

attend overseas conferences and seminars on Equity, you notice that lawyers from other jurisdictions tend to be sceptical about too much reliance on unconscionability, largely because they fear that it will degenerate into idiosyncratic notions of unfairness.

Launching a book is a much more difficult exercise than launching a missile. In the case of a missile, you think only of the target which you hope to destroy. With the book, you think of the reader whom you hope to inform. This book will certainly achieve that object. It is comprehensive and instructive; it is detailed and, in the footnotes, contains references not only to the relevant Australian and overseas decisions, but also to text books, monographs, academic writings in journals, here and overseas. The book therefore provides a solid basis for those who wish to develop an argument on a particular point by engaging in further research. All in all, *Restitution in Australia* will add greatly to our understanding of restitution.

I thoroughly commend it, not least the opening which sets in its correct context the development of the modern law of restitution. Dissatisfaction with legalism and the old forms of action, in particular the money counts, which had become encrusted with precedent, gave way to a new emphasis on substance rather than form. This proved to be a suitable climate for the development of the modern law of restitution.

*Restitution in Australia* succeeds in integrating modern theory with the established body of case law. Those lawyers whose habit of mind accustoms them to thinking in forms of quantum meruit, quantum valebat and the old common money counts, will not feel that they are struggling with alien and deleterious matter in the pages of this book. There is a harmony here that will appeal to even the most rugged and lantern-jawed of common lawyers.

In conclusion, I congratulate the authors on producing a splendid book which will be of inestimable value to lawyers in Australia and elsewhere. My only regret is that the publishers have not provided me with a magnum of champagne with which I can drench the authors in the manner befitting the winners of a Grand Prix. Without the champagne, I declare *Restitution in Australia* duly launched. □

## Principles of European Community Law

Simon Bronitt, Fiona Burns and David Kinley  
Law Book Company, 1995, Pages i-lxi; 1-587  
RRP \$95.00( SC) \$130.00 (HC)

It is, no doubt, somewhat unusual for a student casebook to be reviewed in this Journal and, no doubt, even more unusual when that casebook is entitled *Principles of European Community Law*. Yet it is the very subject matter of this book which may make it of interest and value to the practitioner.

The first point to note is that the book has been written for an Australian audience. As such, it makes few assumptions as to the reader's knowledge of or familiarity with the history

of, and progress towards, European integration and the institutions and treaty structures which have been central to this process. Indeed, in this reviewer's opinion, one of the book's most valuable chapters is that which deals with the institutions and legislative process of the Community. The work is divided into five parts: the Constitutional Structure of the European Union; the Internal Market and Free Movement of Persons, Goods and Capital; Competition Law; the Community's Social Dimension (including a lengthy chapter on Gender Discrimination); and the Environment.

Each chapter contains a mixture of treaty and statutory material, extracts from case law and academic writings, and the authors' accompanying commentary. Given the size of the subject and the relative scarcity in Australian libraries of both official and academic materials on the field, this work is more than just a "convenient compilation". It makes accessible, in a well ordered and discriminating manner, a wide range of materials which provide an excellent entrée to the subject. Unlike many casebooks, the interconnecting commentary is not sparse and perfunctory. Rather, it adds both coherence and insight into the various subjects treated.

Although by no means common, European decisions and doctrines have been cited and discussed in Australian courts in recent times. This has especially been so in the areas of competition law (dealt with extensively in Part 3 of the book) and civil liberties. The concept of "proportionality", discussed in an excellent chapter entitled "The Jurisdiction and Jurisprudence of the European Court of Justice", has also found its way into some recent Australian decisions. One can only assume that, given rapidly improving technology and the growth of legal databases, resort to principles of European law and decisions of the Court of Justice and the Court of First Instance, will increase rather than diminish, especially in an appellate context. With regard to the specific subject areas it addresses, the book is a convenient first port of call for comparative research. Moreover, it provides much useful background material which may assist in placing particular decisions in their proper context or else enhance an understanding of a particular decision. The chapter on "The Jurisdiction and Jurisprudence of the European Court of Justice", already referred to, is particularly useful in this respect. By way of illustration, one is often struck, when reading a decision of the ECJ, at the minimal level of reasoning disclosed. It is only when the role and significance of the preceding Opinion of the Advocate-General is understood that the "whole" decision may be properly appreciated. Moreover, it is both necessary and important to understand the ECJ's teleological approach to law-making, and to appreciate the larger imperatives of European integration which underpin many of its decisions, sometimes explicitly, sometimes *sub silentio*, before the full import of a particular decision can be assessed.

