Leading Cases in Australian Law

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The Federation Press 2016 444 pp

This might be regarded as a bold attempt by Federation Press to reverse the current trend of law students being encouraged to access any current cases which they might need to refer to or cite in any essays or papers via the digital process of AustLII or any other current digitised legal information providers.

This is the question posed by the Chief Justice Robert French who states in his foreword:

'What is the point of a compilation of leading cases in an age in which a small legal library can be carried around on an iPad or personal computer?' His response to this self-posed question would resonate with most senior law academics of a certain age, including this reviewer, when the Chief Justice goes on to state: 'There is much to be said for reading text on paper in a hardcopy book. It presents information with visual cues in two dimensions comprising the eight corners of the pages when the book is opened, and in three dimensions by the thickness of the book as the reader progresses through it. All of this is linked to the tactile experience. That combination cannot be reproduced on a flat screen with a cursor telling the reader what percentage of the book remains to be read.'

This is not an argument made to ignore searchable legal databases but to encourage law students to consider that there could be limited situations where it might be more opportune to adopt the printed word in contrast to the digitised version.

The additional question which then needs to be asked is whether this is such a text which needs to be adopted for this purpose?

With regard to seeking to answer this question the authors themselves in their Introduction to the book argue that their book is following in a great tradition created 179 years ago when in 1837 John Smith first published his innovative book with the title: *A Selection of Leading Cases on Various Branches of the Law with Notes*, a book which led to the publication of a number of similar texts of which the most recent was Simpson's *Leading Cases in the Common Law* published in 1995.

If it is accepted that the argument has been sustained for the continuation of such publications, the question then to be asked is: does this particular book warrant being purchased for the long-time use of its reader?

In support of this proposition the authors argue that whilst there are current eminent casebooks published in Australia, most of these are thematic collections which only deal with one or two areas of law and that in contrast their particular text provides a summary of the 200 leading cases in Australian law *at large*.

Examination of the contents of *Leading Cases in Australian Law* does point to some changes which might be regarded as first-time innovations in an Australian Law book of this kind. Illustrative of this concept was the decision by the authors to seek the assistance of LexisNexis in ranking all those cases known to Australian Law by the frequency with which they had been cited in later decisions. This means that the chosen cases are those which have most often been cited by practising lawyers. In addition there are five appendices in the book which are illustrative of the innovative approach adopted the authors. These incorporate a single sentence heading *(Appendix 1)*, the top 20 cases in each area of the law–as defined by the 'Priestly 11' *(Appendix 2)*, the 20 English cases most frequently cited in Australian courts *(Appendix 3)*, a 'hall of fame' listing the 20 judges chiefly responsible for the expressing the statements for which the listed 200 cases are usually cited *(Appendix 4)*, the cases which have been decided in the last five years and which have already been cited for in such sufficient cases as to make them the 'fast risers' to gain early entry into a future list of leading cases *(Appendix 5)*.

An examination of these principles put into practice may be illustrated by the consideration of the entry regarding the well-known case of Donoghue v Stevenson [1932] AC 62 which summarises the proposition considered in the case that the 'Modern law of negligence imposes a general duty of care on every person to take reasonable care to avoid acts or omissions which could forseeably injure others.' This is followed by a succinct statement outlining the facts and decision of the case whereby the purchase of bottle of ginger beer by a friend of May Donoghue led to her drinking the ginger beer from a bottle which contained the decomposed remains of a snail. The eventual outcome was that the House of Lords *Held:* That David Stevenson, the drink's manufacturer owed a duty to the plaintiff as a consumer of the beverage to take care that it contained no 'noxious element' and that he had neglected this duty. This account also incorporates, *Key statements* relating to the judgment including the observation of Lord Aitkin at page 580 where he answers the question

'Who then is my neighbour?' with the answer 'it seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.' In the accompanying *Commentary* there is an observation that whilst the doctrine of proximity originally propounded in the case has fallen out of fashion, it has still been 'remarkably successful over more than half a century in supplying a touchstone for coherence within the tort of negligence' (*Caltex Refineries (Qld) Pty Ltd v Stavar* (2009) 75 NSWLR 649 at [181]). The entry concludes with some helpful *Cross-references* quoting appropriate references to the case in a selection of textbooks on the topic, including R Balkin and J Davis, *Law of Torts* (LexisNexis, 5th ed, 2013), C Sappiden and P Vines (eds), *Fleming's Law of Torts* (Thomson Reuters, 10th ed, 2011) and P Stewart and A Stuhmcke, *Australian Principles of Tort* (Federation Press, 3rd ed, 2012).

It is not surprising that Donoghue v Stevenson is also listed as fourth in the top 20 English decisions most frequently still cited in Australian Courts. As the head note to *Appendix 3* explains, whilst modern Australian courts resort to English authorities less frequently since 1986, the date which marked the cessation of a right of appeal to the Privy Council, there are still some English authorities which have remained as staples to the diet of the practising lawyer.

Obviously the debate will continue as to the value of compendiums of such collections of cases as *Leading Cases in Australian Law*, but in the view of this reviewer the Guide to the 200 Most Frequently Cited Judgments would add value to any law library and also act as a helpful book of reference to either the hard pressed law student, academic or the busy law practitioner.

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Editor