

AN INTRODUCTION TO COMPANY LAW. By R. BAXT. [Sydney: Law Book Co. Ltd. 1977. xvii+306+(index) 8 pp. A\$15.00 Cloth, A\$9.75 Limp]

Professor Baxt, who is Sir John Latham Professor of Law at Monash University, Victoria, has written much on Company Law before. Now, at last, he has written *An Introduction to Company Law*, ostensibly a work more modest than some of his previous ones, but in reality perhaps representing the fruition of his most difficult

task to date. The book is intended to be “an introductory work for students, practitioners, accountants and others who are interested in getting a very broad sweep of the area of company law” or, put very simply, an “overview of the law” (as the author states in his preface). The author also states that it is not intended to be a guide as to what steps should be taken at all stages in the incorporation or management of a company, although he has taken the liberty of having “perhaps gone beyond the very strict bounds of an introductory work” and elaborated on a few areas which appeared to him to be of greater importance.

For the sake of simplicity, the author’s work is based on the fact that there are uniform Companies Acts in four states in Australia namely, New South Wales, Queensland, Victoria and Western Australia, and treats the relevant laws as being that in force in all six states. He has not attempted to compare and contrast the uniform laws in the four states with the specific positions in South Australia and Tasmania “where the law at times has fallen ‘behind’ in the race for uniformity.” The law in the book is as stated at 1st August, 1976, and, as such was, when published, the most up-to-date account of Australian Company Law (until Ford’s second edition of *Principles of Company Law* which was published in 1978), not only incorporating the most recent case-law, but also dealing with the important uniform Securities Industry Acts (to which one whole chapter is devoted) which came into force on 1st March 1976 in the same four states mentioned earlier. As such, it became the first book on Company Law to explain the new securities legislation. It is a pity, however, that the recent important rulings of the Supreme Court of New South Wales and of the Judicial Committee of the Privy Council in *Re Cumberland Holdings Ltd.* came too late to be included in the book.

Although the author claims that he had found Hornby’s own *Introduction to Company Law* (1957) “a most useful guide,” Baxt is (with a text of 306 pages) more than the introduction that Hornby is, although it contains less information on substantive law than another introduction, Northey and Leigh, *Introduction to Company Law*. It is in many respects, more readable than either, and for students of Australian Company Law (as well as students of Singapore or Malaysian Company Law), certainly more relevant, for the other two introductions are to English Company Law, *simpliciter*. Although it is a useful ‘shorter’ book for students, it is not a ‘potted’ account of the substantive law, which Charlesworth or Topham and Ivamy — favourites of students cramming for the professional company law examinations — are. The author makes frequent (and very useful) references to Gower’s *Principles of Modern Company Law* (for which Baxt’s book is no substitute, of course) but emphasizes that those who wish to look more closely at various aspects of company law should proceed to refer to the more detailed works, such as Gower or Ford, *Principles of Company Law*, the most comprehensive Australian text-book. Indeed, all university law students would be foolish not to do so and to depend solely on Baxt. Ideally, a law student should read Baxt, as well as Gower or Ford, a case-book, and his copy of the Companies Act, and (where included in the syllabus) the Securities Industry Act. In the way of case-books, Australians have Baxt and

Afterman, *Cases and Materials on Companies and Securities*, and Singapore and Malaysian students have the latter or Pillai, *Sourcebook of Singapore and Malaysian Company Law*.

Basically, Baxt attempts to provide an in-perspective "overview" of Company Law, built around its leading principles and the Australian Constitution's federal structure. He also offers his own view and occasionally, criticisms of the law, which one does not normally expect to find in an introduction but which, when found, are extremely welcome.

