

was not an excise duty. Dawson, Toohey and McHugh JJ drew a distinction between ‘a price paid for the right to appropriate a public natural resource and a tax upon the activity of appropriating it’.<sup>5</sup> The distinction is far from persuasive. Yet in an introductory text, the lack of persuasiveness must sadly pass without comment.

### The tests for inconsistency between Commonwealth and State laws.

The three authors have not neatly segmented their tasks, and some overlaps do occur.

For example, there is a discussion in chapter 3 of the paramountcy of Commonwealth law authored by Keven Booker, and Chapter 13, which is authored by Arthur Glass, contains a more detailed analysis of section 109 and the doctrines of inconsistency as they have developed in Australian constitutional history.

The basic tests for inconsistency are neatly set out in chapter 3, and they are simply and clearly explained. Difficult concepts such as the effect of repeal of a Commonwealth law in reviving the enforceability of a State law that had previously been overridden are presented pithily. Yet it is only at the end of chapter 13 that the proactive use of section 109 to expand Commonwealth power is explored at all, and with no reference back to the role of the *Engineer’s* case<sup>6</sup> as underpinning such an expansion. So, while each issue is described and analysed with clarity, there is a gap in the integration of the various chapters.

### Appropriations and the AAP Case.

*The AAP Case*<sup>7</sup> is discussed by Keven Booker in chapter 6 and by Robert Watt in chapter 7. The two discussions do not appear to be well integrated. Keven Booker concludes: ‘Perhaps the diversity of reasoning in the AAP case indicates that constitutional problems about appropriations are not readily susceptible to effective judicial review.’ Robert Watt dissects the six judgements, and like his colleague refers to the more recent case of *Davis v. Commonwealth*<sup>8</sup> to suggest that the High Court has now provided a much clearer idea in relation to the difficult issues that concern the appropriations power. The two chapters are consistent with each other, but again there appears to be a lack of integration between the two authors.

### Conclusion

Overall this is a very useful contribution to the analysis of Australian Constitutional law. It makes it accessible to an audience that wants to know without having to delve into the analytical depths required for thorough jurisprudential consideration of the cases.

Each chapter stands alone, and the quality of the authors’ thinking and writing is immediately apparent. However, the lack of integration across the three authors is a blemish that one can only hope the next edition will resolve.

Reviewed by David D. Knoll

- 1 (1951) 83 CLR 1, 258.
- 2 *New South Wales v. Commonwealth* (1990) 169 CLR 482,90 ALR 355
- 3 For a careful critique of such judicial euphemism see: J.Stone, *Precedent and Law* (1985) esp. at 53-54.
- 4 (1989) 168 CLR 314; 88 ALR 38
- 5 (1989) 168 CLR at 337
- 6 *Amalgamated Society of Engineers v. Adelaide Steamship Ltd* (1920) 28 CLR 129
- 7 *Victoria v Commonwealth & Hayden* (1975) 134 CLR 338
- 8 (1988) 166 CLR 79; 82 ALR 633

## Equity and Trusts in Australia and New Zealand, 2nd Ed.

By G E Dal Pont and D R C Chalmers  
LBC Information Services, 2000.

## Equity and Trusts, Commentary and Materials, 2nd Ed,

G E Dal Pont, D R C Chalmers and J K Maxton LBC  
Information Services, 2000

When Meagher, Gummow and Lehane’s *Equity Doctrines and Remedies* was first published, in 1975, the *Australian Law Journal* said that it ‘fills a gap in Australian legal literature, and does so with distinction. For the first time, we have a comprehensive Australian text-book on equity, incorporating all the relevant Australian case law, and referring also to the pertinent statutory provisions.’ In the succeeding twenty five years a series of further books on equity have appeared. The first edition of *Equity and Trusts in Australia and New Zealand* arrived in 1996; this, the second edition, just four years later.

Inevitably, *Equity and Trusts in Australia and New Zealand* covers much of the same ground as *Meagher Gummow & Lehane*, at least in so far as it deals with equitable doctrines and remedies.

The history and maxims of equity are dealt with concisely, in a brief opening chapter. The following chapters deal with equitable interests in property, relationships of trust and unconscionable conduct. Part V is headed ‘Unfair Outcomes’, and deals with part performance, relief against forfeiture and penalty clauses, subrogation, contribution and marshalling, and deceased estates. The main equitable defences and remedies are examined in the concluding chapters.

