

Thirdly, the case citations are contained in the body of the text, making the book easy to read. The footnotes are devoted to the odd discussion, to points of comparison, to examples and to citing numerous articles, Law Reform Commission Reports, cases and other references. The result is a digest of information and an excellent springboard to further research. Finally, at various points in the book the author sees fit to insert a short subsection cross-referencing the section under discussion with other related areas. This reviewer found this to be a particularly useful device, especially in the middle chapters of the book where many sections link up to discussions elsewhere in the work.

The most impressive aspects of Professor Luntz's work are its thoroughness, clarity, scholarship and depth of insight. It is an excellent book. The only pity is that Professor Luntz has not yet seen fit to publish a work covering the whole field of damages in Australia. Perhaps the next few years will see such a publication.

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*Wills and Intestacy in Australia and New Zealand* by I. J. Hardingham, M. A. Neave and H. A. J. Ford. (Law Book Company Limited, Sydney, 1983) pp. i-xliviii, Index 495-518. Price \$54.00 (hardback), \$36.00 (soft cover). ISBN 0 455 20415 2; 0 455 204160 (paperback)

This book is a revised and consolidated version of the authors' *Law of Wills*<sup>1</sup> published in 1977 and Dr Hardingham's *Law of Intestate Succession*<sup>2</sup> published in 1978. There had theretofore been a distinct lacuna in indigenous writing on the law of wills and succession generally. By contrast, the coverage of those fields by English texts was rich and distinguished. Admittedly Jarman<sup>3</sup> (1951) was a little out of date though it remains probably the most authoritative and certainly the most detailed and comprehensive coverage of the area up to 1951. Theobald<sup>4</sup>, like Jarman, has a long lineage. It was first published in 1876; Jarman in 1841-3. Williams<sup>5</sup> (1952) is a comparative newcomer to the field, and although its footnotes provide a remarkable glimpse of the main Commonwealth cases, it is still essentially an English law text.

Thus, in 1978 *The Law of Wills* was warmly welcomed by law teachers and practitioners. In updated form Part I of the present volume (Chapters 1 to 12) deals with the material that was formerly in the 1978 text. Chapter 1 — 'The General Nature of a Will' — distinguishes a will from dispositions and transactions which are not testamentary but have some of the characteristics or indicia of a will. The aim of the distinguishing process is to isolate the features of a true testamentary disposition. Chapter 2 deals with formal requirements such as signatures and witnesses. There is an interesting discussion of the relaxation in South Australia and Queensland of the formal requirements for the making of a will. In South Australia a document may be admitted to probate as the last will of a deceased person although not executed in conformity with the standard requirements, if a judge 'is satisfied that there can be no reasonable doubt that the deceased intended the document to constitute his will'.<sup>6</sup> There have now been seven reported decisions in South Australia, and they are examined at pp. 24-25. The Queensland provision is slightly different. There a court may admit a document to probate if it is 'executed in substantial compliance with the formalities prescribed . . . if the Court is satisfied that the instrument expresses the testamentary intention of the testator'.<sup>7</sup> Other aspects of this innovative Act, which repays study by anyone interested in the area of administration of estates, are explored. Chapter 3 is

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<sup>1</sup> Law Book Company Limited, Sydney, 1977.

<sup>2</sup> Law Book Company Limited, Sydney, 1978.

<sup>3</sup> Jarman T., *A Treatise on Wills*, 8th. ed. by R. Jennings and J. C. Harper, 1951.

<sup>4</sup> Theobald Sir H. S., *A Concise Treatise on the Law of Wills*, 13th ed. by S. Cretney and G. Dworkin, 1971.

<sup>5</sup> Williams W. J., *The Law Relating to Wills*; Butterworths, London, 1952.

<sup>6</sup> Wills Act 1936-75 (S.A.), s. 12, as amended by Wills Act Amendment Act (No. 2) 1975, s. 9.

