# Meagher, Gummow & Lehane's equity doctrines and remedies (4th ed)

*By RP Meagher, JD Heydon & M Leeming*
*Lexis Nexis Butterworths, 2002*

This is and has been *the* book on Australian equity since the first edition was published in 1975. Ten years have elapsed since the previous edition so that a new edition was needed by the profession and students.

Australian equity is a vital part of the commercial law in Australia, largely as a result of chance factors. The first is that the commercial heart of Australia moved from Melbourne to Sydney in the 1950s and the second is that, apart from a small commercial causes list, all matters other than equity matters had to be heard by a jury of four. The principal mode of escape was to cast the dispute as an equity suit. Prior to 1972 such a move could be countered by a defence of 'no equity'. Thus, the pleader had to find a bona fide claim in equity. In this he or she was aided by the practical wisdom of Charles McLelland, CJ in Eq and later Laurence Street, CJ in Eq. Thus began the practice of commercial disputes taking on equitable flavour. In due course, the commercial list in New South Wales became part of the Equity Division and the Victorian Supreme Court commenced a Commercial and Equity List.

This new growth of equity caught the traditionalists by surprise. In Melbourne, I believe, equity was only taught as part of legal history even in the early 1960s. New South Wales lawyers indeed worried about Victorian decisions which did not seem to be based on true equitable principles. They worried even more about English decisions made by judges who had either never attended law school or had spent their entire career at the Bar in common law matters.

The only reputable Australian textbook on equity in Sydney in 1960 was Frederick Jordan's *Chapters on equity in New South Wales*, a Government Printer edition of the Sydney Law School notes of 1945, slightly revised.

Thus, in 1975, the field was way open for an Australian textbook on equity. And it arrived with a bang. The book was probably the most brilliant 'first novel' ever to hit the legal bookshops (now, unfortunately, virtually a thing of the past!).

Understandably, the book spent a considerable amount of time attacking the heresies of the time, particularly those that were seemingly becoming entrenched in England. It dealt with the true principles in these area in considerable detail. However, it did not deal at all with trusts, as these were already well covered in the companion work, *Jacobs' law of trusts in Australia*, and covered some other subjects in less-than full detail. The references to authority and to statute were perfectly done, thanks to the skill of the research assistants.

However, by the third edition, the work was getting a little tired. Interstate readers complained that references to the law in their states were not updated. The focus on the problems of the 1960s was also getting less useful.

The new edition revivifies the work. Its tiredness has gone. The basic structure is still there. Indeed, if one sees a reference to an earlier edition of the book in another text, and checks to see the corresponding section in the 4th edition one will almost invariably see the identical text from the earlier edition with additions and further case references. The additions, however, bring the work right up to date and often provide a more balanced view of some areas of the law.

The work has now such a reputation that it is an authority of itself which can be quoted on its own without reference to the underlying authority.

I will not waste space by commenting on minor errors such as the typo 1897 for 1987 on p xi. There are, however, two areas of weakness which could be simply remedied in later editions.

As to the first, I am reminded of what Maddock said in his preface when writing his new book on equity in 1815. Ballow had written the first real equity textbook in 1737. Fonblanque had adapted Ballow's manuscript and had added authorities and updating. However, Fonblanque did not feel it appropriate to alter Ballow's sacred text. Maddock said that had Fonblanque's delicacy permitted him to recast the whole treatise a better work would have resulted.

As I said earlier, the present work is focused on the heresies of the 1960s. Many of these heresies have now been abandoned. The focus of equity in the twenty-first century has changed. The enemies today are not the English judges but the restitutionalists, the disciples of Professor Birks and the trendy university lecturers who would like to discard the whole of the learning of traditional equity and substitute some pale substitute based on unjust enrichment. There is very little in the work to counter these people's theories or to defend the basic concept of unconscionability.

It may be that the next edition should not be too tender to rewrite some of the text that has remained the same since 1975.

The second defect is the continued attack on particular judges whose decisions are thought by the authors to show heretical leanings. Thanks to this work, Lord Cooke is now thought of here as the rich man's George Palmer! As Mason P said recently, one does not expect works of great scholarship to descend to the level of such attacks.

These criticisms are relatively minor. *Meagher, Gummow and Lehane's equity doctrines and remedies* remains the standard work in the field and is a 'must have' for any serious equity practitioner.

***Reviewed by the Hon Justice Peter Young, Chief Judge in Equity***