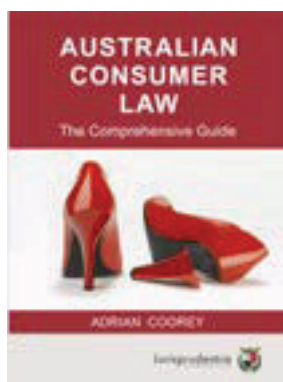


BOOK



Australian Consumer Law: The Comprehensive Guide

Author: Adrian Coorey,
Jurisprudentia (2021)

As its title promises, *Australian Consumer Law: The Comprehensive Guide*, represents by far the most comprehensive textbook on Australian Consumer Law (ACL) currently on the market. It is a must have for any legal practitioner, barrister or law student who practises or wish to practise in the highly litigious and versatile area of ACL.

Split over eighteen chapters, the book

covers all mainstream provisions of ACL placing particular emphasis on key areas including: misleading and deceptive conduct; false or misleading representations; unconscionable conduct; unfair contract terms; unfair practices; consumer guarantees; manufacturer's liability; public and private remedies; and enforcement powers.

The structure of the book largely follows the provisions of the ACL making it easy to follow, but where the book really excels is through its extensive and pin-point referencing of the latest case law, legislation and other secondary sources.

With over 15 years of experience as a legal practitioner and more in academia directly in the field of ACL, Adrian Coorey's experience and knowledge becomes apparent upon a perusal of the first chapter of the text. The tables of pecuniary penalties and disqualification orders in Chapter 16 Public Remedies remains, in my view, a highlight of the book and no doubt would have entailed many late nights compiling such an extensive list.

The penalty table is particularly useful for practitioners and barristers as it is the first time there is publicly available a penalty table, which not only lists the penalty amounts, but it also contains a break-down of the contraventions and penalty amounts both for corporations and individuals. The disqualification order table is equally useful, as it is the first and

only table that has been made public to date on individuals that have been disqualified from managing corporations. In my view, the public and private remedies chapters are the most comprehensive coverage of remedies in ACL in any text or writing published to date.

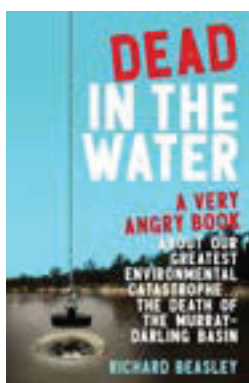
The 'misleading or deceptive conduct' section of the book is split over six chapters covering all facets of the law commencing with an examination of the general principles. Of particular value and interest is Chapter Five which extends these general principles into the realm of social media, online advertising, online auctions, domain names and other aspects of the internet, an area no doubt expected to be a continuing source of contention in the upcoming years.

The writing in the book is concise, up to date (research to 1 January 2021), and well structured. Coorey articulates his work with precision permitting the reader to easily identify the salient features of the law.

Overall, the book represents a well-rounded and far-reaching analysis of ACL along with a balanced consideration of case law as it bears in relation to the various facets of the ACL. The book is a valuable addition to anyone's portfolio.

Oliver H. Berkmann
Barrister
6 St James Hall Chambers

BOOK



Dead in the Water

Author: Richard Beasley

The river system now known as the Murray-Darling Basin has flowed for hundreds of thousands of years. For 40,000 years the

First People lived in harmony with that system. In the last 150 years white settlers have managed to destroy it. Most of the damage has been done in the last 50 years. The damage is continuing.

Richard Beasley's *Dead in the Water* tells this bizarre story. The story is bizarre because the potential damage was avoidable. Experts at the CSIRO foresaw the risk, warned against it, and told the politicians and irrigators how to prevent it. That advice was not just ignored, it was suppressed. Instead, schemes were implemented which aggravated the damage. Much of the damage is now irreversible. Shame on those who have presided over the destruction of the single most important river system on the world's driest continent.

This book is a remarkable achievement. It is constantly engaging and entertaining and informative. At the same time it is cynical and sarcastic and, at times, downright disturbing. It is not a happy tale. At times I found I was getting angry. Beasley exposes a failure at Federation when the river systems were, pointlessly, excluded from central

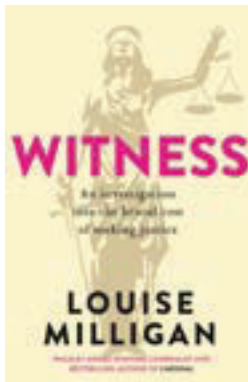
control. After that it becomes a sorry saga of incompetent and spineless politicians, greedy irrigators, lies and corruption. If only a murder could be woven in, Beasley's book could be converted into a movie.

