ENGLISH LAW AND FRENCH LAW: A Comparison in Substance. By René David. Stevens & Sons, London. Eastern Law House, Calcutta, 1980. Pp. 223.

THE BOOK under review reproduces the text of the Tagore Law Lectures delivered by Professor René David, one of the best-known of contemporary comparatists. It may be regarded as forming the third part of a trilogy he has published in English. The first, *Major Legal Systems in the World Today*, as the title indicates, is a general introduction to the various 'legal families' in the contemporary world. It also throws light on the evolution of English and Continental laws and brings out the differences between the two systems on account of their separate sources, their structure, and the modes of thought and methods of procedure adopted by their respective lawyers. The second book, *French Law*, gives the basic data of the subject dealt with. The purpose of the present work, as the auther puts it, is "to consider a variety of branches of the law and to investigate in such branches what is, in England and in France, the present state of the law and what differences are to be noted there between the two systems."[1] He also considers the prospect of bringing about uniformity of law—a favourite subject with the author—in the present day world where international relations call for such uniformity more than ever before.

As the lectures were prepared primarily for the benefit of Indian lawyers who are generally familiar with English law, there are more details given of French law than of English law. Though it is a French lawyer who writes the book it need not be assumed that the author is interested in highlighting the several attractions of the French system. On the contary, he appraises the various legal rules in the two systems with an objectivity born of his legal training both in England and in France and in the light of contemporary juristic norms.

In the first chapter titled "A Law of Remedies and a Law of Rights" where he delineates the differences in the development of both the systems of law, he observes :[2]

> There is a certain stiffness in the conception of rights of the common law, and the doctrine of abuse of rights "has not been generally accepted in England as it has been in France".

There is another observation of the author in the same chapter which should be of interest to common law lawyers in general and to Indian lawyers in particular as most of the latter may not have familiarised

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1. René David, *English Law and French Law*. 6.
2. *Id.* at 13.

themselves with legal education in any country other than their own. Referring to legal education under the two legal systems, he says :[3]

> The law appears in England as a technical subject the study of which only attracts men and women who intend to engage in the legal profession. Things are different in France and in other countries with the civil law tradition. Law schools are there schools of social science, and education in a law school is regarded as the best preparation for a number of professions, in the private or public sphere, exceeding by far what is the domain of the legal profession in common law countries....It is a remarkable thing that in spite of the huge numbers of students who register in law school all holders of a law degree easily find employment in our countries, although not necessarily in the branch which they had initially contemplated or in the job that would appeal to them most. This is apt to show that "the law" is still something which is conceived in a broader sense in France or Germany or the Netherlands than in England where, in spite of a noteworthy evolution, law remains essentially a field of study reserved for a somewhat narrow group of law practitioners.

In drawing a comparison between codified law in France and case law in England the author points out that the English cannot have codes having the same significance as the French codes as long as they adhere to their traditional idea of a legal rule, keep to their rule of precedent and follow their techniqne of distinctions instead of taking the broad continental view of the legal rule and resorting to the technique of interpretation which is employed in civil law countries.[4]

After dealing with certain preliminary matters like the structure and divisions of the law, courts and lawyers and procedure and evidence, David gives brief comparative studies of various branches of law. Speaking of administrative law in France, he assumes that as the Conseil d'Etat does not favour codification at large, some subjects only may be codified and *droit administratif* as a whole will remain for a long time judge-made law.[5] The ethical basis of the law of contract in France is emphasised when he points out :[6]

> The French law of contract is based on a principle of morality, stressed by the canonists, for whom it was a sin for a person not to fulfil his promises : *pacta sunt servanda*, you must keep your word and, if you do not, the State and the law will oblige you to do so.

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3. *Id.* at 15.
4. *Id.* at 20-21.
5. *Id.* at 100
6. *Id.* at 126

> English law on the contrary sees above all in the contract a bargain; what matters is not that a promise should be enforced, it is that the other party, the promisee, who has furnished a consideration for the promise, should not suffer any damage as a consequence of the breach.

It may be an open question worthy of consideration for Indian legislators whether India should adhere to the English notion of consideration or subscribe to the continental concept of *cause* (*causa*) in the country's law of contract.

