

BOOK REVIEWS

FAMILY LAW : PROPERTY / PAUL COOPER, ED.
Sydney : Blackstone Press, 1993 \$47.50

This book is a collection of seven papers concerning the more complicated and intricate issues associated with family law property matters.

The papers are divided into three categories:

- 1 Superannuation and valuation issues; including papers by His Honour Justice Coleman; Ray Fraser; and Gary Fleetwood
- 2 A paper on property proceedings under the *Defacto Relationships Act* by Michael Errington; and
- 3 The interaction of Family Law, Bankruptcy Law, Corporations Law and the competing entitlements of unsecured creditors; including papers by Kathryn McMillan; Garry Watts; and Geoff Sinclair

His Honour Justice Ian Coleman's paper on superannuation and valuation issues, discusses the five approaches to superannuation (including his own views and some practical advice) and touches on the difficulties with valuing assets, lacking negotiability. In considering the value of the interests of the parties, he reviews the authorities and considers the distinction between earnings valuation and realisable valuation, including when third party interests are involved, or when there are different classes of shares. His Honour then considers third parties and the Family Court, providing a general discussion of Section 85A of the *Family Law Act*, Sections 592(1) and 592(2), and Sections 232 of the Corporations Law and general equitable principles.

Ray Fraser's paper looks at the assessment of superannuation and the valuation of company shares. Assessing the value of superannuation requires taking into account tax considerations and a simple and useful table of the tax percentages that apply is included. The second part of his paper considers the valuation of shares in a private company. This paper covers similar material to Justice Coleman's article discussing the two methods of valuing the shares, capitalisation of maintainable earnings and net tangible assets backing basis, and which one to choose.

The third paper "The Use of Injunctions in Property Settlement Proceedings Particularly Relating to Superannuation Entitlements", concentrates on Sections 114(1)(e) and 114(3) of the *Family Law Act* and discusses the issue of whether a party should make an immediate application for an injunction or whether seeking to obtain an undertaking will be sufficient. He also considers third party injunctions.

Michael Errington's paper on the *Defacto Relationships Act* provides a good outline of the existing law and relevant rules, together with the procedures to be followed, illustrating the crucial differences between Section 20 of the *Defacto Relationship Act* and Section 79(4) of the *Family Law Act*. He also considers the important decisions of *Black v Black*, *Dwyer & Kaljo* and *Williamson & Williamson*.

As to the Corporations Law, Kathryn McMillan's paper sets out the duties of company directors and provides a discussion of the relevant authorities. Garry Watts' paper alerts one to the dangers of allowing a spouse to continue his/her role as an inactive director in light of director's duties and insolvency trading. He then provides an overview of

the director's duties and as to insolvency trading, considering the cases of Lewis, Eise and Morley with a discussion of the new Section 588G of the Corporations Law

As to bankruptcy, both Garry Watts and Geoff Sinclair's paper look at the issue of the unsecured creditor as compared to the spouse of a bankrupt. Both papers consider securing property matters avoiding the relation back period by either couching the terms as spousal maintenance, or to implement Sections 87 and 86 Deeds. Geoff Sinclair's paper in particular goes on to illustrate the point that there are a number of anomalies in assessing the rights of a spouse as opposed to third party creditors.

Generally, the papers provide not only an informative analysis of the non-mainstream areas of family law property matters but the authors go further and provide practical ideas and solutions to often difficult questions. They provide a refreshing approach by not only educating but also highlighting crucial issues for further discussion.

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INDEXING LEGAL MATERIALS / ELIZABETH

M. MOYS, ED. & OTHERS

London : Society of Indexers, 1993 \$19.00
(Occasional Papers on Indexing; No 2)

There have been few instructive writings on law indexing, so this is a welcome practical guide. The Introduction quotes Dorothy Thomas (one of the few) who emphasised that indexing the law is "notoriously rigorous" (the term "notorious" having a particular legal usage - publicly, rather than unfavourably, known). Chapter 1 is historical and chapter 2 introduces 'legal material' falling into 'primary' and 'secondary' sources. In the

former are mainly legislation, law reports and digests etc, and in the latter are books of authority, practice or precedent books, encyclopaedic works and law journals etc (not in any order of importance).

