WORKING MANUAL OF CRIMINAL LAW, by Janet A. Prowse. The Carswell Co. Ltd., (1984), pp. xxxv, and 463, looseleaf, $49.50.

The *Working Manual of Criminal Law* is "designed to be a portable general reference book for various areas of criminal law"[1] but does not purport to be "an exhaustive study of each of these areas".[2] There are five chapters which are presented in alphabetical order under the following titles: Defences, Evidence, Procedure, Sentencing, Substantive Offences. It is not a strictly textual presentation, but rather contains well organized headings, with short paragraphs coupled with case and statute citations. The *Manual* deals extensively with Canadian law, although there are some references to English authorities where these are relevant to the Canadian position.

The idea of such a research tool is as innovative and attractive as it is ambitious, especially in view of the stated intention of the author to publish updates periodically. Unfortunately, in its present form the *Manual* is disappointing: it is far too superficial in many of the topics broached, incomplete in others, and sometimes misleading. Given that in preparing this work a conscious choice has been made *not* to canvass each topic comprehensively, it may be wrong or unfair to second-guess editorial decisions as to content. Nevertheless, a significant number of issues are treated in a cursory and skeletal fashion so that it is difficult to appreciate how a legal problem possessing any subtlety whatsoever can be researched beyond square one with this tool. This is a trenchant criticism, striking as it does at the very utility of the book. The identified failings may be illustrated by several examples (and it is to be emphasized that these are intended to be examples only).

In the chapter entitled "Defences", this proposition is advanced with respect to duress:

> The defence of duress is available, at common law, in some circumstances if the accused is charged as a party.[3]

It is not explained what these "circumstances" are, *i.e.*, the offences to which duress does not apply at common law are not listed.[4] Nor are the pre-conditions for the application of duress at common law outlined (a matter which is not entirely free from doubt).[5] Even the listing of the pre-conditions for duress under section 17 is incomplete.[6]

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1. J.A. Prowse, *Working Manual of Criminal Law* (1984), at v.
2. *Id.*
3. *Id.* at 32.
4. "[I]t is clearly established that duress provides a defence in all offences including perjury (except possibly treason or murder as a principal) . . .": *R.* v. *Hudson*, [1971] 2 Q.B. 202, at 206 (*per* Widgery L.J.); *see also D.P.P.* v. *Lynch* [1975] A.C. 653, at 675 (H.L.). The reference to the word "party" in the *Manual* (at p. 32) is inelegant and the term is poorly defined (p. 32-33).
5. *See* the cautious enunciation of Lord Simon in *D.P.P.* v. *Lynch*, *id.* at 686; *cf. R.* v. *Morrison* (1980) 54 C.C.C. (2d) 447 (Ont. Dist. Ct.).
6. *Cf.* D.R. Stuart, *Canadian Criminal Law: A Treatise* (1982) at 383-90; M. Manning & A.W. Mewett, *Criminal Law* (1978) at 295-301.

The discussion of the so-called defence of drunkenness is also very weak. The fundamental rule is, of course, set out: drunkenness may negate liability for offences of specific intent but not those requiring only a general intent. And some crimes to which the defence is available (or not) are listed.[7] But no where is the test for distinguishing between general and specific intent stated, let alone the difficulties in applying that test discussed. Drunkenness in relation to murder under section 212(a) is treated, but no mention is made of the relevance of intoxication to homicide under sections 212(c) or 213(d). Important developments under both these sections have occurred in recent years[8] and it is inconceivable that these should be omitted even from the most general of texts.

Many other issues of complexity are avoided. Only one sentence, a mere passing reference, is devoted to the special pleas of *autrefois acquit* and *convict*.[9] There is no mention made of the important questions recently resolved by the Supreme Court of Canada concerning these defences.[10] Neither is reference made to all the relevant Criminal Code provisions.[11] The analysis of other aspects of *res judicata* is terribly thin. Further, in the very cursory discussion of the seminal case of *R.* v. *Sault St. Marie*,[12] the companion case of *Strasser* v. *Roberge* [13] is not cited and no allusion is made to the complications created by that authority. Only oblique reference is made to the thorny debate as to whether criminal negligence requires advertence or inadvertence. Similarly, the consideration of the concepts of recklessness and wilful blindness, as substitutes for intention as a form of *mens rea*, lacks depth to say the least. In the chapter on "Evidence", under the heading "Identification" the discussion proceeds without reference to the leading English decision in *R* v. *Turnbull*,[14] and the Canadian authorities which have endorsed the important statements made in that case.[15] The discussion of juries deals almost entirely with charging and polling, without treatment of such matters as the principles governing preemptory challenges and challenges for cause.

