This month’s books cover anti-terrorism laws, deeds, native title and misleading or deceptive conduct.

**Seddon on Deeds**

Nicholas Seddon, a senior academic at the ANU, has written what will be the definitive concise Australian and possibly Anglo-Australian book on deeds. At the outset, the author warns that the modern practitioner’s use of deeds is difficult to justify as there are many ways that a deed can go wrong, and that a simple contract can achieve the same purpose as a deed. He opens the first chapter by disparaging deeds, and asserts that no one would be interested in deeds based on the fact that the last textbook on deeds, *Norton on Deeds*, was published in the UK in 1928. This put-down overlooks the extensive legal literature on aspects of deeds in law reviews in that time.

Chapter 2 provides a useful examination of the formal requirements for the execution of a deed, including “signed, sealed and delivered”, paper, seal, signature, witnessing and attestation, and execution of deeds by corporations and other entities. There are four excellent pages on electronic deeds (lacking input from possible lessons from the US and Canada) and 12 pages on the dangers of a defectively executed deed.

The third chapter deals with delivery, and how it has changed over the last 1300 years from a symbolic handing over to today’s intention to be bound, and non-delivery. There are 12 pages on escrow. Later chapters deal with alteration and variation with a reminder that a deed can be voided by a material alteration after execution; interpretation including recitals, estoppel and rectification; enforcement and remedies, including deed polls, multiple obligees and multiple obligors, limitation periods, and the discharge of a deed. The book starts with a foreword by Justice Michael Kirby. Inside the cover on the endpapers is a deed of indenture signed by the author’s ancestor in 1793. The book includes a table of cases, a table of statutes and an index. There is an Anglo-Australian focus, with many UK citations but no mention of lessons on deeds from comparable common law jurisdictions. There is a regular citation of textbooks and a good showing of Anglo-Australian academic literature.

This book will deservedly find its way into judgments and on to many shelves as the gold standard of concise books on deeds.

**Dr Paul Latimer**, Department of Business Law and Taxation, Monash University

**Inside Australia’s Anti-Terrorism Laws and Trials**

In late 2014, internationally recognised human rights expert Professor Philip Alston gave a talk in Melbourne on Australia’s anti-terrorism laws entitled “Could Australia really become a police state?” This book, also by experts in the fields of human rights and anti-terrorism law, sounds a similar warning. It provides a detailed but concise summary and analysis of the vast body of anti-terrorism offences enacted in Australia since September 2001. Importantly it also describes how these laws have been applied in the small number of prosecutions commenced since the laws were passed.

Unusual for a legal text, the book is written in simple, non-technical language with minimal footnotes, which makes it accessible to the non-lawyer reader. The book’s purpose is to assess the effectiveness and necessity of Australian anti-terrorism laws. Do these laws protect the Australian public, or do they undermine important freedoms such as privacy, liberty, religious freedom, and freedom of thought, speech and association? The book provides important commentary on the new laws, which are complex and which carry very severe penalties. Anti-terrorism laws have created new paradigms in criminal law, including the emphasis on preventative measures, rather than on punishment after a clearly defined offence has been committed. The authors question whether intelligence organisations should be given broad powers to detain suspects without charge. The ordeal of Dr Mohamed Haneef illustrates the dangers of unbridled executive power. Dr Haneef was detained in 2007 on suspicion of terror-related activities and his visa was cancelled. He was released without charge and successfully sought damages. The authors highlight the extraordinary breadth of many new anti-terrorism offences, especially preparatory offences, which may potentially capture entirely innocent conduct. They also highlight the creation of many reverse-onus offences, which remove the presumption of innocence. The process by which these laws are made is also of note – often poorly drafted legislation is rushed through parliament in an urgent response to tragic events overseas, allowing little time for public consideration or debate. The importance of reviewing the effectiveness and possible consequences of such laws cannot be overstated.

