

BOOK REVIEWS

Western Legal Traditions: A Comparison of Civil Law & Common Law, (Federation Press, 2015)

law and labour law. This is the most interesting part of the book, especially the chapter on court procedure. The chapter demonstrates most starkly the profound differences in the common law and civil law systems, most notably where a judge (in curial proceedings) remains impartial in the common law system, as opposed to in the civil law system where a judge may be involved in the investigation of matters leading up to a hearing. Not surprisingly in a system where judge-made law is less important, the role of a judge is viewed differently too. According to Vranken the key actor in the civil law tradition is the professor (rather than the judge) whose legal scholarship elaborates on the meaning of civil law doctrine (and upon which the codes were originally based).

Accordingly legal scholarship has a far more important role in judicial decision-making in the civil law system.

Part C (chapters 10 and 11) deals with European Union law. Although interesting, this is perhaps the least relevant part of the book for an Australian audience. While the European Union represents a significant and remarkable development in the law and politics of supranational integration, it is also, arguably, *sui generis*, given the relative commonality of political philosophy and unity of political purpose that led to the creation of the EU. The same cannot be said for the Asia-Pacific region of which Australia is a part. That the operation and institutional make-up of the EU

had its genesis in the civil law roots of the founding countries makes it an even less fruitful model for any supranational institutional developments in our region. This part of the book clearly reflects the author's background and academic training, however, more work needs to be done to explain its relationship to the civil and common law traditions and its relevance to Anglo-Australian law.

Reviewed by Radhika Withana

Endnotes

1. For a particularly good example of the complexities involved in attracting federal jurisdiction, see: *Mok v Director of Public Prosecutions* (NSW) [2015] NSWCA 98.

Australian Consumer Law

By Adrian Coorey | LexisNexis Butterworths | 2015



The new text by Adrian Coorey, *Australian Consumer Law*, is a significant contribution to an area of law that is of increasing significance in Australia. The Australian Consumer Law (ACL) which is contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (the Act) establishes a national law concerning consumer protection and fair trading and contains some of the most frequently litigated provisions in all of Australia's courts.

Mr Coorey has over a decade of experience both as a practitioner and as an academic in the fields of competition and consumer law and his experience is reflected in a text that will be useful to practitioners, academics and students alike.

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With its sole focus on the ACL, this book is more comprehensive than other texts on the market that cover competition as well as consumer law or simply annotate the ACL.

The depth of analysis contained in this text will appeal to both practitioners unfamiliar with the ACL as well as to experienced consumer protection

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litigators who require ready access to more detailed information and analysis beyond the existing texts.

The text is a complete analysis of the ACL. Each chapter addresses a discrete area of law, for example: Misleading or Deceptive Conduct, Unconscionable Conduct, Unfair Contract Terms, Remedies; and contains an elemental analysis of the relevant statutory provisions from first principles to the most recent published decisions.

The writing is precise and propositional and allows the reader to easily identify the important principles and the cases relating to them.

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The text clearly explains the continuing evolution of the concept of statutory unconscionable conduct from common law notions of moral obloquy to more recent interpretations involving 'acceptable standards of commercial dealings', which can include honesty and fairness in dealing with consumers: see, for example, *ACCC v Lux Distributors*

Pty Ltd [2013] FCAFC 90 at [63]–[68]. The text also traverses the emerging case law regarding systemic unconscionable conduct pursuant to s 21(4) of the ACL.

Australian Consumer Law contains detailed coverage of the consumer guarantee regime set out in Part 3–2 of the ACL, which was introduced from 1 January 2011 to replace the implied statutory warranties and conditions which were contained in state and territory fair trading legislation and the Act (then the *Trade Practices Act 1974* (Cth)). Under the present regime, consumers can rely on statutory remedies for breach of the consumer guarantee provisions, rather than needing to enforce their rights as a breach of contract, as was previously the case. This text provides a simplified yet detailed explanation of this regime, explaining, for example, which consumer guarantees apply to goods and services, who is responsible for providing these guarantees and when a remedy, including a refund, repair or replacement, may be available.

The text provides an excellent overview of the ACCC's enforcement powers and procedures under the ACL and also under the Act, insofar as the powers in the Act interact with the operation

of the ACL. For example, the chapter entitled 'Enforcement Powers' addresses in some detail the scope of the ACCC's investigative powers to compel parties to give oral evidence, furnish information and produce documents under s 155 of the Act and the means by which litigants can challenge notices issued under those powers. These topics, in particular, should appeal to practitioners engaged in litigation on behalf of, or against, the ACCC.

The text also has significant relevance beyond the regulatory context, with four chapters dedicated to a detailed analysis of the law on misleading and deceptive conduct. This will be useful to practitioners involved in private litigation. It contains in-depth coverage of the remedies available under the ACL including damages, pecuniary penalties, injunctions, declarations and disqualification orders.

In the short time since the first edition of this book has been published, I have made use of it in court and in preparing written submissions.

This text is not simply a companion to existing texts; its content goes beyond the scope of texts currently available and would make a useful addition to the library of any practitioner involved in commercial or regulatory advocacy, as well as academics and students alike.

Reviewed by Daniel Tynan