

INPRINT

This month's reviews cover medical law, public prosecutions, the trial of Farah Jama, copyright, anti-discrimination legislation and fair work legislation.



Medical Law and Ethics: A Problem-Based Approach

Bernadette Richards and Jennie Louise, *Medical Law and Ethics: A Problem-Based Approach*, 2014, LexisNexis, pb \$110

Scientific and clinical advances, the rising cost of health care, and the impact of health-care on our lives raise a legal and ethical morass to be faced on a daily basis in the clinical practice of health professionals and their legal advisers.

This text guides readers through a series of thoughtful and challenging scenarios to demonstrate how leading cases and legislation, as well as ethical theories and principles, in each key topic area (consent, privacy and confidentiality, organ donation and start and end of life decisions) can guide decision-making, and on occasion serve to highlight the tension for health professionals between legal and ethical behaviour.

Each chapter covers all key legal and ethical concepts as well as discussing legal and ethical rights and responsibilities from the differing perspectives of medical students, health practitioners and patients. Each area is supplemented by further discussion questions challenging readers to develop their own analyses and recommendations. It's simple, clear style makes this book ideal for individual reference and as a text for group teaching.

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The Tainted Trial of Farah Jama

Julie Szego, *The Tainted Trial of Farah Jama*, 2014, Wild Dingo Press, pb \$29.95

This is the story of Farah Jama, a young man convicted solely on the basis of "rock solid" DNA evidence. That DNA evidence was contaminated. Even more shocking, "The guy simply couldn't have done it. The case was a bizarre fiasco."

Here was a young man who was convicted of committing an act (which may not have been committed at all) in a suburb he had never been to, while he was on the other side of town.

Jama was acquitted.

Lawyers and public alike will want to know how this happened and should inform themselves as best they can.

Following the acquittal there was an inquiry into the Jama case conducted by former Justice The Honourable Frank Vincent AO, QC who handed down his report in March 2010. For those interested in the broader implications of this case and specifically the recommendations with regards to the Victorian Institute of Forensic Medicine, the report is available for download from the Department of Justice website.

Although Szego spoke with Jama's legal team, the prosecutor involved and criminal barristers, there was limited input from Jama and his family. Nevertheless, Julie Szego has written this account of Jama's

experience which appears to be about "Men and women, racism, sexual assault, African communities . . . even Islam".

Readers will inevitably draw comparisons here with John Safran's recent true crime novel *Murder in Mississippi*, although it would have been difficult to achieve Safran's wonderful writer/subject dynamic without the participation of Jama.

The real hero of this book is Brett Sonnet. It is he who emerges as the central figure of the book, and he who Szego describes like Miss Marple and Hercule Poirot woke suddenly at 2:30am and thought, "I know he's not guilty".

The case of Farah Jama demonstrates the importance of faith and innocence and the pursuit of both.

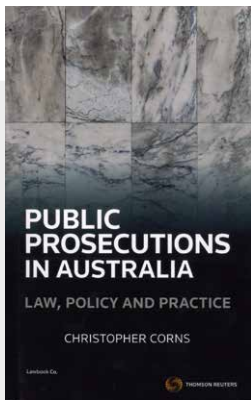
TASMAN ASH FLEMING
BARRISTER

Copyright: The Laws of Australia

Peter Knight, *Copyright: The Laws of Australia*, 2013, Thomson Reuters, pb \$139.95

This book is intended to present basic principles of copyright law and to be as useful to practitioners who are not familiar with the subject matter as those that are. It is up to date as at 15 October 2013.

Knight provides a sound understanding of the elementary components of copyright as well as where the difficulties lie. In his preface, he talks about the significant overhaul that copyright law has seen since 1980, with



Public Prosecutions in Australia

Christopher Corns, *Public Prosecutions in Australia: Law, Policy and Practice*, 2014, Thomson Reuters, pb \$125

Public Prosecutions in Australia is the first book to exclusively review the law and policy relating to the bringing of public prosecutions throughout Australia. It focuses upon the roles, powers and responsibilities of DPPs since the 1980s but also reviews the functioning of other prosecutorial agencies. Corns identifies the historical background of public prosecutions and then reviews the law and

practice of prosecution decision-making. No doubt any second edition will grapple with the ramifications of the High Court decision of *Barbaro v The Queen* [2014] HCA 2 in relation to limitations on what can be said by prosecutors in the sentencing process.

A distinctive feature of the book is its analysis of the prosecutorial arrangements existing between entities such as ASIC, Centrelink, the Tax Office and the Commonwealth DPP. There is also useful coverage of the accountability of individual prosecutors and organisations and performance assessment within OPPs, as well as exploration of the sometimes controversial relationship between Attorneys-General and DPPs.

Corns establishes that there are significant differences in law and practice between jurisdictions in relation to the bringing of prosecutions with the development of distinct regional characteristics and idiosyncrasies. However, for the most part there is similarity in prosecution policies, criteria and guidelines although he argues that greater consistency in respect of statutory disclosure obligations would be constructive. Corns

notes that DPPs face a common set of challenges, including inadequacies in financial and human resources and identification of pleas of guilty at the earliest possible time. Controversially, he argues for strengthening of avenues of review in respect of DPP decisions, and contends that part of the solution may lie in emulating the UK Crown Prosecution Service Inspectorate and further attention to the complex delineation between investigative and prosecutorial functions within DPPs.

