

Reviews

***Scams and Swindlers*
by Bruce Brown,
Centre for
Professional
Development, 1998;
pp228 (includes
index); \$24.95**

Bruce Brown's account of some of Australia's most spectacular scams and swindlers of recent times represents a practical and refreshing approach to making ordinary investors more aware of the pitfalls of plausibly presented investment opportunities that can go horribly wrong.

The choice of cases, all drawn from the experience of the Australian Securities and Investment Commission (ASIC), is excellent, covering matters as diverse as the dangers of investing in corporate heroes such as Alan Bond, reliance without proper inquiry on seemingly reputable investment advisers and seduction by the lure of quick profits such as occurred in the Gulf War Fireclub project.

A particular strength of the book is the way in which the author goes to pains, with considerable success, to present the detail of often complex schemes in a readily comprehensible way. This approach is complemented by the inclusion of simple definitions of technical terms and a summary of good plain lessons to be learned from each case study.

While the book is about communicating a serious message, which it achieves admirably, it is at the same time an entertaining and rewarding read.

This book is an absolute must for all small investors, who would do well to acquire it for their personal libraries and discipline themselves to revisit it on every occasion when a new, seemingly attractive investment opportunity comes into their field of vision.

ASIC is especially to be commended in getting right behind what is a splendid and constructive initiative.

- David Edwards

***That Disreputable Firm: The inside story of Slater and Gordon* by Michael Cannon; Melbourne University Press, 1998; pp324; \$39.95**

In *That Disreputable Firm*, Michael Cannon provides a historical account of the 'ups and down' of the law firm Slater and Gordon. In his account of the 63-year-old legal practice, he provides an interesting perspective of left wing politics in Australia over the past 50 years.

The book also recounts in some detail some of the more interesting cases undertaken by the firm. In recent years, litigation has included

that launched against Dow Corning for faulty silicone breast implants, litigation against CSR (and others) in relation to diseases relating to asbestos mining at Wittenoom, actions against medical institutions for transmitting HIV, and the Ok Tedi litigation.

The stories of litigation commenced within Australia are particularly interesting, as the author recounts the stories of those whose cases never proceeded to trial. The reader learns about settled cases and, sadly, those cases where the litigation dies with the plaintiff's death. The harrowing accounts of asbestos related disease and the premature deaths of those who had worked or lived at Wittenoom are particularly shocking when punctuated with the detailed accounts of how delays meant that many died before their cases could be heard.

The book, in telling the story of those cases that never get to trial, helps to paint a more accurate picture of the way in which litigation is conducted in Australia. However, in doing so, Slater and Gordon is unashamedly portrayed as an aggressive champion of the underdog and the 'Aussie Battler'. The author portrays the use of the media and aggressive tactics used by the firm in a positive light.

Unfortunately, the reader does not always obtain an objective account of the litigation conducted. The stories

that are recounted are focused on the plaintiffs and the long-term implications for the defendants are not considered. In many respects this is probably a fair approach, however the reader is left with an unclear impression as to why the law firm faced opposition from government and others. This criticism arises particularly when one considers the Victorian Workcover response to the Slater and Gordon approach to litigation.

The writer's reference to diaries, newspaper articles, interviews, transcripts, affidavits and other documents adds colour and elevates this book beyond a bland narrative. However, the lively manner in which characters are portrayed in the early parts of the book does not continue in the latter half of the work. Perhaps the writer found it somewhat difficult to maintain the 'personal element' as Slater and Gordon outgrew its early beginnings.

However, overall the book is worth reading. This is particularly so if you are interested in a historian's view of the legal process and the evolution of the legal practice in Australia. The only flaw arises in respect of the material covered. The breadth of material sometimes means that the book covers issues and disputes in a somewhat cursory manner. No doubt each of the major scale pieces of litigation engaged in by Slater and Gordon could be the subject of a fascinating book!

- Dr Tania Sourdin

Human rights in Australian law by David Kinley (Editor), The Federation Press, 1998; pp366, \$60.00

For a long time many lawyers have viewed human rights law as a distinct, separate area of law – often equated with anti-discrimination legislation – that is of little relevance to practitioners in 'mainstream' areas.

The truth, of course, is very different. As Michael Kirby states in the foreword to this book:

"...international human rights law is now permeating the nooks and crannies of Australian substantive and procedural law."

This book is the first to chronicle the growing influence of international human rights law within the Australian legal system. It is divided into three sections. Part One, 'Human rights and the legal framework', looks at the reception of human rights within our constitutional and administrative law systems, and the role of the judiciary in the development of human rights.

