

## BOOK REVIEWS

### **Julie Montgomery**

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### ***Rain Dance***

By Jane Fenton and Anna Grutzner

*Fenton Communications, 1994, \$40.00*

The *Rain Dance* is a new book on marketing, especially for lawyers, by Jane Fenton and Anna Grutzner. Jane is the principal of Fenton Communications and was formerly the director of marketing and public affairs at the Law Institute of Victoria (and who doesn't know how helpful, practical and cost effective her advice is). Anna is a senior consultant with Fenton Communications with special skills in marketing through the written word.

The *Rain Dance* can proudly take its place next to the works of Aubrey Wilson and David Maister. It has the additional benefit that you can ring the authors within your time zone for practical explanation or expansion of the advice.

Margot Costanzo (the training consultant whose motto is 'If you're not laughing you're not learning') said it was so clear, comprehensible and compelling that she read it in one sitting. She loved the cartoons at the beginning of every chapter that summarised the main message by Brian Kogler, a freelance cartoonist with the Law Society Journal of New South Wales and the Sun Herald. She thought lawyers would like the chapter summaries entitled 'Skipping the fine print' that set out the main points.

As you would expect of a practical book on marketing, it deals with the planning process, tips on marketing to existing clients as your best source of likely new business and how to market to new clients. Beyond that it deals with some practical issues that firms can act upon immediately, such as creating a client data base, whether to advertise in the Yellow Pages directories or the internet, and some really useful tips about how to get the best out of client seminars. Jane and Anna define marketing broadly to include issues such as the appearance of your office, ensuring your lawyers have appropriate expertise, and turning client complaint into recommendation.

Jane and Anna also deal with the tricky topic of the clash of cultures between marketers and lawyers as well as the importance of interpersonal skills and proper human resource management.

All in all, at 155 pages with an interesting introduction by Rod McGeogh AM, this book is a must as the first stop on marketing for any practitioner, whether articled clerk or senior partner. In terms of succinctness, expertise and presentation of ideas, it may also become one of those classics that are often seen as the last word.

Jane and Anna's book can be purchased by sending your cheque for \$40 (postage included) together with your name and address to Fenton Communications, Level 1, 441 Little Bourke Street, Melbourne. To members of the Law Librarians Group postage will be free. The purchase price is a 10% discount.

**Margot Costanzo**

Training Consultant, Minter Ellison - Melbourne



### ***Traffic Offences and Accidents***

By Douglas Brown

*Butterworths, 1996, Softcover \$65.00*

This is the third edition of Douglas Brown's *Traffic Offences* renamed *Traffic Offences and Accidents* by virtue of the inclusion of a chapter on civil negligence. Douglas Brown is the editor of the *Motor Vehicle Reports*. The book fulfils the promise made in the prefaces to the first and second editions (not repeated in the latest edition) to provide a guide to the law governing traffic offences. It is an annotation of commonly appearing phrases in Australian road traffic legislation. The latest edition includes a useful chapter on civil liability which contains an up to date discussion on the principles of estoppel and a good guide into the case law on various collision situations (eg turning right, head-on collisions).

The book needs to be read with regard to the State reports. For instance the section on the liability of a driver to answer police questions fails to mention the case *R v Hooper* 64 SASR 480 as to privilege despite citing an earlier New Zealand case on this topic. With that caveat in mind and Bollen also at one's side, this book will provide a useful addition to a practitioner's library if involved in this area of the law.

As a postscript the author (perhaps tiring of the to-and-fro between cases and legislative amendment) makes some interesting comments as to the future. Mr. Brown says that, "The law governing traffic offences and accidents survives in an atmosphere of stagnation and vested interests" "The criminal and civil law governing traffic offences and accidents presents a depressing spectacle of tradition, stereotyped thinking and apathy" The "legislature has lost sight of the need to make simple rules for the

ordinary motorist. The quantum of words in the legislation devoted to breath analysis is gargantuan. The torrent of words pouring forth from appellate judges on the same subject never ceases to flow like a glacier in a heatwave". The author promotes a separate traffic court available to motorists only where they are dissatisfied with an infringement notice. This court would not be presided over by "a highly paid stipendiary magistrate" but by a suitable lay person "with the capacity to ascertain the facts from witnesses". Perhaps the most radical suggestion is for the "destruction or confiscation of vehicles which are driven at excessive speed" to bring home to the motorist that, "speed limits exist to be obeyed".

