
Book reviews

Anthony Lo Surdo SC 12 WENTWORTH SELBORNE CHAMBERS

Contractual Indemnities, Wayne Courtney, 2015, Hart Publishing, ISBN 9781509905010

Promises of indemnity are commonplace in contracts of insurance and in other types of commercial contracts. This work by Wayne Courtney, a Senior Lecturer in the Faculty of Law at the University of Sydney, provides a detailed consideration of the law of indemnities. A text on this area of commercial enterprise is well overdue.

The book is usefully divided into three parts: introduction, general principles and particular indemnities.

An examination of the general principles commences with a consideration of the nature of the promise of indemnity, that is, what the promise requires the indemnifier to do to protect the indemnified party and the manner in which performance is required to be effected to discharge that obligation. It then proceeds to methodically consider the manner in which the scope of indemnity provisions is construed both in England and in Australia including any general limitations and exclusions which may apply expressly or by necessary implication. No consideration of “general principles” would be complete without a chapter which reviews issues which can arise upon enforcement including the interesting question of the enforcement of indemnities for the benefit of third parties.

The final part of the work contains an examination of the principles and issues of construction that relate to four particular forms of indemnity:

- indemnities against claims by or liabilities to third parties;
- indemnities against claims by or liabilities to the indemnifier;
- indemnities against breach or non-performance by third parties; and
- indemnities against breach of contract by the indemnifier.

Each of the chapters helpfully considers the nature of the particular indemnity being examined, illustrations or examples of such indemnities and issues that arise in establishing and proving loss.

This work, which is fundamentally a text on English law, draws upon a considerable amount of material from other common law jurisdictions, including Australia,

Canada, New Zealand and Singapore. It will certainly appeal to students and practitioners in Australia.

Uniform Evidence Law, John Anderson, 3rd edn, 2016, The Federation Press, ISBN 9781760020521

There are many fine books on the Uniform Evidence Law. Some are textbooks in the traditional sense whose aim is to inform and educate students while others are in the nature of annotations aimed at busy practitioners.

Since the publication of the last edition of this book, Victoria, the Northern Territory and the Australian Capital Territory have enacted legislation to give effect to the uniform evidence law scheme. Further, the uniform evidence laws have been responsible for spawning a plethora of case law. Hence, this third edition is both warranted and timely.

This work is designed primarily as a teaching tool used by its author, an Associate Professor at the University of Newcastle Law School, to feed the fertile minds of undergraduate students. However, that is not to say that the work is of no or only limited appeal to practitioners. In fact, the contrary is the case.

Like all good evidence texts, the book commences with a consideration of the basal inclusionary rule that evidence is only admissible if relevant to proof of a fact in issue. Having addressed this issue, there is then a consideration of the exclusionary rules of evidence (including, most importantly, the rule against hearsay, the exclusion of opinion evidence and the exclusion of evidence of tendency or coincidence). The work also contains a useful analysis of the exercise of judicial discretion to admit evidence for a limited purpose.

In examining each of these issues, the author helpfully extracts in full the relevant statutory provisions, supplies commentary on the manner in which the provision is said to operate, refers to relevant authority and, where necessary, provides an extract from the judgment. This structure is of obvious benefit to a student. The advantage to a busy practitioner is that it provides a ready reckoner of principles and a reference to the latest authorities thus potentially reducing the time that would otherwise be taken with researching primary sources.