I am amazed at the skills of the author. Many of us know and admire his work as a novelist, but this is a totally different genre. Beasley's transition is completely successful. He has a light writing hand, a sharp tongue, and a gift for delivering a weapons-grade barb when it is necessary. Unless you are one of those impaled on one of Beasley's skewers, I guarantee you will enjoy this book.

I urge you to buy and read this book. Few barristers these days take up a position in public life – Richard Beasley has and it is an important role he has taken on. His message is simple and the issues opened by his book cannot be ignored any longer. Be better informed. Acquiescence is no longer acceptable. We all share a responsibility to the future. Read Beasley's book.

Geoffrey Watson

BOOK

*Witness*

Author: Louise Milligan

Louise Milligan is an investigative journalist who has exposed dark conduct in Australia's most powerful institutions to the light. In this book, she explores the flaws in the justice system by examining how witnesses are treated, particularly witnesses who are also complainants. The labourers and guardians of the justice system, its barristers and judges, do not come off well in this exploration.

Milligan starts the book with an account of her own feelings before and after giving evidence at the committal hearing of Cardinal Pell (detailed in the eighth to ninth chapters). During that cross-examination it was put to her that she intended to pervert the course of justice, that she sought to 'poison the public's mind' and that her communications with a source were 'charming, if not flirtatious.'¹

She goes on to examine a number of hearings in which the cross-examination of witnesses was crucial to the outcome: the rape trials of Luke Lazarus and Nicholas Weston, the Independent Commission set up as part of the Catholic Church's Melbourne Response, the child sexual assault trials of John Aitchison, George Pell, Stephen Farrell, John Laidlaw and Robert Sharwood; the grooming and stalking trial of Peter Kehoe.

In respect of these hearings, Milligan extracts transcripts of cross-examination of the witnesses, which she weaves in with the accounts of the witnesses and their families about their experience, and astonishingly frank interviews with some of the barristers undertaking the cross-examination. These barristers are often of the older white male variety and this shows in their comments, and the manner of their cross-examination.

In the chapter 'I'm not that guy' Milligan engages with whether the old style of cross-examination directed at 'rape myths' as to how a genuine victim would act and how they would not act, still exists despite evidentiary and procedural reforms designed

to protect complainants. Milligan presents evidence, both academic and anecdotal, that the practice survives. In the same chapter many defence barristers bemoan these reforms because, they assert, the pendulum has swung too far away from complainants and it is too difficult to secure an acquittal. Milligan counters this assertion with statistics showing that between 2009 and 2018, seven per cent of cases reported to police resulted in conviction. The chapter concludes with a disturbing account of the vicarious trauma suffered by barristers who regularly prosecute and defend sex assault trials. The accounts of the barristers she interviews about their experience are honest and touching.

Much of the book focuses on stories already covered by Milligan, and none more than her experience covering, and being involved in, the trial of George Pell. It is unsurprising therefore that the *bête noire* of the book is Robert Richter QC, who gained notoriety for his particularly aggressive defence of the Cardinal at committal and at trial, but not on appeal. He is not interviewed for the book but his cross-examination of Milligan and other witnesses is heavily criticised. Unlike some of the other barristers interviewed for the book, the reader comes away with a vivid picture of Richter's skill and his failings, but none of the insight about what motivates him to practise as he does.

Milligan also touches on other ways in which complainants' experiences of the justice system cause pain, beyond their experience as witnesses: the institutional failings of schools and churches that result in the perpetrator and not the victim being supported, and the related issue of the courts' ready acceptance of character references from respected persons, without any regard for the fact that it is often an abuser's role in society and unblemished reputation that enables him to commit the offences of which he is convicted. She gives an account of making a complaint of harassment and stalking only to have the matter disposed of without her being contacted to give evidence, or even being informed of the outcome.

Perhaps as a consequence of her previous involvement with the subjects of the book, Milligan's approach to the writing of the book is intensely personal: her accounts of her own experience are detailed and immediate, her coverage of the experiences of the principal witnesses betray the personal association that a journalist often develops with a source. She is as much an advocate for these complainants as she is a reporter. This is not inappropriate when regard is had for the subject matter and it makes for engaging reading. As with Helen Garner's coverage of legal proceedings, you feel as if you are in the courtroom with her, sharing the strangeness and intimacy that one feels observing a trial, absorbing the emotions felt by the participants.

