

- L. Tribe, *American Constitutional Law* (1978) iv.
- 23 G. Sawyer, *Federation Under Strain: Australia 1972-1975* (1977).
- 24 G. Winterton, note 13 *supra* cited in *Australian Federal Constitutional Law*, pp.vlx, 62, 111-114, 116, 119, 121, 137-138. Professor Howard described Dr Winterton's book as "meticulously thorough and extensive research." C. Howard, "Eccentric System of Governing" *Age* 21 May 1983, 13 (Saturday Extra).
- 25 *E.g. Australian Federal Constitutional Law*, pp.xliii-li, 137 n.20. Compare the discussion of similar topics in P. Hogg, *Constitutional Law of Canada* (2nd ed. 1985) 189-213. It is instructive to compare all aspects of the treatises written by Professors Howard, Hogg and Tribe (note 22 *supra*).
- 26 There are federalism dimensions of executive power — G. Winterton note 13 *supra*, 29-31, 34, 38-47 — and judicial power — A. Rogers, "State/Federal Court Relations" (1981) 55 *ALJ* 630; M. Byers, "Federal and State Judicatures" (1984) 58 *ALJ* 591; P. Bator, P. Mishkin, D. Shapiro and H. Wechsler, *Hart and Wechsler's: The Federal Courts and the Federal System* (2nd ed. 1973) xix ("The jurisdiction of courts in a federal system is an aspect of the distribution of power between the states and federal government.").
- 27 *Australian Federal Constitutional Law*, pp.143-229. For a comparative dimension see *e.g. Garcia v. San Antonio Metropolitan Transit Authority* 105 S Ct 1005 (1985).
- 28 Legislative and executive checks and balances are also embodied in the Constitution. See *e.g.* ss 5, 28, 56-60, 65, 66; G. Winterton, note 13 *supra*, 93-110. See generally the plethora of references in J. Thomson, "Executive Power, Scope and Limitations: Some Notes From A Comparative Perspective" (1983) 62 *Tex L Rev* 559, 562-564.
- 29 *Australian Federal Constitutional Law*, p.238 (footnote omitted). See also *id.*, p.28.
- 30 See *e.g.* ss 73, 76, 77, 72, 61, 81, 83 of the Constitution.
- 31 See *e.g.* C. Swisher, *The Taney Period 1836-64* (vol. 5 of the Oliver Wendell Holmes Devise History of the Supreme Court of the United States) (1974) 841-854; C. Fairman, *Reconstruction and Reunion: 1864-88* (vol. 6 of the Oliver Wendell Holmes Devise History of the Supreme Court of the United States) (1971) 459-487; G. Gunther, "Congressional Power to Curtail Federal Court Jurisdiction: An Opinionated Guide to the Ongoing Debate" (1984) 36 *Stan L Rev* 895; W. Leuchtenburg, "The Origins of Franklin D. Roosevelt's 'Court-Packing' Plan" [1966] *Sup Ct Rev* 347; M. Parrish, "The Great Depression, The New Deal, and the American Legal Order" (1984) 59 *Wash L Rev* 723, 728-735.
- 32 For examples of such conflicts prior to 1901 see references in J. Thomson, "Removal of High Court and Federal Judges: Some Observations concerning Section 72(ii) of the Australian Constitution" (June 1984) *ACL* 36033, 36042 n.13. For a post-1900 proposal to "pack" the High Court see B. Galligan, *The Politics of Judicial Review* (forthcoming-tentative title), ch.4: "High Court Reconstruction Overruled".
- 33 *E.g. Australian Federal Constitutional Law*, pp.328-329. Despite the changes in judicial approaches to section 92 of the Constitution, which Professor Howard discusses, since the 2nd edition (1972), the formulation of propositions, including proposition 6, on page 286 of the 2nd edition and pages 328-329 in the 3rd edition (1985) remains the same.

*Product Liability in Australia*, by S.W. CAVANAGH, LL.B. (Syd.), LL.M. (Lond.), Barrister-at-Law, Lecturer-in-Law, University of New South Wales and C.S. PHEGAN, B.A., LL.M. (Syd.), Barrister-at-Law, Associate Professor in Law, University of Sydney (Butterworths Pty Ltd, 1983), pp. i-xxxvi, 1-267, with Table of Cases, Table of Statutes and Index. Recommended retail price \$39.50 (hard cover) (ISBN 0 409 49101 2).

"Product liability" is not so much a discipline, as an aggregation of several disciplines; it involves the law of torts, contracts, conflict of laws, limitation of actions, and a variety of statutes, including the Trade

Practices Act 1974 (Cth) and a number of consumer protection laws, and all this in all of the different Australian jurisdictions. Those who do not work in the area – most lawyers – are apt to be confounded and disheartened by the sheer volume and by the variety of questions involved, since this number and variety make it all too easy to overlook or not fully appreciate some point involved in a problem.

This book, at once scholarly and practical, fills a gap which has long existed; in succinct and precise terms it draws together these divergent strands and points to the possible ways in which plaintiffs' claims might be presented and how any defence might be put.

The protection of consumers is one of the "growth areas" of the law; it is both an area of the law in which parliaments are active and judges are, with increasing speed, shaking off the shackles of ideas, whether legal or economic or social, which in times gone by ruled the lives of our predecessors and even of ourselves. This rate of change is probably still increasing.

Thus, for example, even in the period since publication of this book, the Consumer Credit Acts of New South Wales and Victoria have been effectively replaced by the Credit Acts of 1984; the perception of how the limitation rules operate has been radically changed by the decision of the House of Lords in *Pirelli General Cable Works Limited v. Oscar Faber & Partners*<sup>1</sup> and by the decision of the High Court in *Do Carmo v. Ford Excavations Pty Ltd*<sup>2</sup> and there have been a torrent of cases dealing with negligence.

That is, many of the topics covered by the book are particularly topical and are of continuing interest.

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## FOOTNOTES

1 [1983] 2 AC 1.

2 (1984) 58 ALJR 287.