

## Human Rights in International and Australian Law

By Ryszard Piotrowicz and Stuart Kaye  
Sydney, Butterworths, 2000

At the time of writing this review, the Senate was undertaking an inquiry into the whether the *Sex Discrimination Act 1984* (Cth) should be amended in order to allow for the lawful discrimination against women on the basis of their marital status in respect of access to artificial reproductive technology (for example, in-vitro fertilisation). Such an amendment is clearly contrary to the objectives of the Act.<sup>1</sup> If passed, it will arguably put Australia in breach of its international human rights obligations.<sup>2</sup> That it could even be contemplated today, sixteen years after the legislation was passed, is remarkable and nicely illustrates the tension between the place of human rights in an international as opposed to domestic context. While the book touches upon this issue, it fails ultimately to adequately explore it, notwithstanding its title and its target audience.

The book purports to be designed for students and to this end it is accessible and general enough in its scope to give, as Professor Ivan Shearer AM aptly described in the Foreword, 'the shape of the woods' without descending into the often tangled thicket of human rights. Accordingly, for those practitioners for whom human rights law is not their area of speciality, this book provides a good introduction to the various international and local instruments governing this field of law and the framework within which they operate.

The book is divided into three parts and contains an excellent set of reference tables (to cases, statutes, conventions and other relevant instruments) together with a well-constructed index. Part I of the book gives a broad but solid overview of the nature and origin of human rights law and the measures that comprise international human rights, including their enforcement. Of particular interest is Part II, which is devoted to international humanitarian law, an often overlooked but nonetheless important part of human rights law. For as the authors emphasise, it is precisely in times of conflict and war that adherence to human rights becomes of critical importance. Part III deals with human rights in an Australian context and examines the means by which Australia fulfils its international human rights obligations within the limitations imposed by the Constitution and also examines the various legislative mechanisms for the protection of human rights at a local level.

It is, however, in this latter section where the book disappoints. Put simply, much more time and detail ought to have been allocated to examining the treatment of human rights within Australia. As it stands, the title is somewhat misleading when a little under a third of the text is devoted to this topic (for example, discussion of the *Sex Discrimination Act* is limited to less than one

page). Consequently, only the most limited discussion of the importance of administrative law as a bulwark against human rights violations occurs and scant, if any, reference is made to Commonwealth and State industrial relations legislation which have done much to protect human rights in the sphere of employment.

Equally lacking is any real analysis of Australia's attempt to implement its international human rights obligations at a national level. In the current atmosphere of mandatory sentencing and the attempted abrogation of women's human rights under the *Sex Discrimination Act*, this is a critical omission. While it is acknowledged that the stated aim of the authors was not to provide a single comprehensive guide to human rights within Australia, in order to provide anything other than the most cursory coverage of such rights more material is required. In sacrificing detail the authors have equally sacrificed any meaningful articulation of the tension between Australia's human rights obligations abroad and the political reality of their implementation and enforcement at home. A tension which must be appreciated by practitioners and students of human rights alike and which, as recent events have demonstrated, is far from resolved.

Reviewed by Rachel Pepper

- 1 See s3(b) of the *Sex Discrimination Act 1984* (Cth).
- 2 Articles 2 and 26 respectively of the International Covenant on Civil and Political Rights and the Convention on the Elimination of all Forms of Discrimination Against Women.

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## Agency Law

By Simon Fisher  
Butterworths 2000

The stated aim of *Agency Law* is to present a modern and up-to-date account of agency law, written specifically for an Australian audience, drawing primarily (but not exclusively) on Australian authority. That said, the book necessarily draws heavily on English case law and commentary from *Bowstead & Reynolds on Agency*.

The book is easy to read and understand, as the author has gone to the trouble of assuming that the reader may be one that is not knowledgeable as to basic concepts.

The book is divided into six parts and twelve chapters. Parts one and two of *Agency Law* contain repetition of some matters and a dispersal of topics, which may have been more conveniently covered in one area. The index is useful in attempting to locate material. This allows a practitioner (as is our want) to dip in and out of the book, safe in the knowledge that all the relevant material has been located.