The final chapter explores ways in which the justice system might improve the experience of victims of sexual assaults. These include revisiting many of the reforms designed to protect complainants, such as suppression orders and remote evidence, that have proved to create their own problems for victims of sexual assault.

Many of Milligan's observations are astute, none more so than that witnesses and particularly victims are utterly at sea when they come to court to give evidence: without an advocate of their own; with a criminal justice system that is structurally incapable of either preparing or supporting them in the experience of giving evidence; with a Crown constrained by independence, fairness to the accused, time and funds from ever being able to properly protect them; they wander into and out of their own trial largely alone. Milligan canvasses the arguments for and against providing lawyers for victims and makes a compelling case for an advocate to represent the final corner of the triangulation of interests in any criminal trial.²

Of most interest to barristers reading the book is Milligan's unflinching depiction of our conduct, often as told by us. Early in the book she makes an observation of her discussions with barristers that gives some insight into why the criminal justice system struggles to meet the needs of victims, and why that must change:

'...It says things about how the Bar sees victims. Or how it doesn't see them. When it comes to talking about victims, I've often found barristers switch off. They go silent. There's a feeling that they don't want to know, but they don't want to show that they don't want to know. They listen patiently, but then they change the subject.'

Their responses often range from clearly pained and empathetic but not quite knowing what to say, to still and cold and legalistic, to paternalistic and heartless. Victims seem to be a problem for barristers. They don't quite know where to put them. They know their system doesn't treat them well and they don't know quite what to do with that.'

Reviewed by Catherine Gleeson

ENDNOTES

- 1 Melissa Davey 'George Pell hearing: ABC journalist defends sources in book about cardinal' *The Guardian* 27 March 2018 <https://www.theguardian.com/australia-news/2018/mar/27/george-pell-hearing-abc-journalist-defends-sources-in-book-about-cardinal>. Milligan's evidence was relevant because she had received first complaint evidence from one of the complainants against Pell.
- 2 Being the accused, the victim and their family, and the public. *Attorney-General's Reference* (No. 3 of 1999) [2001] 2 AC 91 [118] per Lord Steyn.

BOOK



The Law of Bankruptcy Notices and Creditors' Petitions

Author: Nicholas J. Simpson
(LexisNexis, 2020)

As part of a bonding experience, my college lawyer group went to the cinema to watch *The Accused* or some similar drama. When we came out, our first conversation was not about the key issues in the film of brutal sexual violence, the inadequacies of the legal system or the merits of vigilante justice, but rather about why the jury box in the opening scene had more than twelve seats. It was a sad indictment on the somewhat obsessive tendencies of the legal mind.

Since that time, I have always strived to divert conversations, whether with lawyers or non-lawyers, away from legal matters. My heart sinks at the question: 'Are you working on any interesting cases at the moment?', which always seems to me to reflect a conversational failure on my part rather than any genuine interest in my work.

Perhaps my most important gift to fledgling barristers on the bar course has been asking them to reflect on whether a particular area of law or a case on which they are working really is 'interesting' and how such an assertion would hold upon a Friday night in a bar or at a dinner party with non-lawyers.

So, as I was reading the first chapter of Nicholas Simpson's *The Law of Bankruptcy Notices and Creditors' Petitions*, I bristled as he described the adoption by parliament in the *Bankruptcy Act 1966* of many of the recommendations of the Clyne Report as 'intriguing'; and raised an eyebrow as he described the distinction between a final judgment and a final order as being of 'interest'.

My pedantic and perhaps obsessive sensitivity to the use (or misuse) of such descriptors, however, did not distract me from my enjoyment of the first chapter of this

book, which is a brief history and overview of the area. Simpson writes well, providing an overview that is easily accessible and (in spite of myself) interesting, without becoming bogged down in, or imbalanced by, too much detail.

I had not heard the suggestion before that the term bankruptcy derives from *banque*, the French word for table, and *ruptus*, the Latin word for break, suggesting someone who no longer trades or, literally, has broken their table. I was also not aware of the ideological tussle through the 17th and 18th centuries between stigmatising and showing derision towards bankrupts on the one hand, as reflected in the debtors' prisons, and showing clemency and pity at least to honest bankrupts on the other, as ultimately prevailed.

