

INPRINT



Social Media and the Law

George, Patrick et al, *Social Media and the Law*, 2014, LexisNexis, pb \$140.00

This is a comprehensive book that covers various legal issues arising from the use of social media, with a particular focus on Australian law. The main areas covered are employment law, privacy, defamation, competition and consumer laws, copyright, litigation and the criminal justice system.

Of particular interest is the chapter on copyright which addresses copyright in user generated content posted on sites such as Facebook and Twitter and copyright liability of social media hosts. It also addresses the proposed reforms to Australian law by the Australian Law Reform Commission which has recommended a change to the current fair dealing exceptions by replacing them with a fair use exception.

The privacy chapter considers the rise of platforms such as Snapchat (which promises that posts self-destruct after 10 seconds) as well as continued debate about the evolving, broad privacy policies used by social media platforms. The chapter also delves into “the right to be forgotten” movement leading to a recent decision in the European Court of Justice which allows people to have some control over their personal details.

The book discusses social media and employment law including what employers can do when employees make ill-conceived comments on social media while away from the workplace, as well as bullying, harassment and vilification on social media in the workplace. Given that many social media users do not have any knowledge of the laws of defamation, the publication of defamatory material is a significant issue.

Another interesting chapter in the book covers social media and the Australian Competition and Consumer Commission (ACCC), which considers the application of Australian consumer laws relating to marketing and trade in the context of social media. It addresses the role that the ACCC plays in protecting consumers on social media as well as decisions made by the Advertising Standards Bureau.

The social media and litigation chapter canvases authentication of social media evidence and discovery via social media as well as discovery and the ethics surrounding the gathering of information from someone else’s social media profile for use in litigation.

Finally, the criminal law chapter looks at laws surrounding cyber-bullying, cyberstalking, political speeches made on social media and online hatred as well blackmailing and surveillance of children as well as phishing, keylogging and even revenge porn.

This well written book will be pertinent to many practitioners as the popularity, growth and use of social media impacts on the law.

SHARON GIVONI

SHARON GIVONI CONSULTING – IP AND INTERNET LAW FIRM

Commercial Trusts

Nuncio D’Angelo, *Commercial Trusts*, 2014, LexisNexis, pb \$140

This book focuses on a specific type of trust used in commercial dealings. It defines “commercial trusts” as an arrangement whereby a business enterprise is operated by a trustee, being a limited liability company, of an express trust, which is a unit trust established to resemble in nature and operation a limited liability company. The book purports

to provide the status of the law on commercial trusts as at 31 March 2014.

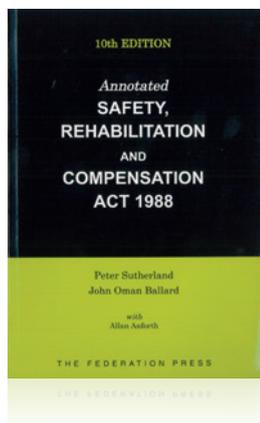
The book is divided into seven chapters. The first chapter introduces the reader to the concepts and principles associated with commercial trusts. It also outlines the underlying hypothesis guiding the book, which is that the nature and use of commercial trusts have radically changed and evolved since their creation so that they have moved from a device for the “guardian” to become one for the “entrepreneur” – a concept that is considered in-depth in Chapter 2. The author contends that the law governing trusts has failed to keep up with this evolution and that had commercial trusts never been invented, they would not be approved for use today.

The text then moves on to a detailed analysis of the legal risks associated with using commercial trusts for beneficiaries, trustees and creditors, as opposed to other mechanisms (Chapters 3 to 5), followed by an examination of the relationship between commercial trusts and Australian insolvency law (Chapter 6), and proposed reforms to the law governing commercial trusts (Chapter 7).

In addition, the author provides insightful comments and useful practical tips and guidance when dealing with trusts, by, for example, providing sample clauses that can be included in trust documents (Appendices 3 to 5) and a due diligence checklist for dealing with the trustee of a commercial trust (Appendix 5).

The author has applied a holistic approach that covers the theoretical, the comparative and the practical aspects of commercial trusts. Given the prevalent use of these trusts in Australia, this book will be a welcome addition to any commercial practitioner’s library.

