This month’s reviews cover former High Court Chief Justice Murray Gleeson’s biography, a crime fiction novel set along the Great Ocean Road, affidavits, civil procedure, appeals, constitutional law, mortgage law and private international law.

**The Law of Affidavits**


For many practitioners, the task of preparing and settling an affidavit often represents the culmination (and summation) of many months of work. John Levingston’s *The Law of Affidavits* is accordingly a very welcome resource, published by the Federation Press as “the first work on affidavits in Australia”.

As the book itself acknowledges, the skill associated with preparing an affidavit to comply with the Rules of Evidence and the formalities of a particular court (while surviving the many bases for objection) is often developed through an informal apprenticeship of drafting under the guidance of a more experienced practitioner. The use of earlier references and precedents is often an integral part of that process. This book aims (and succeeds) in providing a comprehensive and cohesive summary of many of those drafting practices. Although the rules and formalities relating to affidavits can vary significantly between jurisdictions, the analysis of the historical development of their use in court proceedings provides a real insight into the underlying similarities.

The book is written in a very easy and straightforward way, notwithstanding the broad and complex challenge of identifying the many different sources of the law in the various Australian jurisdictions. In addition to providing a reference for the evidentiary, formal and procedural rules relating to affidavits, the book contains some very helpful precedents. It also sets out “jurisdiction summaries” relating to courts and tribunals at federal and state levels, while dealing with practical issues such as taking instructions, assessing a deponent’s capacity, and the proper use of exhibits and attachments.

As both a substantive text and guide, this book will provide assistance not just in the drafting of an affidavit, but in the assessment of the extent to which another party’s affidavit can properly be the subject of objection. Where stringent case management creates increasing pressures for compliance, with short timetables for the preparation and filing of affidavits, this book will be a very welcome addition to the library of most litigators.

**The Annotated Rules of Court**


The Annotated Rules of Court is a two-volume paperback on civil procedure in Victorian courts. The first edition was published in 1996 as a one-volume edition.

Volume 1 contains the Supreme Court and County Court Rules while volume 2 contains the Magistrates’ Court Rules. This division into two volumes is necessary as the Magistrates’ Court Rules and practice differ markedly from the practice and procedure in the Supreme Court and County Court. With these differences in mind, Mr Cook skilfully and, in an economy of language, provides clear notes on each Order. The Notes include details on the source of the court legislation and other relevant Victorian legislation. Any amendments are noted in italics at the end of the relevant Order. The notes to each Order contain an explanation of the Order and its requirements, including reference to relevant UK, Victorian and other Australian case law that has considered the equivalent or similar Order. A comprehensive table of cases referred to the volume is included as is the text of the *Civil Procedure Act* 2010. This is partially annotated. For example, there is no mention of *Yara Australia Pty Ltd v Oswal* [2013] VSCA 14 in the context of any of the overarching obligations. Part II contains the court forms applicable in the Supreme and County Courts. The latest scale of costs is also included, as is a comprehensive index.

Volume 2 contains the Magistrates’ Court Rules. The format of this volume follows the format in Volume 1. There is a separate table of cases that are relevant to the Magistrates’ Court Rules. The *Civil Procedure Act* 2010 is also conveniently reproduced in this volume. The court forms and scale of costs are also reproduced.
MURRAY GLEESON: THE SMILER


The author has produced a very interesting biography of the man who sat as Chief Justice of the High Court for a significant portion of most current practitioners’ careers. As a result, Gleeson’s influence has been felt in many areas of law and policy, including the treatment of asylum seekers.

The book abounds with interesting anecdotes, from recounted childhood memories to incidents while sitting on the High Court. It is clear that the author has interviewed those close to Gleeson extensively and has gleaned a real insight into the life and personality of his subject.

As one would expect, many of the episodes involving Gleeson which have formed part of Australia’s history or become an integral part of Australia’s legal development are covered. These include the “Fine Cotton” horse-racing scandal and the decisions in R v Birks and Egan v Willis, but the book goes well beyond an assessment of the legal analysis contained in such decisions, and incorporates something of the man himself, demonstrating Gleeson to have a strong belief in the separation of powers and the accountability of professionals and politicians.

Gleeson’s opinions, attitudes, and even his sense of humour are explored through the presentation of statements made through the years, and occasionally through the transcript of proceedings (including banter between Gleeson and his fellow members of the High Court). An example is the incident involving a particular gun which had been brought into the court for a demonstration, and Gleeson’s quip directed to David Peek QC, “if you are going to point it at us would you mind pointing it in the direction of Justice Callinan”.

The book’s style is informative, insightful, and entertaining. It is difficult to do justice in a brief review such as this. A great deal of detail is provided in relation to key events, so that readers come away from the book with a sense that they have come to know something substantial of the personality, the humour and the intellect of its subject. In achieving this, Pelly has achieved an excellent legal biography.