It is in the following chapters, however, that Simpson's book contains its real substance, which is an invaluable practical guide to the bankruptcy process. It is there that this book earns its worth.

As Simpson recognises, there is a huge amount of authority in this area and it is not possible to identify, let alone review all the authority on, every issue that may arise. What he provides is an essential guide to the preparation and pursuing of a valid bankruptcy notice and creditor's petition and the grounds upon which each may be challenged. Given this is, as Simpson himself describes it, an 'unduly technical' area, there are many pitfalls that he identifies, with extensive footnotes, but there are also practical considerations set out that will help frame a case in relation to those pitfalls. For instance, after reviewing the relevant authorities on setting aside a bankruptcy notice as an abuse of process, Simpson helpfully sets out ten factors relevant in identifying whether a bankruptcy notice may have been issued for a collateral purpose.

Any practitioner practising in this area needs to have a logical guide and checklist of at least the key issues and key authorities in order to navigate safely through the process. This book fulfils that purpose, but provides so much more.

There is a user-friendly index, which is not always the case with legal texts. I tested it by reference to some of the more obscure issues I have come across in this area and it passed with flying colours. There are also 29 useful precedents.

In the introductory chapter, Simpson details how the recommendation of the 1988 Harmer Report for personal and corporate insolvency to be unified was not adopted. I hope that in a second edition of this book, Simpson includes a concluding chapter that sets out his thoughts and conclusions as to where bankruptcy law now stands and his ideas for potential reform. I would be interested in hearing those thoughts, even on a Friday night!

Anthony Cheshire SC

BOOK



Fake Law: The Truth About Justice in an Age of Lies

Author: The Secret Barrister

The Secret Barrister (SB) is an anonymous blogger and a junior barrister specialising in criminal law in the courts of England and Wales. His first book was a personal account of the many failings of the English criminal justice system. This, his second book, is about the misrepresentation of the law and legal cases by politicians and the media. The SB writes from a land in which three justices of the High Court found themselves splashed across the front page of the daily mail and branded enemies of the people for ruling on the role of the parliament in triggering Britain's exit from the European Union.

We have seen this phenomenon closer to home, from occasional Murdochian judge bashing to the *Australian* and *AFR* and *Justinian* treating legal developments as if they belong on the gossip pages, to the Rule of Law™ doing some herculean and highly inaccurate lifting to protect a cabinet minister from an examination of his fitness for office.

The SB contends that the public misunderstanding of the law that allows legal issues to be distorted in this way is largely the fault of the law itself: accessing the correct law is complex and frequently out of date or incomplete, most Britons do not receive adequate basic instruction in how the law works and what its practitioners do, and lawyers themselves do nothing to share their secrets: 'while the social-media age has brought forth a generation of writers, bloggers and tweeters doing their best to kick down the doors to the courtroom and shine a torch on the arcane activity outside, our historically well-earned reputation as the keepers of the keys, cloaked in black and speaking in tongues, means that many citizens feel irredeemably disconnected from the legal system and its players.' This is dangerous not

only because a disengaged public lack faith in the legal system, but because they lack the tools to properly diagnose the flaws in the system and articulate arguments for reform. It is easy for the gaps in understanding to be exploited by those who stand to gain from misunderstanding of legal rights and protections, and easier still for the most vulnerable to suffer from that exploitation.

In this book the SB identifies some of the major public legal controversies and explains the legal principles that apply to them, so that inaccuracies can be identified and the real problems diagnosed.

In each chapter, the SB examines a single legal issue that garners public attention. He starts by explaining the law of self-defence as it relates to numerous cases of home invasions in which the homeowner was prosecuted, and in the course of doing so identifies unreported facts that led juries to conclude that the defence was not engaged in those cases. He then goes on to explain how the misreporting led the Conservative party to seek to legislate so as to excuse the use of disproportionate force in home invasions, which fortunately for all involved they failed to effectively do.

The same treatment is given to a number of issues: the tragic cases of two babies terminally ill with mitochondrial disorder

and their parents' desperate fight with the hospitals who applied to the court for orders regarding the continuation of their treatment; the sustained narrative of out-of-control compensation culture used as a stalking horse by insurers and employers' groups to impose prohibitive caps on motor accident damages and restrictions on workplace remedies; the Conservative Government's Euroskeptically fraught relationship with the *Human Rights Act* 1998 and the devastating effect it has had on Legal Aid and access to justice; and the many lies and misconceptions that beset public perceptions of criminal law, such as 'an acquittal is proof of innocence' and that certain accused are less deserving of legal representation than others.

