

REVIEW ARTICLE*

Afterman and Baxt's Cases and Materials on Corporations by ROBERT BAXT, KEITH FLETCHER and SAUL FRIDMAN, Butterworths (7th ed, 1996) pp i-li, 1-944 . Softcover recommended price \$98.00 (ISBN 0 409 31092 1).

Corporations Law: Principles Policy and Process by ROMAN TOMASIC, JAMES JACKSON AND ROBIN WOELLNER, Butterworths (3rd ed, 1996) pp i-lxviii, 1-1008. Softcover recommended price \$82.00 (ISBN 0 040930913 3).

Company Law, to those who specialise in it, is among the most fascinating of legal subjects. But its fascination is not always readily apparent to general practitioners or to the students of law, economics and accounting who try to master its intricacies. Indee, they often regard it as technical or dull. This, perhaps, is because they find difficulty in viewing it in its historical and economic context and in grasping its underlying principles. This book has been written in an attempt to meet their needs...¹

The author of the above quotation succeeded beyond his dreams in producing a lively, readable and best-selling textbook in a subject too often dismissed as technical and dull. Gower has gone through five editions in forty years, all with the same author, and is still in print. For this reviewer Gower set the standard in student company law texts and *Modern Company Law*² has been one of the best sellers of English legal textbooks. It was and is, however, a series of lively lectures, augmented by copious footnotes, designed for lecture-style teaching- a mode of teaching very much in retreat, at least prior to the advent of Senator Vanstone as Education minister.

The 'modern' method of teaching company law in most Australian law schools is by casebook and class discussion, with in some cases, computer-based tutorials. There is a plethora of teaching material for an Australian teacher to choose from.

* Phillip Burgess LL.M (Well) Associate Professor of Law, University of New South Wales.

1 LCB Gower, 'Preface to First Edition' in *Modern Company Law*, Stevens (4th ed, 1979) p ix.

2 *Ibid.*

The first of the books under review, *Afterman and Baxt*,³ is the oldest established Australian casebook. The first edition appeared in 1972, when it was the only substantial Australian company law casebook available. The writer remembers it with affection as it saved many hours of cutting and pasting. The book's content did tend to reflect particular interests of the authors, unincorporated associations in the case of Bob Baxt and director's duties in the case of Al Afterman, but overall it was a quantum leap in company law course materials.

Now, nearly 25 years later a seventh edition has appeared. Baxt is still the editor along with Keith Fletcher, an authority on partnership and associations law—Al Afterman having long since forsaken legal teaching and writing for literature. Saul Fridman joins them for this edition. But the field is now crowded. What would justify prescribing *Afterman and Baxt* in 1996?

One unique feature is that more than any other casebook it recognises the essential unity of the law of associations, partnerships and companies. Baxt's particular interest in the unincorporated association provides a useful preliminary canter through the liability and control problems that need to be examined in partnership and company law. It is unfortunate that the increasing weight of material in company law courses tends to squeeze out examination of associations and partnerships, both of which Tomasic, Jackson and Woellner⁴ entirely omit.

In addition, the editors have kept both the notes and the extracts up to date, no mean feat considering the rate of change in the area. There is almost no text from the first edition and more than half the cases are new. One realises that the 1970s and 1980s have seen a flowering of case law not seen since the Edwardian golden age of company law from 1880 to 1910. The emphasis in *Afterman and Baxt* is very much on current trends. Areas beloved of the academic, such as pre-incorporation contracts and the ultra vires rule have been ruthlessly pruned. Although the text has grown to 937 pages, the good editing of extracts, a feature of the first edition, remains.

Afterman and Baxt does not, however include questions, or specific examination of particular issues. The text tends to be of the overview type. To some, this may be a blessing. But the reader is sometimes left wondering what is the significance of a particular case is. There is no real shortage of signposts, but a dearth of flagpoles.

Nevertheless, *Afterman and Baxt* remains a useful compilation, and some might prefer its relatively unstructured presentation which allows the lecturer considerable leeway in designing a course around it. But teaching material for company law is now a crowded field and many competitors have provided much more assistance to hard-pressed lecturers and their students who struggle to keep up to date with changes which proceed at a far greater rate, than was the case in 1972. In the day of the computer there is something anachronistic about a casebook filled with lengthy extracts from judicial wisdom but not much else.

3 R Baxt, K Fletcher and S Fridman, *Afterman and Baxt's Cases and Materials on Corporations*, Butterworths (7th ed, 1996) (*Afterman and Baxt*).

4 R Tomasic, J Jackson and R woellner, *Corporations Law: Principles Policy and Process*, Butterworths (3rd ed, 1996) (Tomasic, Jackson and Woellner).

The second book under review is more recent in its origin, though now into its third edition. *Corporations Law: Principles Policy and Procedure* by Tomasic, Jackson and Woellner⁵ is also in casebook format, though it is not confined to case extracts. It is also a lengthy tome of 990 pages of text. It covers much the same ground as *Afterman and Baxt* excluding the law of partnership and unincorporated associations. Some quite substantial essays by the authors are included, such as Chapter One on theoretical aspects of corporate personality. Some statute-based topics are covered by detailed notes rather than extracts, such as Chapter 12 on securities regulation. In other areas, such as directors' duties where cases are thicker on the ground, the coverage is similar to *Afterman and Baxt*, though coverage is deficient in the area of remedies for breach of duty. Again, there is no attempt to develop questions arising from the material. As a newer work, Tomasic, Jackson and Woellner (with all of the authors from post-Dawkins law schools and all, by an odd co-incidence, Heads of their respective Schools) has a newer feel to it, in part because of the greater concentration on the statutory law. There also appears to be greater use made of the secondary literature. In fact a 1991 article by Bob Baxt on re-examining the corporate entity principle, modestly relegated to a footnote in *Afterman and Baxt*, is extracted in Tomasic, Jackson and Woellner.

Essentially, these are both technicians' books, for the education of technicians. The emphasis in both is on black letter law and its administration. Even here, there is little emphasis on business planning, or the integration of business association law with relevant other areas such as trust, tax or property law. Bulk and coverage has been substituted for depth of analysis. A desultory attempt in both casebooks is made to put company law in its wider social context. The emphasis is on what the law says, with a reasonable attempt made in some areas to explain how the law got to its present state. Gower too is a traditional book, limited by its textbook format, but it reaches a level of doctrinal and contextual analysis lacking in the casebooks under review.

As was noted earlier, perhaps it is thought that both books are merely resources for a competent teacher to develop his or her own approach to the material, but if so the results in both cases cannot be said to be user-friendly, nor comprehensive, despite the bulk of both volumes. On the basis of size, Tomasic, Jackson and Woellner is slightly bigger and cheaper, but as noted, it lacks any material on partnership or associations. Neither book is really addressed to the student's need for structure and direction in their learning process. *Afterman and Baxt* harks back to an American model of the 1960s when students were regarded as self-teaching, and Tomasic, Jackson and Woellner fails to present their sometimes more interesting material in an attractive way. Australia still awaits its own latter-day Gower.

5 *Ibid.*