

Jacobs' Law of Trusts in New South Wales (2 ed.), by R. P. Meagher and P. F. Trevorah. Sydney, Butterworth & Co. (Aust.) Ltd., 1967. 784 pp. (omitting 84-102), with Tables and Index (\$17.50).

The publication in 1961 of the first edition of this work marked a valuable accession to Australian legal literature. The work was based on the standard New Zealand text book on Trusts by Garrow.¹ Garrow's book provided a framework within which the New South Wales law could be expounded.

This new edition follows the same order of treatment as its predecessor. The main changes are the result of re-writing various sections which have been the subject of recent decisions or discussions in periodicals. Typical changes occur in the topics of contracts for the benefit of third persons (pp. 116-17), trusts of covenants (pp. 151-57), gifts to unincorporated associations (p.205), gifts to charitable institutions (p.221), statutory salvage of trusts for mixed charitable and non-charitable purposes (p.279), directions to pay income in perpetuity (p.291), purpose trusts (pp. 297-303), apportionment of receipts from unit trusts (p.473), apportionment of profit from a trading business with special reference to pastoral businesses (p.481), and the right of impounding (p.562). The editors have separated the treatment of gifts on condition and gifts imposing an equitable personal obligation on the donee (pp. 119-124). On these topics a reference to T. C. Thomas' 1952 article² would be helpful. The treatment of the rule in *Milroy v. Lord*³ (p.158) has been expanded. Constructive trusts are dealt with shortly and the editors, prompted by American developments, warn the reader that a constructive trust may have to be thought of as a remedial device rather than a substantive concept (p.330). There are other instances of helpful discussion of trends which add to the value of the book.

There are several matters which might be considered for inclusion in a future edition. Could there be more material on revocable trusts? True, income tax law discourages the creation of such trusts but a discussion of them would aid understanding of the whole subject of gifts and trusts. Is the text on p.138, dealing with the capacity of a corporation to create a trust, applicable to all types of corporation? Should not the discussion of trusts for creditors (p.144) be supplemented by a description of the effect of the bankruptcy legislation? The treatment of trusts for illegal purposes (pp. 183-85) would be improved by distinguishing between the cases where the illegal purpose has been frustrated and cases where it remains capable of being carried into effect. On the same topic more prominence might have been given to the effect of a presumption of advancement, the importance of which for English courts is exemplified by *Gascoigne v. Gascoigne*.⁴ The reference to *Re Tyler*⁵ (p.250) should be accompanied by a reference to the criticism of that decision in such works as Morris and Leach on *The Rule against Perpetuities*,⁶ and the indications in *R.S.P.C.A. v. Benevolent Society of N.S.W.*⁷ that Dixon, C.J. may have questioned its authority. The discussion of the fiduciary duties of directors should be supplemented by reference to s.124 of the Companies Act.

The appearance of the book has been much improved by the use of larger type and wider spacing. The increased number of pages in the second edition has been brought about not only by these changes but also by the incorporation

¹ J. M. E. Garrow, *Law of Trusts and Trustees* (first published 1919; 3 ed. by N. C. Kelly and D. J. Whalan, 1966).

² "Conditions in Favour of Third Parties" (1952) 11 *Cambridge L.J.* 240.

³ (1862) 4 DeG. F. & J. 264; 45 E.R. 1185.

⁴ (1918) 1 K.B. 223.

⁵ (1891) 3 Ch. 252.

⁶ J. H. C. Morris and W. Barton Leach, *The Rule against Perpetuities* (2 ed. 1962) 191, 194.

⁷ (1960) 102 C.L.R. 629 at 641.

of some 83 pages of preliminary tables in the arabic page numbers and by a gap between pages 83 and 103.

H. A. J. FORD*

Cases on Trusts (2 ed.), by H. A. J. Ford (ed.). Sydney, The Law Book Company Ltd., 1966, ix and 807 pp. with Index (\$13.50).

Professor Ford is the most distinguished living Australian academic writer on equitable problems. Indeed, he is probably the only Australian teacher of law whose authority in that field would command unqualified acceptance in all common law countries. It is therefore the highest praise to be able to say that the second edition of his *Cases on Trusts* is fully worthy of him. It is a wholly admirable book. It is, in this reviewer's opinion, by far the best casebook available on trusts. It is learned without being pedantic, informative but not indigestible, concise but never elliptical, accurate, logically arranged, thought-provoking and (within its limits) comprehensive.

The cases which he has chosen to include are selected carefully and sensitively from a variety of sources, English, Australian, American and New Zealand, and he has selected them with unerring discrimination from amongst unauthorized, as well as authorized, reports. But the book includes not only reports of decided cases and extracts from relevant legislation, but also such welcome rarities as quotations from Roman Law writers (for example, Modestinus in *Digest* 33.2.16 on the civilian equivalent of the *cy-près* doctrine) and extracts from the older English legal writers (for example, the *Doctor and Student*, Bacon, Gilbert's *Uses and Trusts*, all on the question of the necessity for consideration in the creation of a trust). The book also contains a just proportion of the older cases, including cases from the fifteenth century onwards, a knowledge of which is often indispensable for a proper understanding of equitable doctrines (although one would never think so from a perusal of some current textbooks).

Not that the book is a parade of largely irrelevant antiquarian learning. Nothing, however exotic or interesting, is included which is other than of immediate and contemporary importance. Whilst no two teachers of equity would ever be in precise agreement on the contents of a casebook on trusts, there is no case included which one could reasonably wish omitted and no case (except perhaps *Inland Revenue Commissioners v. Baddeley*)¹ omitted whose inclusion one could reasonably regard as vital.

The second edition contains much material which was not, and could not have been, included in the first edition, including Windeyer, J.'s valuable summary of the law of equitable assignments in *Norman v. Commissioner of Taxation*;² *Re Cook*;³ (an interesting, but confused and misleading case) on voluntary covenants; *Scott v. Scott*⁴ on tracing; and *Leahy v. Attorney-General (N.S.W.)*⁵ on the validity of gifts to unincorporated associations and the severance of charitable trusts which are too widely expressed.

Professor Ford has been criticized for not including references to relevant

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¹ (1955) A.C. 572.

² (1963) 109 C.L.R. 9 at 23ff.

³ (1964) 3 All E.R. 898.

⁴ (1963) 109 C.L.R. 649.

⁵ (1959) 101 C.L.R. 611; (1959) A.C. 457.