

Bulletin No. 19June, 1969The Oxford Colloquium

All members of the Association should have received full details of the Colloquium to be held at Oxford from 10 to 13 September 1969. If you have not already returned your registration form it would be helpful to the Organising Secretary if you would do this as soon as possible. The registration form has been reprinted on the last page of this Bulletin so that it can be easily detached for use should you have mislaid the original.

Annual General Meeting

The Annual General Meeting of the Association will take place on Tuesday, 30 September 1969, and will be held at Aldermay House, Queen Street, London, E.C.4. Formal notice of the meeting will be given later in accordance with the Rules of the Constitution, but in the meantime members may like to note the date in their diaries. Members are free to raise any matter they wish for discussion at the A.G.M., provided notice is given to the Hon. Secretary before 31 July.

As is customary, we invite a guest speaker to address the meeting after the business session, and it is a pleasure to announce that this year Mr. K. G. Addison, LL.B., F.C.I.I., A.C.I.S., F.I.Arb., has accepted an invitation to address the Association on some aspects of arbitration. Mr. Addison is immediate past chairman of the Institute of Arbitrators. Further details will be given nearer the date.

Estate Duty

Members may like to know that an attractively-produced paperback entitled "Estate Duty" has been published by the Chartered Insurance Institute, price 10s.6d., and is obtainable post free from the C.I.I., 20 Aldermanbury, London E.C.2. This publication contains a full report of papers presented and a summary of the group discussions which ensued at an educational conference held on 20 and 21 February 1969, organised by the C.I.I. in conjunction with Advanced Study Group 78 of the Insurance Institute of London, on estate duty and life assurance. All the speakers at the conference and the group discussion leaders were drawn from members of the

Study Group, which was formed in 1952. This publication is noteworthy for two reasons. First, the conference took place within a year of the introduction of the Finance Act, 1968, which made important changes in estate duty law; secondly, the Study Group has never until now published a report on its activities, and the publication of these proceedings will enable a much wider readership to benefit from the work of this Study Group. The booklet could well be a standard work of reference for many years.

Since the conference was held, a further Finance Bill (1969) has been published, proposing yet more estate duty changes which will have a bearing on life assurance. Among the proposals are the repeal of Section 2(1)(d) and radical changes to Section 2(1)(b) of the Finance Act, 1894, one of the objects being to curtail the estate duty-saving advantages of a discretionary trust. New provisions are also proposed in respect of estate duty on partnership assets passing on the death of a partner to surviving partners, which would appear to be an attack on automatic accrual without full consideration.

However, these proposals do not diminish the value of the book, especially as some of them were anticipated by the contributors. Much of the content of the book is still highly relevant, and to appreciate fully the significance of the new changes it is necessary to be conversant with the changes brought about by the Finance Act, 1968.

A note of the principal contributors to the book and main subjects should be sufficient commendation:

E. A. Holder	Estate duty and life assurance
R. E. Maidment	Recent legislation and case law, including the Finance Act, 1968.
E. J. Bristow	The effects of recent changes in the law on life assurance practice
R. Simmons	Estate duty mitigation
P. W. Bower	Estate duty mitigation
J. Whitmore	The problems of large firms and family companies

"Casebook on Insurance Law"

From the fertile pen of Professor E. R. Hardy Ivamy (a member of this Association) comes yet another contribution to text-books on insurance law.

This book enjoys the distinction of being the first

casebook devoted exclusively to insurance law. Generations of law students have had the benefit of casebooks and now Professor Ivamy has performed a valuable service not only for students but for all who are interested in the legal aspects of insurance. Time is at a premium for most of us and while we would like to have the leisure to savour the full text of the original reports, what we really need is to locate the facts of a case that are legally material and with the minimum expenditure of time. This is what a casebook should do for us. It does not preclude the subsequent study of the original report if the case is of sufficient importance to justify this. The "Casebook on Insurance Law" follows the system adopted by other writers of casebooks. A short statement of the principle involved appears at the head of each case and is followed by a summary of the facts, the decision given, and extracts from one or more of the judgments delivered.

The book is divided into eight sections, one of which deals with the general principles of insurance law while the other sections are concerned with the principal classes of insurance. However, about one-third of the book is devoted to cases on marine insurance. Any casebook has to be selective and there are bound to be omissions which some readers will regret. In particular, there are no cases on life assurance in relation to taxation and estate duty, and a surprising omission is Beresford v. Royal (1938), the leading case on suicide. "Casebook on Insurance Law" is published by Butterworths, price 32s.

"The Italian Legal System"

As Italy is the home of AIDA to which BILA is affiliated, it is not inappropriate that we should call attention to a publication which sets out to introduce its readers to the Italian legal system. The book is a composite work in which Professors Mauro Cappelletti of the Institute of Comparative Law at the University of Florence, John Henry Merryman of Stanford University, and Joseph M. Perillo of Fordham University have collaborated.

As might be expected, the book begins with Roman law which was the matrix from which modern Italian law developed. At an early stage, shortly after Justinian's war to reconquer Italy, a Germanic influence was brought to bear when a greater part of the peninsula came under the rule of the Langobards. Further accretions to the law came following the Frankish conquest of Langobard Italy, while emigrants from other Germanic nations added elements from their respective national laws. Alongside of these developments

was the growth of the Canon law which became woven together with statutory and customary law because of the great influence of the Church on Italian history. Indeed, the Canon law itself made extensive use of Roman legal materials from Justinian's era.

