

## **LEADING CASES IN AUSTRALIAN LAW: A GUIDE TO THE 200 MOST FREQUENTLY CITED JUDGMENTS**

*Leading Cases in Australian Law: A Guide to the 200 Most Frequently Cited Judgments*, by Daniel Reynolds and Lyndon Goddard, Federation Press, 2016, 480 pages: ISBN 9781760020606. Softcover \$79.95.

As a rule, lawyers love lists. We use them to harness and bring to heel the unruly incubi of daily practice. We are also quite fond of summaries, such as the headnotes provided by commercial publishers of law reports and the case notes that appear in most law journals. Both are essential tools for lawyers in a country where nine jurisdictions, each with their own legislature and judiciary, seem to be in an ever-accelerating competition to produce the most voluminous output, and where researching the answer to an urgent legal inquiry of even the slightest complexity can make one feel like a thirsty man attempting to take a sip of water from a gushing firehose.

*Leading Cases in Australian Law*, by two enterprising young law graduates (and former tipstaves to New South Wales Supreme Court judges), fills a gap that we may not have realised existed in the Australian market. It is the culmination of a quite fascinating empirical idea. The authors set about identifying the 200 most cited cases in the Australian law reports, then prepared a two-page summary of each (under the headings Facts, Held, Key Statements, Commentary and Cross-references) and set them out in this book, ranked from most cited to least. The Appendices are most useful also and include a list of the 20 most cited cases in each of the “Priestley 11” categories, a list of the top 20

English cases cited and, most interesting of all, the top 20 “fast risers”, that is, cases decided in the past five years that are not in the list of 200 but are described, somewhat breathlessly, as having been cited “at such a prodigious rate that if they had been decided further [sic] ago, they would undoubtedly have been included in the top 200”.

From reading the summaries of the cases with which I am most familiar, including some which can be described as complex, I was impressed with the way the authors heroically wrestled each of them into the confines of two pages with a satisfying level of precision and coverage; clearly, much thinking has gone into the writing. The concision with which each case is presented brought to mind the quote, attributed to everyone from Mark Twain to Blaise Pascal but likely apocryphal, “I’m sorry this letter is so long; I hadn’t the time to write you a short one”.

As an overall descriptor, it would be courageous to attempt to surpass Chief Justice French who, in his Foreword, colourfully describes the book as a “compression of legal knowledge into the intellectual equivalent of finger food” and as “good quality flat pack furnishing for the mind of the law student and ... practitioners”. While the book does not, and naturally could not, purport to be a substitute for a close reading of the complete judgments, it resurrects an institution that, until recently, all but had died out. The book legitimately stakes a claim to be the first Australian collection of its kind in the tradition of *Smith’s Leading Cases* (of which 13 editions were published, the last in 1929 under the editorship of one Alfred Denning, Esq, later Master of the Rolls).

I very much enjoyed paging through its contents, revisiting some familiar authorities, some from as far back as law school, others of more recent acquaintance, and learning of others not previously known to me, mostly because they occupy territory in the legal universe onto which I have not dared to trespass. Clearly, the degree of satisfaction a practitioner might derive from this book will vary depending on whether he or she is a barrister or disputes lawyer, a real estate expert, a corporate/commercial transactor, a criminal lawyer or something more specialist or esoteric. Administrative law, criminal law and procedure are heavily represented in the top 20 cases but after that the spread evens out across other disciplines. As to whether any of the entries might elicit surprise in a reader, either at their ranking or their inclusion at all, again I think that would depend on one’s experience and areas of particular interest.

Just as the latest announcement of the top 10/50/100 books/ songs/ films of the year/ decade/ all time is regarded by some as an immediate invitation to challenge, this book tempts the reader to identify omissions or unjustified rankings. I will confess that my hackles rose to precisely this temptation when I read recently the New South Wales College of Law’s “Top 10 Most Influential Court Cases of the Last 40 Years”, which was the output of a survey run by the College (June 2014, see <https://www.collaw.edu.au>). Interestingly, not all of those cases made Reynolds and Goddard’s top 200. I sensed similar feelings rising when I saw *Hadley v Baxendale* (1854) 156 ER 145 ranked a humble 179th, *Breen v Williams* (1996) 189 CLR 51 a lowly 155th and *Masters v Cameron* (1954) 91 CLR 353 a positively modest 81st. And what was *Mabo v Queensland [No 2]* (1992) 175 CLR 1 doing languishing at 39th? Good humour was restored somewhat by the ranking of *CBA v Amadio* (1983) 151 CLR 447 at 32nd and *Waltons Stores (Interstate) Ltd v Maher* (1988) 164 CLR 387 at 27th, but it was difficult to recover from the quiet embarrassment of not recognising all of the cases in the top 10.

In any case, I urge readers to resist that temptation with this book. Remember that this is not the authors’ subjective opinion or the results of a survey or poll. It is not a ranking of cases that are deemed by some person or some collective consciousness as “most influential” or “most important” or most anything other than cited in Australian judgments. A reader may be intrigued or even outraged that this case or that has been included (or omitted) but this work, or at least the inclusions and rankings, are the result of a purely empirical process. It may even be argued that the process has *in fact* yielded the 200 most important cases, if the test is what most often occupies the attention of Australian judges and that, in itself, makes it an interesting and worthwhile addition to the literature.

This book is not in the same league as historiographically satisfying anthologies such as Charles and Paul Mitchell’s *Landmark Cases in Equity* (Hart Publishing, 2012) or the American Professor A W Brian Simpson’s *Leading Cases in the Common Law* (Clarendon Press, 1996), but then it does not

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attempt to be. Nevertheless, in an age where almost the entire canon of reported authorities is available with a few clicks of a keyboard and mouse, and almost all of that is internally searchable at speeds approaching instantaneity, it is fair to ask what purpose does a book of this nature serve? While practitioners will, I think, enjoy it and appreciate the refresher, I suspect that the most avid audience for it will be the student population, particularly at the undergraduate level. I remember well struggling through long and complex cases when pre-reading for a class, wishing for a crib or guide or even a hint as to what on earth they were all about. How I would have appreciated a two-page summary of the kind offered in this book as pre-reading to the pre-reading!

*Nuncio D’Angelo*