Book reviews

Editor: Angelina Gomez

INTENTIONAL TORT LITIGATION IN AUSTRALIA: ASSAULT, FALSE IMPRISONMENT, MALICIOUS PROSECUTION AND RELATED CLAIMS

Intentional Tort Litigation in Australia: Assault, False Imprisonment, Malicious Prosecution and Related Claims, by Corrie Goodhand and Peter O'Brien, Federation Press, 2015, 240 pages: ISBN 9781862879638. Softcover $99.00.

I enjoyed reading this book very much. The authors identify that there are no textbooks in Australia specifically related to the kind of intentional torts commonly arising out of the exercise of police powers. The book achieves what the authors, in their preface, identify as their aim: "to provide an introduction to, and summary of, the law of these high frequency intentional torts in Australia. The book aims to serve as a practical guide to these intentional torts".

The focus of the book is the availability, and application, of relevant causes of action in the context of events concerning police and other law enforcement officers and their interaction with private citizens. It is a subject of considerable importance. In such circumstances citizens may be deprived of their liberty, or improperly prosecuted for criminal offences thus involving them in expense in defending themselves, embarrassment, damage to their reputations, and of course involving the exquisite fear and concern of conviction and possibly a custodial sentence.

However, it should not be overlooked that actions between citizen and citizen are often brought engaging causes of action for malicious prosecution, assault, and various forms of trespass to the person, trespass to land, and the like. A recent example is *Sahade v Bischoff* [2015] NSWCA 418. Subject to particular statutory regimes like the *Law Reform (Vicarious Liability) Act 1983* (NSW), and in particular Pt 4 thereof which deals with police tort claims, the same principles apply to actions between citizen and citizen as they do in actions between citizen and State or citizen and individual police officer or law enforcement officer.

In the first half of the 20th century, actions for malicious prosecution between citizen and citizen, or citizen and corporation, were common and some of the leading cases in the 20th century, extending into the 21st century, were actions between citizens and corporations (including cases arising out of steps taken by banks to enforce securities, an example of which is *Johnston v ANZ Banking Group Ltd* [2006] NSWCA 218). Retailers can, and do, encounter this area of the law in attempts to deal with shoplifters. Interestingly, at one time in India malicious prosecution was the most commonly employed cause of action. Those involved in the less frequent, but not uncommon, actions between citizen and citizen, or citizen and corporation, engaging the causes of action examined in this book will find it a useful and instructive tool. I particularly like the structure of the book.

Chapter 2 examines four commonly engaged causes of action (battery, assault, false imprisonment, including false arrest, and malicious prosecution) which are extracted from a menu of "intentional" torts, some of which are identified on p 4 of the book. Those four causes of action are chosen for particular attention because, as the authors note, they are "high frequency torts" when compared to many others in that menu. Each of the four selected causes of action are analysed succinctly and economically in terms of the elements of each tort, and the onus of proof, and then each is attended by a crisp and helpful commentary which I found digestible and entertaining.

Malicious prosecution receives a more extensive examination than the other three selected causes of action and that is no doubt because it is a more complex cause of action and it has received considerable attention from appellate courts, including the High Court, over the last 10 years. The treatment of that cause of action in this book is, in my opinion, exemplary, given that the authors set out to provide an introduction to this important and arcane area of the law, and to provide a practical guide for what can be a difficult road to hoe. Chapter 2 also contains a series of case notes presented by jurisdiction, commencing on p 28 (para 2.8). The notes are succinct, to the point and should be helpful for those looking to read further into the subject.

Chapter 3 deals with what can be a complicated issue, the selection of appropriate parties. For example, the legislation which is relevant to Australian Federal Police differs markedly from the legislation relevant to NSW Police. Shortly, efficiently and crisply, the authors identify the way forward with respect to various law enforcement officials in a most helpful way. I should have liked to have seen a reference to *Martin v Watson* [1996] 1 AC 74, which is authority for the proposition that a police informant may be a "prosecutor" for the purposes of malicious prosecution, and an appropriate and relevant party if that informant supplies information to a police officer which is known, or ought to be known, to be the only information available to the police officer and which effectively compels him to act. But that is a very modest criticism; the chapter contains a very helpful examination of the way forward with respect to law enforcement officials, jurisdiction by jurisdiction, and law enforcement official by law enforcement official.

