This month’s reviews cover personal insolvency, Indigenous social justice, intellectual property and work health and safety.

**Risky Business**


This book sets out to provide a text which concisely and clearly elucidates the underpinnings of “asset planning” or “structuring” strategies which are used to protect assets from availability to creditors of a failed business proprietor. It achieves its aim well.

The book provides an overview of the various legitimate structuring options available, such as sole practitioners/traders, partnerships, companies and trusts, and examines in detail the availability of assets held within those various structures to creditors of a failed business. Although the author gives a brief examination of the effect of scenarios such as death, divorce, dispute and tax, the primary focus of the book is the impact of the personal insolvency (bankruptcy) system.

The author considers the mechanisms within the insolvency system available to trustees in bankruptcy in order to pursue particular assets and transactions. Practical and useful examples involving scenarios with particular structures are given throughout the text and the language used is clear, with the result that the book will be a useful resource for both the seasoned and inexperienced practitioner.

Importantly, the ethical position of professionals advising clients in relation to the above matters is examined. The author looks at the line between what is acceptable conduct by solicitors and other professional advisers, and what is unacceptable (and, in some cases, potentially illegal). This will help practitioners avoid pitfalls, both in terms of their own conduct, and in the advice they give to their clients.

The book concludes with a very useful “checklist” chapter which summarises the key points set out in the earlier chapters, allowing the reader to access a ready reference to the risk or safety of any given asset protection arrangement.

This book would be particularly useful for professional advisers wanting an overview of the interaction between the rights of creditors of a failed business and the various structures available to business people, and is highly recommended.

**DOUGLAS J JAMES**

**BARRISTER**

**Rethinking Social Justice**


Professor Tim Rowse has long been an outstanding scholar of Indigenous policy in Australia. In this collection of essays, he traces the history of that thought through prominent individuals who have made significant contributions to Indigenous public policy in Australia. The period of time covered is from the 1980s to now.

Because of the significant period of time covered, the author is able to delineate different perspectives on how Indigenous interests may be best served in an overwhelmingly non-Indigenous culture and society. The benefit of this longitudinal approach is that it allows the reader to appreciate how the treatment of Indigenous communities is fundamentally a moral and political question. It is also an area of public discourse that is contestable and particularly fluid.

Of course, that is unsurprising given the complicated history of Australia as, depending on one’s perspective, a “settled” nation or one characterised by invasion and violence and the subjugation (particularly through the expropriation of Indigenous land) of the first peoples of this country. And to the extent that the law, particularly in the area of native title, customary law and criminal law, impacts on Indigenous communities, the concepts of “peoples” and “populations” are important and complex notions to understanding the relationship between Indigenous and non-Indigenous communities.

The outstanding feature of this book is the manner in which the author carefully teases out those understandings. To that extent, the work does not set out to provide a blueprint for “curing” Indigenous disadvantage. Instead, by highlighting what has gone before, the author provides a nuanced appreciation of how Indigenous interests may be protected.
Such an approach emphasises the importance of realising the complexity of Indigenous public policy, and that interventions, although politically symbolic, well-intentioned and attractive, as evidenced by the Federal Government’s initiatives in the Northern Territory, belie the complexity of justice for Indigenous communities in Australia.

**Intellectual Property – Cases, Materials and Commentary**


With almost four years passing since the previous edition of this text, the authors have covered a range of recent case law and legislation in intellectual property.

The fifth edition contains significant decisions in copyright, including Telstra Corp Ltd v Phone Directory Corporation Pty Ltd [2010] 90 IPR 1, Intellifile Pty Ltd v Nine Network Australia Pty Ltd [2009] 90 IPR 481, and Roadshow Films Pty Ltd v iNet Ltd [2012] HCA 16.

Following the recent introduction of the *Intellectual Property Laws Amendment (Raising the Bar) Act* 2012 (Cth), this edition notes important changes to designs, patents and trademarks legislation, along with useful background material to assist in interpreting the new provisions. The provisions of the *Competition and Consumer Act 2010* (Cth) are discussed where they intersect with intellectual property rights, particularly relating to trademarks and passing off.

In addition to the main topics of intellectual property, the text also briefly deals with specific protections under the *Circuit Layouts Act 1989* (Cth) and the *Plant Breeders’ Rights Act 1994* (Cth), as well as the protection of confidential information in Australia.

The authors provide key extracts from judgments and articles, as well as notes and questions which are particularly helpful in understanding some of the difficult concepts covered. Materials from various law reform bodies and public consultations are discussed as the book guides the reader through policy issues in each chapter, providing context to the legislation.

This edition, available in paperback or in eBook format, is a great companion for students studying intellectual property, but would also be useful for practitioners wanting to have the latest cases and commentary at hand.

**Work Health & Safety Regulation in Australia: The Model Act**


In a commendable act of cooperative federalism, model workers’ health and safety legislation has recently been enacted in seven of the nine jurisdictions across Australia (Victoria and Western Australia outstanding at the time of writing). While this has been termed a “harmonisation” project, this is not necessarily so: the expanded duty upon a “person conducting a business or undertaking”; the departure from the reliance on the employer-employee relationship; the positive duty imposed on officers and the broadening of worker consultation and participation, are all examples of how the model legislation goes much further than what existed under previous approaches to safety regulation. This much is evident from Richard Johnstone and Michael Tooma’s *Model Work Health and Safety in Australia: The Model Act*.

The book’s raison d’être is to summarise and critique the model legislation. It is a tolerable length: the book’s six chapters primarily focus on the prescribed duties, worker participation, inspection and enforcement. Each chapter commences with an explanation of the prior approaches to safety regulation existing in each state and territory. This colours the outline of the model law’s approach that follows. The authors then apply their analysis to practical examples. Case law extracts are peppered throughout to develop their analysis. The authors use the concluding pages of each chapter to critique the model law and suggest steps the legislatures could take to rectify the failings they identify. The final chapter is dedicated entirely to sewing up this critique, and makes for interesting reading.

This book will be a worthy acquisition for any practitioner not already familiar with the intricacies of the Model Act. For those with some knowledge already, the chief benefit is the comparative analysis of the Model Act and prior legislation. “Study the past if you would define the future”; knowledge of what existed prior, how the Model Act differs and what it most closely resembles will be key to properly advising clients on its intended operation. It is a neat package of extrinsic material, case law and legislative analysis that will serve as a handy reference tool for those who need to quickly ascertain the intentions underpinning the Model Act.

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