

# BOOK NOTES

*AH Angelo*

## ***Down Memory Lane: Peter Ellinger's Memoirs***

Peter Ellinger (World Scientific Publishing Co Pte Ltd, Singapore, 2023) pp i-xx, 1-405.

Professor Peter Ellinger has been a friend and mentor to many over his long academic career. His writings have been seminal, especially in the field of banking law. This current volume is a welcome addition to his writings. It will be of particular interest to those who know him and to a more general audience for its comments on significant world events that have occurred during his "odyssey". That odyssey "has stretched over many years and many political upheavals of the 20<sup>th</sup> and early 21<sup>st</sup> centuries. I survived the Holocaust, found refuge in Palestine (when it was still a British Mandate), saw the foundation of the State of Israel, practised law in Tel Aviv, went for further studies at Oxford and taught law in Singapore, and in New Zealand and in Australia." (Preface, p xvi).

## ***FONO: The Contest for the Governance of Sāmoa***

Peter Swain (Te Herenga Waka University Press, Wellington, 2022)

Foreword by Tuila'epa Dr Sa'ilele Malielegaoi

This book is a complement to the earlier *Pālemia: A Memoir* written by Peter Swain and the then Prime Minister of Samoa Tuila'epa Sa'ilele Malielegaoi. It tells the story of the development of Samoa's unique system of governance, and of those who fought for power and shaped the development of the Independent State of Samoa.

Great lessons have been learnt. The reason why this book is important for all Sāmoans is that it is published at an opportune moment, when recent events in our political history are fresh in our minds. Recent events have tested the principle of the separation of powers. It is critical in small democracies, where the extended family system presents a huge challenge, to ensure the independence of the three branches of government though the rigid observance of constitutionally established checks and balances on power. (Foreword, p 11)

### ***Niue Law Reports, IV***

(Wellington, 2023) pp i-lx, 1-156 including case lists and Digest.

This fourth volume of the Niue Law Reports includes the decisions of the High Court and Court of Appeal of Niue up to April 2023 and includes historic cases which have been accessed since Volumes I-III were published in 2022.

### ***Le Droit Pénal Mauricien: Entre défis et enjeux***

Sabir Kadel (ed) (Law Reform Commission, Mauritius, 2023) pp i-xviii, 1-182.

This book presents the proceedings of a colloquium held in the Law Reform Commission of Mauritius in December 2021. It presents a valuable and contemporary collection of statements on aspects of the criminal law of Mauritius. There are 13 chapters: 10 are in English, the Introduction and three chapters are in French. In his Introduction to the colloquium, the Chief Executive of the Law Reform Commission states that the purpose of the colloquium was to review the state of the law in relation to offences against persons and in relation to property. A complementary effect would, he suggested, be that the participants would inevitably see the gaps that existed in the criminal law. He likened the programme for the colloquium to a voyage such as that on which Virgil guided Dante through the different levels of the other worlds in the Divine Comedy, and opined that sometimes, the participants would be made to feel ashamed about the antiquated nature of the laws of Mauritius and on other occasions have cause to reflect on the ingenuity of lawmakers as they worked in the development of the society. The Solicitor-General, Rajesh Ramloll, SC placed the law of Mauritius in its historical context and along the way, paid homage to L E Venchard.<sup>1</sup>

The law relating to the consent of the victim as a defence is discussed in chapter one, with early comment on the case of *Abramović* (Naples, 1974) (p 1), and the "throwing the dwarf" (25 February 1992) in which the conclusion of the French Conseil d'Etat was that even where the victim is a consenting participant, that consent cannot authorise an action that diminishes personal dignity. The range of cases and instances has a particular interest for those in the antipodean world who are mostly associated with the cases of the English Common Law. This study, as do the others, highlights the value of comparative law by showing the interconnectedness of human experience at various levels.

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<sup>1</sup> A former Solicitor-General and author and compiler of many texts eg Venchard, L E *Codes annotés de l'Ile Maurice*. 2, *Code pénal* (Best Graphics, Port Louis, Mauritius, 1994).

The chapter on "The responsibility of the perpetrator for their actions" addresses, among other things, the vicarious liability of employers for their employees, and the consequences for criminal liability in the case of merged companies.

The chapter on "The child victim" explores new developments in Mauritius law guiding how children give evidence such as the appropriate age for a child's competency to be tested and the weight a child's evidence should be given.

In chapter three, Mehdi Manrakhan discusses the importance of giving victims a voice and central role in proceedings. The author describes the prohibition on prosecuting counsel conferring with prosecution witnesses as an "archaic" rule of the Code of Ethics for Barristers in Mauritius.

In chapter four, Meenakshi Gayan-Jaulimsing analyses the law of attempts and writes about the history of the law of *tentative* from the Mauritian Penal Code which limited attempts to the provisions of the Penal Code itself, to the Interpretation General Clauses Act where the meaning of "attempt" is of general application to any enactment.

In chapter seven, Vinod Boolell discusses mutual assistance in criminal matters. That chapter can be paired with chapter ten on the "Mauritian approach to mutual legal assistance".

In chapter 11, Sabir Kadel discusses the reform of offences against the person: "La reforme des infractions contre les personnes". Chapter 13 provides comment on the proposals of the Law Reform Commission for the reform of the Criminal Code (Supplementary) Act.

Other chapters deal with the Plurality of Perpetrators, Cyber Criminality, Forensic Evidence and Reform of Offences against Property.

Mauritius has a proud legal tradition dating back to the 18<sup>th</sup> century. It had law reports published from a very early date and several texts on substantive matters.

This collection has comparative law value not only because of the current cross-fertilisation of many legal systems, but also because most Pacific legal systems are those of states or countries smaller than Mauritius, most of whom share a common law heritage with Mauritius but there are also some with a French legal heritage and, in the case of Vanuatu, one with an Anglo-French legal heritage.

