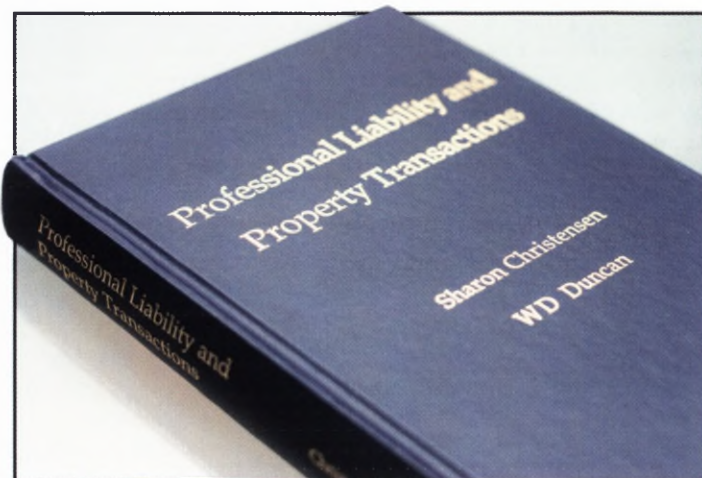


Professional Liability and Property Transactions

by SA Christensen and WD Duncan

By Bill Madden



As the authors indicate in their preface, until now there has been no single text which dealt with the tortious, contractual and statutory liability of professionals engaged in property transactions. This book certainly overcomes that gap, and it achieves more.

Before addressing its core subject in detail, Sharon Christensen, Gadens Professor in Property Law at Queensland University of Technology (QUT), and Professor Bill Duncan, Assistant Dean, also within the Faculty of Law at QUT, devote a substantial section (indeed, 4 of the book's 12 chapters) to issues of a broader nature. A detailed discussion of remedies examines contract, tort and trade practices-type remedies. Contributory negligence and multiple tortfeasors are also covered.

I particularly enjoyed the introductory chapter by Tamara Walsh (Associate Lecturer, QUT Faculty of Law), which analyses the professional in a modern context. It traverses historical matters as well as more recent debates, such as the ever-expanding boundaries of 'the professional', and the conflict, if one exists, between conducting a professional and a commercial enterprise.

Christensen & Duncan review in a comprehensive way the sources of professional liability, limitations and

remedies. I often look to the interpretation of causation as a guide to how well authors deal with complex legal issues. Here the authors have developed a concise and coherent explanation, which would be of benefit not only to students but also to practitioners seeking to give understandable advice in what is often a daunting area.

Of course, the core of the book lies in its separate chapters describing liability for the different relevant professional groups – solicitors, real estate agents, valuers, accountants, construction professionals, lenders and local authorities. These chapters continue the concise yet thorough approach, incorporating many case examples.

The chapter concerning solicitors, for example, includes discussion of fiduciary duty, duty to a third party, statutory overlays, exclusion clauses and reliance on advice from counsel. There is even some helpful comment on issues often raised by potential claimants, such as whether mental distress is compensable in this context.

Similarly, the chapter on real estate agents is comprehensive, covering fiduciary duty, obtaining the best sale price and the recent controversial NSW legislation on giving information to the buyer. It touches on duties to third parties and includes a number of examples of breach of duty. Chapters

on valuers and accountants are of similar depth.

Construction professionals are analysed in a similar way, with examples of losses such as vexation, alternate accommodation and demolition.

The liability of a lender often receives little exposure, but this text does not fail in this regard, with commentary which includes foreign currency borrowing and disclosure to guarantors.

No doubt the book will provide a valuable academic and student reference, and be of great value to practitioners in the property transaction field, particularly for advice on legal exposure, risk management and litigation.

But I think it is also useful for those of us who are not practising in these areas but are called upon from time to time to advise on or speak about professional negligence claims generally, and more particularly those arising from property transactions.

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