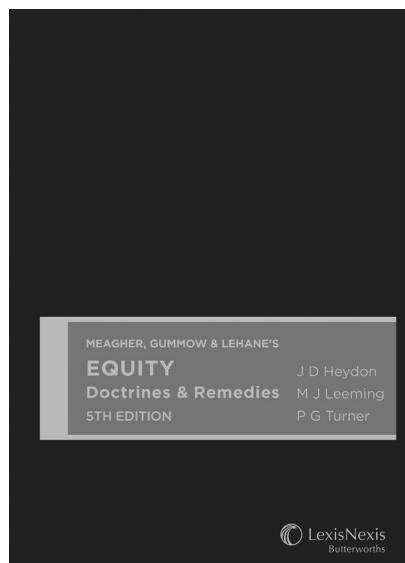


Meagher, Gummow & Lehane's Equity: Doctrines and Remedies (5th Edition)

By J D Heydon, M J Leeming and P G Turner | LexisNexis Butterworths | 2014



The late Professor Emeritus Harold AJ Ford AM, writing for the *Sydney Law Review* in 1976, concluded his review of the first edition of *Meagher, Gummow & Lehane's Equity: Doctrines & Remedies* by stating that it was 'a very welcome accretion to Australian legal literature and is more likely to be a possession for all time than many other works'.¹

Much like Thucydides, whose self-confessed intention in writing his *History of the Peloponnesian War* Professor Ford was referring to, Meagher, Gummow and Lehane were never writing to 'win the applause of the moment.' To the contrary, and as was made abundantly clear by the vigorous criticism levelled at certain judges guilty of committing the 'fusion fallacy' or at forms of relief which the authors considered to be lacking in proper jurisdictional basis, the authors had far loftier goals in mind. Clearly, the work was intended to be not only an exposition of the general doctrines and remedies of equity but also an attempt to steer and shape equity jurisprudence, not least through its forceful critique of judicial reasoning deemed by the authors to exhibit a 'disregard for historical

continuity' or a misunderstanding of the Judicature legislation.

However, and as acknowledged by the authors of the recently released fifth edition, the position forty years on from when the first edition was written is quite different. The authors (J D Heydon, M J Leeming, and P G Turner) refrain from commenting on the extent to which the previous editions of *Meagher, Gummow and Lehane* have been responsible for what they regard as a recent and discernible change in judicial reasoning and academic writing. However there is an implicit recognition by the authors of this edition, evident in the change of tone, noticeable particularly in Chapter 2 ('The Judicature System'), as well as in the abbreviation of that chapter, that the battle is over, at least insofar as it relates to the changes effected by the Judicature legislation, and that the authors of *Meagher, Gummow and Lehane*, past and present, have emerged triumphant.

Gone then from this edition, is some of the (self-confessed) 'colourful' and 'pungent' criticism found in earlier editions. Also left behind is the extensive critique of Mareva injunctions in what can only be read as a begrudging concession that the authors' doctrinal objections to this form of relief found in earlier editions have fallen on deaf ears. New to this edition is Chapter 23 on equitable compensation, which plugs what was a conspicuous gap in previous editions.

Certain chapters have been restructured and rewritten. Chapter 10 ('Contribution') is a representative example. The table of contents at the beginning of the chapter (tables of contents for each chapter being one of this edition's welcome innovations) provides a map to the chapter's structure and a shortcut to the reader who already

knows the particular aspect of the doctrine of contribution with which he or she is interested. The presentation of the text is clearer, the language is more concise, the sentences pithier. A more extensive use of sub-headings (yet another innovation of this edition which is carried across the entire work) makes the chapter more easily navigable. The positive effect of removing citations from the body of the text and into the footnotes (as they have been throughout this edition) cannot be overstated. The overall result is a chapter that must surely be of greater utility to a busy practitioner seeking quickly to determine whether to assert an equitable right of contribution on behalf of his or her client. Yet, as with the other rewritten and restructured chapters, the coverage of the doctrine remains comprehensive and its presentation is true to the overall style and tone of the work.