Part Two, 'Human rights and substantive law', examines areas of the law such as criminal law, immigration, family law, labour law, and information technology law and examines the impact of international human rights standards on the development of the law in these areas. It is great to see the subject matter of some of the chapters being areas of the law that are often neglected in human rights discourse – labour law, with its obvious and complex inter-

action with anti-discrimination law, being one such example.

One recurrent theme that emerges in this section is the fact that the potential reception of international human rights law in Australia is yet to be fully realised, partly due to a lack of understanding and familiarity with international standards by lawyers.

Part Three, 'Human rights and legal practice and procedure', is more practical in its orientation. It includes an excellent chapter on using human rights standards in litigation, and how to research human rights law.

The quality of the book is extremely high. In part this reflects the fact that each chapter is written by an expert in that area of the law. It is difficult to single out individual chapters for praise – but here goes.

The chapters on the role of the judiciary (by Sir Anthony Mason), criminal law (Simon Bronitt and Maree Ayers), family law (Juliet Behrens and Phillip Tahmindjis) and human rights in litigation (Kate Eastman and Chris Ronalds) are excellent.

The most outstanding chapters, however, are John McMillan and Neil William's chapter on administrative law, which includes a fascinating analysis of the High Court's decision in *Minister for Immigration and Ethnic Affairs v Teoh* [(1995) 183 CLR 273], and the ambitious yet wholly successful chapter on Indigenous Australians by Jennifer Neilson and Gary Martin.

Overall, the book is practical in its orientation. It will no doubt

become a significant and useful text for people with an interest in human rights, and even for those who'd rather not know, but who need to anyway!

- Darren Dick

* *Disclosure: Dr David Kinley worked as a legal specialist with the Australian Law Reform Commission from 1995-98. The book reviewer, Darren Dick, has worked with Dr Kinley at both the ALRC and at the Human Rights and Equal Opportunity Commission.*

***Balancing the Scales: Rape, Law Reform and Australian Culture* by Patricia Easta (Editor), The Federation Press, 1998; pp224; \$40.00**

Chicken or the egg? Should the law inform social change or should social change inform the law? *Balancing the Scales* illustrates that neither model accurately describes (nor could prescribe) the Australian social dynamic. A common thread throughout the 14 essays of this book is the inefficacy of law reform when unaccompanied by changes in the values of its administrators.

For those who are reluctant to perceive gender inequality in present-day Australia, the material contained in this collection will be shocking. The contribution of Australian law and legal institutions to this situation will also be news to you. But, unlike the retired Justice Southwell, you

may find that you are not, as he lamented, "too old" to learn about the complexity of the law in this matter. Dr Jocelynne Scutt's essay in this book 'Character, credit, context: Women's lives, judicial 'reality'' takes such remarks and judgments into account in her examination of the power of the judiciary in the administration of rape law reform. Dr Scutt finds that judicial ignorance plays a contingent role in the inadequacy of rape law reform.

However, for those who do have an understanding and/or experience of gender inequality and the law in praxis, this book remains important. In addition to the analyses of the policies and politics that inform the reform process, it offers a useful critique of both the law and its implementation, extending to clear recommendations for positive reform.

These recommendations are argued through detailed scrutiny of the carriage of law, from legislative reform through to the procedures, judgments and results of the courtroom. Sadly, what often transpires from some excerpts of case transcripts used throughout the book, is that this scrutiny is somewhat otiose in the face of such obvious failure of the law to address this violent manifestation of gender inequality.

Most of the essays in this book argue that the failure of law is not, however, an inevitability, provided it is taken to be the result of functioning dynamically rather than unilaterally, within the Australian culture of gender. Indeed, as Kathy Mack demonstrates in her essay 'Corroboration of women's testimony about sexual assault' the law is only as progressive

as the society to which it belongs.

The exposition and recapitulation of this argument in the preface and conclusion of the book seems to border on resignation when the enormity of the consequences of this position is contemplated. Editor, Dr Patricia Easta's closing remarks in particular indicate a realistic, if jaded, consideration of the possibilities of law reform to facilitate gender equality in both its own jurisdiction, and beyond:

"...it is so much harder, perhaps even an impossible task, to eliminate the gender inequality which correlates with rape and with its persistently unfair treatment within the courts."

Despite, or perhaps because of this anti-idealism, this willingness of advocates of law reform to engage with the ugliness of the phenomenon of sexism, *Balancing the Scales* doesn't make one feel like packing up and going home.

This book is nothing if not vigilant in its interrogation of law, law reform and equality in Australian culture.

- Nicole Graham