

■ LAWYER'S BOOKSHELF

Equitable Obligations: Duties Defences and Remedies

By Malcolm Cope
Lawbook Co 2007

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Equitable Obligations is one of a flurry of recent books dealing with the practical aspects of equity. The author confines himself to analysing the particular duties of fiduciaries, including trustees. Broader equitable obligations which arise from non-fiduciary relationships (such as those giving rise to the duties to avoid acting unconscionably or exercising undue influence) fall outside the scope of the book, as do the common law duties which attach to fiduciaries (for example, the contractual and tortious duties owed by professional trustees).

Chapter 1 provides a short analysis of the equitable duties owed by trustees. The broader general fiduciary duties of loyalty and fidelity are explored in Chapter 2. This discussion allows the author to explore the distinction between the natures of fiduciary and tortious duties, and the need for claimants to carefully delineate between alleging a failure to do some positive act (which might give rise to tortious liability) and an allegation that one of the proscriptive fiduciary duties has been breached.

Chapter 3 deals with the identification of fiduciaries, and describes the recognized classes of fiduciaries. Chapters 4 and 5 consider breaches of the duties owed by trustees and fiduciaries, respectively. Chapter 6 deals with third parties' liability for such breaches. Chapter 7 deals with defences. Chapter 8 describes the range of personal liabilities created by a breach of the duties.

Chapters 9 and 10 set out the requirements for proprietary relief for breaches of the duties, building on the author's earlier work, *Proprietary Claims and Remedies*. Perhaps for that reason, the two chapters are a more comprehensive analysis of equitable proprietary remedies than is strictly necessary for a book of this sort. Far from being cause for criticism, the detailed analysis provided by those chapters adds to

the book's practical utility. Chapter 10 includes a discussion of the processes of tracing and following – doctrines often invoked in claims against defaulting fiduciaries or their cronies, particularly those who have received the proceeds of a defalcation. Unsurprisingly, many words are also devoted to the essential topic of competing priorities.

Equitable Obligations is an excellent work. It provides a lucid outline of the principles governing the obligations of fiduciaries and the consequences of a breach of those obligations. This outline is supported by ample reference to recent authority. The book is a valuable reference for those practising in any of the many areas of law in which fiduciaries are involved.

STEWART MAIDEN

Climate Law in Australia

Editors: Tim Bonyhady and Peter Christoff
The Federation Press, 2007
Softcover 315 pages

The editors of *Climate Law in Australia* argue a number of factors including a lack of political will has resulted in Australia's poor greenhouse performance. It was not until 2006 that climate change became a major political issue. A number of factors, including the most severe drought since European settlement, and the appreciation of the economic consequences of global warming, have generated widespread media coverage. Whilst climate legislation in Australia remains modest it has been left to courts and tribunals to test weakness in government policy. This comprehensive text examines, through the work of various authors, key federal and State legislation and the main cases brought before Australian courts.

Authors include leading academics such as Professors Robyn Eckersley, David Farrier, Rob Fowler and Jan McDonald, as well as leading practitioners Charles Berger, Kristy Ruddock, Chris McGrath, Allison Warburton and Martijn Wilder.

Whilst addressing international aspects of climate law the main focus of the text

is Australian legislation and case law. Topics include the Kyoto Protocol and its alternatives, the greenhouse trigger, carbon emissions and trading, and geological sequestration law in Australia. There is also a chapter dedicated to nuclear law.

A number of important climate cases have been determined since 2004, including the Hazelwood Power Station case here in Victoria, the Bowen Basin and Xstrata Coal Mines cases in Queensland, and the Anvil Hill open cut mine case in New South Wales. Each of these cases has a dedicated chapter, revealing the torturous path that conservation organizations have had to take in protecting the environment.

An interesting chapter deals with what author James Prest describes as the Bald Hill Wind Farm debacle, which many will recall shot the orange-bellied parrot to fame yet again. In what could be best described as an episode from *Yes, Minister*, Dr Prest analyses how Bald Hill not only highlighted the state of climate law in Australia, under the previous Howard government, but also showed generally the lack of legislative response to climate change to date.

Whilst the subject matter is at times dense, *Climate Law in Australia* is a thoroughly readable text which provides not only a history of the legislation and cases to date but which also argues that Australia still has a very long way to go in response to climate change.

Principles of Australian Succession Law

By Ken Mackie
LexisNexis Butterworths, Australia, 2007
Pages i-iv, 1-316; Index 317-325

Principles of Australian Succession Law is the successor to an earlier text, *Outline of Succession* by Burton & Mackie (first ed. 1995, second ed. 2000).

In his Preface to *Principles of Australian Succession Law*, the author states that 'the aim of the text is to provide a concise, but reasonably comprehensive, coverage of the current law of succession in Australia...It