DAVID KIM
BARRISTER



Interpreting Principles of Equity

Malcolm Cope (ed), *Interpreting Principles of Equity*, 2014, The Federation Press, hb \$165

This book comprises papers presented at the annual W. A. Lee Lectures in Queensland from 2000–2013. They are broadly on: Trustee Investing (W. A. Lee); The Preamble to the Statute of Charitable Uses 1601 (Hubert Picarda QC); Equity – Too Successful? (Gummow J); Equity in International Law (White JA); How Equity reached the Colonies (McPherson JA); Equitable Relief (Professor Cope); Equitable Lien and Claims against Trustees in Breach (Professor Rickett); Unconscionability in Estoppel (Handley JA); Equity’s Australian Isolationism (Kirby J); The Conscience of Equity (Keane J); Court Intrusion into Testamentary Disposition (De Jersey CJ); Charitable Trusts (McMurdo JA); Trusts and their Equivalents in Civil Law Systems (Douglas J); and Restitution (Kiefel J). In this treasure chest, and against heavy and exacting competition, the lecture by Keane J stands out: his Honour’s passages on the Natural Law Ecclesiastical Foundations of Equity and its modern resonations are particularly interesting.

An undercurrent is the battle between “defenders of doctrinal equitable purity” (Kirby J at 230 and McHugh J at 254 described Roddy Meagher as “one of the finest minds of the 16th century”), and espousers of fusion between law and equity and of restitution law. Thus, for example, although liability for restitution in England now rests upon unjust enrichment (Kiefel J at 332), Gummow J is sceptical of this principle and refers to “the uncouth and misleading phrase

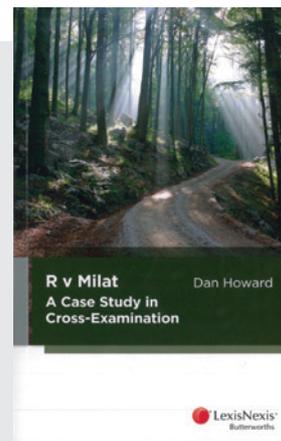
R v Milat: A Case Study in Cross-Examination

Dan Howard, *R v Milat: A Case Study in Cross-Examination*, 2014, LexisNexis, pb \$139

The Ivan Milat backpacker murder investigation and trial was a singular event in the forensic history of Australia: offending on a large and disturbing scale, a massive police investigation and the complexity of the trial that sought to – and did – establish Milat’s guilt beyond reasonable doubt. This book is authored by one of the counsel in that trial, Dan Howard, who was junior counsel to senior crown prosecutor, Mark Tedeschi QC.

The approach of the text is to set out the cross-examination of Milat over three consecutive days. The examination in chief and re-examination are not extracted. Interposed in the transcript of that evidence is commentary of what counsel was seeking to achieve and the methods by which he did so. Most of the methods – closing of the gates, linking, ordering cross-examination by precise sequencing of themes, using previous answers, confrontation with exhibits and other evidence adduced during the trial – common to cross examination are set out and the author explains their significance.

One of the strengths of this work is that it provides “inside” access to a criminal



trial through use of actual transcript by an actual participant. But, at the same time, it is a weakness of the text. This is because there is little critique of the cross-examination. No cross-examination is ever perfect. Yet because there is so much praise of the cross-examiner by the author, the work lacks balance. This is exemplified by the lack of consideration of other more contemporary texts on cross-examination that place the “craft” in a more complex theoretical framework. Pozner and Dodd’s *Cross Examination Science and Techniques* is perhaps the most significant. Yet it is not mentioned at all.

RICHARD EDNEY
BARRISTER

‘restitutionary damages’ ...” (69). Further, the restitutionary doctrine of strict liability for unlawful receipt of trust property allegedly “sends unpleasant shivers down the spines of some Australian equity purists” (Kirby J at 230). And the debate on the scope of fiduciary duty rages (eg Kirby J at 225 and Keane J at 263-271): the wider view being characterised by the joke that Canada only contains those who have been held to be fiduciaries, those who are about to become fiduciaries and judges (253). This book demonstrates that “there are few areas of the law that generate so many passions as equity” (Kirby J at 211).

PHILIP H. BARTON
BARRISTER

Justice In Tribunals

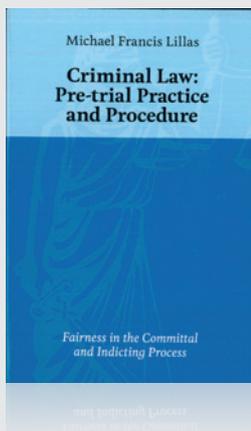
J. R. S. Forbes, *Justice In Tribunals* (4th edn), 2014, The Federation Press, hb \$135

Despite its lofty title, this book is not about how one achieves “justice” in a tribunal or whether tribunals dispense “justice”. It is however about providing a road map for

lawyers and non-lawyers alike who need to navigate their way through the myriad of tribunals that are very much a part of Australia’s justice system.