The authors have had to strike a balance in the length and quantity of the material chosen for inclusion in view of the breadth of the subject which, in truth, subsumes a number

of discrete subjects. Where the authors have been especially conscious of necessary truncation of treatment, this is acknowledged and the reader is referred to more detailed accounts. As a general proposition, the many references to primary and secondary material contained throughout the book provide a valuable starting point for more detailed research if the occasion for such research arises.

There are some areas of European law which have not been treated in this book although the reviewer at once acknowledges the difficulties of confining a project of the kind undertaken to sensible proportions. One particular area the omission of which is perhaps to be regretted is that addressed by the Brussels and Lugano Conventions on Jurisdiction and Judgments. These Conventions have played and continue to play an important practical role in European integration, prescribing as they do jurisdictional limitations on national courts and providing a mechanism for the virtual automatic recognition and enforcement of judgments throughout Europe. The occasional involvement of Australian companies in litigation in Europe or with European companies makes an understanding of this régime, radically different to common law rules on jurisdiction, recognition and enforcement, of importance and relevance to Australian lawyers. As acknowledged above, however, the book's ambit had to be sensibly confined so that the omission of this somewhat technical aspect of European law is no major criticism.

This book is a very useful, well written and valuable project. Its subject matter may mean that its appeal and attraction will extend beyond that of the audience to which it has been primarily directed. □ Andrew S Bell

## Principles of Remedies

**Wayne Covell and Keith Lupton**  
**Butterworths, 1995**  
**RRP \$49.00**

The authors of this work state in their Preface that their:

"... aim in writing this book has been to provide a practical but not entirely uncritical discussion of the principles comprising the law of remedies."

The Preface and the title of this book are entirely reflective of its contents. The book falls into that category of "practitioner's handbook" on which it is becoming increasingly convenient to rely as a starting point in any inquiry.

The book discusses the remedies available at common law, in restitution, in equity and under statute. This work is not, nor does it attempt to be, a learned dissertation on the remedies that it discusses. The authors have taken each of the remedies above and neatly and succinctly laid down a

template from which the reader can glean what remedies are available, the elements of those remedies, any exclusionary factors and the practical application of those remedies in the standard situations.

In relation to statutory remedies the authors have concentrated on remedies available under the *Trade Practices Act* and under the *Contracts Review Act*. The chapter relating to the *Contracts Review Act* consists of eight pages in which the authors succinctly analyse the purpose of the Act, the concept of the unjust contract and its application to the more common facts situations, exclusions and relief. The chapter is well researched, referring to the standard authority from which the readers can obtain the basic principles and commence the necessary research to apply the principles to the situation with which they are faced. The book is one of the few available that deals with the *Contracts Review Act*.

The chapters on contract and tort successfully deal with recent developments in the general approach to these areas of law. For instance, the chapter on Damages in Contract has an analysis of Assessment in which reference is made to concepts such as reliance damages and damages for the loss of an opportunity or chance in the light of more recent decisions such as *The Commonwealth v Amann Aviation Pty Ltd* (1991) 174 CLR 64. Similarly, the chapter on Restitution gives a brief dissertation of the principles, the remedies available, the measure of any restitution and the defences that are applicable.

Covell and Lupton have, in 270 pages of text, condensed four vast headings that are capable of being the subject of extensive works in their own right to their basic principles and in doing so have referred to the major lines of authority on which those principles are based.

The book is a useful tool for practitioners and practically minded students and one which has been of use on several occasions since it was received for the purpose of writing this review. □ Michael Fordham

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