

Book Review

Sweet on Construction Law, Justin Sweet, American Bar Association

- Paula Gerber, Partner and Kate O'Connor, Maddock Lonie & Chisholm, Lawyers.

Professor Sweet is one of America's, if not the world's, foremost experts on construction law. He taught construction law at UC Berkeley from 1958 to 1993, is on the board of editors for a number of construction law journals, has written numerous texts on the construction industry and is a regular columnist for the American Bar Association's *Construction Lawyer*.

As he indicates in the preface, Professor Sweet's aim in writing this book is to bring to the discussion of construction law a touch of humanity, which he believes is absent from most legal writing. The book, which was published by the American Bar Association's Forum on the Construction Industry in 1997, developed from a series of lectures presented by the author in 1996, and the conversational tone and open style of those lectures has been preserved. Professor Sweet recognises that the subject of construction law can be dry. To make his handling of the subject more interesting, he imagines sitting around a coffee table with a small group of intelligent people and having to keep their attention. Sweet's avoidance of an overly legalistic style should ensure that the book has a broad appeal in the construction industry.

In a clear and logical manner the author examines the processes and pitfalls involved in any construction project. The author examines the relationships between the various players, the legal/contractual structure of construction projects, and the technical problems that may arise on site. The book is interspersed with anecdotes which maintain the reader's interest. One such example is entitled "My Leaking Deck Door". The tale begins on page 85 when Professor Sweet is endeavouring to explain the problem of divided responsibility:

"I saw this in a very small way when I decided to add a deck to my house. I hired an architect. I picked a contractor to build the deck. My architect did the design. The contractor did the work, which included a sliding door that opened into the dining room.

The first rainy season came. The water poured through the door and into the dining room. I called the contractor and I said 'Henry, What's going on here?' 'Well,' he said, 'It's badly designed. They didn't specify the right kind of material and waterproofing.' I went to my architect. He said, 'Oh, those guys, they didn't do it right.' I was whipsawed between the two. Each pointed to the other and said 'It's his fault'."

The leaking deck door saga resurfaces in Chapter 7 which covers the subject of defects. Here Professor Sweet uses the deck door problem to illustrate the process that parties must often go through before a resolution can be reached. Almost like a doctor trying to diagnose a patient, Professor Sweet goes through a series of questions including:

- Why did the water penetrate the door?
- Was the glass itself defective?
- Was the sealant inappropriate or faulty?
- Was the seal properly made between the waterproofing materials and the glass itself?
- Was it caused by a rain so strong (one in 50 years) that no window could prevent penetration?
- Was the design defective?
- Was the workmanship defective?
- Did the contractor not use the materials specified?
- Was it a combination of any of these causes?

The author's own opinions are given with great regularity, as are comments from colleagues and other participants in the industry whom Sweet has encountered in the course of his considerable career. There is also plenty of "hard law" in the book, including references to significant cases and recent legislative developments. Footnotes are deliberately kept to a minimum, included only where specific reference is made to legislation, a case or a text. These features add to the informal and readable style of the book.

Sweet on Construction Law is written by an American for an American audience. Case law and legislation referred to is almost exclusively American, and some concepts in the book (such as "mechanic's liens") are not applicable to the Australian construction industry. While not of great use as a reference book for Australians involved in construction and construction law, it is nevertheless recommended to all those wanting to acquire a greater understanding of the construction industry in terms of the "big picture".

At 480 pages, *Sweet on Construction Law* is available from:

American Bar Association
 Publication Orders
 PO Box 10892, Chicago IL 60610-0892