

the mediation a condition precedent to commencing arbitration or litigation.

This is a useful overview and analysis of the principles and practice of ADR in general and of mediation in particular. It is not cheap. But there is as yet no Australian equivalent. And it has brought together within its covers a great deal of analytical and practical material for the practitioner who wants to know how to integrate ADR into his or her practice.

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Robert Angyal

Constructive Trusts

M Cope

Law Book Company 1992

Hard Cover RRP \$175.00

The imposition of a constructive trust as a remedy is an increasingly popular form of relief for litigants seeking to recover assets in the wake of the recent corporate collapses. Creditors have the potential to recover the full amount outstanding rather than being restricted to an often very small dividend payable to unsecured creditors in a liquidation. Liquidators have also sought relief by way of the imposition of a constructive trust when the usual armoury of remedies is circumscribed by, for example, the expiry of relevant time periods or when the proof of insolvency is difficult.

Not only is the conduct of the directors of an insolvent company now rigorously scrutinised by liquidators and creditors, but also that of parties who may have assisted or induced a director to have breached his or her fiduciary duties. The imposition of a constructive trust is a much more flexible remedy than seeking to trace in equity or to recover funds as preferences or voidable dispositions. Proof of the "receipt of the funds" is not essential as a stranger may be liable to compensate a principal if the stranger has induced or participated in a director's breach of fiduciary duty, irrespectively of whether the stranger has received any funds of the company by reason of that breach.

The stated objective of Professor Cope's recent text "Constructive Trusts" is to focus on the constructive trust as a proprietary remedy to give effect to obligations and liabilities enforceable in equity. He commences by examining the nature of a constructive trust and in particular the remedial theory of the constructive trust. Much of the book is concerned with an analysis of the relationship between the constructive trust and the acquisition of property by fiduciaries, through mistake, fraud and duress, on death and by law under an oral agreement. Professor Cope also examines in detail the extent to which constructive trusts can be employed to do justice and to prevent unjust enrichment and unconscionable conduct. The book also includes a useful theoretical analysis of promissory and proprietary estoppel.

Perhaps the most significant aspect of "Constructive Trusts" is Professor Cope's analysis of a stranger's personal liability for a trustee's disposition of trust property in breach of trust and a stranger's liability to account for profits and benefits acquired as a result of a breach of a fiduciary obligation. He carefully reviews the extent to which the second limb of *Barnes v Addy* has now been extended to participation in a breach of fiduciary duty, quite independently of the existence of any express trust, by the High Court in cases such as *Consul Developments and Hospital Products*.

Despite the breadth of the author's analysis, "Constructive Trusts" is ultimate disappointing. Too much of the text is occupied with a review of other relevant texts rather than with an original analysis of the authorities. Conflicting theories and the facts of cases are set forth in great detail in the body of the text rather than being identified and then referred to in footnotes. The text is unduly lengthy and at times it is difficult to identify the propositions which are being propounded by Professor Cope.

The subject matter may be difficult and the authorities often contradictory, but a more robust and concise analysis would have been preferable for practitioners. On a practical level practitioners will find the frequent citations of High Court judgments in unauthorised reports rather than in the Commonwealth Law Reports irritating.

On balance "Constructive Trusts" would be a useful but certainly not an essential addition to a commercial/equity lawyer's library. □

John Halley

Environmental Law and Local Government in New South Wales (1991)

Zada Lipman (ed)

Federation Press - RRP \$35.00

Environmental Law and Local Government in New South Wales, edited by Zada Lipman, lecturer in Law at Macquarie University, is not, as the title may suggest, a comprehensive treatise on the role of local government in environmental control in NSW. It is a collection of chapters by various authors originally delivered at a seminar on Local Government and Environmental Control at Macquarie University in September 1990. Topics covered are Heritage Law (Ben Boer), Social Planning (Donna Craig), Urban Consolidation (Patricia Ryan), Pollution Control (Zada Lipman), Resident Participation in Appeals (Justice Paul Stein) and Land Use Control (Linda Pearson).

According to Lipman in her Introduction, the book has a number of purposes, but in particular it seeks to clarify and explain the role of local government in environmental control. Whether these purposes are achieved is discussed below.