

ESSAYS IN EQUITY. By FINN. [Sydney: The Law Book Company Ltd
1985. xxv + 256 pp. Hardcover: £22]

THIS book is the outcome of a seminar on Equity held at the Australian National University in 1984. The essays were discussed at the seminar and reviewed by the authors in the light of the discussion and comments by those attending.

There are twelve essays in the book. Eleven were discussed at the seminar. The last essay is mainly concerned with discussing the various issues raised by the previous eleven essays. All the eleven essays deal with developments in a specific field of equity within the Australian context clearly illustrating the extent to which equity is flourishing in Australia and to a certain extent its independence from the developments in England.

The first essay, “Unconscionable Dealing” by I.J. Hardingham concentrates on two specific areas of unconscionability and presumed undue influence. The author concentrates on the Australian High Court decision of *Commercial Bank of Australia v. Amadio*¹ and compares it with the English decision of *Lloyd’s Bank v. Bundy*² and *National Westminster Bank v. Morgan*³ He also discusses recent legislative changes to the Trade Practices Act of 1974.

The second essay, entitled “Forfeiture and Uncertainty: The High Court and the House of Lords” is by W.M.C. Gummow. This essay compares the Australian High Court decision of *Legione v. Hateley*⁴ with the House of Lords’ decisions in *Scandinavian Tanker Co. A.B. v. Flota Petrolera Ecuatoriana*⁵ and *Sport International Bussum B. V. v. Inter-Footwear Ltd.*⁶ and tries to reconcile them.

The third essay, “Penalties in Chattel Leases” by R.P. Meagher Q.C. discusses the Australian High Court decision of *O’Dea v. Allstates Leasing Systems (W.A.) Pty. Ltd.*⁷ and its implications on the finance industry. The fourth essay, entitled “Equitable Estoppel” is by

¹ (1983) 151 C.L.R. 447.

² [1975] Q.B. 326.

³ [1983] 3 All E.R. 85.

⁴ (1983) 57 A.L.J.R. 292.

⁵ [1983] 2 A.C. 694.

⁶ [1984] 1 All E.R. 376.

⁷ (1983) 57 A.L.J.R. 172.

P.D. Finn. It discusses the English developments in equitable estoppel and suggests that recent developments in Australia point towards a divergent approach in Australia.

The fifth essay, "Fiduciaries in a Commercial Context" by J.R.F. Lehane is concerned with the identification of a fiduciary and the fiduciary duty arising out of a payment made under a mistake of fact and in particular the case of *United States Surgical Corp. v. Hospital Products International Pty. Ltd.*⁸

The sixth essay, "Breach of Confidence" is by Francis Gurry and this essay is concerned with the difficulties in the existing law of confidence and the various mechanisms developed by the courts in dealing with these difficulties.

The seventh essay, "Some Recent Problems in Regard to Specific Performance" is by I.C.F. Spry Q.C. This essay also discusses equitable estoppel and the case of *Legione v. Hately*⁹ again features prominently. The eighth essay, "The Insolvent Trading Trust" is by Hon. Mr. Justice B.H. McPherson. This essay deals with trading trust where the trustee is a corporation with limited liability and the legal consequences which ensue when the trustee becomes insolvent usually as a result of such trading activities.

The ninth essay, "Disposition for Purposes" is by H. A. J. Ford and it discusses the various restrictions on the disposition of property for non-charitable purposes and the various means by which such restrictions can be overcome. The tenth essay, "Trusts and Trust-like Obligations with respect to Unincorporated Associations" is by W.A. Lee. It discusses the various ways and the extent to which trusts and trust-like obligations impinge on unincorporated associations.

The eleventh essay, "Constructive Trusts" is by R. P. Austin and it covers situations where a constructive trustee is liable and concludes that there are three categories of liability all of which are overlapping. The last essay, "Themes and Prospects" by the Hon. Sir Anthony Mason, as mentioned earlier, was not an essay discussed at the seminar and it is primarily concerned with discussing the issues raised in the previous essays.

All the essays are well-written and offer a deep and thoughtful insight into each of the specific areas analysed. Although it can be of tremendous interest to someone who has the knowledge of the various areas of equity discussed, this book is not one which someone can just pick up and start reading for each essay assumes a working knowledge on the particular area and the various essays do not purport to form a coherent whole. In any case, this cannot be a criticism of the book since it does not purport to be a text book.

Although all the essays concern themselves with developments within the Australian context and sometimes with Australian legislation, it nevertheless offers an excellent alternative to the developments in England, which could only inevitably lead to the further development of the law in these areas.

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⁸ [1983] 2 N.S.W.L.R. 157.

⁹ (1983) 57 A.L.J.R. 292.