

Review of Robert Baxt, Keith Fletcher & Saul Fridman, Afterman and Baxt's Cases and Materials on Corporations and Business Associations, 7th ed Sydney: Butterworths, 1996, 944 p

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1. There is a lot going on in the law of business associations in Australia. The coming into force in 1991 of the Commonwealth's National Scheme to replace the earlier Cooperative one has been followed by a steady flow of amendments of statutory details. In addition there has been a major ongoing reform enterprise to achieve rather more substantial changes^[1]. The National Scheme's primary regulator, the Australian Securities Commission, has been active, both in litigation and in other terms^[2]. There has been a constant flow of other litigation, as befits lively markets, in particular the merger ones. And the flow of legal literature on business associations has been considerable, augmented by new research centres with interests in the area^[3] and by new specialist journals^[4].
2. More than this, there has been a recent enlivening of the debate about the nature and purposes of the law that shapes the formation, operation and termination of business associations. Much of this debate has been carried on under the rubric of "corporate governance". This debate has gone well beyond the work, dating from the 1960s, of those operating in the law and economics tradition who had drawn attention to the need to look beyond the control by legal regimes of managerial and other "controllers" behaviour^[5]. The new debate has increasingly drawn on the relevance of politics to corporate law, and it has been enriched by perspectives from comparative law^[6].
3. This book, published in early 1996, is the latest edition of the oldest of the current published Australian casebooks on the law of business associations. The Preface tells us that this latest edition is meant as a "source of material for students in their coverage of corporate law", and that it should prove an "invaluable addition to the library of practitioners and business people". As a set of introductory materials on law in a state of great change, it has some considerable virtues, but also some significant weaknesses.
4. It is distinguished from the other major casebooks in this country^[7] by its coverage not only of business associations but also of other (not for profit) associations, both incorporated and unincorporated ones. In fact the book commences with a treatment of them. The material here shows very well indeed how far the common law came in such areas as the liability of members of these sorts of associations to the position the principal National Scheme statute, the Corporations Law, provides for. However, given that the overwhelming bulk of the book is on business associations, it is curious that the opportunity is not taken to explore how the law of not for profit associations might illuminate some of the issues of legislative policy at stake for business ones.
5. Thereafter, the book proceeds much as its competitors do. There is a conspectus of the law of partnerships, followed by a (rather short) chapter on the history of company law, both the Imperial and the Australian ones. There are then chapters representing extended treatments of separate legal personality and the matters of promoters and pre-incorporation contracts. As befits an introductory treatment for the benefit of students, there is then a step-by-step account of the incorporation process. This is provided in a chapter which also sets out materials on the nature and effects of the corporate constitution, of memorandum and articles of association.
6. The requirement for and liabilities on a prospectus for new issues and similar transactions are dealt with next, and this is followed by a chapter on capital and finance. This pairing is in an order most users of the book should probably reverse, as the understanding of the account of prospectuses is much improved by a preliminary understanding the forms of corporate finance.
7. There is lengthy chapter on accounting and audit, which is much more expansive on the liability of auditors than it is on the other topics covered, particularly the topic of the corporate disclosure system in which the accounting requirements are now best seen as embedded.
8. A treatment of corporate contracting follows that nicely renders the history of the statutory provisions in the area as well as the

underlying tensions between facilitating commercial transactions and protecting the business against unauthorised conduct.