### **Philip Smith**

Solicitor, Barnfield Somerville Verlato



### ***Law of Torts***

By Rosalie Balkin and Jim Davis

*2nd Edition, Butterworths, Sydney, 1996*

This is the second edition of this work, and it includes all developments up to the end of 1995. The authors have achieved the rare feat of making the second edition shorter than the first. The reason for the decrease in length is the High Court's recent overruling of *Beaudesert Shire Council and Smith*, and its declaration that the rule in *Rylands and Fletcher* forms part of Australian law.

The book's presentation of the law of torts is logically structured, and is not confined to a restatement of the existing law, but indicates paths which the law may take in the future. The authors also highlight instances where they believe the law is being inconsistently applied.

The work firstly covers the intentional invasion of interests in personal security and property.

Trespass and the intentional torts to the person such as assault and battery are considered. The intentional invasion of interests in goods and land is also discussed, as are various defences to the intentional torts against persons and property.

The book considers the negligent invasion of personal, property and financial interests. The authors examine when a duty of care will exist, and what conduct amounts to a breach of that duty. Causation, remoteness of damage and defences to negligence are then considered. Compensation for personal injuries is discussed, including statutory regimes which provide compensation without proof of fault. This part of the book then concludes with a chapter on the negligent infliction of purely economic loss, an area in which there has been many recent developments.

The invasion of personal and property interests by conduct which is not necessarily intentional or negligent is the considered. This includes the law of nuisance, losses caused by animals including statutory liability for damage, and civil actions which may be brought for a breach of statutory duty. The book then considers the protection of interests in reputation and discusses the law of defamation including its defences and remedies.

The next part of the book considers the protection of trading or business interests. This includes both the common law causes of action such as intentional and unjustifiable interference with trade or business, injurious falsehood, passing off and deceit as well as statutory protection against unfair business practices. The importance of statutory protection as opposed to common law causes of action has increased exponentially in recent years, and the authors note that it is likely that in the future the old common law causes of action in this area will further decrease in relevance and importance.

The authors then consider two other interests which the law of torts has provided with some protection. These are family relations, which receive less protection now than in the past, and the misuse of legal process, most commonly by malicious prosecution.

Finally, the book considers the remedies and parties to actions brought pursuant to the law of torts. Vicarious liability of employers for the actions of their employees is examined as is the special position of some parties such as the Crown or multiple concurrent tortfeasors. The remedies available in tortious actions as well as the extinction of those remedies by the imposition of limitation periods is also discussed.

The authors have undisputedly achieved their aim of presenting a comprehensive statement of the law of torts in Australia and New Zealand. The book is not confined to the traditional common law tortious rules, but also considers the meaning and effect of related statutory provisions. For example, the authors' discuss section 52 of the Trade Practices Act (Cth) which prohibits misleading and deceptive conduct, and note that whilst it is not a tort, it has effectively replaced the torts of passing and injurious falsehood and rendered the torts of deceit and negligent misrepresentation much less important.

Throughout the work, the authors refer to not only Australia and New Zealand cases, but also to authorities in the United Kingdom, Canada and the United States by way of illustration or to suggest paths for the future of the law torts. They stress that the law of torts is a creature of the society in which it operated, and that it is the increasing protection given to financial interests in the last thirty or so years. This has particularly happened with regard to damage suffered by way of pure economic loss, where there has been substantial growth in the categories of conduct which may give rise to a right to compensation.

In short, the book offers a clearly written and thorough analysis of the law of torts as it applies in Australia and New Zealand. It would make a useful acquisition for student and practitioner alike.

**Scott Henchcliffe**

Solicitor, Fountain and Bonig



## ***Company Charges***

By W.J. Gough

*2nd Edition, Butterworths, UK, 1996*

Eighteen years have passed since the publication of the first edition of Gough's *Company Charges*, which provided practitioners with the only treatise of its kind devoted to company charges and their registration. The second edition is no less valuable.

