

## **Sue Rigney**

Column Co-ordinator

Department of Justice and Attorney-General

Phone (07) 3239 6064 Fax (07) 3239 6185

Email: sue\_rigney@justice.qld.gov.au

---

## ***De Facto Property Proceedings in Australia***

by **Dorothy Kovacs**

*Butterworths, Sydney, 1998*

ISBN 0-409-31585-0 \$50.00

The property rights of those in de facto relationships, unrecognised for so long, are now the subject of a complex and constantly evolving area of law.

This text was written with the aim of reducing, for practitioners, the disorder generated by, in the author's words, the "simultaneous development of new jurisprudence from the High Court and the adoption by the states.....of legislation" which govern the property rights of de facto cohabitants.

That the author has succeeded in her aim is beyond doubt. What has been produced is a text that logically and thoroughly deals with the statutory regimes adopted by a number of the states and the general law that has application to disputes about property between former de facto partners.

The text begins with a useful overview of the statutory and general law regimes throughout Australia. As well as identifying those states where relevant legislation has been enacted (New South Wales, Victoria, South Australia, the Northern Territory and the ACT) it provides a status report on the progress of moves to enact legislation in the remaining states. The overview also sounds a warning for practitioners who may feel a "false sense of familiarity" based on the apparent similarities between some state legislation and the *Family Law Act (Cth)*. This issue is further explored in Chapter 6 where key provisions of the respective pieces of legislation are compared and reviewed.

Part A of the text deals with the state legislation in a series of chapters clearly designed with the practitioner in mind. As well as examining practical issues like time limits and which relationships are governed by the legislation the chapters include "Practice Points" which encapsulate the practical implications of the text and assist the practitioner in avoiding pitfalls in advising clients and, in particular, drafting pleadings. Other chapters deal with When is an Order Just and Equitable?, Superannuation Entitlements, Cohabitation and Separation Agreements, Ancillary Powers under the State Laws, Proceedings on the Death of a Party and A Victorian Problem - the Need for Real Property.

Part A concludes with a chapter on the relationship between statutory and general law rights.

Part B provides an examination of the common law and equitable principles that have application to property disputes between de facto partners. The author sets up this examination by providing four fact scenarios that would be familiar to any practitioner. These scenarios are then referred back to in the author's subsequent chapters. Those subsequent chapters deal with Contracts, Trusts, an extensive chapter on Constructive Trusts which examines both the traditional constructive trust and the still evolving new constructive trusts, The Equity of Acquiescence, Charges and Liens and Other Remedies. Again, useful "Practice Points" are included for the benefit of the practitioner. The text concludes with a Chapter on Stamp Duty exemptions for De Facto Partners.

The author uses relevant and appropriate references to court decisions throughout the text to illustrate her discussion of the law. This feature means that the text would appeal to the student or academic as well as the practitioner. In particular, the chapter on Constructive Trusts would be a useful reference for any student of equity who is looking for an easy to read discussion of this complex area of law.

The author has managed to produce a comprehensive and easily read text which does meet its stated aim of reducing the disorder, for the practitioner, of this area of law. Given that five states and territories have enacted their own legislation, and there is an extensive body of relevant general law, this is no small task. With Australia's mobile population meaning that practitioners are often required to advise clients of the relevant law applicable in other states or territories and an ever growing number of clients seeking advice following the breakdown of their relationships this text would be a valuable resource for any practitioner or law library.

**Louise Logan**

Legal Research and Training Officer  
Department of Justice and the Attorney General,  
Queensland



***An Introduction to the Law of Contract***

by **Stephen Graw**

*3rd ed. LBC, 1998*  
*ISBN 0455215421 \$49.00*

The law of contract can seem enigmatic at the best of times, all the more so to the layperson. It is just such people, students of contract law in a context other than a law degree, to whom this book is directed.

The author covers the various facets of his chosen area of law comprehensively. Indeed, the text touches on concepts such as economic duress and restitution which are still somewhat embryonic, but nonetheless potentially useful.

Each principle of law is presented succinctly, usually followed by brief descriptions of the relevant leading cases. These case notes outline the facts of the case, without overburdening the reader with detail, and then provide a summary of the result.

However, the one significant flaw with this text, from the perspective of a practising lawyer, who is, it should be remembered, not the book's primary audience, is that it is perhaps too brief. Reference to a more detailed source would be necessary in order to ascertain more precisely the reach and nature of the more subtle or

complex principles. Further, perhaps in an attempt to ensure the text is readily accessible to the layperson, the author does not always provide authorities for the propositions of law he propounds.

As such, a legal practitioner would find this book a convenient and contemporary statement of the basic principles of contract law, for the purposes of quick reference or as a starting point for further research, but this book could not stand on its own as a reference text.

**Terence Walsh**

Articled Clerk  
Barry & Nilsson, Solicitors, Brisbane



***Law Firms – Managing for Profit***

by **Ashley Balls**

*The Federation Press, Sydney, 1998*  
*ISBN 1862872805 \$35.00*

The author explains that this book is aimed to assist lawyers to apply some simple-to-use methods to improve financial performance. It is written in an easy to follow manner without reverting to technical verbiage. Hence the target readers for this book are those professionals seeking to get a broad brush understanding of some of the basics of professional office management.