Chapter 5 contains sound advice: (a) that law indexers are "not in the business of telling readers *what* the law is, only *where* it is to be found"; (b) "when it comes to converting into words the concepts chosen for inclusion in the index, the special importance of *words* to lawyers must be recognised" (my emphasis). The latter cannot be stressed too much and means that unless the words used in the law are recognised and understood by the indexer they cannot be correctly indexed. (A recent example illustrates this. A law index contained the phrasal heading 'Remoteness of damages'. There is no such phrase in law. The expression is 'Remoteness of damage' (injury or harm); if remoteness is found the court will not award damages (compensation). This chapter then deals with phrasal terms some of which may not be familiar to non-law indexers (trespass to goods); compound expressions which must not be broken up or inverted (charging orders); terms which have special legal meanings (cause, discovery, use) and free term v controlled vocabulary.

Chapter 8 looks at tabling (cases and statutes - or acts) which are peculiar to legal books, reports and major works, but tables of cases judicially considered have been overlooked. Lawyers probably use this table more than cases or acts. In Australia these tables are of particular importance because of the jurisdictional differences. An apt example is the criminal law, where some States adopt the common law and others have a codified system, so interpretation of terms in the latter may not apply in the former States. However, tables of cases and statutes are increasingly being computer generated by the larger law publishers but cases judicially considered

require human intervention (See the *Australian & New Zealand Citator to UK Reports*, and the *UK Current Law Citator* which are similar publications)

I return to chapters 3, 4 and 6 (and omit 7: Indexing EC materials) in which I have some difficulty Chapter 3 (Structure and design of indexes) distinguishes between 'classified' and 'specific' entry giving illustrations both of which are unfortunately poor examples of either form The editors (influenced by Andrew Green's paper, read at a BIAL Conference, and which is quoted) conclude that "The trend at present seems to be towards more specific indexes such as that reproduced as Figure 5. In this type of index, entries are made directly under nearly all significant words often in addition to their use as subheadings under generic terms"

Figure 5 obviously falls into that category of books which are commonly referred to as 'law for the layman' and the index is not a characteristic law index However, in chapter 4 there appears to be a change of mind It says that "While a classified structure may well be rejected for a particular publication, there is still plenty of scope for making use of the methods of classification in determining the contents of the index and how to devise the entries."

I am firmly of the conviction (as is Norman Knight) that any true law index must *begin* with classification Specific structure follows by the simple rule of breaking up headings which have too many subs - usually more than a column or two An example that comes to mind is a major index where the heading 'Contract' took up 18 columns I was able to break it up under 28 headings by making headings out of a number of subs (accord and satisfaction; breach; consideration; formation; implied terms etc) and by adding 19 cross references (see also Conflict of laws*, Fraud and

misrepresentation, Specific performance, etc) There are of course times when some headings cannot be broken up in this way I can go on about this aspect of law indexing but this is not the place for it, and I feel certain that the editors will agree with my supplementation of their writing

Chapter 6 (Form of entries and references) seems to stray from another important aspect of law indexing In discussing 'singular and plural' forms of headings particularly, the editors adopt the 'countability theory' (how much, how many). For this reason almost all the examples in the book are expressed in the plural form (Appeals, Contracts, Gifts etc) when the legal terminology for these is in the singular - see any dictionary of legal terms The *Acts Interpretation Act* (Cth) says that "words in the singular number include words in the plural and words in the plural number include the singular" The Act then goes on to give the defined terms (document, record, Minister, affidavit, day, month etc) in the singular This pattern is followed in all other acts Indexes to The Law Reports and other major UK and Australian report series and encyclopaedic works use singular headings and subheadings The plural is only used to refer to services (Roads, Railways), some phrasal expressions (Crown proceedings) and collective headings (Hawkers and pedlars) Another good reason is that some English words when used in law have a different meaning in the singular and in the plural (account/accounts; cost/costs; damage/damages; election/elections etc.)

It is only when one encounters the legal thesauri (both UK and Australian) that there is a complete reversal; almost all expressions are in the plural The UK Legal Thesaurus falls into this trap in its Introduction In attempting to explain how a single sentence in law may need more than one entry it uses (inter alia) the heading 'Contracts' to index 'consent to a contract of marriage'. Most

legal doctrines (Declaration, Injunction, Mistake) and legal subject headings (Appeal, Company, Guarantee, Mortgage) are expressed in the singular. Plural usage has (incorrectly) been introduced by the thesauri, perhaps because plurals are often used in common parlance. The law is more precise

Chapter 6 includes a section on synonyms, antonyms and homographs but the discussion is limited. My advice is that synonyms are to be avoided because they can lead to pitfalls. I read a judgment which said that "It is for the Court to decide whether terms are synonymous (if the Statute had not shown them as antonyms)" and which decided that "a hostile witness is synonymous with an adverse or unreliable witness." (In normal English usage we would not equate hostility with unreliability). Another reason to steer clear of synonyms unless there is certainty, is that in many acts words are defined "for the purpose of this section" or "in this Part" and hence those words do not carry the same meaning for other parts of the act. 'Accessory' and 'accomplice' are used even by some legal writers as if they are synonyms, but here is a subtle difference and 'accomplice' is giving way to 'complicity' particularly by writers in criminal law where the usage occurs more often.

