

BOOK REVIEW

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Michael Eburn and Robert Hayes, Criminal Law and Procedure in New South Wales (LexisNexis, 3rd ed, 2009) 675 pp

The authors of this useful and relatively thorough book, now in its 3rd edition, state their intention as meeting ‘the needs of students who will be studying criminal law over one semester, that is to say, over a time span of only fourteen or so weeks’.² Despite the concern that some may have as to the adequacy of such a brief coverage of an essential area of legal practice within undergraduate law degrees, if that is the reality then this work ought to continue to provide a more than adequate resource to fit the bill.

In terms of structure and accessibility, the book is clearly and logically organised and I found it easy to navigate. A quick test of the index led me effectively and rapidly to a few key laws and concepts chosen at random. So many legal texts these days are unnecessarily nebulous and poorly edited in that it can be a chore to find what one is looking for. The table of cases was similarly thorough and comprehensive and reasonably up-to-date.

The text contains a number of explanatory flowcharts intended to provide a schematic overview of a particular procedure, defence or of the elements of a particular offence. These flowcharts are somewhat simplistic and lack the sort of detail necessary for a comprehensive understanding of the dynamics of some of these principles, procedures and offences, but would presumably be valuable to a student approaching the subject with little or no background in skills such as the elementising of offences. One hopes that a student accessing the flowcharts would do so as an introductory study aid rather than as a comprehensive summary of the relevant topic or as a means to properly addressing a legal problem or scenario.

There is a dearth of jurisprudential background to most of the laws and principles discussed in the book which I found to be somewhat disappointing. Granted that it does not pretend to be a theoretical or contextual exploration of the criminal law, but an understanding of the historical and contextual rationales for the development of criminal

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² M Eburn and R Hayes, *Criminal Law and Procedure in New South Wales* (LexisNexis, 3rd ed, 2009) v.

law doctrines really is essential to properly understanding them and hence applying them in practice.

For example, the development of the modern law in relation to the so-called insanity defence is intimately linked to the facts and procedures surrounding the prosecution of Daniel McNaughten before the House of Lords in *R v McNaughten*.³ The authors make a reasonable attempt at explaining the current statutory and common law rules on the basis of the McNaughten case, although the Irwin discussion would benefit greatly by either incorporation of some extracts from secondary commentary on that context, or at least by referencing some of that commentary.⁴ Unfortunately though, such contextual discussion is not incorporated within the text to a great extent.

The coverage of the range of criminal offences arising within the New South Wales jurisdiction appears quite adequate for this level of study. There is virtually no coverage of any Commonwealth offence creating provisions or any substantive introduction to Commonwealth criminal law and procedure. To be fair, the book does not purport to do this, but it might be useful for students to be given a few more references to the relevant Commonwealth authorities. In particular, it might be worthwhile incorporating some references to pt 1B of the *Crimes Act 1914* (Cth) in the (quite cursory) portion of the book relating to sentencing law and procedure. For areas which are dealt with so briefly in this way, the authors could also incorporate more reference to other texts and references for students who wish to study what they will need to know for the practice of criminal law, in more depth (there are currently a couple of excellent reference works available on Australian sentencing law and policy for example).

Overall the book is well written, is very user friendly in terms of its structure, and is a resource that students and beginning practitioners could make excellent use of in beginning their association with criminal law and procedure.

³ [1843-60] All ER 229.

⁴ Such as Richard Schneider J's excellent analysis in *The Lunatic and the Lords* (Irwin Law, 2009).