Defences and statutory regimes are dealt with in Ch 4. In what can be a confusing area, principally because of the proliferation of "single issue" legislation or legislative provisions, the authors do a very good job of providing a sensible and relatively easily understood path through some very difficult country. The treatment of some of the topics (for example, apologies) might be said to be pithy, or even sparse. But that is because the work is deliberately introductory and intended to provide a practical guide. Discussing whether or not something said or done is an apology, whether or not the subject matter is admissible in evidence, and if so for what purpose and with what potential outcome, could consume a lot of ink. The authors do no more than identify the issue. Had they attempted to do more than that, they may well have lost their way and their very useful and practical forensic tool would have suffered for it.

Their treatment in Ch 5 of alternatives to litigation, such as making use of the office of Ombudsman, or pursuing discrimination complaints, is thought-provoking and constructive. Limitation provisions are dealt with in Ch 6, jurisdiction by jurisdiction, and the treatment of them is extremely helpful. The regimes dealing with damages in this area of discourse can set traps for young players. In Ch 7 the authors have provided a basic guide and commentary which, in my opinion, is very instructive and useful not only for those becoming familiar with this area of discourse, but also for the seasoned practitioner. Ch 8 is, I think, a gem. It identifies and discusses (no doubt non-exhaustively) what sorts of documents might be of assistance in this kind of litigation and some means by which they might be obtained is considered. It is a very practical, hands-on approach to the treatment of an important subject and I found it very helpful.

This book is a very useful addition to the forensic toolbox of practising lawyers.

John Maconachie QC

ADJUDICATION ON THE GOLD FIELDS IN NEW SOUTH WALES AND VICTORIA IN THE 19TH CENTURY

Adjudication on the Gold Fields in New South Wales and Victoria in the 19th Century, by John P Hamilton, Federation Press, Sydney, 2015, 260 pages: ISBN 781760020309. Hardcover $135.

The title of this book forebodes a treatment as dry as the dust that must have swirled around the gold diggings of eastern Australia 150 years ago. But as we all know, titles can be deceptive. Drawing on records not hitherto subjected to systematic analysis and supplementing earlier work that earned him a PhD at Macquarie University, the author has produced an eminently readable account of not only administrative and judicial processes for quelling mining disputes but also the social fabric of Henry Lawson's "Roaring Days".

The reader expecting a discussion of the history of mining legislation and regulation will not be disappointed – but may be surprised to read that a Scot named Scobie was kicked to death outside the Eureka Hotel in October 1854 or that the commissioner on the Gulgong fields in the 1870s became much better known to later generations by his pen name, Rolf Boldrewood. The detailed account of legal events and developments is leavened by such revelations.

The author begins by outlining the book's plan. He sets the stage by looking at history and social background. He then moves to an examination of the origins of the regulatory system and its place in

colonial government. Attention is next given to the various phases of legislative innovation culminating in the creation of mining wardens' courts in the last quarter of the century.

The work's purpose is clearly stated: to discover why the scheme of adjudication took the form it did, whether it was successful (and, if so, why) and whether the Supreme Courts of New South Wales and Victoria played a role in formalising dispute resolution. Answers to those questions are offered in a final chapter that follows a thorough and scholarly examination of evidence gathered from numerous sources, many of them not previously tapped by historians.

The gold rushes of eastern Australia began just as Victoria separated from New South Wales and acquired its own legislative, judicial and administrative structures. The two colonies adopted different methods of resolving gold mining disputes. In the early stages, however, necessity became the mother of invention with local officials choosing to arbitrate without any clear authority to do so and thereby producing practical solutions to disputes about mining titles and rights, encroachments upon claims and the rights of co-venturers.

In most cases, no written record of proceedings was made, although a surviving book complied by the commissioner at Uralla during 1856 shows the kind of ready justice that was dispensed. The author postulates that this system was successful because of the close-knit nature of mining communities and the fact that proceedings were always observed by the community.

