

jurisdiction to address the legal regulation of biological materials. The Act contains the first statutory codification of the ‘work or skill exception’ first recognised in *Doodeward* and the author provides a detailed analysis of it. The analysis is useful because the UK Act will likely influence future statutory developments and perhaps also assist in the development of the common law.

Chapter 5 commences the analysis of legal theory underlying the area and the potential future development of the law. The author conducts a comprehensive analysis of the ‘work or skill exception’ and rejects the exception as a principle capable of general application for the recognition of property rights. This conclusion is significant because commentators have often simply accepted the legal basis for and general application of the exception. Instead, the author argues that another basis is needed to govern the creation of property rights in detached biological material. The two main candidates—that detachment of material from a person’s body is alone sufficient to create property rights in the detached material; or that such detachment must be

accompanied by an intention to use the detached material as property before any property rights are created—are developed and analysed in further detail in Chapter 6.

The author also places the legal framework in a practical context and considers the application of property rights to the operation of biobanks and to questions of ownership of cell lines cultured from an original human source. The latter area is of increasing significance in practice, particularly in regard to stem cells, and is consequently likely to be a source of future litigation. Usefully, the commentary is accompanied by an understanding of the underlying scientific aspects of the process involved. For example, the author points out the often-overlooked fact that, after amplification of a DNA sample, only a tiny fraction of the resulting sample consists of molecules present in the original source (typically 1/10,000th to 1/50,000th), with the vast majority consisting of material added during the amplification process. Questions of ownership based upon the original source of the material are thus complicated by the rules relating to admixture of materials and

particularly specification and accession. Such insights are important, as when applying the law to science, any failure to have regard to the true underlying scientific reality is likely to lead legal analysis astray.

Chapter 7 considers various non-proprietary rights that an individual has or may have in respect of detached biological material, including duties of confidence applying to information encoded in such material, rights in tort (battery, negligence, intentional infliction of emotional distress) and possibly rights based upon an individual’s privacy. The book concludes, however, that a property-based approach provides the more satisfying legal framework.

*Law and the Human Body* is a welcome addition to the literature of law and medicine. It summarises the existing state of the law comprehensively and provides informed insights into the way the law can legitimately employ property rights to govern an increasingly complicated area. The author is to be commended for a well-written, accessible book that is useful to both the legal and medical communities.

**Reviewed by Ben Kremer**

## Professional Liability in Australia (2nd ed)

Walmsley, Abadee & Zipser | Law Book Company, 2007

A second edition of a text as useful as the first edition of *Professional Liability in Australia* has proved to be, is, in itself, something to be welcomed. This edition is even more welcome given the extensive impact on the law of professional liability of a host of statutory developments affecting such liability in the period since the first edition went to press in 2002. The authors draw attention to and make extensive reference to these statutory reforms which include the enactment of proportionate liability regimes, the operation of professional standards legislation and the statutory enactment of the *Bolam* test for professional liability. The authors observe in the Preface to this edition that practitioners in this area ‘will increasingly need to develop an appreciation of general principles of

statutory interpretation on advising clients and prosecuting or defending claims’. They are quite right.

The authors also, as would be expected, take on board recent common law developments including the High Court’s decisions in *Woolcock Street Investments Pty Limited v CDG Pty Limited* (2004) 216 CLR 515; *D’Orta-Ekenaike v Victoria Legal Aid* (2005) 223 CLR 1 and *Harriton v Stephens* (2006) 226 CLR 52.

The book follows the same broad structure as the first edition but with a significantly expanded first section on general principles (running to some 228 pages) and then separate sections dealing with doctors, solicitors, barristers, accountants and auditors, building professionals, valuers

and financial services professionals. This last chapter picks up the language of the *Financial Services Reform Act 2001* (Cth) and treats securities advisers and dealers, finance brokers and insurance agents and brokers, including the not uncomplicated licensing and regulatory provisions relating thereto.

This text is a ‘must have’ for any practitioner dealing with professional liability questions. Such practitioners owe a debt of gratitude to Judge Walmsley SC and Messrs Abadee and Zipser for this new edition which is of high quality and great practical utility. That it has been written by practitioners adds significantly to its appeal.

**Reviewed by Andrew Bell SC**