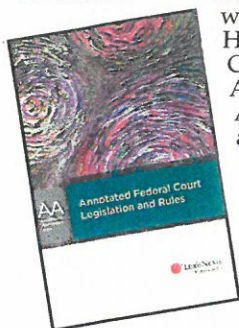


**Annotated Federal Court  
Legislation and Rules  
LexisNexis Butterworths  
Soft Cover version  
1834 pp \$165**

**Reviewed by Brian Morgan**

For many years, I have been a subscriber to the LexisNexis loose leaf four volumes of Practice and Procedure, which includes the High Court, Federal Court, Bankruptcy, Administrative Appeals Tribunal and Trade Practices.



There has recently been debate in our Chambers over the value of loose leaf subscriptions, given the annual cost, but if you

want to be completely up to date, there is no substitute. One of my colleagues though, keeps relatively up to date by purchasing the bound volumes of books, such as that being reviewed, and feels that it works for him.

I have reviewed many of the LexisNexis Annotated publications in the past but this one has to be the daddy of them all, extending to 1834 pages. It is up to date as of September 2012 which is remarkable, given the amount of information contained in it.

If you have a practice which includes the Federal Court, I don't know how you could conduct it efficiently, without having access to a book such as this. Not only does it give you the Federal Court Act, but it also gives you, complete with very extensive annotations, the new Federal Court Rules and Practice Directions in a form which I think works very well for a busy practitioner.

I know that we can, now, readily ensure that our Act and Rules are up to date, but these publications are worth the purchase price because of the quality and quantity of the annotations. In the case of the new Rules, given that they have only been with us for a short time, there has not, as yet, been the opportunity for the same judicial scrutiny as was the case with the old rules. However, the editors have industriously referred to the old rules and to the many judicial comments on similar rules and words, and given us a useful source of reference.

It may be helpful to summarise what the editors say as to the major points of the new Rules. They are:

1. The language is simplified by the use of the active voice, the elimination of archaism legalese and Latin expressions.
2. There is a new structure, which has done away with Orders and rules, replaced with Chapters, Parts and Divisions.
3. They tend not to focus on what the Court must or may do, but what the parties must or may do.
4. Parties continue to be referred to as "applicant" and "respondent" except in Corporations and Admiralty in which case they are "plaintiff" and "defendant".

5. Not all the Rules have been revised.
6. They emphasise that the Court is the manager and controller of proceedings, not the parties.
7. No longer do we have prescribed forms, but forms approved by the Chief Justice.
8. Proceedings under the Admiralty Act are now governed by Admiralty Rules, which have not been revised.

Practice in the Federal Court is enjoyable once one gains familiarity with a different set of rules and procedures. Too many people avoid practice in this Court due to lack of that necessary familiarity.

I commend LexisNexis and the authors for simplifying the means of gaining an understanding of this Act and Rules in a way that every practitioner will frequently use and find of great value.

**Discretionary Testamentary Trusts  
Precedents and Commentary, 1st Ed  
Charles Rowland & Phillip Bailey  
LexisNexis Butterworths  
304 pp \$175**

**Reviewed by Peter Worrall,  
Worrall Lawyers**



This book of 304 pages plus a short preface, table of cases, and table of statutes contains a useful but basic commentary on Testamentary Discretionary Trusts.

The book unusually refers to and is named "Discretionary Testamentary Trusts, Precedents and Commentary". The

subject matter of the book is usually called Testamentary Discretionary Trusts.

The commentary on this form of Will Trust runs for five chapters over 93 pages, covering the following topics: Basics of Discretionary Testamentary Trusts; Tax Effectiveness of Discretionary Testamentary Trusts; Asset Protection and Discretionary Testamentary Trusts; Superannuation and Testamentary Trusts; and Social Security and Discretionary Testamentary Trusts.

Further topics that might usefully be covered and deserve chapters on their own in any future editions, are: "Control of Testamentary Trusts" and "Administration of Testamentary Trusts" although there are some elements of these topics discussed in the book, it would be good to see a greater in depth analysis of them.

It is interesting to see that the authors of this book have moved away from Charles Rowland's previous insistence in his latest edition of *Hutley* that it is suitable to maintain a statutory survivorship period in many wills. I mention *Hutley* because in order to read this present book, you need a copy of *Hutley* nearby.

