

BOOK REVIEWS

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The Law of Defamation in Australia and New Zealand

by **Michael Gillooly**

The Federation Press, 1998

ISBN 1 86287 300 3 RRP \$85

This is an ambitious work, since it attempts to state the law for each State and Territory of Australia, together with New Zealand. The task is made more complicated because the law is codified in some jurisdictions, such as Queensland and Tasmania, but not codified in others. In my view, the ambition is achieved.

What is commendable about this book is the attention paid to recent authority, in espousing principles such as, for example, the effect of the implied guarantee of freedom of political speech (see *Lange v ABC*), and the recently expanded scope of qualified privilege as a defence to defamation, in cases concerning political or governmental matters (see *Lange v Atkinson*). In these and other areas, the law of defamation cannot be said to be immutable, and the author has described the most recent changes to the law. For this reason alone, the book is a useful addition to any law library.

The book is very well researched. There is admirable attention to recent, unreported cases

For each proposition that has a legislative basis, the relevant proposition is noted for each jurisdiction. An exhausting task! The reference to New Zealand is not mere lip service: the New Zealand law too is very well researched, again with reference to recent unreported cases.

Extensive use is made of headings and sub-headings, which makes searching for the relevant principle an easy task. As would be expected in an area of law such as defamation, there is a chapter on proposals for law reform.

The book explains legal concepts, terms and principles in such a way that the book can be read and followed by students or non-lawyers. However at the same time, its comprehensiveness means that it is an ideal starting point for legal practitioners.

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The Legal Concept of Art

by **Paul Kearns**

Hart Publishing, 1998

ISBN 1 901362 50 7 RRP \$80

Shall I tell you what I think are the two qualities of a work of art? First, it must be the indescribable, and second, it must be inimitable.

- Pierre Auguste Renoir

Reason is the life of the law; nay, the common law itself is nothing else but reason.... The law, which is perfection of reason.

Sir Edward Coke

This is a book about art and the law and their profoundly problematic relationship. Art by nature, resists definition, is characterised by imagination and ambiguity and is in a constant state of transformation. The law, on the other hand, is concerned (some might unkindly say obsessed) with reason, organization, definition, classification and solutions to problems. Paul Kearns explores the meeting of these two vastly different cultures in *The Legal Concept of Art*.

The text is a series of essays based upon the legal treatment of art, rather than a textbook on art law. Kearns seeks to analyse the way in which law conceptualises and treats art: that is, the book is an exploration of law's view of art. This analysis is limited to non-motion visual art and creative literature. Kearns chooses to explore the ways in which law treats art by comparison of the laws of England, France and the US, although the focus remains primarily upon English law

The book is divided into chapters, each of which is largely a self contained essay: 'The Legal Regulation of Art'; 'The Judicial Approach to Art'; 'Artistic as a Category and Criterion'; 'The Concept of Art in Defamation Law'; 'The Public Funding of Art'; 'The Concept of Art in the Anglo-American Law of Trusts'; 'The Conceptualisation of Art in its International Movement'; 'Art and the Customs Law of the European Union and America'; 'A Short Miscellany'; and 'Some General Conclusions'.

Having been a citizen, at different times, of both the domain of law and the realm of art, and appreciative of the chasm between the two cultures, I approached Kearns's book with some enthusiasm. I was certainly not disappointed by the early chapters of the book.

Chapter One, 'The Legal Regulation of Art' is a comparative analysis of English, French and American public morality laws dealing with obscenity. This chapter considers the interface between art and morality, exploring the law's response to such subject matter as *The Satanic Verses* and foetal earrings. The morality/art interface is fascinating, and Kearns's tone clearly impassioned:

Because art, by its nature, calls into question any set definition, and will always violate standards set, the most obvious conclusion is that either art as a whole is protected or 'society' is protected from 'obscenity' If standards imposed were undone, art might react by becoming less seemingly anti-social, and the problem would resolve itself.
(p 39)

Similarly, Chapter Two is lively and compelling. 'The Judicial Approach to Art' examines the ways in which judges approach and describe art in public morality cases. The chapter begins with a consideration of the prosecution of D. H. Lawrence's *Lady Chatterley's Lover*, examining the extent to which artistic merit or taste embodied in a creative work may relieve that work of the punishment of public morality laws. This chapter explores the very difficult distinction between the erotic and the pornographic. Again, this is clearly where Kearns's interest lies.

He is critical of judicial attempts to suppress 'obscenity': 'Why not let it be free to educate and civilise even in its rejection, by individuals themselves, much more vigorous and critical than the abstracted susceptible "collective conscience"?'(p.58)

Perhaps one of the most obvious areas of contact between art and law is in the area of copyright. This is explored in Chapter 3, 'Artistic as a Category and a Criterion. In this chapter, Kearns examines the distinction between originality and creativity as the criterion for copyright protection. In the conclusion of that chapter he deals with the vexed distinction between art, protectable by copyright, and utilitarian objects, protected by design laws. Although not as impassioned as the first two chapters, this chapter is interesting and offers a critical analysis of law's treatment of art.

