

an edifice sited on a slope above the city and dominating its skyline. A jumble of weatherboard buildings beside and behind the courthouse ruined the impression of its two imposing storeys of bluestone. The Old Court was the venue for the judicial theatre featuring the murderers of Sophia Lewis. Redmond Barry, a vain, pompous "hanging judge", presided.

Of course, whether champions of Ned Kelly or not, few legal historians now claim that Ned Kelly received a fair trial for the murder of a police trooper for which Barry hanged him (see Phillips J, *The Trial of Ned Kelly*).

The same must be said of this trial. The trial occupies two chapters. The outcome – two guilty verdicts – is a foregone conclusion. As the death penalty applied, both men were hanged and it is this moment that is genuinely moving in the book. The finality of such a penalty means that any disquiet and distrust of the verdicts is purely academic.

Oldis writes his account with clarity and economy. As a history of the early Victorian colony revealed through the trial of the two accused, the book succeeds admirably.

The publishers might have considered a list of characters, as some of the Chinese names in the early part of the book required me to backtrack; however this may reflect my own limitations with Chinese names. For those curious as to the fate of some of the notable characters, there is a lengthy epilogue containing condensed biographies.

This scholarly, readable and interesting work is a valuable addition to the rather neglected history of the early beginnings of the criminal justice system in Victoria.

RAYMOND GIBSON

UNDERSTANDING AUSTRALIAN CONSTRUCTION CONTRACTS

By Ian Bailey QC and Matthew Bell
Lawbook Co 2008

Some years ago, it fell to this reviewer (in his role as in-house solicitor for a well regarded and long established building industry association) the thrilling task of sorting through some very old and very musty document archives for the purpose of document discovery.

There was nothing particularly memorable or interesting about undertaking such a task, save for one particular find among the cobwebs and the dust.

It was a standard form construction contract. It was an orange document of some six or so pages, was dated around 1965 or '66 and was for the construction of the association's new headquarters. It was unaltered, save for one small change to a clause that had been made in royal blue ink and in a style that bespoke considerable forethought, not to mention admirable clarity and brevity of expression. The project was undoubtedly costly and yet the contractual framework was concise.

Where, you may well ask, have we gone wrong (contractually speaking) in the succeeding 40 years, when commercial construction contracts are invariably of *War and Peace*-like proportions and, frankly, about as comprehensible as the loan documents that underpin the project.

Well, that particular question is not for this review to attempt to answer. What can be said without question is that Professor Bailey QC and Matthew Bell have rendered an invaluable service to the construction industry in general and to the legal profession in particular with the recent publication of their splendid handbook entitled *Understanding Australian Construction Contracts*.

The book covers the four most widely and commonly used commercial construction contracts and analyses in minute detail the clauses in those documents that deal with particular aspects of the project delivery, such as insurance, liquidated damages and service of notices under the contract. The arrangement of the text may therefore be said to follow broadly the progress of the project and the performance sequence of the contract.

The busy practitioner can now look to a specific section in the text when a specific issue relating to the performance (or more usually, the lack of performance) of the contract comes up for consideration. For that, the authors are to be congratulated.

The book is easy to use and easy to navigate through. There is a refreshing absence of footnotes (footnotes, at least in this reviewers opinion, often assume a life of



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their own, which detracts from the text) and helpful further references are given at the end of each chapter. The book also contains many useful comparative tables of key aspects of each contract.

This is a reference book in the truest sense and should be on the shelves of all practitioners who work in or about the construction industry.

The book does, however, contain within its covers an irony: while the commercial construction industry is the beneficiary of this and many other learned and significant texts, the domestic building industry is not – which is strange when one considers that domestic construction projects affect more people in arguably more significant financial respects than is the case with commercial projects.

Perhaps this is a future publishing task that the learned authors may wish to undertake.

NEIL MCPHEE
Solicitor

Admiralty Jurisdiction – Law and Practice in Australia, New Zealand, Singapore and Hong Kong

By Dr Damien J. Cremean
The Federation Press 2008 (3rd Edition)
pp (i)-(lii), 1-508.

