

directly on an intestacy and dependants unrelated to the intestate such as a *de facto* spouse. This is an unsatisfactory scheme; mean in concept and fortuitous in operation. But it is better than nothing, and in Dr Hardingham's view should be adopted by those States, such as Victoria, which have no such provision.

After the statutory provisions of the selected legal systems are dealt with, there comes a discussion of various miscellaneous matters, *e.g.* hotchpot, felonious killers, Testator's Family Maintenance legislation, survivorship, conflict of laws and 'contingent partial intestacies'.

Where an intestate has died but a short time before a practitioner is faced with the mode of distribution of the estate there is usually no difficulty in rendering speedy and accurate advice. But if, as is often the case, an intestacy is discovered or arises long after the death (as in the case of a contingent partial intestacy), the task is not as simple. The next edition of Dr Hardingham's book might well provide a number of tables showing, for each State and Territory, the appropriate distribution depending on the date on which the intestate died. Thus: 'if your intestate died between 1929 and 1953, then . . .' (*cf.* 17 *Halsbury's Laws of England* (4th ed. 1976), paras 1404 and 1413).

The Appendix (pages 157-223) contains the text of the major legislative provisions governing intestate succession in the legal systems examined.

There is no comparable coverage of intestate succession in Australia and New Zealand and Dr Hardingham's work is most welcome.

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Family Law in Australia, by H. A. Finlay, (2nd ed., Butterworths, 1979), pp. i-xxxii, 1-365. Price \$21.50 (softcover); \$27.00 (hardcover). ISBN 0 409 35451 1; *Family Planning and the Law*, by H. A. Finlay and J. E. Sihombing, (2nd ed., Butterworths, 1979), pp. i-xii, 1-228. Price \$15.00. ISBN 0 409 43577 5.

Since the publication of the first edition of *Family Law in Australia* seven years and considerable legislative reform have resulted in significant changes to the law. The second edition sets out to describe the law now that the first problems of transition from the Commonwealth Matrimonial Causes Act 1959 to the Commonwealth Family Law Act 1975 have been weathered. The Family Law Council was established under section 115 of the Family Law Act to monitor the operation of the Act. However it is likely that the immediate future will see a period of stock-taking and consolidation rather than reforms of the magnitude that have been experienced recently. In view of this it is not surprising that the second edition of *Family Law in Australia* places less emphasis on possible reform. This is not to say that there are not anomalies, defects and lacunae in the field of family law, nor that the Family Law Act is perfect in all respects. The author does not hesitate to draw attention to such matters and to suggest possible solutions.

The book as a whole however concentrates on describing the *status quo* in a wide range of topics fitting under the family law rubric. There is some reorientation of material covered in the book and the introduction of new material dealing with the constitutional issues raised in *Russell v. Russell*.¹ A chapter is devoted to an analysis of the background to the constitutional problems raised by *Russell's* case and to consideration of the effects of that decision and the unhappy state of fragmentation in which the jurisdiction finds itself as a result. The perhaps over-zealous amend-

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¹ (1976) 50 A.L.J.R. 594.

ments² to the Family Law Act which were made to bring it into line with the narrowest *ratio* of the High Court in that case have not removed constitutional problems from the scene of family law practice. There remain issues which are unresolved — the ambit of the injunction power in the context of property disputes for example — and where some clarity has been reached on the problems of the interface between Commonwealth and State jurisdictions the result has not always been a satisfactory one. The interaction of these jurisdictions over matters concerning the welfare of children has produced some strange and unfortunate results. For example, in the case of *Meyer v. Meyer* in the Equity Division of the Supreme Court of New South Wales³ it was held that as a result of the operation of section 109 of the Commonwealth Constitution, the Family Court's jurisdiction over children of the marriage as defined is exclusive of the jurisdiction of the State Supreme Courts to make such children wards of the court. However the Family Law Act has not invested the Family Court with wardship powers and as it is a creature of statute it apparently has no such powers inherently. Such lacunae indicate not only the need for further consideration of possible legislative reforms, but the likelihood of considerable case law building up as attempts to exploit or minimize the dichotomy of jurisdiction over members of the same family are made. In this context Finlay's chapter on the 'Constitutional Limits of Australian Family Law' provides a most useful background and point from which readers may orient themselves to consider future developments.

Apart from the treatment of constitutional issues, the main strength of the book lies in the breadth of its approach. Although several texts have appeared which deal admirably with matters covered by the Family Law Act,⁴ *Family Law in Australia* is the only text book which has been published in Australia which takes a comprehensive approach and covers a range of topics concerning family relationships in their formation, continuance and breakdown which have not been dealt with recently elsewhere. The coverage of the law of adoption in each of the States has been brought up to date and the effects of the Status of Children legislation is considered in some detail. Most importantly, the law is dealt with not in isolation but as a reflection of societal attitudes, and this involves the presentation of a considerable amount of historical background and demographic statistics to place the law in context. As Finlay stresses in his Preface:

the study of law should never be an end in itself. Law is an instrument for the adjustment of human relationships in a social environment. Changes in that environment must be followed by changes in the law, if that law is to do its job of offering to the people whom it serves the opportunity of realising to the full their potential of personal development and happiness.⁵

This view of the role of law is one which pervades the entire book. It is one which must be considered seriously when the fields of law studied are those which closely affect family relationships. The responses of the law and of lawyers to the problems which confront people in their personal experience of life are of great significance. They impinge directly on human happiness and also contribute to the respect in which the law is held by the people it affects. The range of topics covered by this book and the view of the law in its social context which is given will make it particularly useful not only to lawyers as a reference work but perhaps more importantly to non-lawyers as a source of general information and to provide insight into the interaction of social and legal change. This is of particular importance in an area of law which can and should be readily accessible and comprehensible to everyone.

