationship' rule still the law after the Homicide Act". We now find in this edition that the above passage in relation to Viscount Simon's words in *Mancini (supra)* has been deleted by the authors. Moreover, the question which was posed by the authors as stated above, has now been answered in the negative. They state that it now "clear" that the reasonable relationship rule "is not a rule of law". This answer has obviously been inspired by the recent case of *R. v. Brown* [1972] 2 All E.R. 1328, where the Court of Appeal gave Viscount Simon's formulation a decent burial, in holding that it is *not* a rule of law. The authors also now take a kinder view of *Phillips v. R.* and in fact have quoted passages from it with apparent approval.

Another significant modification is to be found in the treatment of "manslaughter". This may have been influenced by the somewhat strong criticism expressed by Mr. Griew in his review of the second edition ([1970] M.L.R. 226) by stating that "As a matter of fact manslaughter is one of the few topics on which *Smith and Hogan* cannot, in my view, safely be followed". Thus, regarding constructive manslaughter, the authors have re-written most of the passage from p. 217 onwards of the previous edition. Significantly, the passage at p. 221 thereof, referred to by Mr. Griew in his review, finds no place in this edition. That passage relates to the authors' view (held at that time) that "if *D* casts down a banana skin on a public footpath and *P* slips on it and suffers fatal injuries, it would seem that there is *prima facie* case of manslaughter against *D*". The authors apparently have modified their view regarding this doubtful example. The re-considered views of the authors are to be found at pp. 248-251 of the present edition.

Special mention may be made of the authors' treatment regarding driving offences involving drink or drugs. The test of impairment of the ability to drive under the Road Traffic Act 1960, was replaced by a fixed blood-alcohol concentration as the criterion of unfitness by s.1 of the Road Safety Act 1967. The authors point out in this edition that this provision has been substantially re-enacted in s.6 of the Road Traffic Act, 1972. It will be recalled that at its inception, this so-called "breathalyser law" provoked a storm of controversy and some Englishmen went to pubs on horses as a symbolic protest. Within the last four years there have been four Appeals decided by the House of Lords, and a host of Appeals to the Court of Appeal and the Divisional Court. Most of them have been dealt with by the authors in this edition. The treatment of *D.P.P. v. Carey* [1970] A.C. 1072, *Pinner v. Everett* [1969] 3 All E.R. 257; *Sakhuja v. Allen* [1972] 2 All E.R. 311 — all House of Lords cases — can only be said to be both exhaustive and masterly. It is also heartening to be assured by the authors that "this law is now moving into calmer waters. Recent decisions are showing a more balanced approach to the interpretation of the complex provisions. There is now apparent a willingness to make it work — something that was not always evident in the earlier decisions." (p. 378).

However, it is in the Chapter relating to Theft and Related Offences that the authors must have spent a lot of time in considering and analysing the cases during the past four years. This is because when the previous edition was published, the Theft Act had just come into force, and a lot of what was written had to be theoretical. Now, with a flood of cases on the various provisions of the Act, the authors have been able to advance more concrete views, and in some cases have had the chance to modify their previous views. It should also be noted that one of the authors (Professor Smith) is also the author of the book entitled *The Theft Act*; the second edition of which was published in 1972. However, it should not be thought that what appears in *Smith and Hogan* is a reproduction or copy of the aforesaid book. In fact, the treatment of the Theft Act in the present edition of *Smith and Hogan* has an edge over Professor Smith's own book (2nd edition) as it has been able to state the law up to 1st April 1973, and therefore more recent cases could be considered and cited. One interesting aspect considered by the authors is the question of property "Belonging to Another". In view of the definition of that phrase in s.5(1) of the Act, it is now clear that not only a co-owner may steal property belonging to himself and another, but the sole owner himself may steal his own property. Thus, the authors bring out the point that in *Bonner*

[1970] 2 All E.R. 97, the Court of Appeal held that a partner can steal partnership property. In *Turner* [1971] 2 All E.R. 441, the Court of Appeal also held that an owner of a car who surreptitiously took it back from a garage owner with whom he had left it for repairs, was guilty of stealing.

“Deception” under the Theft Act has also been re-considered in view of the recent cases. It is interesting to note that the ease of *Lawrence* [1972] A.C. 626, which eventually went to the House of Lords does not settle the relationship between s.1(1) and S.15(1) of the Act. The authors also point out that a person may act dishonestly for the purposes of deception although he does not obtain the property with a view to gain, or notwithstanding that he intends to pay for the property. The ruling in support of this somewhat harsh proposition is *Halstead v. Patel* [1972] 2 All E.R. 147. A different view was expressed in *R. v. Feely* [1973] 1 All E.R. 341.

Considering the question of obtaining property by deception and obtaining a pecuniary advantage by deception, the case of *Ray v. Sempers* [1973] 1 All E.R. 860 (D.C.) is most instructive, and has been noted by the authors at p. 448 of this edition. In that case some students including the accused *Ray* had gone to a Chinese restaurant and after eating some dishes (but before finishing the meal) ran out of the restaurant without paying. He was fined £1 by the justices for “evasion of debt” by deception under s.16(1) of the Act. The Divisional Court quashed the conviction on the ground that there was no deception under s.16(1) since the accused had not actually made a false representation within s.15(4) of the Act. It is this decision that has been noted by the authors. However, it must be pointed out that this decision has now been set aside by the House of Lords (Lord Reid and Lord Hodson dissenting) in [1973] 3 All E.R. 131 on the ground that in ordering the meal the accused had impliedly made to the waiter the ordinary representation of an ordinary customer that he had the means and the intention of paying for it before he left. It remains to be seen how the authors will comment on the views of the House of Lords in their next edition.

Now, for one or two comments in the nature of mild criticism. Firstly, while the re-writing of certain Chapters and certain passages in other Chapters is to be appreciated, one has an uneasy feeling in reading the book as a whole that recent cases have not been given due weight or prominence in certain cases. Old cases should give way to new cases, and in any event even if the authors do not wish to cut down on their comments on and quotations from old cases, new cases which have been mentioned more than once should at least indicate what they are about. A case in point is that of *R. v. Foy* (1972) Cr. L.R. 504 (C.A.). It is mentioned as a footnote at three places, namely, pp. 186, 188 and 190. All we know from the book is that it is a case which involves conspiracy to commit a public mischief, namely, to indemnify a person of his bail. Perhaps some mention of the important points involved might be helpful to the student reader.

Finally, it must be admitted that there are too many quotations in certain sections of the book. For example, at pages 6 and 7 alone, there are nine quotations. Obviously, it would be difficult for the student reader to assimilate the quotations, when it is difficult enough for him to understand the authors' treatment of the subject. Undoubtedly, *Smith* and *Hogan* is a work of considerable scholarship, and it ranks with Dr. William's book on the *Criminal Law (General Part)*. For this reason, it has not become universally popular with students, especially as Criminal law is taught in most Universities (including Singapore) as a first year subject. Sometimes, on going through the authors' views and comments one feels that one is going through a dissertation, rather than a text book. While the book is most welcome to University law teachers, it does seem that so far it is more appropriate reading for the maturer student, rather than for the beginner.

MYINT SOE