Until I read the complete wills, which appear in chapter 9 - "Examples of Precedents Applied", I was having considerable trouble with the drafting

style and the drafting methodology in chapters 6 to 8 (inclusive), and even now I do not find the drafting as clear as, for example, the precedents as in *Kessler* and *Flynn* on Drafting Trusts and Wills Trusts in Australia, which I suggest practitioners may find to be a more useful book on Testamentary Discretionary Trusts. This preference may well come down to my own views about how to draft Testamentary Discretionary Trusts. Both books are useful, but if I was buying only one book I would buy the *Kessler* and *Flynn*.

There are a small number of curious features in this text and precedents, which are worth mentioning. These include having the position of both Appointor, who are to have one set of roles, and Protectors, who are to have a different set of roles. This may cause confusion for practitioners who do not do many Testamentary Discretionary Trust Wills, as well as accountants, and those poor souls who finish up administering these Trusts as Trustee/Appointor/ and Protector. It is perfectly possible to have a Testamentary Trust without an overarching role of Appointor/Protector/Guardian, but practitioners will recognise that those Trusts with a single position of Appointor/Protector/Guardian have considerable advantages.

The second curious feature is the discussion of the family law cases in the context of asset protection. The discussion of these cases is good, extensive, and a great deal of thought appears to have gone into thinking about the nature and the extent of the vulnerability of Testamentary Discretionary Trusts to attack in Family Law property proceedings. The pity is the form of the precedents does not take into account this learning, as well as it might. The best example that I can give, is the insistence on what I consider to be the outmoded use of the term and function "primary beneficiary", a term and function I have never used. I consider this term and function makes the Testamentary Discretionary Trust more vulnerable to a Family Law property attack. There is no reason to have a primary beneficiary, and no advantage in having one, but there appears to be disadvantages when it comes to the weight that might be placed on the value of the assets of a Testamentary Discretionary Trust for Family Law property proceedings.

The third curious feature that I will mention is that of paying an initial \$10.00 from the Executors, out of the estate assets, to the Trustees. I can think of no law, and no reason to have such a device in a Testamentary Discretionary Trust. It appears to be an overhang from the formation of inter vivos Trusts in the form of a Family Discretionary Trust, where the only reason relating to having a settlor setting up a trust with a moderate amount of money, is for Duties Act purposes. No other precedent system or Will with a trust of this type has been observed by me to have this feature.

A benefit of the book is the discussion of the *Bamford* decision, and its applicability to Testamentary Discretionary Trusts, an item often overlooked in terms of tax effectiveness of these structures.

The curiosities mentioned above aside,



the book is well worth reading and well worth having. The authors are to be commended for putting together the material that they have gathered in this book.

**Juries in the 21st Century**  
Jacqueline Horan  
Federation Press 2012  
214 pp \$64.95 (paperback)  
Reviewed by Dorothy Shea  
Supreme Court Librarian

It has been said that the Internet will change the way we think; if our thought processes change, then so too will the institutions that we take for granted reflect that change. Those born in the 21st century will be defined by their use and acceptance of technology as the medium where they acquire information, whether it is from reliable or unreliable sources. It will shape all sections of society, including the judicial system and the place of juries in that system.

The central theme of Dr Horan's book is the impact that technology is having on jury trials. She looks at the history of the jury system and how it has changed over the centuries to reflect changes in society and why these changes are necessary if the jury is to remain a meaningful element in the judicial process. Rather than wringing her hands and bemoaning the intrusive nature of social media on contemporary juries, she argues that those involved with juries should be looking at how they can use technology to improve jury communication and also assist jurors in understanding the issues raised during the trial process.

After looking at the role of the contemporary juror in Chapter 1, the author proceeds to examine the particular challenges facing jurors in the 21st century, highlighting the potential problems for juries in coping with the increasing complexity of evidence presented in criminal trials, particularly for corporate and child pornography cases.

Chapter 3 develops this into an assessment of the capabilities of the average contemporary juror, who is generally computer literate, and how he or she may feel that the legal process is not making use of technology to communicate with the jury. This leads to a discussion in Chapter 4 on how juries cope with understanding expert evidence and how judges and counsel might be able to find ways to improve the presentation of expert evidence to the jury.