I do not, in spite of expressing myself on a few matters, wish to give the impression that this is not a worthwhile contribution to the literature on indexing, and more particularly to law indexing. Quite the contrary. It

contains very valuable directions for the would-be law indexer and has brought to notice many important and peculiar facets of law indexing that are not encountered by non-law indexers. Indexers who have no acquaintance with the law will find this book enticing and lively reading. In the face of a dearth of published material the bibliography of works cited in the text is another welcome addition and so is the detailed index.

It may have been expanded** but may then have become too large for the Society's Occasional Paper series.

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* A misprint on p 29 seems to give the impression that conflict of laws is concerned with country and 'nationals'. That is only partly correct. In cases of conflict the court determines the system of law by reference to which the parties' rights may be ascertained. It concerns the *lex loci* (the law of the place where the issue arose) or the *lex fori* (the law of the place where the action is brought). It arises like a thief in the most unexpected situations - bankruptcy, tort, marriage etc.

** Consolidation of law indexes (some involving two volumes of 1000 pages each) require special skills, controlled vocabulary, altering headings, going repeatedly back to the text, rephrasing entries, allocating some entries to different headings etc. Indexing of Statutes is another specialism (see the recent *Subject Index of Legislation Victoria*). Statutory annotations require a process of abstraction with which indexers are familiar (see *Victorian Statute Annotations* 6th ed 1986 and Supplement). 'Words and Phrases' is a heading in all major legal works. A five volume (UK) and a three volume (Aust) publication denote the importance of this tool for lawyers. Indexers should be on the lookout for expressions to be extracted for this heading. They are as important as definitions.

**BLACKSTONE'S GUIDE TO AUSTRALIAN
LEGAL BOOKS 1986-1990 / PAUL K COOPER
& OTHERS**

Bondi Junction, NSW : Blackstone Press,
1993 \$185 00

From the foreword, Paul Cooper outlined the aim of this work: "The *Guide* enables the user to go beyond conventional bibliographic directories which provide details of title, author, publisher, year and place of publication. This *Guide* provides an edited version of the contents pages of each work, enabling the reader to better assess the value of each entry to a particular research problem than would be possible by reference to book title alone".

How many of us have been confronted by our users on obtaining a book and seen the disappointment in their faces once they have examined the contents of a book? This work acts as an aid in being able to ascertain quickly the contents of a book. This is particularly useful if a title is out on loan and instead of recalling it you can decide on its usefulness by examining the book's contents. Some libraries have keyed the contents of monographs into their computerised catalogue so it is interesting to see this approach validated by a book.

There are some reservations I have about this work. Under Evatt and Forsey on the *Reserve Powers* there is no mention of the fact that the book is a reprint. Likewise GS Bower's *Code of the Law of Actionable Defamation*, which is a reprint of a UK work. Hardly an Australian legal book! Under Finn on *Essays on Contract* under contributor, none are listed, yet there were many, whereas under Finn on *Restitution* it lists only Peter Birks and PA Butler whereas there were many. A better approach I think would have been to list the different contributors next to their chapters. Under Gifford on *Town*

Planning Law and Practice there is no reference to the fact that it is a looseleaf service. This latter fact is often an important factor in deciding whether to examine a work or not.

Examining the entry for Hughes on *Essays on Computer Law* you only get the subject sections not the chapter titles. This would have taken at least two pages, which could have been done, as with Nygh. This may be contrasted to other works, e.g. Pannam on *The Horse and the Law* where chapters plus chapter subheadings are listed.

In the Foreword, there is mention of what is excluded from the *Guide*. Amongst the works excluded are law reform reports and other reports and recommendations on law, and yet on pages 311-315 we have listed various Law Reform Commission discussion papers.

At the end of the *Guide* is an "Alphabetical guide to book titles plus a subject index".

Is this book worth \$185 00? I think many law librarians would balk at the price. If it were priced at \$100 00 there would be a few sales whereas the figure of \$185 00 appears to be quite high, notwithstanding the many hours put into its production. It seems a pity that this novel approach to legal research will not attract more buyers because of its price, nevertheless readers who can scrape together the extra dollars will find it useful in drawing attention to many texts of which they may not have been aware.

Colin Fong

Allen Allen & Hemsley