Thus, on the subject of pre-incorporation contracts, (where the law in Australia is the same as under the English common law), he suggests (p. 24) that since the company cannot ratify its pre-incorporation contract, what the law requires is a novation but that, "unfortunately the law has not recognised the pressures of modern business" and thus persons forming companies "need to take particular care that the difficulties thrown up by the law in this area are provided for in documentation." Curiously, Baxt does not venture to suggest legislation to allow ratification after incorporation, as was recommended by Gower in his draft Ghana Code on Company Law and as has been provided for in the Singapore Companies Act, section 35. At page 96, Baxt, in dealing with the problem of disclosure in relation to prospectuses, considers that the only question that is likely to be examined by the potential investor (*i.e.*, the average man in the street) is the question of the likely profitability of the company, and therefore questions the need to take all the trouble of preparing detailed documentation. He suggests instead that "legislation should be changed to cast a different set of responsibilities and a different set of relationships between the company raising moneys and a special class of investment analysts who will advise the public at large and to leave the interests of the public as a side issue in all of these cases." The point is taken, but is the suggested solution simpler? At pages 215-6, Baxt states that he disagrees with *Percival v. Wright* [1902] 2 Ch. 421 and is persuaded by the recent New Zealand Supreme Court case of *Coleman v. Myers* (1976, unreported at the time of Baxt's going to press), although the Australian Courts were more likely to follow *Percival v. Wright*. Although he is right that the actual fact situation in the latter case has not been covered in the Companies Act, he fails to state that section 124 of the Uniform Companies Act (equivalent to Singapore's section 132) does in fact alter the common law position represented by *Percival v. Wright*—even where he discusses section 124 (at p. 208). At page 262, Baxt recognises the financial cost (apart from the delays and time taken) that faces a minority shareholder who seeks relief in court, and suggests contingent fees or legal aid as a legal development that "could lead to an important breakthrough in this area." In this respect, one can hardly disagree with him, as there seems no easy solution to this matter.

Perhaps Baxt's most interesting chapter is on that most unlikely of subjects making for interesting reading: Accounts and Auditors (Chapter 10). In this, Baxt gives an insight into the shortcomings of present accounting techniques and of the present Companies Act disclosure requirements in relation to accounts. He prefers the overall

introduction of “current cost accounting” to replace “historical cost accounting” as it permits accounts to reflect more accurately today the current state of a company’s valuation. He would also like to see all companies value assets under *one* uniform method, or it could be very confusing to investors to compare one company’s performance against another.

Finally, both in the preface and in the conclusion, the author betrays some of his more general personal views. He supports national (federal) legislation in Australia as the best way of achieving effectiveness in legislation in relation to public companies and creating a better investment climate. However, he concedes that uniform legislation “is the next best bet.” He appears (p. 306) not to believe in self-regulation, unless it is accompanied by strong administration at a government (preferably federal) level, and the co-operation of the stock exchanges.

There are occasions when Baxt goes beyond the bare rules and indicates the realities or predicts the approaches the courts will take on matters. Thus, at page 187, he points out that there are “persistent breaches” of the Companies Act in relation to the holding of annual meetings and the preparation of annual returns, and therefore numerous prosecutions. At page 118 he says that “the courts do have a discretion to refuse a reduction of capital if it is not fair and equitable, but in most cases decided to date the courts have not chosen to exercise that discretion”; and at page 271 he points out that “the courts seldom will reverse a decision made by creditors and shareholders” and “will only intervene where there is a clear case of unreasonability or oppression. Judges are reluctant to say that they are better able to assess the financial and other problems facing a company and its shareholders or creditors.” Good news indeed, for those who wish to draw up schemes of arrangement or compromise! At pages 261-2, he notes that it is unlikely that the Australian or English law will develop in the way that the American and Canadian courts have in recognising the general availability of a remedy to shareholders where the *majority* shareholders are merely exercising their control or power over the affairs of the company, because of “some conservatism in the courts.”

All in all, this book is largely free of a tedious enumeration of technical rules or summaries of the main statutory provisions. This is its chief merit. Instead, it provides a readable text, providing legal principles and concepts in company law placed in their perspective, with comments on the landmark cases, and many of the author’s own views and enlightening observations. A good introduction, in my view, should serve as an appetizer before the main course (the statutes and cases) accompanied by vintage Gower 1969; it should not be something that makes you realise your worst fears of company law, so that you would send the main course back to the *chef* and not even uncork your bottle of vintage wine. This book succeeds, in my view, as that appetizer.

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