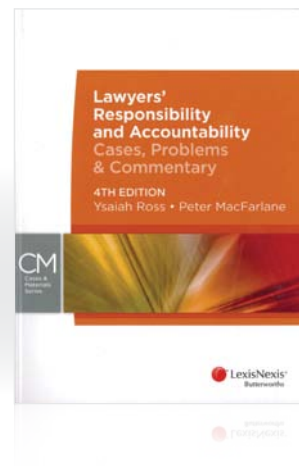
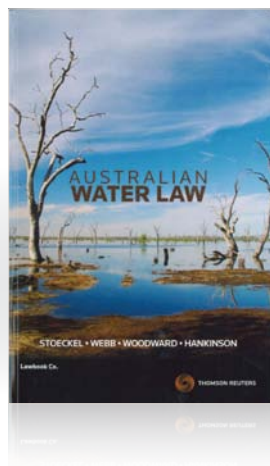
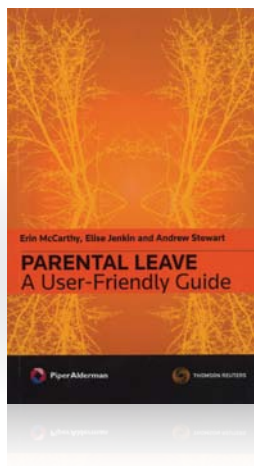


INPRINT

This month's reviews cover parental leave, water resources law, private international law and legal ethics.



Parental leave: A user-friendly guide

Erin McCarthy, Elise Jenkin and Andrew Stewart, *Parental Leave: A user-friendly guide*, 2012, Thomson Reuters (Professional) (in conjunction with Piper Alderman Lawyers), pb \$79.95.

Australia is known for its generally good record in providing work-related benefits for its employees. However, we have lagged well behind most other OECD countries with respect to one important right – the right for working parents to take paid leave on the birth of a child. This was rectified in 2010 when the federal government introduced legislation to provide the primary carer with a maximum of 16 weeks' leave, paid at the rate of the federal minimum wage, for births or adoptions occurring on or after 1 January 2011.

While the basic entitlement of the paid parental leave scheme (PPLS) (which is pay, not leave) appears straightforward, parental leave overall is a surprisingly complex area. This is mainly because of the interaction of the PPLS with other laws, including the National Employment Standards, anti-discrimination laws, taxation and superannuation guarantee legislation. Fortunately, this new book addresses all of the important questions that employers and employees might have about the operation of parental leave, including the entitlement to payments (both under the PPLS and enterprise agreements and employer policies), the employer's role as "paymaster", managing the leave

entitlements of couples, filling a temporary "parental leave" position and how to manage the employee's return to work, especially when the employee requests part-time or flexible working arrangements so as to manage family responsibilities.

The book is written in a crisp, accessible style. It is true to its claim to be "user-friendly". It is well-organised and indexed, making it easy to find relevant information to answer the problem at hand. It also contains numerous short case studies that exemplify the many and varied issues that can arise, with clear answers and advice provided. The book also provides summaries of relevant anti-discrimination cases dealing with requests for flexible work arrangements. There is a wealth of practical legal advice on how to hire temporary replacement workers to avoid the legal pitfalls.

The authors have done a splendid job in producing an authoritative and user-friendly handbook about the background to and operation of parental leave in Australia. Employers, employees and their representatives will find it an invaluable resource.

DR KAREN WHEELWRIGHT
FACULTY OF LAW, MONASH UNIVERSITY

Australian Water Law

Kate Stoeckel, Romany Webb, Luke Woodward and Amy Hankinson, *Australian Water Law*, 2012, Thomson Reuters (Professional), pb \$190.

This text adds to the scarce literature on water resources law in Australia. One of the difficulties that bedevil authors in this area

is the apparent need to write a text of nationwide relevance. Regrettably this means a large part of the text is focused on the comparative positions between states. This is of policy and academic interest, but not so useful for practitioners. Nevertheless, there are few texts on water law in Australia. Any practitioner interested in this area of the law should obtain a copy of this text.

The book provides a carefully researched account of the history and policy development of water reforms in Australia. It deals with the evolution of water rights, water planning and management, water access regimes, water infrastructure, community water services and water trading. There is a useful section on Indigenous water rights.

The authors state in the preface that "We have focused on providing the main structure of the legal and regulatory framework for each jurisdiction". The book achieves that end. The authors have not made any serious attempt to consider in any detail the judicial decisions either underpinning or considering that framework. They do not refer, for example, to the leading cases of *Castle v Southern Rural Water* [2008] VCAT 2440 or *Alanvale Pty Ltd & Anor v Southern Rural Water & Ors* [2010] VCAT 480. In Victoria, disputes about water rights and responsibilities are generally determined at VCAT. The book does not refer to any VCAT decisions. It is of limited use to practitioners seeking solutions to practical disputes.