9. The next chapter, on meetings, is almost entirely concerned with those of shareholders, although there is a reference to the informal conduct of directors' meetings which seems to suggest (if so, misleadingly) that the corresponding position for shareholders' meetings is comparable.
10. Probably the heart of the casebook is the next four chapters, which together comprise about one-third of its length. These deal with the control and management of companies, the duties of controllers and directors (itself by far the longest chapter in the book), the duties of controlling shareholders and common law remedies for their breach, and statutory remedies for minority shareholders. Here there is much to tell from the recent history of business associations law in this country, and the basic features are generally well rendered, particularly the evolution of the statutory oppression remedy in the Corporations Law.
11. The last two chapters of the book are concerned with what could be called fundamental changes in the corporation. One is on schemes of arrangement and takeovers, where as the authors acknowledge it is very hard to provide an intelligible basic account of what are very complex statutory schemes. The other is on companies in difficulty, covering investigations by the ASC, receiverships, voluntary administrations and winding up. In this the book's last chapter the only substantial treatments are of investigations, of winding up by court order on the just and equitable ground and on the basis of faithless conduct by directors, and of receiverships.
12. The emphasis throughout the book is on providing introductory accounts of the areas of law covered. These accounts proceed for the most part by having quite lengthy notes introduce what are often very substantial extracts from cases. These extracts are frequently much longer than is usual in the competing casebooks, which in areas such as the oppression remedy helps the book give the flavour not only of the substantive issues at stake, but also of the complex evidentiary issues that corporations law cases can involve. Case extracts are sometimes followed by notes that expand on issues the cases raise, or that pose questions about them. However, there is no consistency or other evident pattern in doing this. And in most extracts there are no editorial references to the provisions in the current National Scheme statute that correspond to the statutory provisions the case concerns, where this would help the reader with determining its current relevance.
13. There are very few extracts from material other than cases. This means that the book does not directly provide either the increasingly important flavour of much of the work of the ASC through policy statement and practice note, or an idea of the sorts of assistance with issues of corporate law policy that the secondary literature can provide. There are "Further references" and other citations to some of the secondary literature provided throughout each chapter, but these are uneven, particularly in their coverage of recent Australian work other than that in the *Australian Business Law Review* and the *Company and Securities Law Journal*. Thus, there are no references to the major sources on the new corporate governance debate - in fact, I could find no flagging of the debate in the text or its index.
14. The book aims to take account of the law as at mid-1995, with some references to developments up to the end of that year. This permits coverage of the effect of the commencement in September 1994 of the Enhanced Disclosure system^[8] and of the introduction by the legislation enacted in 1995 of formal provision for the one person corporation^[9]. There is also some account of some of the further major changes that had been proposed at the time the book went to press, and that (in a modified form) are now pending in the Commonwealth Parliament^[10].
15. There are signs, however, that even in respect of the changes that had been enacted by the mid 1995 date not all of the necessary editorial adjustments were made to the text. Thus, the references to the prospectus requirement do not take sufficient account of the dropping of the application of the requirement to secondary market transactions. There is no account of the continuous disclosure principle for unlisted disclosing entities. And there continue to be references to (although no definition of) the Exempt Proprietary Company which the 1995 amendments largely eliminate from the National Scheme (and a definition of which no longer appears in the Corporations Law).
16. Beyond this, and even allowing for the introductory character of the work, there are some significant gaps or abbreviations in treatment of the substantive law. Thus, the discussion of prospectuses does not indicate that the requirement extends beyond securities issued by corporations, to include the exotic world of prescribed interests (or, as they are now coming to be known in anticipation of further legislative reform, collective investments)^[11]. There is virtually no treatment of the relatively new regime regulating related party transactions, which given the book's emphasis on controlling power in the corporation is a major gap^[12]. The treatment of the floating charge is brief in deed, probably too short for the student to be able to make good sense of it^[13]. And it is hard to gather from the scattered references in the book the significance to the main form of Australian company, the closely held one, of the shareholder agreement as a useful supplement to the corporate constitution^[14].
17. At the level of the book's production values, while it is generally well presented, there is a scattering of blemishes across its length that further copy editing could have removed. These include typographical errors, unnecessary text repetition^[15] and erroneous (or missing) cross references. In common with its competitors this book uses a rather burdensome page layout format, featuring fonts that are too small for ease of reading (especially reading case extracts), and not enough white space. In this respect the Australian books have not reached the presentation values of the best of their US counterparts^[16].
18. On balance, this book is a useful set of teaching materials for an introductory course on business associations law of the sort all law schools and commerce programmes have. It is, however, one that probably needs to be supplemented, more than is the case with its major competitors, with extracts from the literature other than the cases. As a set of reference materials for interested legal

practitioners and business people, the book offers more substantial case extracts than its competitors. But its gaps and limitations in substantive law treatments mean that it can form only a part of the sort of library on the rapidly changing Australian law of business associations that the conscientious need to maintain.

Notes

[1] This is the *Corporate Law Simplification* enterprise, which may ultimately prove to have only two forms of issue, the First Corporate Law Simplification Act 1995 and the [Second Corporate Law Simplification Bill 1996](#), the latter before the Commonwealth Parliament but not yet enacted at the time of writing this review (March 1997). The *Simplification* enterprise may now be substantially at an end (two Acts short of its target), because of the federal government's recently announced "Corporate Law Economic Reform Program" (March 4, 1997) (<http://www.treasury.gov.au/organisations/bld/strat3.html>). This most recent initiative appears to signal a new reform enterprise of at least equivalent significance, however.

[2] For a review of its work, see R.L. Simmonds, "The Enforcement of the Corporations Law in Australia: A Framework for Reform" *25 University of Western Australia Law Review* 49 - 76 (1995).

