

KERRY AYERS AND PETER WYLLIE

TRUSTS AND RELATIONSHIP PROPERTY

Emma Rae and Michael Cavanaugh***

Kerry Ayers and Peter Wylie Trusts and Relationship Property (Brookers, Wellington, 2003) (200 + xx pages).

Kerry Ayers has published many texts and articles regarding property and trusts, as well as presenting seminars on trust related issues. His co-author Peter Wylie also has experience in trusts, as well as asset planning. Combining their expertise they have created a text that is targeted at both law students and practitioners who are unfamiliar with the topic.

The authors set out to show the inter-relationship between trusts and the Property (Relationships) Act 1976 (P(R)A). They start off with the scheme of the P(R)A and then take the reader through the basic types of trusts and their elements. The last few chapters demonstrate the way trusts and the P(R)A impact on one another. The appendices contain an example of a trust deed with an analytical commentary accompanied by the complete text of the P(R)A. This provides a "one-stop-shop" approach to the topic which is valuable for those who are new to the area.

A feature which is perhaps of particular use to students is that each chapter adopts a simple structure, introducing the general topic of the chapter and then expanding on points in short paragraphs which are clearly referenced. Simple and concise ideas are made including references to relevant case law. By using such a clear structure, it is ideal for those who are unfamiliar with the material.

While in the main the book is a very good overview of the nature and formulation of trusts, the authors ultimately rather fail to meet their aim of covering the inter-relationship between trusts and relationship property to a full extent. The necessary points for each chapter are certainly covered, but some ideas seem to be repetitive and little new material is introduced to distinguish one area of the P(R)A from another. A better approach may have been to divide chapters into the pertinent sections of the Act and how the relevant case law is affected.

* Assistant Editor, Victoria University of Wellington Law Review.

** Associate Editor, Victoria University of Wellington Law Review.

The argument for using such an approach is evidenced in Chapter 10: *Effects of the Property (Relationships) Act 1976 on Express Inter Vivos Trusts*. The authors discuss in depth the effects of orders under the P(R)A on interests and rights conferred by trusts. This includes the powers that the court has and the discretion to make orders in relation to a trust where both partners own rights or interests conferred by the trust. The authors recognise that there is no relevant case law on the issue of how the courts will go about making such orders, but they set out what the pertinent factors are likely to be.¹ This is the best section by far, as the inter-relationship between trusts and relationship property under the Act is dealt with to a full extent.

Understandably it is difficult to reach a conclusion on undecided points of law, but the authors frequently do not reach much of a conclusion at all, frustrating the reader by leaving the issues open. In Chapter 9: *Effect of the Property (Relationships) Act 1976 on Trusts Generally*, the authors demonstrate what the definition of "property" under the P(R)A is, but they do not explain what the effect this has on trusts, as the title to chapter implies that they would. The argument that they put forward is circular:²

This is where it is necessary to identify "property" in the context of businesses and trusts. It is particularly important in those situations to comprehensively analyse what constitutes individual items of property.

Examples of this lack of finality occur throughout the book.

The authors have made the difficult topic of trust law slightly easier to understand by attempting to demonstrate how relationship property and the new legislation will work together. However, given the inconsistencies that the book contains its main value for both students and practitioners is as a signpost to the appropriate case law and authorities on the topic.

1 Kerry Ayers and Peter Wylie, *Trusts and Relationship Property* (Brookers, Wellington, 2003) 61.

2 Ayers, above n 1, 52.