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Book Review

Amending Final Judgments & Orders

John Tarrant
The Federation Press
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Reviewed by Greg Geason

The Author conducts a detailed analysis of the law relating to the correction of errors in judgments and orders, and the remedying of more substantive errors arising from matters such as the inadvertent failure to raise an issue, as occurred in, for example, *Shaddock & Associates V Parramatta City Council* (no.2)(1982) 151 CLR 590).

The 'slip' rule has attracted considerable judicial comment, its existence recognising the considerable inconvenience, not to say cost, which an inability to effect corrections would impose. But there is little if any academic analysis of the subject matter. Justice Campbell of the NSW Court of Appeal describes this text as filling a "gap in the literature". The coverage is thorough and detailed. The Author examines the law in Australia and England, citing a large body of case law, including Tasmanian authority [for example *Bennet v Tasmania* (2005)15 Tas R41, a judgment of Evans J].

The slip rule functions to open up orders and judgments to variation, but on the limited basis that such variation must be directed to doing what the court intended to do. The correction of clerical errors is an obvious example, but as the author records, it goes beyond this sort of example to permit the inclusion of matters omitted by mistake. Thus it was held in *Shaddock*, supra, that the failure of counsel to direct the court to the need for a direction about the payment of interest, arising through accidental omission, could be cured through the application of the rule. But the point remains very clearly, that the rule "corrects oversight and not afterthought", as Justice Campbell puts it in his foreword.

The author describes the emergence of the rule as a means to avoid the costs of a rehearing, something the Chancery Courts permitted. Indeed the judges of the Courts of Chancery "could rehear not only their own decrees, but the decrees of their predecessors" (in *Re St Nazire* (1879) 12 Ch D 88). By 1828 a specific rule permitting amendment was enacted, though on limited terms, to provide a means to make amendments without the need for a rehearing.

The book explores the existence of inherent powers to correct, which are only available to some courts, and the express powers almost universally contained in court or tribunal rules, which prescribe a power to amend and articulate the nature and extent of that power.

Particularly useful is the chapter dedicated to identifying orders which are capable of being corrected. The analysis of the principles is thorough and undertaken by reference to the cases, drawing together many examples to identify the considerations which are applied to application of the rule.

Chapter structure is good. The author provides the reader with a preamble which articulates a principle which is discussed in the following sections. The analysis which follows identifies cases which support the asserted principle, and those which appear contrary to it, or exhibit a partial deviation from it. As such the book provides a source of argument for other points of view which it may be necessary to put.

The most surprising feature for some will be the fact that this subject sustains a whole book. Once read, that surprise will give way to admiration for the thoroughness of the author's analysis of this topic.

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