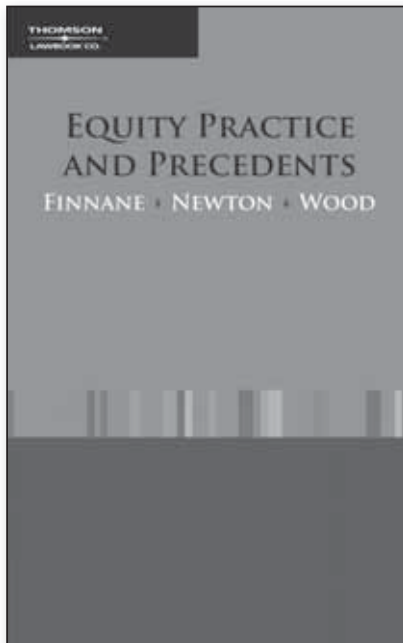


Equity Practice and Precedents

Christopher Wood, Edmund Finnane, Nicholas Newton | Lawbook Co., 2008



The judges of the Equity Division of the Supreme Court conduct the division's business as efficiently as they do largely because of the work of the junior bar. Whilst silk may conduct the longer cases, the junior Bar produces and dispatches well over 80 per cent of equity business in this state.

Whilst the senior Bar may at first find it startling that so much should happen without its intervention, the reality is that with close judicial supervision, equity practice has ever been thus. It was certainly the case when I came to the Bar 30 years ago. The then chief judge in equity, the Hon Justice Michael Helsham, used to administer an impromptu but searching oral examination to all new equity juniors at their first appearance in his list. It was colloquially known as the 'Helsham test of competence'. It was normally only administered once. Failure meant banishment into exile in the darkness beyond his list. There was little point in even trying to return. Success led to other lesser tests which when all passed ultimately meant that a barrister's urgent equity applications could be conducted rapidly using a high degree of judicial trust in the skill and candour of the practitioner concerned.

Michael Manifold Helsham was a Second World War RAAF hero. He had been awarded the Distinguished Flying Cross for nursing a stricken aircraft back to Darwin after it had been disabled by Japanese fire in battle, thereby saving the lives of his bomber crew. Barristers undergoing the Helsham test of competence felt rather like new flying officers being put through their paces on arrival at Justice Helsham's Equity Squadron.

Prior to this year and during the last hundred years, four major books collecting precedents in equity have been published in New South Wales. Unsurprisingly given the traditions of equity practice, not one of their authors was a silk. Mason and Weston were equity juniors who authored the first well remembered text *Precedents in Equity* in 1915 just 35 years after the passing of the *Equity Act 1880*. In 1934 Eric Miller and John Horsell, published *Equity Forms and Precedents*. Miller was a prominent equity junior of the day who joined in the publication with Horsell, one of the staff of the master in equity. This text survived a virile 47 years before it was succeeded in 1981 by the work of two Supreme Court registrars Nevill and Ashe, who wrote *Equity Proceedings with Precedents*. This was followed later in the 1980s by a loose-leaf service produced by a later equity registrar, John Leslie. Nevill and Ashe is now long out of print.

This year three busy equity juniors from Thirteenth Floor Wentworth/Selborne Chambers, Edmund Finnane, Nicholas Newton and Christopher Wood, have identified the need for a new text in this field and have embellished this fine publishing tradition with a remarkably useful book, *Equity Practice and Precedents* Law Book Co, 2008. This work has three important strengths. First it fully captures for the junior Bar all the breadth and variety of modern equity practice. Second it does not just provide precedents of applications and pleadings but introduces the precedents with a dense but practical discussion of the essential relevant law. Third it contains tightly crafted working precedents that are easy to use.

The variety of the law and the jurisdictions covered in *Equity Practice and Precedents* is perhaps its most striking feature. Earlier

precedents texts were written for practice in the Supreme Court of New South Wales. *Equity Practice and Precedents* considers the expansion of equitable jurisdiction within the Federal Court and Federal Magistrates Court. In the past equity precedents books have tended to look at Corporations Act jurisdiction as a separate field of discourse not to be addressed in such a work. Finnane, Newton and Wood have usefully taken a different approach and support the busy practitioner with chapters on Setting Aside a Statutory Demand, Provisional Liquidation, Administration and Winding up.

A complete collection of equity precedents must now include developing equity and associated statutory jurisprudence. *Equity Practice and Precedents* has chapters on Mareva orders, the Contracts Review Act and the statutory remedies for unconscionable conduct. Precedents are even provided for the exercise of jurisdiction by court appointed referees. In the traditional content of equity precedents the work still excels. Jim Thompson, a floor colleague of the authors, has contributed a concise chapter on the essentials for gaining injunctive relief. The chapter contains a thoughtful checklist of what must be covered by the perpetually time poor equity barrister heading up to the duty list.

Lawbook Co has published this text in soft cover perhaps not fully appreciating the frenetic way of life of the busy equity junior. An indispensable equity precedent text such as this will be regularly tossed into the blue bag and dragged home to draft pleadings and applications. It will appear at dinner, over coffee, at bedtime, in the country, on the train, and whilst waiting for the youngest to exit day-care. The book is so comprehensive it deserves to be treated as a miniature set of portable equity chambers. Given the wear and tear expected through daily use I recommend the purchase of any hard cover version that is available. With it I expect that the equity barrister of 2008 will be well equipped to survive any modern version of the Helsham test of competence.

Reviewed by Michael Slattery QC