

BOOK REVIEWS

AUSTRALIAN COMMERCIAL LAW (Twenty Third Edition), by Clive Turner, Sydney, Law Book Company, 1049pp. New Zealand price \$97.80 plus gst.

Clive Turner's book is a welcome addition for readers seeking more than just a discourse on the traditional areas of commercial law in Australia. The book is a valiant attempt to marshal, in one handy volume, subject matter that the reader would normally find by referring to a number of texts.

Despite the size and detailed contents of the book, the presentation of the commentary is admirable and designed to be user friendly. There is good use of specific cross-referencing throughout the text to topics and page references where related material has been discussed either at a prior or subsequent point in the book. There is a very handy five page glossary at the beginning of p xci of foreign – mainly Latin – terms used in the book. Each of the chapters begins by listing the main headings and page references within the chapter where discussion under the respective headings begins. The headings in the body of the chapter are in bold text. Each main heading in the text is broken down into sub-headings under which the text of each chapter is presented. Straight after the list of main headings at the beginning of each chapter is an introductory paragraph headed "Introduction". These introductions accurately encapsulate what the chapter seeks to convey to the reader. At the end of the text in each chapter is a list of further reading references that includes specialist and in some cases leading texts in the particular area. For example Chapter 21 on 'Bailments' at p 489 refers in its commentary to Professor Palmer's classic text on *Bailments* which is also listed at the end of the chapter in the list for further reading. Also at the end of each chapter, where appropriate, is a list of Internet sites and journal references for access by interested readers.

The book begins with a fairly full introduction to the Australian legal system in the only chapter in Part One. The introduction deals with the essential ingredients of Australia's constitutional and legal system. It discusses subject matter under headings which include the nature of law, the Australian constitutional system, the sources of law, the doctrine of precedent and the hierarchy of courts in the judicial system and finally alternative methods of dispute resolution. To the New Zealand reader, the discussion of Australia's constitutional arrangements and Federal Court system present an interesting contrast. The introductory chapter presents a wealth of useful background material that provides the reader with a context in which the remaining Parts and 31 chapters of the book unfold.

Part Two of the book contains the next 12 chapters and deals with the various elements of contract law. Usually material found in this Part is in a separate specialist contract law text and a commercial law text assumes that a reader of commercial law has prior knowledge of the principles of contract law. However the inclusion of a treatise on contract law in a commercial law text is another hallmark of Clive Turner's book. Not only does Part Two serve the practical purpose of being a ready reference if needed, but has a more deliberate purpose in relation to the central theme of the book which is a discourse on commercial law itself. The author explains the link between contract law and commercial law in the introduction to Part Two as follows:

The law of contract is the basis of commercial law. Much of the law governing the sale of goods, agency, negotiable instruments, insurance, partnerships and so on discussed later in this work concerns the application of general contract principles to specialised areas of commercial law.

Due to the predominantly common law landscape of contract law in Australia, extensive case law is referred to, and a number of decisions are examined in some detail. The discussion of a case is highlighted in bold with a vertical line running parallel to the text of the case in the margin marked with the notation "case" to indicate that an actual case reference is being discussed. This notation is particularly helpful when cases are discussed successively in bold type and can be distinguished from each other by the parallel vertical lines and notation "case" in the margin. It also serves to distinguish the text of the case from the author's commentary. This method, of distinguishing cases that are discussed, flows throughout the book.

Part Three of the book deals with commercial law matters, beginning with Chapter 14 on Agency. This is helpful in understanding Chapter 25 on Insurance, in its discussion of the general principles of agency law in regard to the liability of insurers for their agents and employees. Chapter 15 deals with the law on sale of goods, whether the contract is a commercial contract or a consumer contract and outlining, where appropriate, statutory provisions which imply conditions in consumer contracts.

A chapter on the law of electronic commerce appears as Chapter 16 with a discussion of the Commonwealth Electronic Transactions Act 1999 which came into operation on 24 March 2001. It is on this legislation that New Zealand's Electronic Transactions Bill is largely based. The chapter helpfully discusses issues which include encryption, digital signatures and authentication, electronic banking and privacy as well as data protection initiatives. There is also discussion on conflict of laws and internet jurisdiction.

Chapters 17 to 24 deal with consumer protection, restrictive trade practices, the law in relation to credit, guarantees, bailments, personal and real property, and negotiable instruments. The final and second largest chapter, on the core commercial law component in Part Three, is a 55-page chapter on insurance law and is a reflection of the practical importance of the insurance of risk in commercial transactions.

Part Four of the book contains chapters which deal with partnership and company law. Partnerships and companies are perhaps the most commonly used structures for setting up and engaging in trading operations. The commentary on these two types of business structures, provides a fairly good account – particularly chapter 27 on companies – of the law relating to these business organizations without the reader having to access separate works on partnership law and company law.

Part Five, entitled “Allied Areas of Law” is recognition that commercial transactions occur in a practical context where the law of tort for instance exists to provide redress in cases of unlawful interference with an individual’s property and economic or commercial interests. Trusts today play an increasingly prominent role in the management of commercial affairs. Intellectual property law can no longer be regarded as a field devoid of its direct connections to commercial transactions. Design law which seeks to protect industrial designs, and trade marks law which protects a trader’s individual mark or symbol, are indispensable components of commercial dealings in the modern trading environment. Bankruptcy law is heavily resorted to in the case of partnerships which do not enjoy a separate legal identity and where the partners as individuals are subject to bankruptcy law in the event of insolvency. The need to distinguish the partner’s private personal estate in bankruptcy as distinct from the partnership estate becomes important for the purposes of meeting creditor claims for both categories of estate. Finally, the significance of employment law in modern day business activity is brought into sharp focus in the last chapter in the book.

Overall, the book is very readable and engaging despite its sheer volume, complexity, depth and range of subject matter. There is a sense of lingering reverence at the pace and extent of developments in Australian commercial law. The book will certainly interest Australasian practitioners and scholars wishing to keep abreast of developments across the Tasman in the challenging area of Australian commercial Law.

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