

Family Law by Anthony Dickey (The Law Book Company Limited 1985) pp. i-xxxvii, 1-642; select bibliography 643-659, index 661-685. Price \$60 (hard-back) \$45.00 (soft cover) ISBN 0 455 20307 5; ISBN 0 455 20308 3 (soft).

In the last few years Australia has seen the publication of an increasing number of text and casebooks dealing with its family law situation. This is not surprising given that the Family Law Act 1975 (Cth) has now entered its second decade. The development of case law, which inevitably suffers from an initial lag when new legislation commences operation, is now at a stage where academics and professionals can analyse and discuss the state of the law with 'some confidence.' (As no doubt practitioners dealing with the Family Law Act and its wide judicial discretion would agree, rarely can the subject be discussed with 'certainty'!).

One of the most striking aspects of this work of Dickey's is his valuable and interesting selection of historical material which he uses to lay a basis for a good understanding of the current law and the policies behind it. In Part I, the introductory section, he begins by drawing on ecclesiastical law and old statutes and cases to demonstrate to the reader the development of family law in Australia. In Parts II and III, the beleaguered area of constitutional powers and the jurisdictional aspects in the Australian federal system relevant to family law receives thoughtful analysis and uncharted areas to be drawn to the readers' attention. (See, for example, his comments on sections 119, 120 of the Family Law Act and section 111A of the Marriage Act 1961 (Cth)). Altogether, Chapters 3, ('Commonwealth and State Jurisdiction in Family Law'), 4 ('Introduction to the Family Law Act') and 5 ('The Family Court') give the reader a most satisfactory overview of our unique Australian system under the Family Law Act.

Part IV ('Marriage, Nullity and Divorce') contains, among other things, the author's novel but quite effective manner of addressing the question of validity of marriage. (As Dickey states at p. 96 'the law on what constitutes marriage is to a large extent the law on what does not constitute marriage'). Here too he briefly considers vexed problems such as the status of unions concerning homosexuals and transsexuals and issues of lack of consent due to duress, fraud or mistake.

The author's fascinating touches of history can be found again enhancing the subject-matter of Part V which deals with the consequences of marriage ('The Effects of Marriage'). Under this heading he comments on the doctrine of unity, civil liability of spouses, conspiracy and domicile. Further to his discussion in this Part on a wife's implied consent to sexual intercourse with her husband, readers should note that the Victorian Legislature was forced recently to act quickly to reverse the effect of a notorious 1985 case in the Victorian County Court in order to ensure that there would no longer be immunity for a husband from prosecution for rape or indecent assault of his wife where the spouses are living together.¹

The issues of children within the family are canvassed in Part VI which contains chapters on legitimacy and the status of children, on guardianship and custody under the states and territories legislation and under the Family Law Act, and on the various adoption laws of the states and territories including the Adoption Act 1984 (Vic.).² Relevant to his discussions in this Part dealing with children are the recent Registration of Births, Deaths and Marriages (Amendment) Act 1985 (Vic.) (names and name changes) and the Commonwealth Powers (Family Law — Children) Act 1986 (Vic.) (particularly with reference to issues of maintenance, custody and access to ex-nuptial and step-children).

In Part VII ('Maintenance and Property') Dickey has *inter alia* comprehensively examined the complex area of property proceedings between parties to a marriage emphasizing the adamant stance of the High Court of Australia in *Mallet v. Mallet*³ that each case must be decided on its own merits and that the Family Court's broad discretion must remain unfettered.

¹ Crimes Act 1958 (Vic.) s. 62(2) as amended.

² Some major provisions of which apparently some still have not been proclaimed. (The author noted in his 'Preface' that some of the legislation mentioned in his book had not actually been proclaimed at the time of writing.).

³ (1984) 156 C.L.R. 605.

Readers will find that comparatively little emphasis is given in this book to the growing area of property disputes between *de facto* couples and also the associated area of cohabitation contracts. Such contracts have been recognized by the New South Wales Legislature through the De Facto Relationships Act 1981 and more recently the Victorian Legislature has been considering a similar Bill. This is not to say that the financial and other matters of *de facto* partnerships are completely ignored (indeed the law relating to ex-nuptial children, a subject frequently intertwined with *de facto* relationships, is given considerable attention) but rather that Dickey appears to have taken a conservative view of the meaning of the title of his work *Family Law* and has tended to concentrate his examination and analysis more on *de jure* partnerships. Nevertheless those readers interested in *de facto* relationships will greatly appreciate the references found in Chapter 8, to legislation, cases and literature dealing with the interpretation of the various expressions connoting *de facto* relationship situations.

The general law of property, the Married Women's Property Acts, cases such as *Pettit v. Pettit*,⁴ *Gissing v. Gissing*,⁵ *Allen v. Snyder*,⁶ and the more recent *Thwaites v. Ryan*,⁷ are given brief consideration. However, *Calverley v. Green*,⁸ important among other things for its decision on contribution with respect to liability for mortgage repayments begs more attention than it was given. It should not be forgotten that the general law of property is still very relevant with respect not only to *de facto* relationships but also to continuing marriages and those terminated by the death of a spouse. One notes in relation to the latter situation that the various testator family maintenance provisions can be found documented in this Part of Dickey's book.

The injunctive provisions under both the Family Law Act and state laws are dealt with in Part VIII of the book where once again the reader is given many useful references if further research is desired.

This book was a pleasure to read and review. The mass of references to case law not only from the Australian jurisdiction but also, where appropriate, from New Zealand, and particularly England, provides the reader with a broad view of the principles, trends and conflicts that are found in this area of the law. Dickey's diligence is reflected by the very large Table of Cases. Similarly, the Table of Statutes is indicative of the comprehensive use of Australian and English Statutes. The book, thankfully, is sparing in its reproduction of extracts of cases and legislation — what is there is sufficient, concise and to the point and does not impede the easy flow of the text. Comprehensive and valuable footnoting complements the use of extracts. A bonus to those who are unfamiliar with the Western Australian system of a State Family Court is the author's informative review of its operation. In short, the book would be a greatly valued addition to the library of anyone teaching, practising or studying in the area of Family Law.

JOAN WRIGHT*

⁴ [1970] A.C. 777.

⁵ [1971] A.C. 886.

⁶ [1977] 2 N.S.W.L.R. 685.

⁷ [1984] V.R. 65.

⁸ (1984) 155 C.L.R. 242.

* Senior Tutor, University of Melbourne.