
The publication of this important book of conference papers could (one hopes) mark a watershed in never ending debates about the relationship between Law and Equity in Commercial Law. Selection of the title suggests that it might.

There would be nothing remarkable about a title as dry as Equity in Commercial Law were it not for the fact that the theme for the conference that spawned the book was more provocatively focused on the existence or otherwise of a ‘fusion of law and equity’ and its corollary, ‘fusion fallacy’.¹ The passions aroused by the word ‘fusion’ are very real in some quarters. Whatever the story underlying selection of the title of the book, one can but hope that omission of the word ‘fusion’ was an act of reconciliation. A number of conference speakers remarked upon the need to focus upon the substance of doctrinal development of the law, and not to be diverted by polemical debate about ‘fusion’.

In promoting the conference in the lead up to it the editors of the conference papers correctly observed:

This conference will bring together many of the world’s leading judges, academics and practitioners to consider contemporary and unresolved issues relating to the relationship between common law and equity in commercial law. Underlying many of these issues is a question of deep theory about which there is acrimonious debate: what is the relationship between those ‘common law’ doctrines deriving historically from the King’s Courts and those doctrines of ‘equity’ deriving from Chancery?²

Much of any ‘acrimonious debate’ has centred upon the views respectively championed by the late Professor Peter Birks, on the one hand³ and Meagher, Gummow and Lehane, on the other hand.⁴ The deeply ingrained differences of opinion between those who favour and those who oppose ‘Equity’ as a separate field of study are manifest in Equity in Commercial Law.

From the perspective of an Australian practitioner, greater importance might attach to knowledge that these differences exist than to particular theories about how they might be resolved. That is because a practitioner

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¹ The conference was held in Sydney in December 2004. It was hosted by the University of New South Wales, and organised by James Edelman and Simone Degeling, editors of the published papers.
³ Peter Birks died on 6 July 2004. He was a charismatic teacher, a keen student of Roman Law, a seminal authority for the modern law of restitution and an advocate of a ‘new taxonomy’ in which ‘Equity’ would cease to be recognised as a separate field of study. His Australian Obituaries include (2004) 25 Aust Bar Rev 99–102 and (2004) 78 ALJ 615–16, the latter of which was written by his former student, Justice Keith Mason. Equity in Commercial Law is dedicated to the memory of Peter Birks.
⁴ The first edition of Equity: Doctrines and Remedies was published in 1975. The fourth edition (edited by R P Meagher, J D Heydon and M J Leeming) was published by Butterworths LexisNexis (Australia) in 2002. It is the modern classic on ‘Equity’ as a separate field of study.
needs to be able to judge the forensic strengths and weaknesses of academic commentaries available for citation.

An advocate who wants to experience the full range of learning available on the topic could do worse than to read the chapters of *Equity in Commercial Law* contributed by Australian judges: Sir Anthony Mason (Ch 1); Justice Keith Mason (Ch 3); Justice J D Heydon (Ch 9); Justice Peter W Young (Ch 19); and Justice W M C Gummow (the concluding chapter). Those chapters provide parameters within which the book as a whole can be read for edification and enjoyment.

*Equity in Commercial Law* is an indispensable reference work for any lawyer interested in general law principles touching upon Equity as a separate field of study; the relationship between Law and Equity; the Law of Restitution; Commercial Law; or the influence of taxonomy on the application and development of law.

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