

only criticism that might be levelled at it is that it attempts to do too much within the limits of its rather modest length. While it was admirable to discuss this topic with respect to several areas of law, it was somewhat disappointing to this reviewer that more attention was not given to one alone. Had focus lain more with equity and trusts, for example, then it would most likely have provided a unique work of essential scholarship. The same could, of course, have been said about contract, tort, or criminal law. It is with hope and expectation, therefore, that *Accessory Liability* provides a beginning rather than an end to Paul S Davies's examination of this topic. If this is the case then it is to be expected that this extremely complicated area of law will soon be made much clearer.

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### **Seddon on Deeds**

Nicholas Seddon

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This is a slim, handsomely gold-covered volume on the Australian law of deeds by Dr Nicholas Seddon (a special counsel with Ashurst and also an adjunct professor at the College of Law Australian National University). The preface comments that friends urged him to 'get a life' when hearing what he was writing about. Dr Seddon is to be commended for ignoring such naysayers.

Deeds can be a tricky area, with various hidden traps where formalities are unclear or confusing (or just not realised). The Australian law on deeds looks to be pretty similar to the law of England and Wales, so this book is a very useful item for practitioners in England and Wales. When faced with tricky points on deeds, this book is a valuable resource to look for Australian guidance on the various issues.

The Australian legislation on deeds seems to differ only a bit from that in England and Wales (one thing lacking in this book, from a UK perspective, is an appendix containing the relevant state legislation). For example, it is stated that all the Australian states (save Victoria) have a requirement in their legislation that an attesting witness to a deed be someone who is not otherwise a party to the deed. There are some old cases that could be considered as imposing that requirement in relation to deeds in England and Wales too, but there is nothing express in the legislation over here (and in my view the better approach is that it is not a formal requirement).

In England and Wales,<sup>1</sup> trust lawyers use deeds for a variety of purposes, including:

- The statutory powers to change trustees only requires the appointment to be 'by writing' (Trustee Act 1925, s 36), but a retirement under the statutory power must be by deed (Trustee Act 1925, s 39) and the statutory implied vesting of property in new trustees only applies if the appointment or removal is by deed (Trustee Act 1925, s 40).
- Trust instruments are often drafted to require the use of a deed – pension scheme amendment powers often (but

<sup>1</sup> The term 'deed' does not seem to feature under Scots law as having any particular technical meaning. An instrument governed by Scots law requiring the use of a 'deed' is likely to be construed as just needing any act without any particular formality: see eg *Low & Bonar Ltd v Mercer Ltd* [2010] CSOH 47. The same seems to apply in the Channel Islands, eg *Oakley v Osiris Trustees Ltd* [2008] UKPC 2.

not universally) require a deed, eg *Briggs v Gleeds* [2015] Ch 212.

Deeds, despite being the oldest form recognised by English law (King John sealed Magna Carta – modern drawings depicting him signing have rightly been criticised), have been neglected by modern legal writing. Not much has been written about deeds. Practitioners looking for analysis have been faced with little to guide them. The latest edition of Norton's *A Treatise on Deeds* was published in 1928. There is a very useful chapter on 'Deeds and other Instruments' in *Halsbury's Laws*, Vol 32 (2012) by Professor Mark Thompson. The book *Execution of Documents* by Mark Anderson and Victor Warner (3rd ed, 2015, published by the Law Society) is also very helpful on the practicalities.

In the 1980s, the Law Commission sponsored legislation that resulted in a much-needed update of the statutory position for the execution of deeds (by individuals and companies) in s 1 of the Law of Property (Miscellaneous Provisions) Act 1989. But this was oddly handled. The consultation paper stated that it was looking at formalities for the transfer of land – but the final report (and ultimate Act of Parliament) were not so restricted and apply to all deeds to be executed by individuals or companies since its coming into force in 1990.

Contracts and written instruments are relatively free of formality. But constituting a 'deed' necessarily envisages some greater formalities being met. In practice this involves the use of concepts such as 'signing' 'attesting', 'delivery' (and the use of 'escrows' or conditional delivery), authorisation (if execution is by a company or for a third party). This book gives a useful guide to the relevant Australian law in this area.

This first Australian text on the law of deeds, *Seddon on Deeds* is greatly to be welcomed, given that the common law relating to deeds applies in broadly the

same way in other common law jurisdictions. This new work gives a hugely valuable insight into the Australian case law on deeds. Although not answering all the elephant traps for deeds in England and Wales (eg can a spouse witness a deed? – probably yes), it is likely to be of use to all English law practitioners.

The book examines in Chapter 1 the pros and cons of using deeds. Chapter 2 sets out the law on execution of deeds for all types of legal entities. Chapter 3 examines the concept of delivery and the use of escrows. Chapter 4 analyses the legal consequences of altering a deed, either inadvertently or by agreement. It discusses what it calls the 'the 400-year-old troublesome rule in *Pigot's Case*', dealing with alterations to a deed. Chapter 5 considers issues of interpretation of deeds. Chapter 6 looks at enforcement and remedies. Chapter 7 covers the various ways that a deed is discharged.

I particularly found the references to the Australian case law very helpful. For example the references to *Netglory Pty Ltd v Caratti* [2013] WASC 364 (Edelman J giving a learned summary of the law on deed execution and attestation and holding that a deed could not be attested nine years after execution) and *Mostyn v Mostyn* (1989) 16 NSWLR 635 (Young J holding that a multi-party deed with each signature other than one witnessed by another party to the deed did not comply with the statutory requirement in New South Wales for there to be 'at least one witness' who was not a party to the deed).

In the foreword, Michael Kirby comments that:

'some commentators ... insist that today deeds have become a nuisance and snare for lawyers and citizens alike. For such critics, it is precisely because the present law of deeds is frequently uncertain and often productive of seemingly absurd or unjust outcomes, that caution needs to be

exercised in using them whenever they are not mandatory’.

I suspect that this is being over-cautious. If use of a deed is not mandatory, then even if a document fails as a deed, it will probably still take effect as a written instrument, so little has been lost by trying to use a deed: see eg *Windsor Refrigerator Co Ltd v Branch Nominees Ltd* [1961] Ch 375 (purported deed still effective as a written instrument) followed in *Byblos Bank SAL v Al-Khudhairy* [1987] BCLC 232, but contrast the recent decision (odd to English eyes) of Cregan J in Ireland, *McPhillips v ACC Loan Management Ltd* [2015] IEHC 591 (a document under seal did not constitute a

‘document under hand’ as required under a mortgage).

*Seddon on Deeds* aims comprehensively to set out the law applicable to the use of deeds by lawyers, referring, so far as possible, to Australian cases, and covering the 20th century Commonwealth, State and Territory legislation that modifies the ancient common law rules.

*Seddon on Deeds* provides important insights for practitioners on the hazards that can be encountered in using deeds and sets out how to ensure that a deed is legally sound and how to avoid trouble.

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