The organization of the book emphasizes the need to understand the context as well as the substance of the law in this field. The first chapter examines the attitudes to marriage and divorce of Australians as evidenced by statistics relating to marriage rates, nuptial and ex-nuptial birth rates and the divorce rate over the last decade. It is

² Family Law Amendment Act 1976 (Cth).

³ [1978] 2 N.S.W.L.R. 36.

⁴ See for example Nygh P. E., *Guide to the Family Law Act 1975* (2nd ed. 1978); C.C.H., *Guidebook to Family Law in Australia* (1978).

⁵ Finlay H. A., *Family Law in Australia* (2nd ed. 1979) ix.

only by following trends over some reasonable period of time that some clarification of the effect of legal changes can be achieved. A fear expressed by some after the passage of the Family Law Act and the subsequent startling rise in the rate of divorce was that the legislation itself threatened the stability of marriage and undermined respect for the family unit.⁶ As the Honourable Elizabeth Evatt, Chief Judge of the Family Court, points out in her Foreword to the book,⁷ it is necessary to take account of a range of factors affecting marital stability before jumping to conclusions regarding the effect of legislative reform. The inclusion in the text of relevant social demography data indicates the significance which the author attaches to material of this kind in the study of law.

Perhaps because of the range of material covered in *Family Law in Australia*, some topics are not fully explored. This lack of depth in some areas is the weakness of the book. The problems arising from the interaction of jurisdictions under section 10 of the Family Law Act are not covered, although they may present testing practical conflicts in the context of child welfare.⁸ The discussion of the Court's power to alter property interest under section 79 lacks clarity and is somewhat superficial. Nevertheless, the value of this book is in its treatment of a variety of important topics which have received little or no attention from other text book writers and its strength lies in the broad approach to the law set in context. The style is easy to read, the organization of material is straightforward, well indexed and cross-referenced and it will prove invaluable to lawyers, students and lay persons alike.

The second edition of *Family Planning and the Law*, which Professor Finlay produced with J. E. Sihombing further illustrates the useful role which texts can fulfil in serving both lawyers and non-lawyers. This book is divided into two parts. The first is a review of statutory materials from each State and the mainland territories dealing with aspects of family planning. These include the distribution and marketing of contraceptives, abortion, sterilization and a collection of topics under the general heading of 'Augmentation of Families' which includes adoption and artificial insemination. The second part of the book consists of a number of papers presented at a symposium on 'Family Planning and the Law' which was held at Monash University in July 1976. These papers are not confined to legal aspects of family planning but include material presented by medical practitioners, social workers and pharmacists and cover a range of legal and social issues raised by the various methods of family planning. There is much of interest in these papers although perhaps inevitably there is some overlap between parts one and two in so far as comments in the papers regarding legislative controls recover materials presented in the statutory review. Some of the matters touched upon would have seemed more appropriate in the realm of science fiction than legal text only a few years ago. The developments of medical technology while solving some human problems give rise to others and the role of the lawyer in this field may be a particularly challenging one. Certainly the law should be under constant review so that it keeps reasonable pace with developments in other fields and their application in real life. Sterilization of both males and females is becoming an increasingly popular method of contraception in Australia. Its popularity may be the result of a number of factors and these factors may vary from age group to age group. In a country which so readily accepted the female contraceptive pill it is hardly surprising that when women who have been dependant upon oral contraceptives reach an age where their continued use is increasingly fraught with dangerous side effects many will turn to an alternative which is equally available and effective. The figures quoted by Buddin in his paper 'Voluntary Sterilization'⁹ indicate not only that sterilizations are numerous and growing in numbers each year, but that the ratio of male to female sterilizations is about one to

⁶ The divorce rate expressed per 10,000 population rose from 17.6 in 1975 to 43.7 in 1976.

⁷ Finlay, *op. cit.* vii.

⁸ See for example the problems raised in *In Re Demack, Ex parte Plummer* (1977) 137 C.L.R. 40 and *In the Marriage of Kitchener* (1978) 20 A.L.R. 535 (Fam. Ct.).

⁹ Buddin T., 'Voluntary Sterilization' in Finlay H. A. and Sihombing J. E., *Family Planning and the Law* (2nd ed. 1978) 164, 173.

two, a much more equal ratio than had been previously found. It is suggested that in part at least this levelling may be due to an increase in the numbers of doctors willing to perform vasectomies. This in turn might itself be due to the long delayed interment of Denning L.J.'s *dicta* in *Bravery v. Bravery*¹⁰ which unfortunately received such publicity in medical journals. It is to be hoped that similar misconceptions regarding the state of the law and its consequences in civil liability are more quickly put to rest should they arise in the future. Indeed it is from symposia and books such as this one, where information in a readily digestible form is shared between the professions that the lead is given to avoid areas of unnecessary confusion. Certainly the range of issues which might be affected in law by procedures such as artificial insemination is wide — probably wider than the range canvassed in this book — and it is clearly undesirable that a great number of such procedures should be undertaken without any contact between the law and medicine. The role of the lawyer as one who plans to minimize future conflict can be emphasized in this context.

Family Planning and the Law provides an excellent starting point for anyone with a particular interest, whether academic or practical, in the legal or medical and paramedical aspects of family planning which it covers. It indicates the level of State involvement through legislative controls or their absence and suggests complexities in relationships between law and medicine which might not have been raised elsewhere. It is thus a useful package as a reference work for lawyers and as a basic source of information for non-lawyers working in the field.

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¹⁰ [1954] 1 W.L.R. 1169, 1180 f.

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