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, 444 pages + xxxvi: ISBN: 9781760020606. Softcover $75.00.

As Chief Justice French, as he then was, makes clear in his Foreword to this extremely interesting new volume, there is a long tradition of books which compile leading cases but that tradition has not previously encompassed Australia. The authors – both of whom I had the privilege of meeting in their time at UNSW Law School – have produced a book which is steeped in history and yet highly innovative. It makes use of extensive legal databases now available to researchers in order to determine which cases have been the most cited in Australian courts. The authors further add to what is already available through legal databases by including concise but thorough sketches of what each case is about and providing a glimpse into why it has been cited so frequently.

This "value adding" is important for a book that only the hardiest souls will attempt to read from beginning to end. In fact, *Leading Cases in Australian Law* will be used in a number of other, different ways. First, it is a reference book, a resource to which lawyers and law students might turn, either to check what the case mentioned in their reading stands for, or to refresh their memories about its facts, or simply to use the authors' commentaries as a source of information as to where a case has recently been cited or discussed in academic writing.

Second, there are those readers who will find great interest in the way that the authors have compiled their list of the 200 most frequently cited judgments. How many English judgments are included? Are there more from a particular period in Australia's history than any other? What are the subjects which have resulted in the most cited judgments? Which judges have contributed the most to the cases listed? As a matter of legal and historical interest, there is much in *Leading Cases in Australian Law* that will keep readers amused regardless of whether they have a particular case to seek out.

Third, this book will attract "trainspotters"; people who are familiar with the cases in the book, or at least those in a certain area, but are interested in reading what the authors have to say about those cases or are diverted by which cases have made the list and why. *Leading Cases in Australian Law* is particularly rich in interest for administrative lawyers of such a bent.

For one matter, there are many administrative law cases included in the 200 featured. A conservative count indicates that 39 of the cases are about administrative law, or a little under 20% of the total. What conclusions might a reader draw from the disproportionate contribution of administrative law cases to the list? The authors have also included, as Appendix 5, a group of twenty "fast rising" cases that

> have been decided in the past five years and have since been cited at a prodigious rate, such that, if they had only been decided further ago, they would undoubtedly have been included in the top 200 cases of all time.

Seven of these twenty are administrative law cases. Interestingly, though, two of those cases – *Minister for Immigration and Border Protection v Singh* (2014) 231 FCR 437 and *Minister for Immigration and Border Protection v Stretton* (2016) 237 FCR 1 – are notable mainly as attempts by the Full Federal Court to come to grips with the implications of the case which tops the list of "fast risers", *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332.

Another interesting issue is that, of the full list of cases, those on administrative law most frequently cited are not necessarily those you would think. There are four administrative law cases in the top ten, eight in the top twenty. Not everyone would guess that the highest of these, at #3, would be *Project Blue Sky v Australian Broadcast Authority* (1998) 194 CLR 355. By contrast, few would fail to guess that the list is topped by *House v The King* (1936) 55 CLR 499. The top twenty administrative law cases (see Appendix 2) feature a number of cases which must be cited with declining frequency because they decided points which are no longer at issue: *Minister for Immigration and Multicultural Affairs v Eshetu* (1999) 197 CLR 611; *Abebe v Commonwealth* (1999)

197 CLR 510; and *Muin v Refugee Review Tribunal* (2002) 190 ALR 601 have been overtaken by amendments to the *Migration Act 1958* (Cth); *R v Hickman; ex parte Fox* (1945) 70 CLR 598 has been of extremely limited use since the High Court's decisions in *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476; *Kirk v Industrial Relations Commission of New South Wales* (2010) 239 CLR 531; and *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273 has been read down to a fraction of what it decided[5] and treated by the High Court as having been all but overturned as an administrative law precedent since *Re Minister for Immigration and Multicultural Affairs; ex parte Lam* (2003) 214 CLR 1. These cases appear higher in the list than more important (in the sense of currently useful) cases like *Kirk*, *Lam*, *Minister for Immigration and Multicultural Affairs v Jia Legeng* (2001) 205 CLR 507 and *Annetts v McCann* (1990) 170 CLR 596. Indeed, one wonders whether the appearance of *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 at #23 in the full list has more to do with it having given its name to an oft-pleaded ground of review than because the case itself is being cited.

Not every reader will want to descend into exercises like the above. It is fortunate therefore that *Leading Cases in Australian Law* is also such a useful, elegantly written and appropriately concise reference work. It is trite to review a book by including the sentiment that it is one which every lawyer will wish to own. Whether that is literally true of *Leading Cases in Australian Law* or not, it is certainly a book which is unlike any other produced for an Australian market and it fits that space so well that lawyers may well forget a time when it was not available. This is a testament to the great achievement of its very talented authors.

Greg Weeks
Senior Lecturer, ANU College of Law

CONTROLLING ADMINISTRATIVE POWER: AN HISTORICAL COMPARISON

Controlling Administrative Power: An Historical Comparison by Peter Cane, Cambridge University Press, 2016, 582 pages + xxiii: ISBN: 9781316601501. Softcover $89.95.

Controlling Administrative Power: An Historical Comparison is the product of many years of work and thinking by one of the common law world's preeminent public law scholars. It is, quite simply, a must-read for anyone with an interest in the intersections between constitutional law, administrative law, politics and history.

In this book, Cane set himself the rather enormous task of examining the relationship between the way power is distributed between the institutions of government, and the systems for controlling public power, by comparing three jurisdictions: England, the United States of America and Australia. In essence, his project surveys the powers, relative strength, and relationships between the three branches of government in each of those jurisdictions and analyses how these features have shaped the form and content of the mechanisms through which administrative power is controlled.

In-depth comparative work of this scale is rare in public law, particularly in the common law world. This is probably, in large part, due to its complexity. As Cane's book reveals, the modern mechanisms for controlling public power in the US, England and Australia are not only a product of the institutional framework established by the respective constitutions of those jurisdictions, but also of various historical, political and social factors. Comparative work in public law therefore demands an understanding of how all these forces operate together to shape the development of government institutions and law, in three quite different jurisdictions. As Cane's book shows, despite its difficulty, when done well, detailed comparative work of this nature can be extremely rewarding.

The book is comprised of 14 chapters: an introduction and conclusion, plus 12 substantive chapters. Those 12 substantive chapters can broadly be divided into three sections. Chapters 2 to 5 establish Cane's analytical framework. Chapters 2, 3 and 4 trace the historical development of government institutions and the distribution of powers between them in each of the jurisdictions

[5] See *Nweke v Minister for Immigration, Multicultural Affairs and Citizenship* (2013) 136 ALD 235; [2013] FCAFC79, [29].