The author carefully traces progress from informal adjudication (generally accepted by disputants) to a highly organised and regulated legal system. In doing so, he has produced not only a legal treatise but also a book that is entertaining because of the attention it gives to personalities and the human dimension that so often turn a dry legal account into a good story. Particularly illuminating is the account of differences between the commissioner at Gulgong and the local newspaper editor that resulted in a six-month sentence for criminal libel.

A chapter about cases in superior courts shows that there was more reported litigation in Victoria than New South Wales and that, as one might expect, many cases involved common law claims for prerogative relief, trespass and ejectment. The dominant judicial figure was Robert Molesworth who, despite what must have been a debilitating preoccupation with matrimonial proceedings to which he was party in his own court between 1861 and 1864, was later said by Sir Samuel Griffith to have "practically made" the mining law of Australia.

In his foreword to the book, Justice Geoff Lindsay aptly says: "It is a triumph in versatile storytelling. It can be read as a novel, studied as a judgment, or consulted as an expert's report, according to the purpose and mood of the reader."

R I Barrett

VETERANS' ENTITLEMENTS AND MILITARY COMPENSATION LAW

Veterans' Entitlements and Military Compensation Law (3rd ed), by Robyn Creyke and Peter Sutherland, Federation Press, Sydney, 2016, 928 pages: ISBN 9781760020460. Softcover $150.00.

With a history dating back to the tragedy of World War I, and the nation's horrific losses of blood and treasure, repatriation law has a unique place in the Australian legal landscape. It is an area where few lawyers practise, yet has been subjected to a significant amount of litigation, including in the High Court with a massive amount of case law covering the field. It is also an area that has been subject to constant legislative change over the last 30 years. That is not surprising given that the current spend on veterans' entitlements runs at approximately $12.1 billon per annum. It is perhaps interesting to note that Australia has deployed more service men and women since 1999 to East Timor, Afghanistan and Iraq than were deployed to Korea, Malaya, Borneo and Vietnam combined. As a result, repatriation law is an area that will continue well into the future, given that Australia is creating new returned service men and women every day.

When it first appeared in 2000, this book represented the first serious academic attempt in Australia to provide a comprehensive guide to both the *Veterans' Entitlements Act 1986* (Cth) (VEA)

by annotations and case law as it has developed over the years. It is still the only comprehensive text in the area. The authors, Robyn Creyke and Peter Sutherland, have an enviable reputation in administrative law. Both are well credentialed academics, tribunal members, and prolific authors of high quality legal texts. This text builds upon that reputation and can be justly referred to as the "bible" for this area of law.

This third edition adds new chapters that discuss the *Military Rehabilitation and Compensation Act 2004* (Cth) (MRCA) which applies to military service after 1 July 2004, and more importantly applies to all aspects of service, both peacetime and wartime. The MRCA will increasingly overtake the VEA as the applicable legislation as time rolls by. The text covers both the area of entitlement to pensions and benefits under both Acts, but also the calculation process or GARP. It makes sense to the novice of an area of law that was described by then Justice Gyles of the Federal Court as containing concepts that would "defy a philosopher". The text is highly readable and easy to navigate given the complexity of the subject. It provides a good discussion of the linkages that exist between the VEA and MRCA. This is no easy task given both pieces of legislation run to two volumes each.

A first in this third edition is coverage of the Statements of Principle (SOP). These are legislative instruments, produced by the Repatriation Medical Authority, that provide a basis for linking injuries, illness, and disease with the circumstances of a person's service. Separate instruments exist for peacetime and wartime service. SOP were developed in Australia and are unique in terms of repatriation law. Recently however, New Zealand decided to adopt the Australian SOP regime for its domestic repatriation system. Appendix 1, by Bruce Topperwein, provides a short summary of a little known tribunal, the Defence Honours and Awards Tribunal, which has jurisdiction to hold reviews into the awarding of campaign and long service medals to individuals and some bravery awards.

This text sits on my bookshelf, as does its predecessor. I refer to it regularly. I recommend this book for the practitioner in the area as an essential reference book. I also recommend it to anyone with an interest in what is a uniquely Australian area of law.

Doug Humphreys
Principal Member, Veterans' Review Board