
BOOK REVIEW

Australian Succession Law Sourcebooks



This article reviews the latest edition of Hutley, Woodman & Wood *Succession: Commentary and Materials*, edited by Judge GL Certoma, and compares it with its leading competitor, Atherton & Vines *Australian Succession Law: Commentary and Materials*.

THE publication of the fifth edition of *Succession: Commentary and Materials* by FC Hutley, RA Woodman & O Wood (hereafter referred to as *Hutley*)¹ after an interval of 10 years will be welcome news for Australian succession lawyers and law students.

This well known and highly respected casebook was first published in 1967. The new edition is edited by Judge GL Certoma, one of this country's most highly esteemed succession lawyers and the author of *The Law of Succession in New South Wales*.² The new edition of *Hutley* has already been named a 'Category Winner' in *The Australian* newspaper's prestigious Awards for Excellence in Educational Publishing. This review will consider *Hutley* in relation to its main rival, *Australian Succession Law: Commentary and Materials* by RF Atherton & P Vines (hereafter referred to as *Atherton & Vines*),³ and will reflect on the relationship of both casebooks to the core texts on succession law.

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1. Sydney: Law Book Co, 2000.
 2. 3rd edn (Sydney: Law Book Co, 1997).
 3. Sydney: Butterworths, 1996.

Far from having grown in size, the latest edition of *Hutley* is more than 100 pages shorter than its immediate predecessor and contains 25 fewer cases.⁴ Ten cases decided since the last edition in 1990 have been included, all but one of them being from New South Wales. There are several other recent cases that could perhaps have been included, but any casebook is, of course, the result of a personal selection that reflects the author's teaching style and general outlook. The series of Problems, an interesting and useful feature appended to chapters of earlier editions of *Hutley*, has now been abandoned for no obvious reason. This is a pity.

Readers interested in a sourcebook on Australian succession law are now faced with a fairly direct choice between, on the one hand, the new edition of *Hutley* and, on the other, *Atherton & Vines*, which is still in its first edition. Judge Certoma tells us in the Preface to *Hutley* that the main purpose of a casebook on the Australian law of succession is to 'supplement the texts',⁵ for example, his own *The Law of Succession in New South Wales* or Hardingham, Neave & Ford's *Wills and Intestacy in Australia and New Zealand*.⁶ With this in mind, the present work refers the reader to the relevant chapters of *The Law of Succession in New South Wales*, but there is little in the way of more detailed referencing. One might disagree with Judge Certoma's philosophy as a general proposition – certainly the authors of *Atherton & Vines* would disagree with it – but, as suggested below, it clearly represents the philosophy of the new edition of *Hutley*.

Notwithstanding that they are both admirable works in their own ways, *Atherton & Vines* is a very different book from *Hutley*. The former is a large work of 906 pages. Although only 125 cases are extracted, occupying much less than half the book, hundreds more are mentioned in the text. There is also a mass of useful legal information, discussion and commentary drawn from a wide variety of sources. *Atherton & Vines* is thus an anthology, in the proper sense of the word, namely, a 'choice collection of passages from [the relevant] literature',⁷ supplemented by comment and opinion. The book provides generally comprehensive, if somewhat

4. The deletions include: (i) as to donatio mortis causa, *Public Trustee v Bussell* (1993) 30 NSWLR 111; *Sen v Headley* [1991] Ch 425; (ii) as to executors by representation, *Darrington v Caldbeck* (1990) 20 NSWLR 212; (iii) as to testamentary capacity, *Estate of Griffith, Easter v Griffith* (unreported) NSW Sup Ct 1994; *Re Herbert Brothers* (1990) 101 FLR 279; *Estate of Galieh: Winter v Crichton* (1991) 23 NSWLR 116; (iv) as to forfeiture of a killer's entitlement, *Re Keitley* [1992] 1 VR 583; *Troja v Troja* (1994) 33 NSWLR 269; and (v) as to revocation by marriage, *Estate of Trickey* (1994) 34 NSWLR 539. Some of these cases are concerned with areas of the law not covered in *Hutley*, though they are covered in Judge Certoma's textbook on succession. Topicality might have warranted their retention. Several cases dealing with the court's dispensing power have not been included.

5. Preface, v.

6. 2nd edn (Sydney: Law Book Co, 1989).

7. *The Concise Oxford Dictionary* 8th edn (Oxford: OUP, 1990).

uneven, coverage⁸ of most aspects of the law of succession in nearly all Australian jurisdictions. If some readers of *Atherton & Vines* find the mass of material it contains a little daunting, they must sift the wheat from the chaff.⁹

Hutley, in contrast, now comprises 497 pages and 203 case extracts. The commentary is terse, being largely confined (i) to introductory material to the various chapters and sections of the book, and (ii) to brief notes following particular cases. The reader would certainly be well advised to study Judge Certoma's other work, *The Law of Succession in New South Wales* in conjunction with the present book in order fully to understand the subject. Indeed this is what Judge Certoma recommends.

In marked contrast to *Atherton & Vines*, *Hutley* is not in any sense a general anthology of material relevant to the law of succession. It is, in fact, very much a 'black letter law' account rather than an all-encompassing treatment of the law of succession in its social context.