The authors have brought together a well-researched analysis of the historical evolution of common law controls over water flows and

rights and, in that regard, add to the literature. The text does not attempt to overcome the absence of any texts which deal with the complex issues of water rights and liabilities arising from water flows.

ROBERT SADLER
BARRISTER

Private International Law in Australia (2nd edn)

Reid Mortensen, Richard Garnett and Mary Keyes, *Private International Law in Australia* (2nd edn), 2011, LexisNexis, pb \$125.

Private international law applies to all cross-border disputes – not just those crossing national borders. A dispute between residents of different Australian states (or territories) could involve issues of private international law. Given the continuing growth in cross-border trade, travel, migration and communication, such disputes are becoming more frequent. This work is a clear and concise overview of the main issues and principles in this complex and expanding area of law.

The work covers three broad areas: jurisdiction, judgments and choice of law. Jurisdiction concerns whether a court in which proceedings are commenced can and should hear and determine a cross-border dispute. (Practitioners will recall the doctrine of *forum non conveniens*, under which a court may stay proceedings commenced in a clearly inappropriate forum.) Judgments concerns the recognition and enforcement of foreign judgments in Australian courts. Choice of law (also known as “conflict of laws”) concerns what law a court will apply to resolve a cross-border dispute.

The first edition of this work, published five years ago, was written by Professor Mortensen alone. The second edition has two additional authors (Professors Garnett and Keyes) and includes new chapters on international arbitration, property and maintenance in family law, and international company law. By providing detailed technical information in these particular areas, these additional chapters have considerably improved the balance between theory and practice in this work. Although the chapters on the history and development of private international law are interesting and necessary, they are too long and discursive. Practitioners wanting to advise clients on their rights and responsibilities are more interested in concise statements of the law and accurate summaries of relevant cases and legislation.

As territorial borders become more porous, private international law becomes more important. Every practitioner must be familiar with at least the basic principles. Hence the importance of this well-written book.

BILL SWANNIE
SENIOR LAWYER, TENANTS UNION OF VICTORIA LTD

Lawyers' Responsibility and Accountability (4th edn)

Ysaiah Ross and Peter MacFarlane, *Lawyers' Responsibility and Accountability: Cases, problems and commentary* (4th edn), 2012, LexisNexis, pb \$129.

Ross and MacFarlane have again provided a relevant and critical collection of cases and questions concerning lawyers' responsibilities.

This text is the companion volume to Ross's 2010 *Ethics in Law* and their approach follows previous editions: a list of some hard questions (problems), key case extracts and conduct rules and then some further questions about resulting choices.

The treatment is impartial and is thought-provoking for students and lawyers alike.

The authors begin with scene-setting sections on ethical contexts followed by chapters covering most areas of ethical concern.

Notable exceptions are abuse of process and document destruction. There is no treatment of *McCabe v British American Tobacco* at first instance ([2002] VSC 73) or on appeal.

To my mind the two early chapters are particularly important, because they could provide a framework for the later analyses of specific problem areas.

Thus, at page 18 the authors invite the reader to “. . . [deal] with the facts of the following case, according to whether you take a legal technician's approach, a moral human being's approach by applying community values, [a] loyalty to your client approach, [a] loyalty to the legal system approach or your own point of view”.

If this sort of framework were explicitly suggested as a mechanism for understanding and interpreting the choices evident in later chapters, readers' comprehension of those issues would be improved.

Some confusion exists as to which professional conduct rules are preferred by the authors as reference points.

In Chapter 2, on page 15 they state that they “will apply” the 2010 consultation draft of the imminent *Legal Profession National Rules* (now the *Australian Solicitors Conduct Rules*) and extract some of them.

But in later chapters, they provide only extracts from the now dated 2002 LCA *Model Rules*.

At p505 this issue is important because of the reference in model rule 3.1.3 to the ability of a lawyer to disclose a past serious crime without breaching confidentiality.

Under the new rules, that exemption has been removed.

Excepting these minor problems, this edition will remain very useful to anyone requiring a case-based approach to current problems in legal ethics. ●

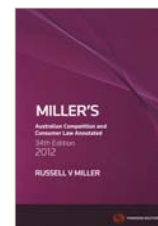
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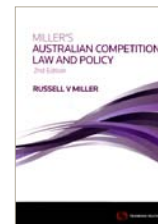
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