[3] See the Centre for National Corporate Law and Policy Research of the University of Canberra (1989), the Centre for Commercial and Resources Law of the University of Western Australia (1990), and, most recently, the Centre for Corporate Law and Securities Regulation of the University of Melbourne (1996).

[4] The *Corporate and Business Law Journal* of the University of Adelaide (1988) and the *Australian Journal of Corporate Law* of the University of Canberra (1991).

[5] For a particularly lively account in that tradition, see R Romano, *The Genius Of American Corporate Law* (Washington, DC: The American Enterprise Institute, 1993).

[6] For a most interesting recent contribution that also provides references to the major sources, see B Black and R Kraakman, "A Self-Enforcing Model of Corporate Law", *109 Harvard Law Review* 1911 - 1982 (1996) (reflecting on lessons from authors' experiences in working on new Russian corporations law). See also the papers for the 1997 Corporate Law Teachers National Conference, the University of Melbourne, 9 - 11 February 1997, "International Perspectives on Corporate Governance".

[7] See P Redmond, *Companies and Securities Law Commentary and Materials*, 2nd ed (Sydney: Law Book Company, 1992) and *Supplement to Companies and securities law : commentary and materials* (Sydney: Law Book Company, 1996); and R Tomasic, J Jackson and R Woellner, *Corporations Law [:] Principles, Policies and Process*, 3rd ed. (Sydney: Butterworths, 1996).

[8] By the *Corporate Law Reform Act* 1994.

[9] By the First Corporate Law Simplification Act 1995.

[10] See [Second Corporate Law Simplification Bill](#)

[11] Compare Tomasic et al, 3rd ed, *supra* note [7], at pp 614 ff.

[12] Compare Tomasic et al, 3rd ed, *supra* note [7], at pp 349 - 351.

[13] Compare Tomasic et al, 3rd ed, *supra* note [7], at pp 606 - 614; and Redmond, 2nd ed, *supra* note , at pp. 743 - 746 and 788 - 797.

[14] Compare Redmond, 2nd ed, *supra* note [7], at pp 257 - 259.

[15] See for example the repetition at pp. 918 - 919 of the account of the facts in the extract for *Re Dalkeith Investments Pty Ltd*.

[16] See especially William L Cary and Melvin Aron Eisenberg, *Corporations [:] Cases and Materials*, 7th ed (unabridged) (Westbury, NY: Foundation Press, 1995).

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URL: <http://www.austlii.edu.au/au/journals/MurUEJL/1997/5.html> The book contains the essential cases and materials that students need in order to fully understand and analyse the international legal system, drawing on a truly global range of jurisdictions and sources. Expert author commentary and notes place selected extracts within the wider legal framework and explain the complexities of the principles of law to students.Â Robert McCorquodale Director, British Institute of International and Comparative Law Professor of International Law and Human Rights, University of Nottingham. Sarah Williams Associate Professor, Faculty of Law, University of New South Wales. 1. Corporations: Examples & and Other Business Associations: Cases and Materials, Explanations, Fifth Edition, presents a full review of the legal Fifth Edition, reflects major developments in the Corporate issues that arise in modern corporations. Law environment while remaining accessible to students. Instructors know they can This timely revision offers a The authors retain the features Other notable changes: recommend this text with great deal of new material: that earned the book widespread confidence because it: additional attention to agency Delaware updates, including adoption: la Afterman & Baxt's Cases And Materials On Corporations And Associations [Baxt Robert, Fletcher Keith, Fridman Saul] on Amazon.com. *FREE* shipping on qualifying offers. Afterman & Baxt's Cases And Materials On Corporations And Associations.Â by Fridman Saul Baxt Robert, Fletcher Keith (Author). See all formats and editions Hide other formats and editions. Price. New from.Â Special offers and product promotions. Amazon Business : For business-only pricing, quantity discounts and FREE Shipping. Register a free business account. Product details. [54] Robert Baxt, Keith Fletcher, and Saul

Fridman, Afterman and Baxt's Cases and Materials on Corporations and Associations (7th ed, Butterworths, Sydney, 1996), p 155.
AustLII: Feedback | Privacy Policy | Disclaimers URL: <http://www.austlii.edu.au/au/journals/MurUEJL/2000/32.html>. The present paper reviews the literature on business ethics with a special focus in marketing ethics. The literature is divided into normative and empirical sections, with more emphasis given to the latter.Â Holloway, Robert and Delbert Hastings: 1978, "The Business and Society Course and Its Discontents"™, Working Paper, College of Business Administration, University of Minnesota. Hosmer, L. T.: 1985, "The Other 338: Why a Majority of Our Schools of Business Administration Do Not Offer a Course in Business Ethics"™, Journal of Business Ethics 4, 17-22.