fashion. This chapter provides a useful discussion of the development of expert evidence in trade practices litigation, and the current rules. It should be noted, however, that the Federal Court has recently, and since the publication of this book, revised and reissued its Practice Notes dealing with experts - see *Guidelines for Expert Witnesses in Proceedings in the Federal Court of Australi*', dated 9 March 2004.

The second book is a compilation of essays by Professor Maureen Brunt, who, for a great number of years, has been Australia's pre-eminent anti-trust economist. Professor Brunt served, for a number of years, as a lay member of the Trade Practices Tribunal, and was also a lay member of the High Court in New Zealand, sitting on competition cases. In these capacities she has been involved in a number of significant cases under the *Trade Practices Act 1974* and the *Commerce Act 1986* (NZ).

There are seven such essays that have been reproduced, and Professor Brunt has written an introduction, effectively updating all of the chapters. The seven essays (and when they were first published) are as follows:

1. 'Legislation in search of an objective' (1965);
2. 'Lawyers and competition policy' (1976);
3. 'The use of economic evidence in anti-trust litigation: Australia' (1986);
4. 'Market definition issues in Australian and New Zealand trade practices litigation' (1991);
5. 'Australian and New Zealand competition law and policy' (1992);
6. 'The Australian anti-trust law after twenty years: A stock take' (1994); and
7. 'Anti-trust in the courts: The role of economics and of economists' (1999).

Both books are recommended to any trade practices practitioner.

Reviewed by Ian Pike

Trusts law in Australia (2nd ed)

By Denis SK Ong
The Federation Press, 2004

As the author, an associate professor of Law at Bond University, notes in the introduction to his work, the most important institution in equity was, and is, the trust. And it is the trust and trust law in Australia which is the focus of this book.

The opening chapter provides a useful summary of the nature of the trust and compares it to other concepts, such as debt. The author recognises what he refers to as a dichotomy between trust and debt in certain circumstances, the most notable of which being the *Quistclose* trust. There can co-exist in the one transaction both legal and equitable rights and remedies, that is, remedies at law arising from the relationship of debtor/creditor but also remedies in equity arising from the mutual intention of the parties as to how the moneys the subject of a loan are to be utilised. The author provides a useful and easy to digest analysis of the judgment of Lord Wilberforce in *Quistclose*. The nature of a *Quistclose* trust is considered in the context of cases which have applied it both in Australia and England. The prevailing view in the authorities that a *Quistclose* trust is in the nature of an express trust was challenged by the House of Lords in *Twinsectra* in 2002 where Lord Millett held that such a trust was an entirely orthodox example of a default or resulting trust. The author incisively considers the conceptual incongruities which emerge from Lord Millett's view of the nature of the *Quistclose* trust which is at odds with the prevailing view.

In considering trusts in the context of other concepts, the author also examines the use of the *Romalpa* clause which, if effective, affords to an aggrieved supplier a right to trace either the property the subject of the clause or to trace the proceeds of sale. The book considers the development of the law in relation to retention of title and the position of *Romalpa* clauses after the High Court's consideration of them in *Associated Alloys* and, in particular, the danger that a retention of title clause could be construed as either a trust or, of greater concern for suppliers, that it could be construed as a charge and fail for want of registration.

So whilst the focus of the book is on trusts, the comparison with other concepts such as the *Quistclose* trust and *Romalpa* clauses provides the reader with a multi-faceted manner of examining particular factual circumstances which could arise either as part of one's study of the law or its practice.

After the interesting and informative opening chapter, the author then deals in a comprehensive fashion with the 'compulsory' considerations in any work on trusts, namely, the 'Three certainties required for the creation of express trust', the 'Writing requirements for certain types of transactions', the 'Complete constitution of voluntary trust', the duties, liabilities, powers, rights, appointment, retirement and removal of trustees, an examination of charitable, resulting and constructive trusts, tracing and the rules against perpetuities and accumulations.

The chapter on tracing provides a useful summary of the general principles of tracing at common law and in equity including an examination of the topical issue as to whether the rule in *Clayton's Case* is of any application in determining the manner in which a mixed fund is to be distributed. In considering this issue, the author has considered the development of the law both in England and Australia since *Re Diplock* to come to the conclusion that there is no scope for the operation of *Clayton's Case* except in limited banking contexts. To the authorities considered in the book on this topic may be added in Re: *Global Finance Group Pty Ltd* (2002) 26 WAR 385 and in Re *French Caledonia Travel* [2003] NSWSC 1008 which expressed views consistent with those of the author.

The book is an informative and easy to read update on the law of trusts in Australia. Its content and style render it useful to both students of law and practitioners alike. It is a welcome addition to the corpus of works on trust law.

Reviewed by Anthony Lo Surdo