That the text of the new edition is nearly three times longer than its predecessor is largely due to the increase in the number of reported decisions on the subject of company charges, coupled with the extensive legislative reforms that have taken place in the United Kingdom (Companies Act 1985) and Australia (the Corporations Law). Nor does the author draw exclusively on sources of English and Australasian case law; decisions of the courts of Singapore and Hong Kong for example are also helpfully quoted.

For all its increased length, this edition of Gough is recognisably the same book as its predecessor. The author continues his common treatment of the law in England, Australia and New Zealand, and his enthusiasm for the investigation and discussion of controversial topics remains undiminished. This makes for a book which is much more than just a work of reference, although as such it has no equal; it is also a wide-ranging treatise on a legal subject which not only merits (and receives) a thorough intellectual analysis, but which can also present practitioners with crucial practical questions (which are answered).

If the book can be criticised, it is perhaps in its concentration of floating charges, which are the subject of more than 350 pages out of a total of 1100, and which clearly are of especial interest to the author. On the other hand, he is careful not to overlook other areas of topical interest including retention of title (a particularly lucid review of developments since the *Romalpa* case in 1976), financiers' block discounting and other debt discounting arrangements (with particular attention to the *Cyril Lord Carpets* case), and the

registration of foreign company charges under recently enacted English and Australian legislation. In addition the book includes new sections on disguised and defective charges, preferential and subordinated debts, and the all-pervading constructive trust.

In this second edition of his book Mr Gough is as ready as ever to express his own views, albeit unobtrusively, and he is not diffident in answering the criticisms of the priority enjoyed by the floating charge which were contained in the Cork Report. Moreover he likes to identify current issues of policy and to discuss the rival arguments in the debate - not merely as seen through legal eyes, but also from the point of view of financiers and their borrowers, and indeed of society at large.

In short, this is a comprehensive, scholarly and stimulating book, and no practitioner in the corporate field should be without it.

**Simon Nuttall**

Solicitor, Norman Waterhouse



## ***Accessing the Consumer Credit Code***

By Stephen Edwards, David Brogan and Alison Tierney

*FT Law and Tax, Paperback 1996*

This book is a methodical easy - to - use guide to the text of the Consumer Credit Code, gives an analysis of the Code's effect and provides practical hints to its readers.

The authors' diverse professional backgrounds in the areas of government credit policy, finance industry representation and credit litigation ensure that the book offers broad appeal. For those advisers, in particular lawyers acting for either credit providers or consumers, the book is an additional reference tool to the traditional loose - leaf services which often contain detailed legal analysis rather than practical advice. The practical hints set out for each of the Code in the words of the authors, give "direction to both

those required to comply with, or who can take the benefit of, the provision.”

In the Preface the authors have explained the reasoning behind the structure of the book. In short, for each section of the Code, the book:-

- sets out the text;
- contains an extract from the official Explanatory Note;
- provides the authors comments, argument and analysis of key aspects of the section;
- lists and explains applicable Regulations and cross-references to related provisions;
- provides practical tips to credit providers and consumers.

The intimate policy involvement of the authors in the often tortured evolution of the Code reveals itself in the content of the commentary which provide for more than simply a restatement of the Code text.

Worthy of particular comment are 2 matters.

Firstly an area of difficulty for many lawyers not generally practising in the banking and finance industry is in determining the application of the Code to their clients' businesses. Examples of this are school fees and terms of account.

The analysis of the meaning of “credit” and “deferred debt” are difficult concepts which are well-researched and contain cross-references to and discussions of other texts and the US Uniform Consumer Credit Code. In addition a checklist is provided in the practical hints to determine whether the Code applies to any one transaction.

Secondly, in the context of considering the circumstances in which a Court may re-open unjust transactions, in the obvious absence of any judicial interpretation of the Code to date, there is an excellent discussion of case-law interpreting similar provisions of the Contracts Review Act 1980 (NSW), the Trade Practices Act 1974 (Cth) and the Credit Acts.

