

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."

Consequently, my prejudice may now be apparent when I state at the outset that I have nothing but praise for the authors for their achievement in writing two excellent books on this subject of complexity and relevance for a large section of Australian society.

John Wade's book *Property Division upon Marriage Breakdown* represents an excellent reference book for both practitioners in general practice and law students. The book's layout and detailed annotations enable a busy lawyer in general practice to quickly find and have presented to him a vast range of topics from procedural requirements to more complex matters, such as injunction against third parties, in a clear, precise manner with sufficient detail to grasp basic concepts and the judicial approach to particular problems.

The jurisdiction of the Family Court to make orders affecting third party rights, the nature and extent of accrued and associated jurisdiction to deal with matters which otherwise come before a State court, and the exercise of judicial discretion, have been the subject of a number of High Court judgments as well as those of the Full Court of the Family Court of Australia. These more difficult areas of the law have been given an interpretation by the High Court in earlier years reflecting a widening of the Family Court's jurisdiction, but with a more recent retreat by the High Court to a narrowing of the jurisdictional boundaries.¹

The "notable experiments" referred to by the author which were a consequence of the enactment of the Family Law Act, have contributed largely to jurisdictional problems. Prior thereto, the Supreme Courts of the States were vested with federal jurisdiction. Since the Family Law Act, dual jurisdiction has been removed which has proved to be a retrograde step so far as cost to society is concerned. An insight into these subjects provided by John Wade should cause the reader to be at least aware of the complications involved.

A mere cursory reading of *Australian Family Property Law* by Ian Hardingham and Marcia Neave will demonstrate to the reader the tremendous amount of time, research and effort which the two authors gave to the publication. Their commitment to produce a textbook which was 'up to the minute' is illustrated by the story that one of them, having heard of the High Court's judgment in *Mallet*² whilst listening to the car radio, immediately rewrote part of the manuscript just before printing.

This book is one which is probably more attractive to the needs of academics and students, rather than lawyers in practice, although members of the Bar may find it a more than useful reference book in the course of preparing cases.

A detailed historical survey is given of doctrines and principles applicable to matrimonial property law commencing prior to the enactment of the Married Women's Property Acts. In order for the student or indeed, anyone interested in appreciating the scope of property disputes which may have a matrimonial flavour, whether in the Family Court or in the Supreme Court, a knowledge is essential of equitable doctrines and remedies particularly in

relation to trusts. Part II of the book gives a clear and concise treatment of these matters which unlike many other texts, does not smother the reader with rambling detail, leaving the reader as confused (and perhaps worst of all – bored) as at the outset.

A consideration of the provisions of the Family Law Act, in relation to property settlement proceedings, would be incomplete without appreciating the nature and extent of the power to set aside dispositions pursuant to section 85 of the Family Law Act, as well as the injunctive relief that may be available pursuant to section 114 of the Act. Those more difficult subjects as well as the relationship between state and federal jurisdiction are the subject of separate Chapters of Part IV of the book and the complexities involved are made clear by the authors in a manner which should be attractive to lawyers in practice who have little expertise in family law matters.

Whilst one has the impression from reading book reviews, that the job has not been satisfactorily done if criticisms are not made, that would only reflect a pettiness which would unfairly detract from these two excellent books. I sincerely recommend them to those interested in acquiring more knowledge in a difficult area of family law.

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FOOTNOTES

- 1 *E.g. Re Dovey; ex parte Ross* (1979) FLC 90-616; *Ascot Investments Pty Ltd v. Harper* (1981) FLC 91-000; *Re Ross-Jones; ex parte Green* (1984) FLC 91-555.
- 2 *Mallet and Mallet* (1984) 52 ALR 193.