<sup>7</sup> Succession Act 1981 (Qld), s. 9.

concerned with capacity to make a will. It includes an incisive discussion of the Probate Court's jurisdiction to omit expressions included by mistake, and discusses section 31 of the Queensland Succession Act 1981 which empowers the court to insert in a will material which was accidentally or inadvertently omitted by the testator: '[T]he Court shall have the same jurisdiction to insert in the probate copy of a will material which was accidentally or inadvertently omitted from the will when it was made as it has hitherto exercised to omit from the probate copy of a will material which was accidentally or inadvertently inserted in the will when it was made'. As the section indicates, the new power to *insert* is hedged about by the same limitations as is the jurisdiction to *omit*. Chapter 4 deals with privileged wills. Chapter 5 — 'Delegation of Will-Making Power' — is a thorough discussion of a difficult area and considers, amongst other things, whether a power of encroachment is an impermissible delegation. The authors examine the curious unreported decision of Mr Justice Adam in the case of *Nevil Shute's Will*<sup>8</sup> in which it was held that such a power (for example, if my trustees consider that my wife at any time is in need of further provision, they are empowered to make such provision for her out of my residuary estate) was invalid. Chapter 6 deals with the revocation and amendment of wills, chapter 7 with incorporation by reference, revival and secret trusts, and chapter 8 with changes in the subject matter of a gift between the making of the will and death. Chapter 9 — 'Failure of Gift in Relation to Beneficiary' — is concerned with witness beneficiaries, lapse, and disqualification where a beneficiary causes the death of the testator by the commission of a crime. The treatment of the first topic includes a discussion of the ameliorative Wills (Interested Witnesses) Act 1977 (Vic.).

Chapter 10 deals with the equitable doctrines of satisfaction, ademption and election. A large chapter of some fifty pages is devoted to problems of construction. This is the area with which most modern court cases (the majority of them unreported) are concerned. It is a daunting task to write about the problems of construction of wills, but the authors have made a welcome start. It must however be said that the solution of many problems of construction will still require reference to the English texts or to the wills volume of Halsbury. Part I closes with a chapter on contracts relating to wills.

Part II (chapters 13 to 34) contains the material that was in Dr Hardingham's 1978 text. Although the number of chapters in this Part exceeds that in Part I, the number of pages is much smaller, and Part II accounts for a little more than a quarter of the entire volume. After three introductory chapters concerned respectively with the advantages of dying testate rather than intestate, the historical setting, and division *per stirpes* and *per capita*, chapters 16 to 25 set out the intestacy distributions laid down by the law of the States and Territories of Australia and of New Zealand. The special position of spouses is considered in chapter 26, including South Australia's *de facto* spouses who, provided they fit the statutory description, are put in the same position as a true spouse for purposes of intestate succession. Children are the subject of chapters 27 and the position in each State and Territory and in New Zealand is set out. Chapter 29 deals with hotchpot: the need to bring *inter vivos* benefits into account in determining the share to be taken on an intestacy. The difficult cases on the various counterparts of s. 53(a) of the Victorian Administration and Probate Act 1958 are discussed in chapter 30 — 'The Need to Bring Testamentary Benefits into Account on a Partial Intestacy'. The remaining chapters of Part II deal with disclaimer, altering the statutory scheme of succession, personal chattels and the matrimonial home, and contingent partial intestacies.

The two chapters of Part III deal with two miscellaneous matters: testators' family maintenance and survivorship. The former was part of the 1977 volume and the latter part of the 1978 volume. The chapter on family provision is an up to date discussion of this very important area of the law. The chapter on survivorship deals, *inter alia*, with *commorientes* and the presumption of death.

This composite edition is most welcome. It is not a mere exposition of the law, but examines the decided cases in a critical manner. In the reviewer's opinion the best examples of this approach are the discussions of correcting testators' mistakes and delegation of testamentary power.

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<sup>8</sup> *In Will and Estate of Nevil Shute Norway* (unreported), case No. 63/4731 (1963) of the Supreme Court of Victoria.

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