The opening sentence of the preface to the book is: “This book deals with the courts’ application of jurisdictional limits and procedural fairness to other bodies, public and private, that decide the rights of individuals”. As you would imagine from such a description, all of your old administrative law favourites are dealt with in this book in separately crafted chapters – judicial review, jurisdictional and non-jurisdictional error, natural justice, the right to be heard, giving reasons for a decision and so on.

The book usefully looks at relevant legal principles in the context of how they operate in various tribunals and how specific pieces of legislation impact on both private and public tribunals. Given the number of Royal Commissions and Inquiries that have been recently established (pink batts and Australian unions, among others), the book also has a very useful chapter on



Criminal Law: Pre-trial Practice and Procedure

M. F. Lillas, *Criminal Law: Pre-trial Practice and Procedure*, 2014, Lillas Legal Publishing, pb \$105

This book covers many important aspects of committal hearings. The author explains in a preface that there are few recent texts

on the subject of indictments, and that the right to cross examine witnesses during committal hearings has in practice been limited. (This receives emphasis in the foreword where the Queensland Chief Justice comments on “the prospect that recently introduced restrictions may be extended further”.)

The manuscript was submitted to state revising editors in four states but not in Victoria. Nevertheless there are references in the text to the *Criminal Procedure Act* 2009 and to Victorian authorities, such as Rushton, Clune, McKay and Lancaster. The book deals with the commencement of committals, the listing of witnesses to be called, the (rarely encountered) giving of evidence by the accused at committals, control of cross-examination at committals, advocacy at committals and trials, the role of the judge at trial, discontinuance, jury selection and many other aspects of criminal trials: indeed there are almost a hundred discrete chapter headings running to more than 500 pages of text.

The rationale of committal proceedings – fairness to the accused – has received different emphases over the years. In the 19th century, trial by ambush prevailed. Thus, the prosecution in the murder trial of Ned Kelly failed to provide the defence with a statement made by the main witness, Constable McIntyre, in which he recalled that his colleague, Constable Lonigan, had reached for his gun just before he was shot. The notion of a fair trial received greater acceptance in the 20th century, but defence counsel sometimes pushed their luck with the result that committals and trials began to take longer to conclude, to the point where some judges such as Chief Justice de Jersey suggests that survival of committals “is moot”. They have the advantage of being held in public, unlike the Grand Jury system that still prevails in the United States.

This text might be a daunting prospect to the novice, but would be useful for the criminal law practitioner to consult.

THE HON GRAHAM FRICKE
RETIRED COUNTY COURT JUDGE

your career



LAW
INSTITUTE
VICTORIA

Accredited Specialisation MAKE YOUR MARK IN 2015



“Becoming an Accredited Specialist has been of enormous and continuing benefit to my own career in family law and I am pleased to have seen the scheme widely cement the perception of the higher standard of expertise of Accredited Specialists amongst the public as well as my legal peers.”

Rose Lockie, Partner, Gadens
ACCREDITED SPECIALIST, FAMILY LAW

Find out how you can make your mark in 2015

Visit www.liv.asn.au or contact us on 03 9607 9461 or email special@liv.asn.au

Accredited specialisation is being offered in the following areas of law in 2015:

- ADMINISTRATIVE
- COMMERCIAL
- TENANCY
- COSTS
- FAMILY
- MEDIATION (TO BE CONFIRMED)
- PERSONAL INJURY
- PROPERTY
- TAX



**LAW
INSTITUTE
VICTORIA**

“Non-Determinative Inquiries” that outlines some of the “ins and outs” of dealing with these bodies.

And there is even something in the book for sports fans in the form of Chapter 4 which deals with “Private Tribunals and Restraint of Trade” (the AFL, cricket and rugby rate a mention and I expect that the fifth edition will deal with the Essendon Football Club/James Hird v ASADA litigation given the administrative law issues that case has raised).

This book is easy to read and navigate. The chapters are logically organised and well sign posted with section headings. The tables of cases and statutes and statutory instruments are very comprehensive. This book is well worth considering if you are looking for a comprehensive text on the law as practised in tribunals.

STEPHEN NEWMAN
EXECUTIVE COUNSEL
PONTE EARLE

The Law Affecting Rent Review Determinations

Alan Hyam, *The Law Affecting Rent Review Determinations* (2nd edn), 2014, The Federation Press, hb \$165

The variety and number of cases cited in this volume highlights the ripe source of litigation provided by rent review disputes. The filling of a text in what, on its face, appears to be a narrow topic is no doubt reflective of the fact that the review of rent is keenly contested between lessor and lessee.