It is not necessary in a brief review to highlight the various points of comparison which the author has beautifully brought out in his fairly comprehensive study covering almost all branches of the law. What is warmly recommended is a careful reading of the book which will be highly rewarding to any lawyer who is not content to be a mere mechanic of the law.

The appendices consisting of the Preambles of the Constitutions of 1946 and 1958, a few other excerpts from the Constitution of 1958, the Declaration of the Rights of Man and Citizen, 1789, some excerpts from the Civil Code of 1804 and the translated texts of judgements of a few select cases decided by the *Cour de cassation*, a Court of Appeal, *Conseil d'Etat*, and the *Tribunal des Conflits*, not only help acquaint the common lawyer with certain basic concepts in the law of France, but also make him familiar with the style in which opinions are written by judges in France. Indian judges may not feel inclined to emulate the conciseness of French judgements, but they may feel convinced that the habit they indulge in of writing voluminous judgements is not an essential element of the judicial process.

Any lawyer who considers that acquisition of general legal culture is an indispensable ingredient in his juristic repertoire would do well to familiarise himself with the contents of the book which will prove to be of inestimable value to him.

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PRIVATE INTERNATIONAL LAW. By K. Sreekantan. Academy of Legal Education Trivandrum. 1978. Price Rs. 15.00.

PRIVATE INTERNATIONAL law is one of the important branches of legal knowledge introduced in almost all the legal institutions either as a compulsory paper or an optional paper, both at the graduate and post-graduate levels of legal education. At a time, when we hardly find any Indian writer attempting a text book on Private International Law, Mr. Sreekantan has made a bold attempt by writing a simple student edition on this subject. The author's approach and analysis are based on Cheshire's great work on Private International Law. Basically, the book under review, is mainly intended for B.L. or LL.B. students only. The book consists of 276 pages including notes and appendix. Being a low priced edition costing only Rs. 15 it is within the reach of each and every student.

The chapter analysis shows that it contains 19 small chapters dealing with all important aspects of the subject of Private International Law. Chapter 1 deals with nature, definition, and scope of the subject. Chapter 2 deals with the general principles of Private International Law. Chapter 3 deals with the ticklish problem of choice of law and jurisdiction. The choice and proof of foreign judgements are analysed in chapters 4 and 5, with brief but critical analysis of some important cases, such as, *Russ* vs. *Russ*.[1] Domicile, which plays a key role in determining the question of choice of law and jurisdiction, seems to have taken much attention and time of the author in chapter 6 which is replete with detailed explanation of the concept of domicile and analysis of English and Indian cases.

Chapter 7 discusses various theories of proper law of contracts. Surprisingly, the author has overlooked important recent cases on contracts. Several aspects of contracts, such as the capacity of parties, essential validity, *etc.* are well analysed so as to make it easier to understand even by an averge student of Private International Law. Equal attention is paid by the author to the subject of torts in chapter 8, where he has explained different theories of tortious liability with the relevant case Law.

Of all the chapters, the most interesting one is chapter 9 dealing with the law of marriage. It mentions both the English and Indian concepts of marriage, laying emphasis on the cases decided by courts in both the Countries. Special mention is made of polygamy and its effects on children.[2] The author has vividly discussed the doctrine of "*locus regit actum*" in chapter 10 and explained its significance regarding the validity

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1. (1962) 23 AUER 193.
2. K. Sreekantan, *Private International Law* 103.

of marriage. The author has also well distinguished between the formal validity and essential validity of marriage in this chapter.

The subject of matrimonial remedies has been analysed in detail in chapters 11 and 12 with special reference to English and Indian laws on divorce. Chapters 13 and 14 deal with the laws relating to legitimacy, adoption, and the law of guardianship and custody of children.

Finally, the law of property and the law of succession are covered under chapters 15, 16, 17, and 18. The last chapter 19 dealing with recognition and enforcement of foreign judgement is no less significant in the sense that this chapter extensively discusses the common law and the Indian case law. At the end, the author has made some useful notes on the most valuable principles of Private International Law such as stay of proceedings of Private International Law. Appendix 1 is devoted to the discussion of model questions and problems of Private International Law.

The book is essentially meant for law students and may be described as "Cheshire's Private International Law made easy". The author has done well in simplifying the complicated subject of Private International Law for the benefit of students.

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