Other chapters have been wholly rewritten and reorganised, such as Chapter 17 ('Estoppel in Equity'). In this edition, the authors have taken the opportunity to analyse the status of the 'single overarching doctrine' suggested by Mason CJ and the 'general doctrine' of estoppel by conduct advanced by Dean J in *Commonwealth v Verwayen* (1990) 170 CLR 394. The conclusion advanced by the authors, based on this new analysis, is that no single overarching doctrine of estoppel by conduct exists in Australia and that the attempts to simplify the law in this area have failed.

The authors have undertaken a similar stock-take in Chapter 42 ('Confidential Information'). It is noted in this chapter that much of the doctrinal uncertainty apparent in the case law on confidential information has been clarified and resolved, such that the fundamental questions in relation to confidential information identified in previous

BOOK REVIEWS

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editions of the work are now able to be answered. The chapter explores what has been established and what remains to be developed.

Twelve years have passed since the publication of the last edition. As the authors have observed in their preface, during that time there has been

delivered a considerable number of judicial decisions, as well as extensive commentary published, dealing with many areas addressed in this work. In particular, the authors note development in the areas of fiduciary relationships, assignments, estoppel, penalties, equitable compensation, rectification and confidential information. Accordingly, a new edition of *Meagher, Gummow and Lehane* was much needed. This fifth edition has not disappointed. The change in tone is refreshing and welcome, as are the authors' conspicuous (and successful) efforts to modernise the work's style and presentation. The updating of the text with recent judicial decisions and commentary is characteristically thorough and it is

apparent that considerable thought has been given to how these developments affect the authors' commentary and conclusions found in previous editions; where necessary material has been reworked or excised to reflect these developments.

As prophesied by Professor Ford, *Meagher, Gummow and Lehane* is a possession for all time. And thanks to the commitment and erudition of its current authors, it has been allowed to evolve gracefully and judiciously.

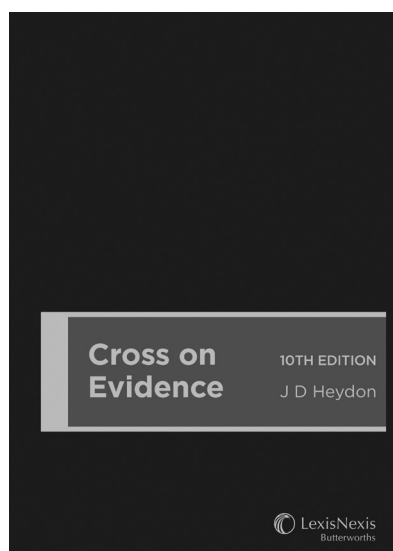
Reviewed by Juliet Curtin

Endnotes

1. Ford, H A J, 'Meagher, Gummow, Lehane, Equity: Doctrines and Remedies', (1976) 7(3) *Sydney Law Review*, 474.

Cross on Evidence (10th Edition)

J D Heydon | LexisNexis Butterworths | 2014



Given the law of evidence is an integral part of the process of litigation it is no surprise that it is the subject of continued attention by the courts and accordingly undergoes rapid and

constant development relative to other areas of law, save perhaps for the law of civil practice and procedure. Consider, to name just some of the recent developments in the case law, the High Court's decisions on opinion evidence (*Dasreef Pty Ltd v Hawchar* (2011) 243 CLR 374; and *Lithgow City Council v Jackson* (2011) 281 ALR 223); spousal incrimination privilege (*Australian Crime Commission v Stoddard* (2011) 282 CLR 620) the rule in *Jones v Dunkel (ASIC v Hellicar* (2012) 286 ALR 501); legal and evidential burdens of proof (*Strong v Woolworth Ltd* (2012) 285 ALR 420); the use of extrinsic evidence in contractual construction (*Western Export Services Inc v Jireh International Pty Ltd* (2011) 86 ALJR 1). These and other developments were captured in the ninth Australian edition (2012) of *Cross on Evidence*.

Since then there have been yet more developments in the case law to clarify the law in respect of the uniform evidence legislation and the common law, judicial notice, discretionary exclusion of evidence where the prejudicial effect of which evidence outweighs its probative value; tendency and coincidence evidence, privilege, illegally obtained evidence, expert evidence and the use of extrinsic evidence in contractual construction. These new developments have been captured in the latest edition of *Cross on Evidence*.

As with earlier editions, the target audience of the book includes practitioners, both bench and bar, law students (and academics who teach them and research in the area). This diversity of audience results in there