As noted in the preface, there have been many developments in the area since the first edition in 1996. The chapter on unconscionability, for example, sets out the developments in respect of the rule in *Yerkey v Jones*, with a detailed discussion of *NAB v Garcia*. Statutory initiatives including the *Consumer Credit Code* are considered. When it comes to injunctions there is a separate chapter dealing with Mareva and Anton Pillar orders, with a useful analysis of *Cardile v LED Builders Pty Ltd*.

In respect of trust law *Equity and Trusts in Australia*

and *New Zealand* again, inevitably, covers much of the same ground as some of the other standard texts, particularly *Jacobs' Law of Trusts*. The nature of a trust, the requisite certainties and the requirements as to form are all considered. Separate chapters deal with discretionary, charitable and resulting trusts. There is a particularly useful chapter on superannuation which includes an analysis of the legislative regulation of superannuation in both Australia and New Zealand. Constructive trusts are dealt with as one of the equitable remedies.

The authors of *Equity and Trusts in Australia and New Zealand* have set themselves a demanding task: to describe all equity and trust law, case law and statute, in both Australia and New Zealand. It is convenient to have all this in the one volume. The price of the convenience is brevity. To take one example, the vigorous debate in respect of those cases which have taken a more expansive approach to equitable set off, as compared with what *Equity and Trusts in Australia and New Zealand* calls 'classical equitable set off', is confined here to a footnote.

Still, readers wishing to research an issue in more depth are directed where to go. *Equity and Trusts in Australia and New Zealand* is a comprehensive and accessible addition to the legal literature in this area.

The companion volume is a casebook, and consequently may be of more interest to the student than the practitioner. Extracts of cases are followed by detailed questions, and points for law reform. Usefully, the organisation of parts and chapters conforms to that of the main volume. Because of this the casebook will be of particular interest to those students studying equity and trusts through the main volume.

*Reviewed by Jeremy Stoljar*

## Media Law and Commentary Materials

*By Sally Walker*  
*LBC Information Services, 2000.*

In the forward to this publication, Sally Walker notes that over a decade has past since her last book, *The Law of Journalism in Australia* (LBC) was published. The considerable size and scope of this work is a reflection of the profound changes and explosion of activity in the field of media law during this period and a comprehensive one at that.

The author states that the book, while described a compendium of 'commentary and materials', was prepared not only with students in mind but was aimed more broadly at practitioners, media organisations and journalists. To this end she has achieved her objective. While the latter may hesitate before dipping into this work given that its orientation is clearly towards a legal audience, the book is nevertheless accessible enough so that those who do not possess a background in the law

can nevertheless make use of the information contained within it. For lawyers, the book is an excellent resource for those who do not profess to be specialists in this field. It marries contemporary commentary with relevant legislation, case extracts and secondary materials in an altogether harmonious fashion thereby providing a convenient initial 'one stop shopping' facility for those who are unsure as to where to commence their researches. For both students and lecturers, the publication will undoubtedly become an invaluable teaching tool given its breadth, its depth and its clarity.

The book is structured into seven parts dealing with all of the topics that one would expect in a publication bearing the name Media Law, viz, defamation and related actions; the reporting of events in the courtroom and in the Parliament; the publication of offensive material; the protection of intellectual property, the protection of privacy and the regulation of broadcasting, print and electronic media.

The layout of the book is clear and simple, enabling ease of navigation. The index to the book, for example, is sufficiently pithy to allow a reader to find with haste the topic to which their inquiries are directed. Equally helpful are the contents pages to each part and the detailed cross-referencing to other sections of the book. The table of statutes is also extremely useful.

In short, this practical and informative casebook will greatly assist practitioners and non-practitioners alike and given the lacuna that presently exists in respect of publications of this genre in this area of the law its release is timely.

*Reviewed by Rachel Pepper*

## Trade Mark Law in Australia

*By Brian Elkington, Michael Hall and David Kell*  
*Sydney, Butterworths, 2000*

There has, for some time, been a pressing need for a textbook on Australian trade mark law which deals with the *Trade Marks Act 1995*. This book to a large extent fills that gap, and will be of considerable assistance to practitioners in the area of trade mark law.

The book takes the form of an annotated *Trade Marks Act 1995*. Usefully, it also contains the Regulations, although not annotated.

The commentary is, on the whole, accurate, informative and concise, and provides a convenient starting point for analysis. It does, however, supply far less detail than the existing texts in the area such as *Shanahan Australian Law of Trade Marks and Passing Off*, and practitioners will need to go to other sources to obtain all relevant authorities or to analyse particular problems.

Like most works in the form of annotations, the book is somewhat difficult to use as a textbook: commentary on the one topic or on closely related topics is spread