The third edition of Dr Cremean's significant work on Admiralty Law and Practice comes at a very convenient time. Someone who borrowed my second edition has failed to return it. I suspect it was a Judge of the Federal Court.

It is not difficult to see why Dr Cremean's work is worth acquiring; for both regular and occasional practitioners in the Admiralty jurisdiction. It is a complete text concerning and annotating the provisions of the *Admiralty Act 1988* (Cth) and the regulations and court rules made in respect of that statute. An important and convenient extension of the book by this third edition is to include the statutes, applicable rules and practices in New Zealand, Singapore and Hong Kong. The extension into the Asian countries allows the reader to draw on both court decisions and the experience of the application of laws and practices in those jurisdictions. For my part it would have been useful to

have known of the decision of Justice Barnett in the Supreme Court of Hong Kong in *The Sea Empire* [1992] 1 HKC 357 at the time of arguing *The Boomerang 1* (2006) 235 ALR 554 before Justice Finkelstein (see page 185 of the text). It would not have made any difference to the decision, but would have been nice to have discussed the matter with the Judge.

Comity and consistency in the application of Admiralty laws around the world is important for two reasons. Firstly, most of the significant developments in Admiralty law occurred in England between the 17th and 19th centuries, and most trading nations have enacted laws and maintained practices consistent with those developments. Secondly, most modern trading nations have developed and applied laws in relation to arrest as a consequence of adopting the 1952 Brussels Convention on the Arrest of Sea-Going Ships. Thus, a work which brings together the law in Australasian and Asian jurisdictions will ensure consistency of practice in these jurisdictions. In that sense the book is an invaluable reference on the procedures in the Admiralty jurisdictions in Australian and New Zealand and the English adopting Asian jurisdictions.

Recent important Australian decisions discussed at length in this new edition include *Comandate Marine Corp v Pan Australia Shopping Pty Ltd* (2006) 157 FCR

45 (on jurisdictional issues and anti-suit injunctions) and its 'sister' case *ASP Holdings Ltd v Ship Boomerang 1* (2006) 235 ALR 554 (on the intersection of admiralty and insolvency) and *Scandinavian Bunkering AS v Bunkers on Board the Ship FV Tarhman* (2006) 151 FCR 126 (on what might be the subject of an arrest).

The *Admiralty Act 1988* has been one of the great successes of Commonwealth legislative design. It rose out of a reference to the Commonwealth Law Reform Commission in 1982 and culminated in the Law Reform Commission's Report No. 33 on Civil Admiralty Jurisdiction published in 1986. The 1998 statute is notable for not having been amended and for its ease of application by the courts. Dr Cremean was an initial researcher and a consultant to the Law Reform Commission that produced the statute. From at least this beginning to the present day Dr Cremean has accumulated an encyclopaedic knowledge of the Admiralty jurisdiction in Australasia and in Asia and has provided the benefit of that extensive knowledge by this third edition. It is a thorough and easy to use text which I recommend to both occasional and regular practitioners in the Admiralty jurisdiction. Perhaps if everyone got their own copy of the third edition, my copy would remain safely on my shelves.

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The Australian construction industry is characterized as being a competitive and risky business environment due to lack of cooperation, insufficient trust, ineffective communication and adversarial relationships which are likely lead to poor project performance. Relational contracting (RC) is advocated by literature as an innovative approach to improve the procurement process in the construction [Show full abstract] industry.Â Understanding the Critical Success Factors (CSFs), commonly used construction contracts and the NEC system can help us address some of these issues. However, there are gaps in the validation of the benefits of NEC and its link with project success. Generally, construction contracts in the Australian jurisdiction will contain governing law clauses which stipulate that the governing law is the state or territory where the project takes place. However, despite the presence of a governing law clause, parties cannot contract out of certain legislation, such as certain provisions of the Competition and Consumer Act 2010 (Cth) and the security of payment legislation in each state or territory. In certain states and territories, parties will also be unable to contract out of proportionate liability legislation.Â In contrast, any contractual provisions that purport to impose a penalty on the parties for non-compliance with the contract are prohibited from construction contracts. This particularly relates to excessive liquidated damages.