The key issues affecting the review of rent and the assessment of rent pursuant to commercial leases, including retail leases, are the focus of this text.

The plethora of terms used in leases to express the rental value to be determined, including market rent, open market rent, reasonable rent and fair rent has led to varying judicial interpretations as to what is to be determined in the context of a rent review and how it is to be determined.

The text explores the issues primarily by extracting relevant parts of judgments that deal with the point under consideration. Wrapping up sections with succinct summaries may have been useful to synthesise the sometimes dense case extracts.

There is comprehensive coverage of the key factors taken into account in a rent review including improvements made by the lessee, the impact of incentives and inducements, and what use of the premises may be assumed. The discussion of the role of the expert valuer and the nature of a valuation fits well into the structure of the book.

A practical chapter is also included on the ability to challenge rent review determinations. Challenges can be based on a number of factors including mistake and a failure to comply with the criteria specified in the lease.

Despite the many cases initiated, the text highlights the practical difficulties of succeeding in challenging rent review determinations.

Invaluable headings aid in navigating this specialist text.

JAMIE BOLIC
COLES GROUP

Annotated Safety, Rehabilitation and Compensation Act 1988

Peter Sutherland and John Oman Ballard, *Annotated Safety, Rehabilitation and Compensation Act 1988*, (10th edn), 2014, The Federation Press, pb \$145

The 10th edition of this reference book builds on its impressive foundations to provide the full text of the *Safety, Rehabilitation and Compensation Act* as at 1 April 2014 alongside tightly written and impeccably researched annotations. This book is a must for all practitioners in the Commonwealth compensation field and will no doubt find a welcome home among lawyers, HR practitioners, union organisers and tribunal members.

The biggest change in this edition is that, unlike all previous editions, Peter Sutherland alone has conducted the editorial work without the contribution of John Oman Ballard. This in no way reduces or diminishes the skill and detail provided in researching and commenting on the many developments since the last edition including decisions of the High Court, the Federal Court and the Administrative Appeals Tribunal.

Old and new practitioners alike will be particularly well served by the attention given to matters such as “reasonable administrative action taken in a reasonable manner”, liability for injuries in the course of employment and the exhaustive notes provided on other essential defined terms such as “ailment”, “disease” and “injury”. These are all key concepts and definitions that are subject to judicial review – the latest edition leaves the practitioner in no doubt about the current working understanding of these terms.

As well as incorporating legislative and judicial updates, this edition provides an updated version of Allan Anforth’s excellent Practitioner’s Guide. The guide is a wonderful introduction for beginners in this field or a welcome reference and refresher for long term practitioners. It should act as the first port of call for any practitioner who is engaged in this field of compensation practice. ●

JOSEPH KELLY
PRINCIPAL KELLY WORKPLACE LAWYERS

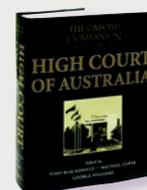
REVIEWERS WANTED

If you are interested in reviewing books for the *LJ*, please email your contact details and areas of interest to Libby Brown at lbrown@liv.asn.au.

LIV Bookshop

LAW FORMS, BOOKS & TEXTS

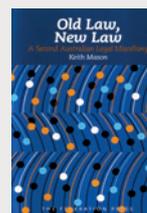
Oxford Companion to the High Court of Australia



By Michael Coper, Anthony Blackshield, George Williams **\$162**

This comprehensive publication examines the High Court of Australia’s public work and its role in Australian law, politics and society. Containing 435 expertly compressed entries, this companion provides lawyers, law students, journalists and political scientists with insights into the inner workings of the High Court of Australia.

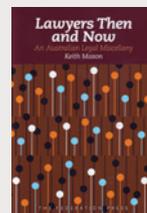
Old Law, New Law: A Second Australian Legal Miscellany



By The Hon Keith Mason AC QC **\$54**

A mix of genuine, funny and shocking legal stories drawn from historical and contemporary Australian law. Find out how the law intertwines with everyday life to produce entertaining anecdotes about human nature, from Chief Justices in dodgy marriages to instances of cannibalism.

Lawyers Then and Now: An Australian Legal Miscellany



By The Hon Keith Mason AC QC **\$54.90**

Loosely modelled on Robert Megarry’s *Miscellany at Law* and filled with interesting facts and hilarious tales, readers will discover instances of extreme rudeness between judges, a judge who was tried and acquitted of murder, and a law officer convicted of murder and sentenced to hang.

Order online www.liv.asn.au/bookshop
Shop in person 470 Bourke Street, Melbourne
Contact the Bookshop bookshop@liv.asn.au