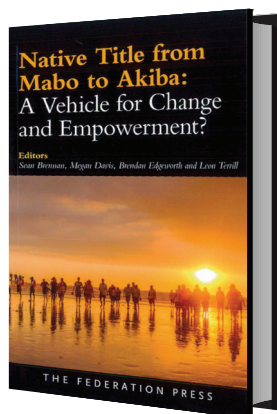


## Ong on Rescission

Denis SK Ong, *Ong on Rescission*, The Federation Press, 2015, hb \$125

*Ong on Rescission* joins Professor Ong's preceding four titles *Ong on Subrogation*, *Ong on Specific Performance*, *Trusts Law in Australia* and *Ong on Equity*. Professor Ong, a UK law graduate admitted in the UK, is a professor at Bond Law School and a former head of the Law School at Macquarie University.

The book is a traditional monograph on rescission with a distinct Anglo-Australian focus. It revisits the lessons of the classics in some detail such as *Alati v Kruger*, *Bell v Lever Brothers*, *Leaf v International Galleries* and *McRae v Commonwealth Disposals Commission*. There are few recent references (one is *Independent Trustee Services* from the UK in 2013) and few media-neutral citations from Austlii and equivalents. There is one reference from Canada, two from New Zealand but



none from the US, and little if any citation of legal literature from any jurisdiction. The author uses a lot of italics to stress his point. You may need your dictionary to check unnecessary language such as tenebrific and marmoreal exegis.

Chapter 1 sets out the distinction between rescinding a transaction ab initio and terminating a contract, including discussion of *Hurst v Bryk* (at pp17-18 not pp16-17 as stated in the index). Chapter 2 explains the distinction between restitution at common law and restitution in equity.

Chapter 3 sets out the concurrent and exclusive jurisdiction of equity in relation to restitution. It also includes discussion of rescission legislation in the ACT, NSW and South Australia. Chapter 4 introduces intention-based election and estoppel-based election to affirm or to disaffirm a transaction.

Chapter 5 examines the impact of third party interests on the distinction between void and voidable transactions. Chapter 6 deals with the concept of partial rescission, chapter 7 deals with the effect of misrepresentation on executed contracts, and chapter 8 concludes the book with a study of the grounds for rescission, namely, mistake, misrepresentation, breach of fiduciary duty, undue influence and unconscionable conduct. There is no mention of the growing developments under the Australian Consumer Law.

*Ong on Rescission* provides a compact Australian hardback focus, and will be a worthwhile addition to the shelf.

**Dr Paul Latimer**, Department of Business Law and Taxation, Monash University

## Native Title from Mabo to Akiba: A Vehicle for Change and Empowerment?

Sean Brennan, Megan Davis, Brendan Edgeworth and Leon Terrill (eds), *Native Title from Mabo to Akiba: A Vehicle for Change and Empowerment?*, The Federation Press, 2015, hb \$165

It is nearly a quarter of a century since the momentous High Court decision in *Mabo (No 2) v The State of Queensland* was handed down. That decision – recognising the existence of native title – remains an important milestone in the history of Indigenous and non-Indigenous communities of Australia.

In this timely work, the editors have assembled an impressive array of distinguished authors in the disciplines of law, history, anthropology, economics, community development and Indigenous history and culture. The result is a nuanced and rich description, not only of the jurisprudential history of native title, but of the wider social, political and economic context in which native title subsists and the opportunities it offers for Indigenous advancement.

The work is divided into two parts. The first part – *Legal Dynamics in the Development of Native Title* – is concerned with detailing and reflecting on the legal history of native title following *Mabo*. For anyone whose knowledge of native title starts and finishes with *Mabo*, this is an excellent primer on how native title has developed since that decision.

The second part of the book – *Native Title as a Vehicle for Indigenous Empowerment* – is concerned with the important question of how the recognition of native title may be linked to, and lead to, the advancement of Indigenous communities.

It is a vexed and unresolved question given the momentous act of dispossession that is at the core of the foundation of the Australian nation state. Personally, I found this the most interesting part of the book. And it makes crystal clear that native title is not the panacea to reckon with the legacy and enduring effects of colonial dispossession on Indigenous communities and any advancement remains gradual and is part of a wider political context. ■

**Richard Edney**, barrister