

Foreword

The Hon Justice Steven Rares

One could be forgiven for thinking that a book on case management might not be a compelling read. However, Professor Michael Legg has made the subject remarkably interesting in this scholarly work.

Professor Legg has impressively surveyed, synthesised and compared the various rules and practices that Australia's Federal and Supreme Courts, the High Court of Justice of England and Wales and the Federal District Courts of the United States of America use in managing complex litigation. The analysis ranges over historical developments to what courts are doing today. It reveals, as one might expect, that there is more than one way to approach any problem. But the benefit of Professor Legg's research is its comparative distillation of the techniques used in each jurisdiction.

When I was called to the bar in 1980, Justice Andrew Rogers had just begun to manage the Commercial List of the Supreme Court of New South Wales. It was not a place for the faint hearted but he demonstrated to the profession just how good, active case management could narrow issues, reduce costs and promote settlement. Not all his experiments endured, such as the narrative responsive statements of facts ordered in *Gollin Holdings Ltd v Adcock* [1981] 1 NSWLR 691, in which I appeared. But his use of discovery in waves in that case has.

Aspects of case management can be seen, like the practice of medicine, as an art not a science. The challenge for courts is to contain and narrow what needs to be done to ensure that each litigant has a fair opportunity to use the limited resources of the judicial system to resolve the controversy in which he, she or it is engaged. The use of that opportunity in each case has the necessary consequence of preventing the judge or jury hearing it from hearing other proceedings. Hence, legislatures and courts have had to impose imperatives on the parties themselves, as well as their lawyers and the courts, to recognise that the judiciary must eschew as much as possible a modern day replication of *Jarndyce v Jarndyce* that Charles Dickens pithily explained in hundreds of pages in *Bleak House*. Late in the 19th century, Bowen LJ described Sir George Jessel MR as "a great lawyer, but a rapid lawyer, and one who certainly sometimes brushed away cases in a speedy and perhaps somewhat imperious way", albeit that he was generally right.¹ Oftentimes, cases today need to be managed with an eye to practicality and justice, just as Jessel MR may have done.

This second edition of the book is a fine contribution to case management itself. It will prove to be a substantive resource for practitioners, judges and the academy.

Steven Rares
Federal Court of Australia
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¹ *Lamb v Evans* [1893] 1 Ch 218 at 231.