From this point, however, much of Kearns's fire seems to be lost, and from Chapter 5 onwards the text becomes increasingly descriptive. This problem is further compounded by the fact that this is not a readily accessible text. It is dense, even, at times, somewhat obscure. From an Australian perspective, the book is of limited utility given its focus upon the US, English and French law. However, as a comparative text it offers some useful insights into a variety of legal areas where art is in issue. Earlier chapters are not only thoughtful but illuminating of law's struggle to come to terms with the unruly subject matter of art.

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[This book is available through **The Law Shop** at www.lawshop.com or phone (08) 9447 5954.]

The GST Guide

by **Amrit MacIntyre, Peter McMahon, Ian Murray-Jones, and Philip McCouat**

CCH Australia Limited, 1999

ISBN 1 86468 256 6 RRP \$505/year

This loose-leaf service is suitable as a basic reference work for the practitioner who wishes to become familiar with the GST. *The GST Guide* should also assist practitioners as they move from first principles into a deeper understanding of the GST.

A tab division called 'Key Data Checklists' contains a good glossary of GST terms and expressions and a list of GST-free supplies. The checklist for Food and Drink unfortunately confirms that both cream buns and doughnuts are subject to the GST. References to key dates and a list of important contacts and sources of information, including info-lines and web sites are included.

The general commentary contains an overview of GST Legislation and addresses in greater detail some of the important issues. The 'Overview' and 'Transitional Issues' tab divisions are a valuable addition to the source legislation (Acts, Bills and Regulations), which are also included in the volume. There is also a tab division including GST Bulletins, Miscellaneous Rulings and the Draft GST Rulings.

The difficulty of keeping up with changes to the GST Legislation is demonstrated by the fact that the publication has certain sections that are out-of-date. It is possible that the rate of change will mean that the 'Latest Developments' tab division may soon outgrow the rest of the publication.

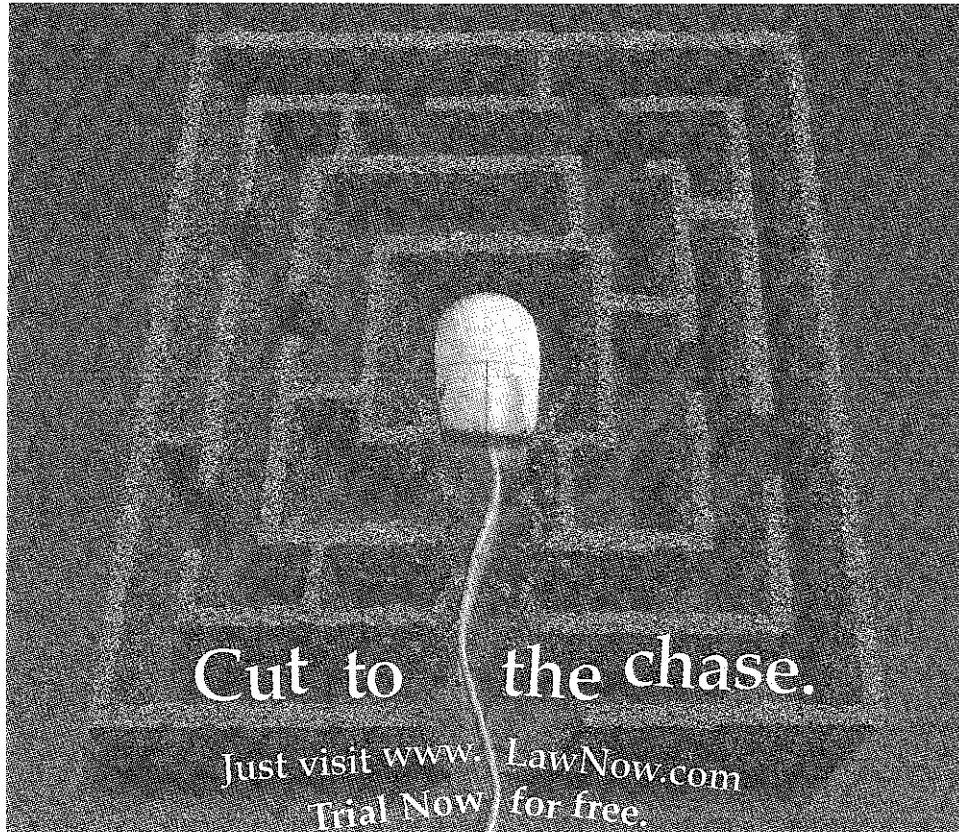
Until an authoritative GST text is published, services and publications like *The GSI Guide* are a very important source of information to Australian business and the practitioners advising them. It will be interesting to watch the

service develop beyond the 1 July 2000 start date

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