

## FUNDAMENTALS OF EUROPEAN CIVIL LAW BY MARTIN VRANKEN

*Pp xiv + 290 including Appendix, Bibliography and Index. Published by the Federation Press, Sydney, 1997, soft cover, NZ\$45*

*Reviewed by AH Angelo\**

The purpose of this book is "to take account of the ever-increasing penetration of national law by the legal order of the European Community by incorporating the relevant materials on European Community Law within each chapter, in preference to having a separate chapter at the end of the book. This desire to demonstrate the impact of the European Community on the national law of a growing number of member states has affected the selection of the substantive topics for discussion. Thus, there is no discussion of family law or criminal law, for example, as these areas of the law largely remain untouched (so far) by European Community law" (page iii).

"In this book, the emphasis has been on expounding the essential characteristics of the European civil law from a common law perspective. The writing of the book was premised upon an assumption that civil law and common law constitute the two main (though not the only) legal families in the Western World to date, hence the need to understand both if only to break the barriers of insularity in legal education. By and large however, the making of any direct comparisons has been avoided throughout the book. Rather, the reader has been expected — and, ideally, encouraged — to reflect upon the civil law offerings from his or her own national, common law perspective" (page 212).

The above set out both the objects of the book and the purposes which it has achieved. This is a compendious and easily read book. Its size is deceptive relative to its content. It is very tightly and clearly presented and provides a good introductory text for a number of purposes. It discusses the central topics of comparative law and provides a basic introduction to the courts, profession, the codes and the methods of interpretation of the main systems of continental Europe. In addition, it provides a basic introduction to the law of contract, the law of tort, labour law, and commercial and company law in the French and German legal systems, as well as within the context of the European Union. It could therefore be the undergraduate text for a programme on comparative law, or on French or German law, and could also be the text for an introductory programme on European Union

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law. The bibliographical references at the end of each text and the more substantial bibliography which runs from page 252 to 284 provide a most useful listing of relevant modern English language materials.

The Appendix with documentation (pages 227-251) is appropriate and helpful but would be likely, in the standard undergraduate context, to be supplemented by additional materials which support the course emphasis of the individual teacher. The value of the book is that it presents the standard material very clearly and in a contemporary form, and particularly that it uses the comparative study of European legal systems as the basis for an introduction to the law of the European Union. This is a very valuable contribution, and perhaps a salutary reminder to the common lawyers of the Commonwealth to understand the ingredients and impetus for the European lawmaking which is more and more frequently and significantly affecting the development of the law of the United Kingdom.

Much of what the book tells us is encapsulated in the recent case of the European Court of Justice of *Webb v Webb*,<sup>1</sup> which dealt with article 16 of the Brussels Convention of 1968, and which concerned in particular the nature of the common law trust. That case deals with an institution dear to the heart of common lawyers. It also shows the role and the significance of the role of the Advocate General in the European legal system (discussed on pages 72 and 73 of the book) and the respect given to academic commentary. Equally interesting is the reaction of Professor Birks in the *Trust Law International* journal.<sup>2</sup>

The teacher of the traditional comparative law course might miss the substantive topics of family and succession, but will be well satisfied with the treatment of contract and tort and the inclusion of the consumer protection and labour law material.

This book clearly explains the development of European law in significant areas and the role of the civil law heritage in that development. This development is both a natural and predictable result of the Treaty of Rome of 1956 and the accession of the United Kingdom to that treaty. It is with a degree of amusement and bemusement that one remembers the reactions in the United Kingdom on the likely impact of the common market on the common law. Whether ingenuous naive or optimistic, the government of the United Kingdom in the 1960s said that there would be no impact on the private law of England. The present book provides a reasoned and correct view of the impact of the European Union on aspects of the private law of the member states.

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1 [1994] QB 699. A common lawyer might be interested to have a case reference on the role of the European Court of Justice. Lord Denning put it in his way in the *Bulmer v Bollinger* [1974] 3 WLR 202 (esp 210-211), *Schorsch Meier v Hennin* [1974] 3 WLR 823 (830), and *Miliangos v George Frank (Textiles) Ltd* [1976] AC 443 line of cases.

2 "In rem or in personam? *Webb v Webb*" (1994) 8 *Trust Law International* 99.