One of the most interesting chapters concerns what happens when the so-called 'court of public opinion' comes up against the rule of law in difficult cases involving unpopular individuals. Unlike the unusual spin being indulged in by our present government, the traditional course was described as follows as applied to whether an architect of the global financial crisis should get to keep his contractually mandated pension: 'Ms Harman correctly calculated that this base appeal to our worst instincts would play far better than a sober and reasoned explanation of the importance of equal

treatment under the law, no doubt because she had seen how successfully her forebears and contemporaries had navigated difficult legal cases by casually tossing the rule of law under the bus.' The SB examines a number of examples of the Government's temptation to engage in ad hominem treatment of various individuals, from the murderers of James Bulger to Sir Philip Green's Weinstein moment to Shamima Begum and her child.

Fake Law is a funny book and an interesting book. In keeping with the author's intention, it explains fundamental legal concepts in a way that is easy to understand and discusses them in a way that will engage lawyers and non-lawyers. The book finishes by offering elegant solutions to the problems the SB has identified: simpler and fairer reporting of issues and better public legal education, for children and for those professions to which an understanding of the law is essential, including journalism and public service.

Fake Law is an excellent book for those of us who are endlessly frustrated by the tendency of politicians and the media to convince the public that fewer rights and less justice is the better way, and are looking for a means of articulating why this needs to stop and how to stop it.

Reviewed by Catherine Gleeson

MOVIE



The Truffle Hunters

(8 February 2021)

To describe *The Truffle Hunters*, by co-directors Michael Dweck and Gregory Kershaw, as a documentary about truffle hunting is a bit like describing *Moby Dick* as a book about whale hunting. It is that and so much more.

Shot in the damp, mountainous beech forests of Piedmont, Northern Italy, this quirky, exquisite film delivers a peek into the lives of a handful of astonishingly sprightly,

mostly octogenarian gentlemen who, together with their dogs, are responsible for sourcing some of the most expensive, highly sought-after truffles in the world. Alba white truffles are prized the world over because, unlike other varieties, they cannot be cultivated or grown in a laboratory. Modern day science has not yet cracked their code. The fact that they can only be found in certain locations which are kept a closely guarded secret by these elderly men – who, along with their much-loved dogs, have been perfecting the art of finding them all their lives – only adds to their rarity and the cult-like frenzy which surrounds them.

All this makes for a fascinating tale on its own. Yet it is just the tip of the iceberg. This film is also an ode to the natural world, to traditions, to community and to relationships – those between man and dog, between husband and wife and between the men themselves. And it is an insight into the delicate balance which is at the heart of all these things.

The film is a visual feast. Each scene is a perfect vignette; each one could be an Old Masters painting. To watch one of the central figures, Carlo, and his wife carry out their domestic rituals – washing tomatoes from their summer harvest and pressing grapes – all in a familiar silence borne of what is probably 60 years of marriage is a joy to witness. The colour-palette, the textures and the kookiness are all Wes Anderson-esque

and downright enchanting.

That said, this is not a romantic, fairytale perspective of a charming, bucolic life. This film is not twee. Thanks in large part to a changing climate and drier soils, the truffles are becoming increasingly difficult to find and the hunters are paid a fraction of the price for which they are ultimately sold. And, in response to the skyrocketing prices, some of the newer breed of truffle hunters are becoming increasingly greedy and resorting to a variety of underhanded tactics. The film does not shy away from these tensions and the grief that sometimes results from them, but nor does it dwell on them. There are things we are left to wonder about and hope for and things left unanswered. There is a rhythm to this film that reflects the rhythm of life itself – the ups and downs and all the simple joys in between.

Whatever it is you usually do to reset, recharge and lift your spirits – be it going for a walk or a bike ride, playing a musical instrument or catching up with friends – I urge you to skip it just once and take yourself off to a cinema to see this film instead. In a mere 84 minutes it will have the same effect on you and more. Finally, it is worth noting that, much like truffle hunting itself, patience is rewarded for those who are prepared to stay for the credits and listen closely.

Sarah Woodland