The book is divided into a total of twelve chapters, each covering different facets of practice management.

Chapter three deals with "keys to profitability and rules of thumb". There is some danger in reading for the first time books that provide so called benchmarks and I have found from my own experience that some of the percentages used are quite a bit out of touch with the Australian legal services industry. Having said that, the chapter provides a good basis on several important issues of which managers should be aware.

Chapter four deals with business plans. This is a most worthwhile chapter and provides some very sound reasoning why business planning is critical to the well being of any professional firm. It covers the issues of budgeting particularly well and doesn't become over

complicated by attempting to describe why the business plan needs to tie in with the master budget.

Chapter five deals with the mechanics of profitability. Again this is an excellent chapter, particularly dealing with the areas of gearing (for staff), chargeable hours and recovery of work in progress. The chapter could have mentioned that for subscribers, there is some comparative survey information available in Australia from the Financial Management Research Centre, Armidale, New South Wales (FMRC). FMRC rated a mention in chapter three and its mention in this chapter would advise the reader that they could compare their own staff structures and expense ratios with industry averages based on the FMRC survey. Surveys are a useful guide but should be taken in the context of the number of participants in the survey, their location and their specialty services that they may be offering the public.

Chapter six deals with working capital control. It is my experience that this is the area that is constantly an issue to be dealt with, with professional firms. Cashflow is critical to the well being of a practice. The author conveys the requirement to control work in progress and debtors and describes the benefit of reducing the delay between (receipt of) instruction and the date when cash is received for the work done. The author provides a particularly useful quote on page 72 of this chapter and I quote "many firms will tell you that they are delighted to have high work in progress because they are delaying tax and they have fees in the cupboard for future years". He goes on to explain the fallacy of this.

Chapter eight deals with management reporting which is all a question of giving the right information to the right people. The author correctly points out that in simple terms the increase in the volume of a management report is an inverse ratio to the percentage of partners who will read it. Importantly the chapter deals with the need to train the users of the reports to decipher the information that is important to them. It also correctly details the requirement that these reports must include actual against budgeted detail. Overall the key aim of management reporting is to provide management information that enables management to act swiftly to improve performance.

Chapter nine deals with the development of personal and management skills. This is an extremely difficult topic to write about considering the frequency of managing partners and administration staff not being particularly trained for the functions that are expected of them. The chapter does deal with the management of staff issues and correctly classifies staff as the largest "investment" of the firm. It deals with the control of work through sound management to enable legal services to be provided at lower cost. It also deals well with the specific skills that are needed by successful partners and provides a clear list of answers given as to the skills required by successful partners on page 90. Career development issues were not discussed in this chapter which would have been the useful place in the book to outline the desire for professional firms to have a definite career policy and for practitioners and support staff to be measured in respect of their progress.

Chapter ten deals with the role of client care in profitability. The chapter discusses the benefits of adopting a clear client care program. It is somewhat confusing that the term "client care" is a term used by the various law societies in their first attempt several years ago to have lawyers provide to their clients a letter of engagement detailing the terms of business. This has more latterly been further refined to make it mandatory for practitioners to provide such information to clients on receiving instructions. In this chapter "client care" deals with caring for the client and hence the confusion as the chapter develops. The chapter deals with the marketing issues of looking after the client and giving them a high level of service as the singularly largest and easiest method of obtaining further client work, both from existing clients and referrals from existing clients. The chapter is particularly good reading and deals with some of the theory of marketing to an existing client base.

Chapter eleven deals with tax planning. This chapter is necessarily hard to write given the generalities that occur between operating a practice on each side of the Tasman. It may have been more suitable for the author to stipulate some of the basic fundamentals in a briefer manner and suggest in the book that the reader take specific advice from their tax accountant as to the most suitable structure to meet their needs. In particular there

is some discussion on the use of service companies which are very prevalent in Australia and are probably better described as being service trusts, being the more common term and certainly the more useful for tax planning purposes. It is a little erroneous to talk about income splitting when the Service Company is "owned by the partnership". Clearly if the ownership is with the partners, then there is little possibility of splitting income to spouses and partners in a company structure unless dividends are paid. Hence there is an incidence of tax at the corporate tax rate in Australia of 36% with an imputation credit possibly applying to the income being received by the spouse or partner. In summary this chapter was possibly too long for the book and could have been dealt with better.

My summary overall is that this book is by nature quite simplistic in its approach and would not be a textbook to work against in establishing a well-run professional practice. It does provide however, some very creditable comments on the attitudes of professional people, the market place that the profession operates within and gives some general guidelines on the expectations that managing partners and financial managers can expect to observe in the day to day operations of a practice. I found the text easy to read and this book would be a good read for newly appointed managing partners, without expecting it to be the "bees knees" on every point that was raised.

**Mervyn Lobb**

Managing Principal

Lobb Davidson & Associates, Brisbane

