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On Equity

Authors Justice PW Young AO, Clyde Croft QC, Megan Smith, Publisher: Thomson Reuters Law Book Company
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On Equity is a thorough examination of the principles and practise of equity with examples. It is clear and readable. The work's 18 chapters explore the history of equity, equitable doctrines and equitable remedies in three major parts:

(a) history and overview covering an introduction, fundamental concepts, maxims and practical applications of equity;

(b) equitable doctrines, including fraud, trusts, fiduciary relationships, property, mortgages, equitable assignments, contracts, miscellaneous equities and the principles relating to probate and administration of estates;

(c) equitable remedies covering remedies, equities, procedure, usual remedies, defences, restitution and new and future developments.

What is regarded as "equity" varies with the legal education and cultural background of the writer. Many Australian law schools do not teach "equity" as a separate subject, but rather deal with equitable principles as part of other subjects, such as real property or remedies. There is no satisfactory exhaustive definition of "equity".

The Anglo-Australian system of equity is unique. It has evolved over time to deal with problems as they have arisen. To some degree, principles of equity appear in other legal systems. Some have developed from Roman law principles, some from doctrines in natural law and others for purely pragmatic reasons. The scope and content of the principles of equity continue to grow and develop. This evolution appears more vigorous in Australia than in England.

Accordingly, the work deals with the basic principles of trusts, equitable property and equitable remedies, providing cross-references to the major works that specialise in these areas. This enables "On Equity" to deal with the remainder of issues comprehensively. Areas of particular difficulty are identified and considered.

Examples from the first half of the 19th century from the United States are used. The authors consider the way jurists of the stature of Chancellor Kent dealt with the problem of applying equity, with its genesis in the late Middle Ages England to the New World particularly helpful. Australian lawyers, to some extent have had to do the same in the 19th and 20th centuries.

Less assistance is obtained from the United States and Canada since about 1960, particularly in areas of constructive trust and fiduciary relations. The United States and Canadian decisions may, however, be "sleepers" in the sense that Counsel may at some time be able to convince courts in the rest of the common law world that they provide more appropriate solutions to modern problems than more traditional approaches. New South Wales is mentioned often in the work because the *Judicature Act* reforms were not introduced in New South Wales until the *Supreme*

Court Act 1970 (NSW). Jacobs J, speaking extra-curially at an ANU Law Society dinner on 2 May 1968,[1] said that the Act came into effect on 1 July 1972 and accordingly constituted "a great leap forward to 1875!" The fact that, New South Wales was the place in which most Australian commercial disputes were decided during this period, and in the equity side of the court, meant that NSW made some lasting contributions to equity jurisprudence.

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[1] Unpublished speech 2 May 1968 copy held in the Judges Papers, Supreme Court Library, Sydney.