An important stage of development came with the legal renaissance at Bologna, for this was the period which marked the genesis of Italian civil law - the jus commune - the European common law which spread from Europe to Latin America (and other parts of the world) and became the basis of the "civil law system" which is often contrasted with the Anglo-American "common law". In the middle of the 12th century there were about 10,000 law students at Bologna and it is interesting to note, in the light of 20th century student revolt, that these students chose their own teachers and contracted with them concerning the place and manner of instruction and the amount of tuition. The jus commune developed in those days continued as the law of a great part of Europe until the modern era of national codification.

The account continues to tell in a fascinating way of subsequent development through the work of glossators and commentators and through the legislative complications of a later period which were a prelude to and were eventually absorbed into the Napoleonic Codes. These were superseded in due course by the local codes of the Restoration period down to the current codes of unified Italy promulgated during the first half of the 20th century. Among other features in this historical development, the authors trace the spread of Roman law into other continental systems and its more limited influence on our own legal system. Of special relevance at a time when our own Law Commission is turning its attention to codification are the contrasting attitudes towards the nature and functions of codification as reflected in the French and German codifications.

After a chapter on the Italian constitution and government there follows a fascinating description of the legal profession and of legal education in Italy which cannot fail to interest our members in the light of current discussions about the future of the legal profession and revised regulations for legal education in England. It appears that there are 27 law schools in modern Italy, of which 24 are units of the State university system and three are sponsored by private agencies. The curriculum is laid down by the Ministry of Education and only minor deviations are permitted. To enter law school, an applicant must have completed 13 years of primary and secondary education, of which the last five years must be spent at a liceo school

where there is great emphasis on the classics. In the law schools the case method is not used because the basic law is codified so that the legal education is concerned not so much with problem-solving as with the inculcation of fundamental concepts and principles. Thus, law school is not regarded as a profession training school but as a cultural institution where law is taught as a science. Examinations are conducted orally and the final stage for a law degree is a thesis on which the student is examined, again orally, by a panel of professors.

The Italian system of legal education helps the student to develop fluency in the spoken word, but it has the disadvantage that the learning process is passive with a great deal of memory work. Many of the law graduates go into industry or the civil service, but those who practise choose between the bar, the notariat, the bench or a position as State attorney, and there is not much interchange between these branches of the legal profession. For example, a judgeship is not preferment for the successful advocate but a position to be earned by apprenticeship within the judiciary, entrance to which is by competitive examination. Here we see the principle of separation of powers pushed to its logical conclusion in a judiciary which is not only a separate but an autonomous branch of government.

Of all careers in law, the academic is the most sought after and the most difficult to attain, and it is interesting to find that among the most famous and successful practising lawyers, professors predominate. The remainder of this chapter is devoted to a descriptive and critical examination of compartmentalism in the Italian legal profession.

A lengthy chapter follows dealing with the basic characteristics of Italian civil procedure and evidence. In common with most European systems, evidence is regarded as a branch of procedure. While Italian procedure in particular is described, a comparative viewpoint is included. Rules of evidence in civil cases are in the Code of Civil Procedure and in the Civil Code, and rules of evidence in criminal cases are mostly in the Code of Criminal Procedure. The relationship between civil and criminal procedure is examined, as are the relationships between civil and administrative and civil and constitutional procedure.

An appendix contains the complete history of a typical Italian civil action from trial through appeal, cassation, and decision on remand, including all the pertinent documents. This appendix is a "must" for anyone who would like to get the feel of Italian law in action, and moreover it is absorbingly interesting.

The remaining chapters of the book are concerned with the traditional attitudes and assumptions about law and the legal process that give Italian law its particular character, individuality or, as the authors say, "style". The role of doctrine in Italian legal thinking is seen as providing a sturdy foundation for the study and exposition of legal problems, and if some Italians are critical of the traditional doctrine or seek to progress beyond it, yet it continues to dominate the literature most frequently used in teaching and practice.

More specific topics are discussed next, such as the theory of the sources of law, the principal divisions of the law, and the ideology, content and arrangement of the Italian Civil Code of 1942. These topics also provide the authors with the opportunity to discuss the interplay between the traditional view of the legal process and the great political, economic and social changes that have swept over Italy in this century. When it is considered that within a period of 50 years or so Italy has experienced two disastrous wars and three kinds of government - a liberal monarchy, a fascist dictatorship, and a constitutional democracy - it is not surprising that even the most thoroughly entrenched traditional legal conceptions are, to use an expression commonly encountered in Italian legal circles, "in crisis".

What has been said about doctrine and law takes on new meaning in the last chapter which deals with interpretation in the Italian style, for the act of interpretation is the point at which doctrine and law intersect. The writers distinguish three kinds of interpretation, viz., doctrinal interpretation which is the work of scholars, authentic interpretation which is performed by the legislature, and judicial interpretation. The significance of doctrinal and authentic interpretation during specific periods in the history of the civil law is discussed and forms a useful background for the subsequent explanation of current theories of judicial interpretation in Italy.

In addition to the appendix on the progress of a civil action referred to above, there are appendices giving the text of the Italian constitution of 1948, including the amendments of 1963, and summarising the Italian Civil Code of 1942.

"The Italian Legal System" is published by Stanford University Press, price \$10.00 (92s.), and besides being a handsome production which is a pleasure to handle, the writers have done their work of blending so well that it would be difficult to detect composite authorship from the text itself.