There are other significant differences between the two casebooks. The most obvious of these is that whereas *Atherton & Vines* is a work dealing comprehensively with the law of succession in *all* Australian jurisdictions, *Hutley* is confined almost exclusively to the law of New South Wales. The book is strong on reproducing the applicable New South Wales statutes and cases, but it does not treat the law of other jurisdictions nearly so well. The Table of Statutes makes no reference to any significant Western Australian legislation. Likewise, there is no reference to any Tasmanian, Northern Territory or ACT statute and there are only four references to South Australian legislation. While there is some reference to Victorian and Queensland statutes, these are not treated comprehensively. The book should perhaps be re-titled to reflect more accurately its focus on the law of New South Wales. This does not mean, however, that *Hutley* is of use only to New South Wales readers; but it must be used by others with an awareness of its limitations and with an appreciation of its narrow jurisdictional bias.

Considered merely as a collection of cases, however, *Hutley* has much to commend it, even when compared to *Atherton & Vines*. First, many more cases are extracted in *Hutley* than in *Atherton & Vines* – and they are very carefully extracted, with all superfluous material removed. Secondly, and more importantly, Judge Certoma has retained and extended the extremely useful device of beginning each case extract with a succinct and, so far as one can see, correct statement of the point or points of

8. The chapters on the administration of estates may perhaps be so regarded.

9. It could be argued that *Atherton & Vines* would be more useful to its readers if it included more case extracts. Many well known cases (eg, *Attenborough v Solomon* [1913] AC 76; *Sugden v Lord St Leonards* (1876) LR 1 PD 154; *Helton v Allen* (1940) 63 CLR 691; *Commissioner of Stamp Duties (Qld) v Livingston* (1964) 112 CLR 12; *Vacuum Oil Co Pty Ltd v Wiltshire* (1945) 72 CLR 319), to name but a few, are not extracted in *Atherton & Vines*, although the first four are mentioned in passing at several points.

law decided by the case.¹⁰ Many modern casebooks, including *Atherton & Vines*, do not adopt this laudable practice. It is almost as though the authors of such casebooks deliberately set out to discipline their readers, believing that they will benefit from wading through lengthy case extracts with a view to identifying the ratio or points of principle established therein. The pedagogical utility of this approach is a matter of opinion, but readers can circumvent the approach simply by reading the headnotes from the actual reports. *Hutley*'s practice in this regard is one of the strong points of the book, making it particularly useful for busy practitioners and students alike.

Thirdly, it should be pointed out that, unlike *Atherton & Vines*, *Hutley* does not claim to be comprehensive, even with regard to the law of New South Wales. Once again, this is consistent with Judge Certoma's expressed intention. Many topics that form an accepted part of the law of succession are either mentioned only in passing or not mentioned at all. For such topics, the reader must go to a textbook such as Judge Certoma's *The Law of Succession in New South Wales*, to *Atherton & Vines* or to other works. Topics omitted altogether from *Hutley* include: the succession rights of killers; donatio mortis causa; contracts to make wills; the construction of wills; mistakes in wills;¹¹ privileged wills; equitable doctrines directly relevant to succession entitlements (eg, election, ademption, conversion and satisfaction); coronial enquiries in relation to the administration of estates; rights and duties of personal representatives in relation to a deceased's corpse and body parts; devastavit, administration actions and equitable account; and the administration of insolvent estates. All of these topics, however, with the exception of coronial enquiries, are canvassed in Judge Certoma's *The Law of Succession in New South Wales*, which is intended to be a much more wide-ranging treatise than the present work – though it is still concise. Given that it is intended that the two books be used together, the limited coverage of *Hutley* is understandable.

The new edition of *Hutley* will be a useful sourcebook for lawyers and students in New South Wales, especially those who have ready access to Judge Certoma's *The Law of Succession in New South Wales* (or, alternatively, to *Atherton & Vines* or other books). At the same time, *Atherton & Vines* is still the only sourcebook on Australian succession law with a proper national coverage of cases, statutes and other materials. It remains the leading national work on succession law.

To constitute a true rival to *Atherton & Vines*, both within and outside New South Wales, and especially in relation to 'black letter law', *Hutley* and Judge Certoma's *The Law of Succession in New South Wales* should be combined into a

10. The practice was first adopted in arguably the greatest of all legal casebooks: JW Smith *A Selection of Leading Cases on Various Branches of Law* (London: Sweet & Maxwell, 1888).

11. New South Wales has statutory provisions relevant to this, which are reproduced in *Hutley*.

single volume. It would, however, be necessary for such a volume to provide a more national coverage in respect of statutes and to include a far wider selection of cases from Australian jurisdictions other than New South Wales. There is certainly a large potential market for such a book. That cannot necessarily be said of either *Hutley* or *The Law of Succession in New South Wales* in their present form. Given that the latter work is concise on many points, the overall size of any such combined volume might not be much greater than the previous edition of *Hutley*, published in 1990. Such a book would be a true competitor to *Atherton & Vines*, and it would mean that a student of the law of succession would need to consult only one book instead of two.

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