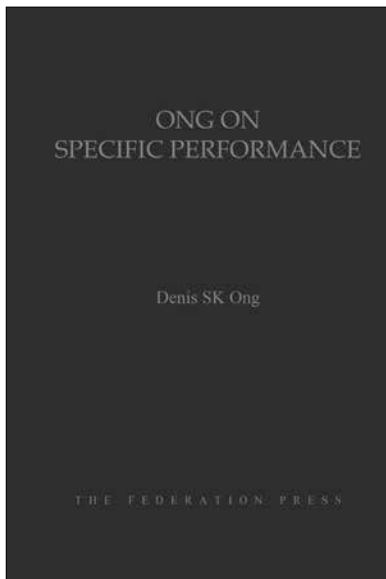


Ong on Specific Performance

By Denis SK Ong | The Federation Press | 2013



Professor Denis Ong of Bond University has taught and written extensively on the topic of equity for many years.

His latest book on specific performance accompanies his previous works, *Ong on Equity* and *Trusts Law in Australia* (the latter now in its fourth edition).

Ong on Specific Performance is arranged in six chapters and examines all aspects of suits for specific performance.

The first chapter analyses the difference between performance of an executory and an executed contract.

The second, much longer, chapter considers the requirements for the making of orders for specific performance, including the inadequacy of common law damages and the plaintiff's readiness and willingness to perform the contract.

Chapter three gives examples of contracts where specific performance may be refused, including contracts requiring the supervision of the court and contracts of personal service.

Chapter four deals with the doctrine of part performance.

Chapter five looks at specific performance and common law damages as alternative remedies. This includes a detailed discussion of *Ogle v Comboyuro Investments Pty Ltd* (1976) 136 CLR 444 which established the proposition, among others, that a vendor who has initiated proceedings for

specific performance may be able despite, and during the pendency of, such proceedings to rescind the contract for further breach.

The final chapter deals with the defence of hardship.

Ong is not afraid to speak his mind. He describes the decision of one member of the High Court in *Foran v Wight* (1989) 168 CLR 385 as 'conceptually problematic as well as irreconcilable with pre-existing high authority' and one which gives rise to 'a capricious dichotomy of outcomes'. All this despite the fact that the said approach – as Professor Ong fairly acknowledges – has attracted support at intermediate appellate level on at least two occasions.

Ong on Specific Performance is written in a lively way, but also in a clear, accessible style. Possibly it was written with students in mind. It will attract a wider readership. Professor Ong has produced a useful, concise yet comprehensive survey of this important remedy.

Reviewed by Jeremy Stoljar SC

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necessary service that filled the vacuum left wide open by government policies, the market economy and the limited assistances available through charitable organisations.

It is also a romp of a detective story. Dr Cossins clearly relishes being able to uncover facts and evidence in order to tell a story which has never been told in full. It is a story of convict heritage, family betrayal and forensic science still in its infancy. In the

days before radio, television and mass communication, it is easy to understand how the Makins' notoriety fascinated the people Sydney, many of who attended or attempted to attend the inquests, trial and appeal. Contemporary accounts suggest that the court hearings were each and every one a full house.

From a lawyer's perspective the book provides a fascinating insight into how considerably the

criminal law has evolved, and in particular how our notions of a fair trial have developed in the 120 years since the convictions of the Makins. Dr Cossins applies the sensibilities of the twenty first century criminal lawyer to demonstrate how different the outcome might have been, had the trial been held today.

Reviewed by Richard Weinstein