BOOK REVIEWS

HIRE-PURCHASE LAW AND PRACTICE. By R. M. Goode, LL.B. (Lond.), Solicitor of the Supreme Court (Hons.). Second Edition: London: Butterworths. 1970. Pp. lxxii and 1302. $46.20.

Modern society has been compelled to cope with a very important problem unknown, or known only in a very limited way, by earlier generations. This is the problem of financing the purchase of chattels. Credit purchasing is, of course, as old as the law of mortgages, and that branch of our law goes back a very long way. The application of the idea of credit buying to purchases of chattels, however, at least on a large scale, is a phenomenon of our more affluent, commercially minded age, during which there has evolved the philosophy that everybody should be able to enjoy now, not tomorrow, the fruits of the earth, or rather, the products of modern technology. This has involved both retail and wholesale purchasing of goods. The structure of our society is such that large sums of money have been required to enable such purchases to be made, whether in bulk or at the consumer level; large sums of money far exceeding the cash available to the purchaser in question. How to provide for such purchases, without the need to pay the total amount at the time of purchase, while at the same time protecting the vendor from any failure of his purchaser to pay, has been one of the vital legal questions of our time. Different legal systems have evolved different means of achieving this result. In England, the concept of hire-purchase, which first emerged at the end of the nineteenth century and has become so sophisticated and complex as to require whole treatises for its exposition, was utilised for such purpose. In North America, the same, or virtually the same, result has been achieved otherwise, by the development of conditional sales, chattel mortgages, and the like. This has led to the divergence of the legal notions, and the conceptual framework operating in this area between Canada and England, which together with the similarity that exists between the different legal systems, has been extensively and extremely competently described in Goode & Ziegel's book "Hire-Purchase and Conditional Sale", published by the British Institute of International and Comparative Law in 1965. On the narrow issue of relevance to the current legal situation in Alberta, therefore, a study of the English law of hire-purchase cannot be said to merit much consideration. Nonetheless, at a time when there is great discussion of the reform of the law relating to chattel security, notably by the introduction of the ideas enshrined in Article 9 of the American Uniform Commercial Code, it is not altogether uninteresting to take a long, hard look at the modern English law in this respect.

For such purpose Professor Goode's book (and it is worthy of note that since it came out he has become a Professor at the University of London) is ideal. It is comprehensive, well-written, and extremely clear and readable. Though at first blush some 1,300 pages devoted to a monograph on the subject of a narrow segment of the law of bail-

ment, or contract, or personal property (whichever rubric you wish to give to the general field of law under which this topic falls), appears excessive, the way in which this area of the law has grown in recent times, and its complexity and importance in relation to domestic or private transactions and business generally, as well as the financial and commercial ramifications involved in hire-purchase dealings, make it imperative to provide a full discussion of the legal principles and rules concerned. Indeed, to the practitioner of law in England, an important and useful feature of this book is the last portion, the Appendices contained in the final 300 pages, in which are to be found statutes, orders, forms and precedents. To the Canadian reader these are not as illuminating, nor as relevant. Nonetheless they are a model for books of this kind, which explain the theory but also provide necessary practical information.

The law of hire-purchase has become complicated in the past decade or so by the introduction of legislation, designed to protect the individual purchaser on hire-purchase, who has so often been the victim, in England at least, of those from whom he bought. This is not to say that the common law was not itself somewhat involved. Much of the difficulty stemmed from the fineness of the distinction between contracts of hire-purchase and transactions which fell within the Bills of Sale Acts or within the law relating to moneylenders. What was the true nature of a hire-purchase transaction? Was it a contract disposing of property? Or was it a roundabout method of lending money? Much of the law was concerned with correctly defining and characterising these transactions. In this respect mention must be made of another problem. This was concerned, and still is, with the difference between a contract that transferred property and title in goods and a transaction which did not have that effect. The former came, and still comes within the scope of the law of sale of goods: the latter could not do so, by virtue of the common law, and subsequently the statutory definition of sale. North America did not have this problem because greater emphasis was placed upon the functional aspects of the transaction involved as opposed to the conceptual differentiations. But the distinction referred to is crucial to an appreciation of the development of hire-purchase law and the resolution of its difficulties—if, indeed, it can be said that they have been resolved. There are other differences, for example, the fact that hire-purchase legislation is limited in scope by the amount of the purchase price, whereas legislation on conditional sales is more general in its application: and even though, as Goode & Ziegel have pointed out, in 1965, there was some overlap between hire-purchase and conditional sales, it is necessary to state that the distinction produces vitally different results.

Whereas the contract of sale has two effects, one contractual the other proprietary, resulting in a duality of consequences, the contract of hire-purchase has been treated, by the common law at any rate, as a "pure" contract, though of a special kind and with its own peculiarities and problems, such as the definition of implied terms, rights and duties of the parties, etc. Statutes, however, in England as in Canada, the U.S.A. and elsewhere, have been compelled to consider other aspects of such contracts, for example the problems of transfer of ownership by buyers on hire-purchase, repossession, penalties and, notably, the problem of misleading advertising. One interesting feature of this area

of the law, which makes it very valuable from the student's point of view, is the way in which legislation has been necessary to supplement and correct the common law development. This is a subject in respect of which the modern law is an amalgamation (not always easily achieved or satisfactory when completed) of the older common law and the newer statutory provisions made necessary by social and economic changes. Further, by the introduction of legislation some of the differences adverted to earlier between the formulae and methods adopted in England and those of such countries as Canada may have disappeared, in practice even though they possibly continue to exist and to operate in theory.

The English situation is brought out in copious detail, but with great clarity, in Professor Goode's book. Throughout, the learned author makes reference to authority in Canada and the United States, as well as other Commonwealth common law countries. He has also been at great pains to relate the law of hire-purchase to other, connected areas of the law, such as sale of goods, contract generally, tort, property, etc., wherever there is any overlap or materiality. As a work of careful, thorough, and well-researched scholarship, the book is a paradigm. As a source-book of the law and practice of hire-purchase it almost defies challenge. Admittedly in recent years there have appeared on the English market several books on this subject, notably that of Professor Guest. But this book by Professor Goode, which, if I am not mistaken was the first large-scale study of the topic, as opposed to other brief and inadequate accounts, is still an outstanding and leading work. As I have already indicated, it may not be of immediate and significant interest or importance to the Canadian lawyer or law student. Nonetheless it ought not to be ignored in this country at a time when the situation of the credit purchaser is under serious consideration by lawyers and law reform bodies. If they are seeking, for comparative and educative purposes, a comprehensive and intelligible account of the English approach to the legal problems and issues raised by this particular fact of economic and commercial life, then they would do well to resort to Professor Goode's work for satisfaction.

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THE CRAFT BARGAINING UNIT. By J. A. Willes. Kingston, Ontario: Industrial Relations Centre, Queen's University. 1970. Pp. xiii and 43.

This work provides an examination of the "lost constituency"[1] of collective bargaining, the craft unit. It points out that, except in the construction industry, the craft unit is indeed vanishing, and examines the policies of legislatures and labour relations boards that have contributed to bringing this about.

The problem of the craft unit is one of insuring a group of employees, exercising a particular craft and with a strong community of interest,

[1] Carrothers, *Collective Bargaining in Canada* 242 (1965).