**Bill Swannie**, College of Law and Justice, Victoria University
Native Title in Australia

Richard H Bartlett, Native Title in Australia (3rd edn), LexisNexis Butterworths, 2015, pb $169

The author in the third edition of his seminal work on native title has once again demonstrated why this work is the leading text in this field. What has always been the strength of this text is the sensitivity that the author brings to the singular and undeniable reality that underpins native title law and the “settlement” of Australia: the dispossession of the Indigenous communities that had existed in Australia for thousands of years.

Of course, as is well known the decision of the High Court in Mabo (No 2) was to dismantle once and forever the legal fiction that was terra nullius. That decision on 3 June 1992 remains the most significant and well-known decision of the High Court.

This text traces the development of native title law that has emanated from the momentous decision in Mabo (No 2). To do that in a clear and balanced way is not a simple matter. Not only have there been significant statutory reforms – including the passing of the Native Title Act and its various iterations – but a complex body of native title case law has developed. Importantly this is no “black letter” law text. The author not only sets out the relevant decisions, he distills the wider significance of the decisions and what they mean for Indigenous communities. He laments the “current narrow understanding of native title in Australian law with respect to proof, content and extinguishment”.

Notions of equality and identity are not divorced from legal decisions: instead they are made part of it. Questions of native title law are inseparable from those issues and in a post-Mabo society are still not resolved. Indeed, one of the most powerful chapters in the book is the last, which is titled “Twenty Years to a Limited Acceptance”. This amounts to the author’s reflection about native title. He sees greater scope for equality – as opposed to pragmatism – in native title law. It is to be hoped that this can be achieved.

Richard Edney, barrister

The Law of Misleading or Deceptive Conduct

Colin Lockhart, The Law of Misleading or Deceptive Conduct (4th edn), LexisNexis Butterworths, 2015, pb $220

Claims for misleading or deceptive conduct run alongside many commercial claims including both tort and breach of contract. Given its prevalence in these matters, case law on the subject can be voluminous.

The introduction of the Australian Consumer Law (ACL) has made this edition a necessary update. The ACL has changed and broadened the landscape of misleading and deceptive conduct claims. There has been a vast amount of case law since its introduction – more than 1000 cases were reviewed in preparation of this edition, including a number of important High Court decisions.

Practitioners need to be abreast of developments such as concurrent wrongdoer in the area of proportionate liability and the High Court’s decision in Hunt & Hunt Lawyers v Mitchell Morgan Nominees Pty Ltd.

There is coverage of the High Court’s examination of the issue of prohibition in Forrest v ASIC and ACCC v TPG Internet Pty Ltd.

The law is often criticised for failing to keep up with recent social and technological advancements. The internet, for example, has revolutionised the way lawyers work and communicate with each other. The decision in Google Inc v ACCC has had an enormous impact, particularly in relation to the liability of intermediaries for misleading and deceptive conduct and quite properly is well documented throughout this edition.

Practitioners, particularly commercial lawyers, need to be familiar with developments when advising on or preparing claims for misleading and deceptive conduct.

This is an excellent guide to the breaches, defences and remedies.

Tasman Ash Fleming, Barrister

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Native Title from Mabo to Akiba: A Vehicle for Change and Empowerment?

By Sean Brennan, Megan Davis, Brendan Edgeworth and Leon Terrill (eds) $85

Provides an assessment of the achievements, frustrations and possibilities of native title. Written two decades after the enactment of the Native Title Act 1993 (Cth) and following the most significant High Court decision on native title in more than 10 years, Akiba v Commonwealth.

Out of Order: Stories from the History of the Supreme Court

By Sandra Day O’Connor $50

Get a rare glimpse into the Supreme Court’s inner workings: how cases are chosen for hearing; the personal relationships among the justices; and the customs and traditions that bind one generation of jurists to the next – from the seating arrangements at lunches to the basketball games played in the court building’s top-floor gymnasium, the so-called “highest court in the land”.

Australia’s “Company Law Watchdog”: ASIC and Corporate Regulation

By Vicky Comino $120

Focuses on the issue of ASIC’s effectiveness and how it might be more effective. Dr Comino identifies the factors that have contributed to ASIC’s mixed record of success in pursuing those responsible for some of Australia’s largest financial scandals.

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