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7. *Supra* n. 1, at 24-27.
8. *See R.* v. *Vasil* (1981) 58 C.C.C. (2d) 97 (S.C.C.) (s.212(c)); *R.* v. *Swietlinski* (1980) 18 C.R. (3d) 231 (S.C.C.) (213(d)).
9. *Supra* n. 1 at 59.
10. *See R.* v. *Riddle* (1980) 48 C.C.C. (2d) 365 (S.C.C.).
11. Only s. 538 is cited. *See also* ss. 535-537.
12. (1978) 40 C.C.C. (2d) 353 (S.C.C.).
13. (1979) 50 C.C.C. (2d) 129 (S.C.C.).
14. (1976) 63 Cr. App. R. 132 (C.A.).
15. *See e.g., R.* v. *Duhamel* (1980) 56 C.C.C. (2d) 46 (Alta. C.A.); *R.* v. *Medredew* [1978] 6 W.W.R. 208 (Man. C.A.). "Canadian Courts are . . . coming to accept the decision of the English court of Appeal in *R.* v. *Turnbull* as to when a case based on identification evidence must be withdrawn from the jury": M. Rosenberg, "The Preliminary Inquiry" in *Criminal Procedure* (The Law Society of Upper Canada Bar Admission Materials, 1983-84), ch. 4, at 90 (*citing R.* v. *Duhamel, supra*). *See also* E. Ewaschuk, *Criminal Pleadings and Practice in Canada* (1983) at 410.

Concerning "Illegally Obtained Evidence" it is said that such evidence is admissible "as long as it is relevant and not of trifling weight".[16] The decision in *R.* v. *Wray* [17] is cited, as well as the following comment:

> This principle may be challenged under the Charter. Depending on the circumstances, it may be challenged under ss. 8 or 11 of the Charter of Rights and Freedoms.

This is the sum total of the discussion of illegally obtained evidence. Leaving aside the truncated summary of *Wray*, it can be seen that no mention is made of the special exclusionary rules for wiretap evidence,[18] nor of other Charter provisions, especially, but not exclusively, section 24, which bears on this issue.[19] This example also serves to illustrate the short shrift which the Charter receives in the *Manual*: there are only ten curt references. The discussion under "Protection of the Canada Evidence Act" demonstrates this further. That topic concludes with a simple reference to section 13 of the Charter.[20] It would have been far more helpful had it been noted that this constitutional protection against self-incrimination need not be specifically sought or invoked by a witness, thus possibly outflanking completely the cases under the Canadian Evidence Act.[21] The lion's share of the *Manual's* discussion deals with this latter, now perhaps rather unimportant, line of authority.[22]

Some major headings are conspicuous by their absence. There is no section on the basic elements of corporate criminal liability, entrapment, mistake of law and officially induced error, the problems of causation or criminal omissions, wiretap evidence, criminal appeals, to name just a sampling. One startling omission relates to the chapter on "Evidence". The hearsay rule, described by Sir Richard Eggleston as the "first and most important"[23] rule of exclusion in the law of evidence, is not covered except in relation to other areas such as *res gestae*, and has no reference in the index. These omissions severely tarnish the book's claim of being a portable general reference, or a checklist for the preparation of a case.

16. *Id.* at 143.
17. [1970] 4 C.C.C. 1 (S.C.C.).
18. *See* Criminal Code, R.S.C. 1970, c. C-34, s. 178.16, *as am. by* S.C. 1973-74, c. 50, s. 2; 1976-77, c. 53, s. 10.
19. The pivotal provision is section 24 which provides the basis upon which illegally obtained evidence can be excluded. *See generally* A.A. McLellan & B.P. Elman, "The Enforcement of the Canadian Charter of Rights and Freedoms: An Analysis of Section 24" (1983) 21 *Alta. L. Rev.* 205, at 225-41. *See also* P.K. McWilliams, *Canadian Criminal Evidence* (2nd ed. 1984), at 44-58, for a discussion of the other relevant Charter provisions.
20. *Supra* n. 1 at 258.
21. R.S.C. 1970, c. E-10, s. 5.
22. *Supra* n. 1, at 257-58. *See R.* v. *Wilson* (1982) 67 C.C.C. (2d) 481 (Ont. Prov. Ct.); *R.* v. *Altseimer* (1982) 1 C.C.C. (3d) 7 at 12 (Ont. C.A.).
23. R. Eggleston, *Evidence, Proof and Probability* (1978) at 46.

There are propositions of law presented in the *Manual* which are debatable at best,[24] and potentially misleading. For instance, the components of the offence of assaulting a police officer under section 246 of the Code are listed in these terms:

With respect to this charge, the Crown must prove the following elements:

A. That the accused assaulted a person;

B. That the person the accused assaulted was a public officer or a peace officer; and

C. That the public officer or peace officer that was assaulted was engaged in the execution of his duty at the time of the assault.[25]

It will be noticed that there is no mention of the *mens rea* requirement. General doctrine suggests that knowledge (or recklessness or wilful blindness) as to all of the material facts outlined above must be brought home to the accused.[26] It is knowingly attacking a person involved in enforcing the law which forms the essence of the offence, distinguishing it from other forms of assault, and there is longstanding authority which so states.[27] Yet this is not set out as an element which the Crown must prove.

A simple statement of a rule is not particularly helpful unless its underlying rationale is also presented, for only then can it be determined if a principle or authority is relevant in solving a present problem. Often the *Manual* excludes any consideration of the reasons for the rules. Thus, in answer to the question: "Can customers be convicted of soliciting [under section 195 of the Code]?" it is stated:

> The Courts are divided on this issue.