DOUGLAS J JAMES
BARRISTER
Jock Serong writes with a surfer’s love of the water. The cold, the pulse and the power loom over this book.

Charlie Jardim is a Junior on the verge of a nervous breakdown who makes an outrageous attack on a magistrate in court. The outburst has left him briefless, facing a disciplinary proceeding and with a broken engagement.

Out of the blue, Charlie gets a brief for the OPP led by Harlan Weir QC, a noted jury advocate and eccentric who plays his cello on Sunday mornings with his phone off the hook.

This is a crime fiction novel which offers a great deal of familiarity to Melbourne lawyers with its descriptions of the courts, chambers, AFL football, the Great Ocean Road and the beach.

Charlie is sent away from his broken relationship, away from the chambers’ gossip and out into the underworld of abalone and drug smuggling in the small town, Dauphin, which it seems is hell bent on him getting to the truth.

Although it is a very Melbourne book, much of the action takes place in Dauphin. Dauphin feels very much like Apollo Bay with its description of the shops and nearby Lavers Hill, and the unabashed nostalgia of dim sims and landlines.

There are some interesting supporting characters – Les the bartender of the local pub Norman’s Woe, who is kinda mean and kinda not, the small town matriarch Delvene Murchison, no doubt to be played by Jacki Weaver in the telemovie alongside Patrick Brammall’s Charlie Jardim.

Lovers of this kind of book will no doubt have read Shane Maloney’s wonderful book *Something Fishy*, the Murray Whelan adventure set in Lorne. This book sits somewhere between there and John Saffran’s *SMH* article from 26 June 2014 *A Town Called Malice* by way of adventure and subject matter.

There will no doubt be more Charlie Jardim novels.
The chapter on drafting mortgages contains a succinct summary of the dangers in widely drafted all moneys clauses and the perils of locating loan covenants in extraneous documents outside of the registered mortgage through the possible loss of indefeasibility.

The 2012 decision of the High Court in the Andrews case, which held that fees payable by bank customers may constitute penalties, irrespective of whether or not they are payable upon a breach of the mortgage or loan agreement, is discussed as part of the exploration of penalties and the techniques to ensure covenants to pay are not void.

The discussion of external dispute resolution contains a practical summary of the requirements for lenders to belong to a scheme and the ability of borrowers to seek redress through such schemes.

The work is well designed to assist the busy practitioner. Case law and legislation are comprehensively cited and lists and tables are effectively used to summarise the essential elements of particular points. Pro forma pleadings and affidavits for remedies available to a mortgagee is also a useful feature. The book is clearly written and well structured, with the use of practical heading descriptions making the work easy to navigate.

The practical approach of this work will not only appeal to the specialist banking lawyer but also to property lawyers and general practitioners.

**Nygh’s Conflict of Laws in Australia**

M Davies, A Bell and PLG Breton, *Nygh’s Conflict of Laws in Australia* (9th edn), 2014, LexisNexis Butterworths, pb $176

Since its first publication in 1968, *Nygh’s Conflict of Laws in Australia* has been an icon of the Australian legal literature scene, influencing the practice and development of private international law in Australia. Indeed, it has on numerous occasions been referred to by the High Court (e.g. Pozniak v Smith (1982) 151 CLR 36; Akai Pty Ltd v The People’s Insurance Company Ltd (1996) 188 CLR 418; Swedman v Transport Accident Commission (2006) 226 CLR 362).

In this edition, the authors have continued their philosophy of honouring Dr Nygh’s original text, to the extent possible, but at the same time updating and expanding the material so that it is up to date with recent developments in the law. This will ensure that the book remains a valuable resource for practitioners and academics alike.

The book is divided into 43 chapters covering topics such as Jurisdiction in Personam (Chapter 3), Cross-Vested Jurisdiction (Chapter 6), Forum Selection and Arbitration Agreements (Chapter 7), Corporations (Chapter 35) and Choice of Law in Arbitration (Chapter 39). These chapters are but a snapshot of the various topics examined in the book, all of which are comprehensively considered.

Importantly, the new edition includes common law developments both in Australia and overseas which have arisen since the last edition. For example, it considers recent High Court decisions regarding foreign state immunity and federal jurisdiction. It also considers the latest legislative developments such as the Trans-Tasman Proceedings Act 2010 (Cth) and the Australian Consumer Law, and the applicable court rules of the Federal Court of Australia and the Supreme Courts of the states and territories.

This latest edition maintains what the previous editions were able to achieve – to explain complex concepts in a simple and succinct manner. It reaffirms the book’s reputation as an authoritative text in private international law in Australia.

**REVIEWERS WANTED**

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