Public Prosecutions in Australia is a fine contribution to criminal law literature in Australia, although its index is indifferent, even lacking any entries under "B". It addresses an important topic in a well organised, systematic way. It is thoroughly researched and referenced and thoughtfully raises ongoing issues that are fundamental to the bringing of public prosecutions. It should find a place on the library shelf of all practitioners who undertake or resist criminal prosecutions.

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the *Copyright Act* 1968 having been amended more than most other Australian legislation (other than tax of course) which can be heavily attributed to the pace of technological change.

The author is at the same time somewhat critical of the Act, described as "large and complex", prone to drafting errors and inconsistencies as well as being subjected to "conflicting currents of judicial interpretation". He goes to the extent of suggesting that

some of the most recent decisions reflect a profound lack of understanding of technologies affecting businesses.

What I liked about the book is that Knight introduces debate and questions some of the accepted norms in this area, particularly where decisions are subject to uncertainty and need to be explored more in the future. Specifically, he discusses the decisions of *Burge v Sawbrick* ([2007] 232 CLR 336) in the context of works of artistic craftsmanship

and the *Telstra Directories* case ([2010] FCA 44) in the context of copyright in databases.

Known for expressing his opinions unreservedly, the author also deals with certain controversial overlaps and inconsistencies in copyright in this book. For instance, he flags that there is no clear reason why we have "dual protection" because of the overlap between copyright, design and patent.

While in terms of content the book is good, in so far as layout goes, perhaps a way in

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which the book could have been improved would have been to incorporate a different paragraph numbering system. The current numbering is understandable, given that the author has limited choice as the book itself is also published as Subtitle 23.1 in Title 23 of *The Laws of Australia Encyclopaedia*. However, given that topics such as copyright law are so vast, this numbering system which extends to 23.1.10090 may need to be reconsidered.

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Australian Anti-Discrimination Law

Neil Rees, Simon Rice, Dominique Allen, *Australian Anti-Discrimination Law*, (2nd edn), 2014, Federation Press, pb \$125

Australian Anti-discrimination Law is an account of anti-discrimination legislation operating in all federal and state jurisdictions. Now in its second edition, it has been updated to account for legislative amendments and case law developments. Major additions include new chapters covering victimisation, industrial legislation and positive duties of the kind found in the *Equal Opportunity Act 2010* (Vic).

The book is thorough. It begins by addressing the political, historical and constitutional foundations of anti-discrimination law (Chapters 1 to 3), follows with a logical, comprehensive account of each element of an anti-discrimination claim, and ends with minutiae such as time limits, strike out applications and costs (Chapter 12).

The analysis is supported by extracts from cases (state, federal and international jurisdictions), parliamentary debates, statutes, treaties, statutory instruments and academic materials. Care is taken to ensure that each jurisdiction receives attention throughout. The result is a complete resource that will equip practitioners with a solid understanding of key concepts of anti-discrimination law and how they are translated in legislation throughout Australia.

The authors should be commended for producing a new edition so quickly after plans to consolidate Federal anti-discrimination law were withdrawn (see the *Human Rights and Anti-Discrimination Bill 2012* (Cth), now lapsed). While it is regrettable that the consolidation did not proceed, few would argue that the failure should be seen as a mandate to preserve the status quo. Until reform is revisited, practitioners will continue to rely on resources like *Australian Anti-Discrimination Law* to bring clarity to inconsistent frameworks, outdated statutory language and the overly complex judgments that beleaguer

this area. In this sense, the contribution this book makes to the administration of justice should not be underestimated. It will be a valuable acquisition for any lawyer practising in public law.

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Fair Work Legislation

Rinaldi, Lambropoulos and Millar (eds), *Fair Work Legislation*, Thomson Reuters, 2013, pb \$142

This volume is the bound copy edition of Thomson Reuters' looseleaf and online annotated versions of the Fair Work and related legislation.

There is a distinct editorial challenge in constructing a bound version, for shelf or for bar table, of an annotated looseleaf or online legislation service. Space is at a premium. This is particularly so when, as here, the publisher has been especially generous in including not only full reproductions of the primary Fair Work statutes, regulations and rules, together with exhaustive and helpful cross references and notes, but also extracts from an array of Commonwealth legislative material which touches on the field of controversy that might arise in this area. The cross referencing is especially good, and especially helpful in a corpus of such intricate material.

After all of that legislative material has been included, the room left for annotations, in this 2200 page volume (presumably, approaching the maximum number of pages that any such volume could marketably contain), is relatively small. Hence the editorial challenge.

It could not be said that this is truly an "annotated" version of the legislation. There has not been a serious attempt to discuss the key concepts and essential authorities arising from any but a small proportion of the much-litigated provisions.

The Thomson Reuters Fair Work Legislation series will benefit, if it is given time to, from the application of editorial judgment in favour of commentary and at the expense of extraneous legislative material at the margins. The 2013 edition is a respectable start.

The price differential, between this volume and those which collect the statutes and other legislative material without annotation, is not so very great. If the choice is that between this volume and the statute collections without annotations, this is the one to buy. ●

TOBY BORGEEST
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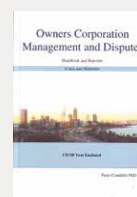
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By Simon Libbis **\$175**

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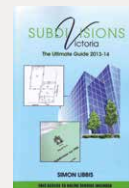
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By Simon Libbis **\$195**

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