There are plenty of examples of how jurors have used the internet to carry out their own research in order to help them come to the "right verdict". Chapter 5 looks at why jurors use the internet, what they use it for and how the courts can best manage the "online juror", particularly when the rights of a defendant to a fair trial are jeopardised.

The impossibility of controlling jury exposure to prejudicial publicity is discussed in Chapter 6. No longer can the courts shield jurors from being influenced by publicity by

gagging media outlets. In today's world everyone has the potential to be a publisher, and once something is posted on the Internet as a tweet or a blog it goes world-wide and assumes an infinite life.

On the positive side Dr Horan believes that jurors just want to be respected for the part they play in the trial process. If lawyers and expert witnesses persist in presenting complex and boring oral evidence, then many jurors will feel they should be able to use the internet to try to make sense of the evidence being presented.

*Juries in the 21st Century* brings together a decade of research and draws conclusions about what works and what does not in the courtroom. It presents a compelling argument as to why juries are still essential in the criminal justice system, and why they must be recognised as a participating partner and respected for their contribution in providing a fair trial for defendants. Dr Horan argues strongly against government and court attempts to deny jurors the right to use technology; the emphasis, she believes, should be on using technology to enhance understanding of complex evidence and providing clear directions to the jury on what is acceptable practice.

**L N Study Guide**  
**Corporations Law 2nd edition**  
Harris  
LexisNexis  
328 pp \$47.00  
Reviewed by Garth O'Rafferty

In 1600, Elizabeth I incorporated as "one body corporate and politic" the Levant Company, granting it a 15 year monopoly on importation of goods into England from the Mediterranean and the Venetian Dominions. The royal charter ordained that they were to have succession, property rights in their corporate name, the capability of suing and being sued, and a common seal (Ford, Austin, Ramsay, *Ford's Principles of Corporations Law*, 11th ed, LexisNexis Butterworths, at [2.050]).

In *Australasian Temperance And General Mutual Life Assurance Society Ltd v Howe* (1922) 31

CLR 290, Isaacs J traced the legal development of the corporate entity from its purely metaphysical, fictional existence in 1612, and noted its transformation into a real, legal and artificial person as early as 1883, saying:

"And as these corporations more and more assume the functions of individuals, so more and more the law attributes to them conceptually and by analogy individual attributes in keeping with the social functions they are in fact performing."

Speaking extra-judicially in 1995 at the Athenaeum Club in Melbourne, the then Hon Justice Michael Kirby noted that "the germ of the idea of the corporation was already established in the

charter companies created by the

Crown" and spoke of "the brilliant idea of the corporation which remains one of the few truly creative contributions of the law to the economic well-being of the world and the economic liberty of its people."

On 15 July 2001, the Corporations Act 2001 came into effect. Its preamble states it is an Act "to make provision in relation to corporations and financial products and services and for other purposes", which doesn't really do justice to its 5 Volumes running to some 2,500 pages dealing with everything from its interaction with State and Territory laws to financial reporting, managed investment schemes, compulsory acquisitions and buy-outs, fundraising, financial services, market manipulation and insider trading, whistle-blower protection, and jurisdiction and powers of courts, not to mention its related legislation.

Faced with the monumental task of understanding the intricacies of corporate law, a text providing a clear and concise summary of the core principles citing only essential authorities seems a good place to start. Jason Harris's book, simply titled "Corporations Law", first published in 2008 and again in 2011 as part of LexisNexis's Study Guide series, is stated as being primarily to provide undergraduate students with a concise summary guide to the key principles of corporate law that are covered in compulsory law and business courses around Australia, and not as a comprehensive guide to all topics.

The book's 13 chapters cover topics such as comparative business structures, regulation, the separate legal entity doctrine, governance, share capital, membership and meetings, members' remedies, equity and debt finance and external administration. Its format involves giving an overview of the topic and principles involved, followed by the essential cases summarising essential facts, issues and holdings, together with a brief explanation of their significance.

No doubt "Corporations Law" would be appropriate for undergraduate students, and at only 304

pages would be a handy text for practitioners looking to gain a quick overview of unfamiliar topics. In my view, the text requires further editing to tighten the brevity and directness of case law summaries which, in their current form, detract not insignificantly from the intention of the book as a concise summary guide to key principles.

A senior lecturer at the University of Technology Sydney, Jason Harris is also author of numerous journal articles on corporate law and a more comprehensive text published in 2011 by LexisNexis.