
Book reviews

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THE INTERPRETATION OF CONTRACTS IN AUSTRALIA

The Interpretation of Contracts in Australia, by Sir Kim Lewison and David Hughes (with foreword by Hon J J Spigelman), Thomson Reuters, Sydney, 2012, 452 pages + 65 pages of tables: ISBN 9780455228686. Hardcover \$295.00.

Lewison's *Interpretation of Contracts*, first published in 1989 and now in its fourth edition in England has a well deserved reputation as the leading text on the subject. The first and second English editions were reviewed in this Journal respectively by Ross Sundberg in "Book Reviews" (1990) 64 ALJ 442 and David Maclean in "New Books" (1999) 73 ALJ 219.

The rules as to interpretation of contracts in Australia differ considerably from the English rules. Moreover, the High Court has made it clear that local courts are not at liberty to depart from the principles laid down by it in *Codelfa v State Rail Authority (NSW)* (1982) 149 CLR 337.

With the active co-operation of Lord Justice Lewison, David Hughes (formerly the researcher for the Chief Justice of New South Wales, now at the New South Wales Bar), the best of the English book which is apposite to Australia has been retained, but has been intertwined with the decisions of the High Court and Australian superior courts to produce a work that can be used with safety by Australian lawyers.

The Australian book only takes up Chs 1 to 9 of the English book. This takes up 33% more pages than the corresponding chapters of the English book and probably meant that the balance had to be put aside for reasons of space. It was a pity that Ch 10 of the English work on the preliminary parts of a deed was not included as there is little by way of modern texts on this subject matter. Ross Sundberg noted the value of the chapter on deeds in his review of the first edition.

I was also a little sad that that great quote said to be derived from Fred Householder, *Linguistic Speculations*, was omitted from the Australian edition: "Nothing can be so clearly expressed that it cannot be utterly misinterpreted."

When one compares the first two chapters of the English and the Australian books, one can see the considerable differences in approach of the courts in the two nations. The Australian edition has to cast its net far more widely that exegesis of the speeches of Lord Hoffmann.

Although the Australian work follows the basic structure of the English book and there are many direct transcriptions from it, sometimes, a section is almost completely rewritten.

Thus, the Australian section 4.09 is headed: "The Court will not usually be greatly assisted by the citation of authority on the construction of a one-off contract". Then follows a page and a half of quotes from Australian judges followed by a quote from Jessel MR in *Aspden v Seddon* (1874) LR 120 Ch App 394 at 396n.

The English 4.09 is headed: "The court discourages the citation of authority on the construction of a one-off contract, and will not usually be greatly assisted by it". Then follows a page and a half of English authority, followed by the same material focused on Jessel MR's reasons in *Aspden v Seddon*.

Australian lawyers are grateful to Mr Hughes for his efforts in turning an already useful work into the Australian standard.

Acting Justice Peter W Young