Finally, for those readers who have little spare time for research, the book contains a detailed table of contents to both the text of the Code and commentary and a user friendly index.

**Peter Chester**

Partner, Minter Ellison Solicitors - Adelaide



***Courts of Final Jurisdiction: The Mason Court in Australia***

edited by Cheryl Saunders  
Sydney, Federation Press, 1996

This book is a collection of papers originally delivered at a conference, “The Mason Court and Beyond” held in Melbourne in September 1995. The conference was intended as a commemoration of the retirement of Sir Anthony Mason as Chief Justice of the High Court of Australia and of the work of the High Court during the 8 years that Sir Anthony held that office.

It is a fitting recognition of Sir Anthony's significant contribution, particularly during his period as Chief Justice of the High Court of Australia, to the legal and social development of Australia. At the same time, it is acknowledged that reference to the “Mason Court” is merely a convenient short hand description of the body of seven justices of, as Sir Gerard Brennan reminds in the first of two papers he contributes, “robust independence of mind, willing and able to give cogent expression to their own views” who together compose the Court.

There are twenty-two contributors to the book, drawn within Australia from the ranks of the judiciary, the executive, academia, the private legal profession and the media, as well as from both common law and civil law systems from around the world: Canada, New Zealand, Papua New Guinea, the United Kingdom, South Africa, the Netherlands and Germany. A particular purpose of this international contribution is said to be to show that the changes in the methodology and doctrine of the High Court and

the tensions to which it is sometimes subject are in no sense unique amongst courts of final jurisdiction.

The task was an ambitious one as befitting a commemoration of the work of the Court during this period. As of any such undertaking, it is easy to be critical at the margins. One might, for example, ask why no contributor from the United States of America appears in the collection when jurisdictions of apparently less direct relationship, the Netherlands and Germany, are represented.

It is also easy to criticise such a diverse collection of papers as lacking a coherent theme. There is certainly evidence of this concern even from the title of the book. Drawn from a conference, "The Mason Court and Beyond", the book is retitled "Courts of Final Jurisdiction" yet subtitled "The Mason Court and Australia". This concern is reinforced in the internal division of the book into two parts, the first dealing with "The Chief Justice and the High Court", the second with "The Global Context".

That having been said, this reader did not find the changes in direction in the book too distracting. The papers were highly readable and interesting. The breadth of and diversity in their contents stimulated and informed.

In a review of a book of this nature, it is of course impossible to consider each and all of the papers contributed. This reader has chosen to draw attention to two papers which he found particularly interesting.

The first is by John Doyle, Chief Justice of the Supreme Court of South Australia, considering the implications of judicial law-making. Recognising that during Sir Anthony's period as Chief Justice, the Court acknowledged its law-making role more openly than in the past, he suggests the need for the Court to define more clearly the limits between the law-making roles of the Court and Parliament, to clarify and expound the judicial techniques supporting this

role, and to refine the procedures it adopts in carrying out this function. Of particular interest, he queries whether judges need training to discharge this law reform function, perhaps suggesting the value of future appointees to the High Court having experience in policy formulation.

The collection seeks to raise issues for the future. While this appears in various aspects throughout the collection, it is expressly addressed in the last three papers. One of these is the other paper to which the writer has chosen to draw attention, by Jürgen Kühling on the Federal Constitutional Court in United Germany. Considering issues likely to face the Court, he refers to the rapid developments occurring in the new information technologies, allowing huge amounts of electronic data to be collected and analysed on a scale never before possible. To date in Australia, there has been no comprehensive privacy regulation. Faced with these new technologies, the Commonwealth Government recently produced a Discussion Paper on Privacy Protection in the Private Sector. In this writer's view, this is likely to be one of the most significant potential areas of legal development in the future. Moreover, its scale and operation is global and the resolution of the issues to which it gives rise will almost certainly require a global response. It will doubtless lend force to the growing relevance and influence of international developments on Australian law which is highlighted in this collection.

This book is a valuable addition to any law library, but is just as likely to find a place in the personal collection of many a lawyer in this country.

**Dr Philip Jamieson**

Senior Research Officer  
High Court of Australia