However, there was one example where the index did not lead to the Promised Land. A direction led the

user to paragraph 4.1.1 for the meaning of ‘constructive authority’. The label was not familiar, and I was eager to learn more. When I located the correct paragraph the author, rather disappointingly, states that ‘constructive authority’ is more commonly known as ‘ostensible’ or ‘apparent authority’, and he also groups agency by ratification under this so-called authority. The wisdom of introducing yet another label for a well understood concept escapes me, particularly when the author otherwise continues to use the common labels.

The author deals with the subject of agents as fiduciaries in, rather confusingly, two separate places. Firstly under the heading of ‘The points of similarity between bailment and agency’, and then in the chapter headed ‘Duties of the agent to the principal’. The subject of the existence and scope of the fiduciary duties is covered too briefly.

Further, the book deals too briefly with Crown agents and the subject the principal’s vicarious liability for the action of its agent. As McHugh J recently commented, vicarious liability is an important area of the law, which is evolving under circumstances where the contracting out of work has become commonplace. The High Court decision in *Travis Kane Scott v Geoffrey Arthur Davis* [2000] HCA 52 (5 October 2000) is an extremely good read for those who wish to explore the current thinking of the High Court on vicarious liability and the history and development of agency principles with respect to owners and drivers of motor vehicles.

On balance, this book fulfils its purpose to provide a book within ‘a moderate compass, avoiding the intricacies of detail that tend to obscure’. It is a useful addition to a practitioner’s library on the law of agency in Australia.

*Reviewed by Sheila Kaur-Bains*

## Outline of Succession (2nd Edition)

By Ken Mackie and Mark Burton  
*Butterworths Australia 2000*

According to its preface, *Outline of Succession* is intended as an introduction to the law of succession aimed primarily at the undergraduate law student embarking upon the subject for the first time.

As its title suggests, *Outline of Succession* is not, and does not purport to be, an exhaustive analysis of succession law. It seeks rather to provide a general overview of the basic features of the legislation and case law in each of the Australian jurisdictions.

The book is wide in its scope, seeking to deal with the laws of succession in each of the Australian jurisdictions. As the authors themselves point out more than once in the book, the absence of uniformity across the Australian jurisdictions renders it impossible in a

work of this size to canvass in any detail the legislative provisions and case law of each of the states. The reader is frequently advised to consider for him or herself the specific legislation of interest or to refer to other texts in the area. Such an approach is unlikely to find favour with students who, due to limited time and resources, would be inclined to prefer a text which could be used as a ‘stand alone’ reference. Without consulting the legislation itself or the various other texts referred to, it is unlikely that a student reading this book alone would be capable of answering the questions which appear at the end of each chapter.

Whilst the authors generally do identify the key cases in each area, there is on the whole scant reference to Australian authority, with most references being to English decisions. Peculiarly, where the legislation of each of the Australian jurisdictions resembles the United Kingdom *Wills Act 1837*, the provisions of that Act are cited in preference to those of any of the Australian jurisdictions.

Whilst the book is written in a readily understandable style, there is excessive use of somewhat simplistic ‘Samuel is the owner of a property called ‘Redacre’ type illustrations. Explanation by reference to the facts of reported cases may have been more instructive.

For practitioners, *Outline of Succession* provides at best a starting point for research. It must be said that the book does not profess to be of more than occasional use to practitioners. This is particularly the case for practitioners in New South Wales, as many of the more difficult and commonly encountered areas of the law of succession in this state are glossed over in the book. For example, in Chapter 9 ‘Distribution on Intestacy’, only passing reference is made to s61D of the *Wills Probate and Administration Act 1898*, pursuant to which a surviving spouse has a right to acquire the appropriation of the matrimonial home.

The discussion in Chapter 10 ‘Family Provision’, in relation to the matters to be considered by the court in the exercise of its discretion as to what provision, if any, ought to be made in favour of an applicant is of such brevity and superficiality that it would offer no real assistance to a practitioner considering whether such an application would be likely to succeed. The complicated provisions in Division 2 of Part II of the *Family Provision Act 1982* relating to notional estate are given only cursory attention. Typically of the book as a whole, the chapter offers little in the way of guidance as to procedural matters.

In summary, *Outline of Succession* is unlikely to be of great assistance to practitioners. It may, however, provide a useful overview of the laws of succession for students.

*Reviewed by Elizabeth Frizell*