

The Family Law Casebook, by FRANK BATES, LL.B., LL.M. (Sheff.), Reader in Law, University of Tasmania and J. NEVILLE TURNER, LL.B. (Hons) (Manchester), Barrister and Solicitor of the Supreme Court of Victoria, Senior Lecturer in Law, Monash University. (Law Book Company Limited, Sydney, 1985), pp. i-xxxvii, 1-732, with Table of Cases, Table of Statutes and Index. Cloth recommended retail price \$57.50 (ISBN 0 455 20393 8); limp recommended retail price \$42.00 (ISBN 0 455 20394 6).

The publication of this family law casebook coincides with the end of the first decade of the regime established by the Family Law Act 1975 (Cth), of one of the surprisingly few legislative monuments to the reforming zeal of the Whitlam Labor Government.¹ Despite the passage of time, neither the Act or the Family Court of Australia (created by the Act) has come to command universal or even (as some would suggest) widespread community approval. The Family Court has been subjected to stringent criticism from a variety of sources,² while Judges of the Court and their families have been victims of unprecedented and outrageous acts of violence.³ The very philosophy underlying the Family Law Act has come under attack by those who would seek to return to the concept of matrimonial fault embodied in the Matrimonial Causes Act 1959 (Cth).⁴ Moreover, the boundaries of Family Law continue to expand as perplexing questions are raised by developments such as the new techniques of artificial conception.

For the authors of a family law casebook, these extraordinary changes and uncertainties exacerbate the customary difficulties of producing a reasonably complete yet stimulating set of materials. If too much attention is devoted to current issues, the authors risk concentrating on the ephemeral at the expense of more fundamental and enduring questions of principle. On the other hand, unless the immediate issues are addressed, the materials may be regarded as missing the mark, both in relation to the needs of students and as a contribution to the literature.

Mr Bates and Mr Turner attempt to steer a middle course, with a bias towards the well-recognised issues confronting family law. They adopt a fairly conventional framework, dividing the materials into four parts:

- I. The Family, Society and Marriage
- II. Marital Breakdown and the Law
- III. The Child
- IV. The Economic Consequences of Marriage and its Breakdown

The materials selected are derived primarily from legal sources such as statutes, cases from Australia, England and North America, law journal articles and (in an area subject to constant review) law reform reports.

The authors acknowledge the significance of non-legal disciplines to an understanding of the theory and practice of family law. Materials drawn from disciplines such as social work and sociology are extracted regularly, although it is fair to say that they are used with restraint. As one might

expect certain chapters, such as those dealing with “Foster Care” (Chapter 11) and “Artificially Created Children” (Chapter 13) rely on materials of this kind to a considerably greater extent than others.

It is very much a matter of taste as to how much interdisciplinary material should be included in a casebook intended primarily for law students. Even accepting this, however, there is much to be said for a greater use of such material in selected fields. There is no sustained attempt in the book, for example, to explore the intractable problems presented by custody and access disputes through the insights available from psychology or psychiatry. It is true that the cases extracted raise many of the relevant issues; but students would benefit greatly from exposure to theories and reports of clinical experiences that have proved influential in this country and elsewhere. Similarly, the book makes only limited use of statistical data relating to the role and structure of Australian families and to the operation of the Family Law Act. In particular more emphasis might have been placed on the work of the Institute of Family Studies, whose Director wrote the Foreword. Of course space is always a problem in a casebook, but a not insignificant portion of the book consists of extracts from the Family Law Act itself. It seems reasonable to expect readers – certainly students – to have a copy of the Act at hand. Certainly the richness of the materials would have been enhanced by substituting interdisciplinary materials for extended extracts from the Act.

Recognising that the reviewers’ tastes vary widely (like those of authors), some questions deserve more detailed treatment in a substantial family law casebook. One is the constitutional structure of family law in Australia, which is not merely of theoretical significance but imposes severe practical limitations on the scope of the Family Court’s jurisdiction. The book extracts some cases dealing with jurisdictional questions,⁵ but the basic constitutional framework is left to other sources.

Another striking omission (or partial omission) concerns the administration of the Act, using that expression in its broadest sense. There is a chapter headed “Administration of the Law” (Chapter 7), but fourteen of its twenty-four pages consist of extracts from the Family Law Act. Yet it is in relation to administration – establishing guidelines for decision-makers, avoiding delays, minimising costs, reducing conflict and bitterness, clarifying what fairly can be expected of judges and practitioners – that the fate of the Family Court and indeed the entire system of law it administers may well be decided.

These criticisms should be interpreted only as suggesting that the value of this casebook to its likely readership would be enhanced by a broader selection of materials and perhaps some change in emphasis. The comments should not be read as detracting from the value of the collection which is generally well-balanced and offers ample scope for teachers who wish to imprint their own perspective and experience on a course. Undoubtedly later

editions will reflect the further development and refinement of a system that represents one of the most courageous experiments in private law undertaken in a common law country.

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FOOTNOTES

- 1 The Act came into force on 5 January 1976. The Preface notes that the law is stated as at 1 December 1983.
- 2 See, e.g. the comments of the Chief Justice of Australia at the 23rd Australian Legal Convention, Melbourne, 5 August 1985: Sir Harry Gibbs, "The State of the Australian Judicature" (1985) 59 *ALJ* 522, 522-523.
- 3 The casebook is dedicated to the memory of Pearl Watson, the wife of Mr Justice R.A. Watson of the Family Court, who was killed in a bomb explosion at her home on 4 July 1984.
- 4 See the discussion of matrimonial fault in the Law Reform Commission's Discussion Paper, *Matrimonial Property Law* (June 1985, No. 22), paras 47 ff.
- 5 Such as *Ascot Investments Pty Ltd v. Harper* (1981) 148 CLR 337.

Property Division upon Marriage Breakdown, by J. H. WADE, LL.B., Dip. Jur. (Syd.), LL.M. (Hons) (U.B.C.), Senior Lecturer in Law, University of Sydney. (CCH Australia Limited, Sydney, 1984), pp. i-xxiii, 1-660, with Case Table and Index. Cloth recommended retail price \$62.00 (ISBN 0 86903 444 8).

Australian Family Property Law, by I. J. HARDINGHAM, B.A., LL.M. (Melb.), Ph.D. (Monash), Reader in Law, University of Melbourne and M. A. NEAVE, LL.B. (Hons) (Melb.), Senior Lecturer in Law, University of Melbourne. (Law Book Company Limited, Sydney, 1984), pp. i-liiii, 1-697, with Table of Cases, Table of Statutes and Index. Cloth recommended retail price \$69.00 (ISBN 0 455 20513 2), limp recommended retail price \$54.00 (ISBN 0 455 20514 0).

In carrying out the task of reviewing these two texts on matrimonial property law, I did not follow the advice of Sydney Smith who said "I never read a book before reviewing it, it prejudices one so."