

BOOK REVIEW

TRUSTS LAW: TEXT AND MATERIALS by Graham Moffat with Gerry Bean and John Dewar, Fourth Edition, Cambridge University Press, 2005, xlvii, 1051 pp.

I was pleased to have the opportunity to review the latest edition of Graham Moffat's book, *Trusts Law: Text and Materials*, as I have been an admirer of this work since the first (albeit thinner) edition appeared in 1988. It is a book in which the author exhibits an obvious familiarity with the subject matter yet at the same time he maintains an enthusiasm for the intricacies of trusts law which sets him apart from many other authors in this area. The book is part of the series which is published under the banner of *Law in Context*. The general editors of the series are William Twining and Christopher McCrudden.

The philosophy that lies behind the series is that legal phenomena should be taught from a broad perspective, from the viewpoint of law's place in society. When new developments occur, they should be taught while bearing in mind the practical implications for the operation of law as well as its rules and principles. Although the book is written primarily from an English perspective, the author carefully chooses examples from any of the common law jurisdictions that will provide clear explanations of the points being made. Graham Moffat recognises that the different approaches to issues that have developed in Australia, New Zealand and Canada, as well as the United Kingdom, are important to our overall understanding of the way trusts work and how equitable principles may be applied. He uses these examples to explain the way the different jurisdictions approach particular problems within the contexts of their own systems.

For example the relationship between the common law and equitable remedies has been discussed at various times in each of the jurisdictions and different judicial attitudes have prevailed. The Canadian and New Zealand approaches may have some things in common with each other, as may the prevailing attitudes in the United Kingdom and Australia, but each country adopts its own unique solutions to remedy the problems. The questions raised might be almost identical, but the answers are arrived at according to the individual needs and accepted legal philosophy of that jurisdiction. While Moffat is successful in giving a detailed account of the issues and the legal philosophies that guide the answers, he avoids the commonplace techniques of mere comparison. Instead, he balances one opinion against another, introducing similarities and points of difference where appropriate. He takes the whole picture, describes it, explains it and then offers his own perspective which serves to clarify the issues and enlighten the reader.

The detail of Graham Moffat's knowledge in the area of equity and trusts is phenomenal. He writes clearly, but the clarity of the writing does not detract from the complexity of the material he is presenting. He neither over-simplifies nor does he obfuscate in the way that some authors try to establish their superiority in a subject, particularly in this area. This is not an easy subject, but by taking this contextual approach the law remains relevant and dynamic. Equity in this book is viewed against the background of individual legal systems with their unique histories and formative characters. To teach law in context means that diverse legal issues are never examined in isolation, but instead are presented against a background of events and changes that form a reference to the society in which the issues arose. Graham Moffat's book returns to this theme time and again.

For example, the judicial attitude to the treatment of women has been steadily evolving since the 1970s. This has been clearly evident in areas like employment law and the law relating to matrimonial property. In trusts law the imputed trusts (constructive and resulting trusts) have been applied in situations where women appeared to be suffering an injustice, at times when relationships were breaking down, but when the established legislation was of no use to them. Questions of justice and policy were expected to be resolved within a conceptual framework that was never intended to serve such a need. Judges have been asked to interpret policy which has led to uncertainty and much reliance on evidentiary matters. A clear result of this has been that the cases have become more expensive to litigate. Moffat explains the present position clearly and then goes on to identify possible ways forward. In doing this he refers to approaches taken in Commonwealth jurisdictions, thus putting law into a wide context, but at the same time making each jurisdiction's approach part of a broader exposition of the principles.

Another example in which law is seen to be more frequently operating against a contextual background comes from the commercial world. In recent years there has been an increasing demand for equity to find solutions to problems arising in areas of activity where equity was hitherto discouraged from involvement. Some commercial transactions may now give rise to fiduciary relationships and breach of duty between those connected by contracts may now result in an equitable remedy. Here again Graham Moffat succeeds in giving us the context against which we can properly examine the issues. He gives us a detailed analysis of the problems and suggests ways forward based on a reasoned examination of the various approaches that have been adopted in New Zealand, Australia, Britain and Canada. The commentary is authoritative and the examination of current developments is thorough.

There are 1051 pages in this edition of *Trusts Law: Text and Materials* which is testament to the continuing work of the author to gather together insights from all the important commentators and decided cases in this area of law. The work encompasses the law relating to charities and the role of trustees, private and family trusts, where the problem of sham trusts are discussed against a background of modern social welfare and avoidance of payment for care for the elderly. These are all relevant wherever the national legislation allows for assets to be held under a trusts which are protected from the normal rules pertaining to taxation. Even in the portions of the book that are written from the perspective of the English lawyer, for example where the Trustee Act 2000 is discussed, the author compares case law on the legislation with other cases from other jurisdictions on the basis that even specific statutes from diverse common law countries have a common foundation. This is a book that is accessible to law academics and students at undergraduate and postgraduate levels who will find it proves to be a stimulating resource.

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