More specifically, the British Columbia Court of Appeal has held that customers cannot be convicted.

> *R.* v. *Dudak*, 3 C.R. (3d) 68 at 72, [1978] 4 W.W.R. 334, 41 C.C.C. (2d) 31 (B.C.C.A.) (ROBERTSON, Farris C.J.B.C., Bull 3:0).

However, the Ontario Court of Appeal has held that customers can be convicted.

> *R.* v. *Dipaola*; *R.* v. *Palatich* (1978), 4 C.R. (3d) 121, 43 C.C.C. (2d) 199 (Ont. C.A.) (HOWLAND, C.J.O., Brooke, Martin 3:0).[28]

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24. The *Manual* speaks of drunkenness going to the issue of capacity. Thus, it is said that that "[t] Crown must prove that the Accused had the *capacity* to form the specific intent. The Crown does *not* have to prove that the Accused formed the specific intent. Once the capacity is proven, the Accused, like any other Accused, is assumed to intend the natural consequences of his acts": *supra* n. 1 at 59 (emphasis in the original). Below this paragraph is cited *R.* v. *Perrault* [1971] S.C.R. 196. These propositions are questionable for two reasons. First, although it is true that the *Beard* rules refer to capacity, the more logical view is that intoxication need only negate the specific intent and not the capacity to form that intent (*see R.* v. *Otis* (1978) 39 C.C.C. (2d) 304 (Ont. C.A.). Secondly, the Crown must prove the specific intent beyond a reasonable doubt — this is trite law. The 'assumption' that a man intends the natural consequence of his act is merely an evidential aid, raising an inference and no more. Where this inference arises, the trier of fact may, but not must, be satisfied as to the existence of the relevant intent. It is no longer acceptable to elevate this inference to the status of a presumption (or assumption): *see R.* v. *Giannotti* (1956) 23 C.R. 259 (Ont. C.A.). Despite the obvious problems with the above quoted passage, support for Prowse's statements can indeed be gleaned from *Perreault*, *supra*. Equally obvious however, is a lack of consideration of the issues addressed in this note.

25. *Supra* n. 1 at 323.

26. *See R.* v. *City of Sault Ste. Marie* (1978) 40 C.C.C. (2d) 353 at 362 (S.C.C.).

27. *R.* v. *McLeod* (1954) 111 C.C.C. 106 (B.C.C.A.).

28. *Supra* n. 1 at 429-30.

The natural result of this type of summary treatment is that the reader must resort to the cases cited, reducing the *Manual* to a glorified index. Even here, there is no extensive citation of authorities and, more telling, in the entire text there is only *one* reference to periodical literature;[29] no other secondary sources are referred to. Additionally, some recent important cases are absent;[30] the book is not as up-to-date as the 1984 publication date, or the editorial note (dated September, 1983) would lead one to believe. This is unfortunate since currency can be a major asset of a looseleaf service.

Of course, it is easy to overlook the positive attributes of a book which possesses many deficiencies. Some of the topics, such as those relating to "confessions", "refreshing memory" and "loss of jurisdiction", seem to summarize the law in a reasonably successful fashion. The inclusion of the judicial panels as part of the citations for each case is a nice touch. In general, the indices, tables, tabs, etc., are well presented and easy to use. However, as to the ordering, some topics appear in the most curious of places. The law of attempts is included in the chapter on "Evidence", as is the discussion of criminal intent, parties to an offence, and included offences. These placements must be innocent errors.

In summary, the *Working Manual of Criminal Law* is a lamentably poor attempt at executing a well-nigh impossible task. One may ask whether there is a readership to whom this work can have a present value. As a teaching aid it is inadequate because it is devoid of analysis. It cannot inform an experienced criminal law practitioner. And with regard to the young barrister, or occasional criminal lawyer, one is reminded of that hackneyed (but apposite) old maxim — a little knowledge can be a dangerous thing. Unfortunately, it will require considerable further development before this text can form a useful addition to the literature.

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29. A. Manson, "Excessive Force in the Supreme Court of Canada" (1982) 29 C.R. (3d) 364, cited in the *Manual*, *supra* n. 1 at 66. Compare the effective indexing of authorities and other references in E. Ewaschuk, *supra* n. 15, *passim*.

30. *E.g.*, *R.* v. *McGuigan* (1982) 66 C.C.C. (2d) 97 (S.C.C.) (s. 83, parties to an offence); *R.* v. *Sullivan* (1983) 77 Cr. App. R. 176 (H.L.) (insanity); *R.* v. *Hagenlocher* (1982) 70 C.C.C. (2d) 165 (S.C.C.); *aff'g.* (1981) 65 C.C.C. (2d) 101 (Man. C.A.) (the rule in *Kienapple*). *See also* the cases referred to in footnotes 15, *supra*. And imagine, a book on criminal law and evidence which contains no reference to *D.P.P.* v. *Woolmington* [1935] A.C. 462 (H.L.)!