

BOOK REVIEWS

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Fundamentals of Legal Research, 7th ed.

By J. Myron Jacobstein, Roy Mersky and
Donald Dunn

New York Foundation Press, 1998.

ISBN 1 56662-613-7 \$US 50

American legal research texts rarely get reviewed in Australian journals. This paucity should be remedied immediately in view of the increasing use of American and other overseas precedents in Australian courts.¹ Kirby, J. in referring to a recent High Court of Australia decision regarding judicial disqualification, made the following comment: 'Decisions of the courts of South Africa were considered along with those of New Zealand, Canada and the United States'.² And two years previously,

¹ Dorsett, S. & Godden, L. 1998, *Guide to overseas precedents of relevance to native title*, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra; Von Nessen, P. 1992, 'Use of American precedents by the High Court of Australia 1901-1987', *Adelaide Law Review*, vol. 14, pp. 181-218.

² Kirby, M. 2001, 'Blueprint to keep the Bench on the straight and narrow', *Sydney Morning Herald* 18 April (<http://www.smh.com.au>).

Fiona Buffini in discussing legal professional privilege, claimed: 'Justice Heery did not mention the two recent cases in his judgment, relying in part on six United States cases'.³ Also note the introduction of the United States business judgment rule as legislated in *Corporate Law Economic Reform Program Act 1999* (Cth).

The book under review is a classic, now in its seventh edition. One of its authors, Roy Mersky is known to many Australian law librarians due to his visits to Australia and his attendance at various overseas conferences which Australians have attended. Though concentrating on US legal literature, the work also has chapters on international law, English legal research and computer assisted legal research.

There is a glossary of terms used in legal research. If you wish to understand US federal tax, there is a chapter solely devoted to this. This is certainly a one-stop shop for US legal research covering all the different formats of US legal literature. The various state and federal case and statute laws are covered. Australia was slow to adopt legislative histories, which have been in use in the United States for generations, and these are discussed

³ 'Blow to AIO over client names', *Australian Financial Review* 24-28 December 1998, p. 6.

in a separate chapter. Some unique US publications such as annotated law reports, Shepard's citations, KeyCite, Restatements, model codes and interstate compacts are discussed. The appendices include a table of legal abbreviations, state guides to legal research and coverage of the National Reporter System. There are illustrations from various print and electronic sources scattered throughout the text

Many questions posted on various law library email news lists could be answered by reference to this text. Australian and New Zealand law librarians would do well in considering this work for purchase in view of the increasing use of American legal literature by Australian legal researchers.

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Universal Citation Guide

By the **Committee on Citation Formats,**
American Association of Law Libraries,
Madison, Wisconsin, State Bar of Wisconsin,
1999

ISBN 1-57862-017-1

This work concerns itself with providing model rules for citation of judicial decisions, constitutions, statutes and administrative regulations. The background to this work is outlined by reference to a need to cite both print and electronic formats.

The book discusses the move to media neutral citations in the United States since the early 1990s whereas in Australia the High Court of Australia initiated its own format for media neutral citations for its decisions from the beginning of 1998. Other Australian superior courts followed suit with their own media neutral citations. During 1997 the *anz-law librarians* list canvassed the issue of media neutral citations and there were many contributors on this topic.

In the US it appears a lot simpler, e.g. *Smith v Jones* 1998 WI 453 para (reverse p) 82. This indicates the parties, year of judgment, court designation, judgment number of the year and a pinpoint citation. However the reverse p is not found on every keyboard. Contrast this to Australia, with *McCann v Switzerland*

Insurance Australian Limited [2000] HCA 65 at [15].

This book has useful appendices covering geographic abbreviations; court name abbreviations, other abbreviations, United States, state jurisdictions. These are useful for Australian researchers who often need to know various US geographic abbreviations. This work has already been supplemented by a draft on law reviews and court rules.⁴

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The Australian Federal Judicial System

By **Brian Opeskin** and **Fiona Wheeler** (Eds)

Melbourne University Press, 2000

ISBN 3-84889-522-0 \$87.95

Over the last ten years the High Court has in a number of significant decisions dusted off the somewhat arcane provisions of Chapter III of the Commonwealth Constitution and caused fundamental reassessment of the role of the judiciary and federal jurisdiction in settlement of disputes in Australia. The publication of this book is therefore timely. It comprises fourteen

contributions by leading judicial, academic and professional commentators. As may be expected, it therefore draws together a well-informed and balanced range of writings that explore many of the complex issues associated with the judicial power of the Commonwealth.

The various chapters are divided into four parts. The first, 'Recent Themes', is largely directed at conceptual and jurisprudential doctrines, namely the separation of powers (Cheryl Saunders), judicial federalism (Gavin Griffith QC and Geoffrey Kennett) and the independence of the judiciary (Stephen Parker). It is appropriate to start at this level as the theoretical environment engendered by the High Court of late requires fresh analysis. All three papers deal incisively and perceptively with a number of difficult abstract and abstruse issues addressed in recent constitutional litigation.

Part II is more institutional in its emphasis and is concerned with the Federal Courts themselves. Contributions are made by Sir Anthony Mason, Justices Robert French and Bryan Beaumont, rounded off by a valuable theoretical assessment by Margaret Allars of the interrelationship of federal courts and federal tribunals. The treatment of these topics is reasonably up to date. For example, Justice French deals among other things with the new Federal Magistrates Court, whilst Justice Beaumont's chapter on managing litigation in

⁴ 'The Universal Citation Guide: Tentative drafts for law reviews and court rules' 2000, *Law Library Journal*, vol 92, pp. 363-75

the Federal Court is well pitched at practical problems of litigating federal issues.

The third part looks more closely at the content of federal jurisdiction itself. Henry Burmester explores the limits on federal adjudication such as standing and justifiability, while Leslie Zines descends into the complicated depths of 'associated' and 'accrued' federal jurisdiction. Brian Opeskin, one of the editors, takes upon himself the onerous task of analysing the background and breakdown of the cross-vesting scheme for sharing state and federal jurisdiction between the States' Supreme Courts and the Federal courts. His paper ventures into the frontier region of the remedial state legislation that was designed to overcome the destruction wrought to the cross-vesting legislation by the High Court in *re Wakim; Ex parte McNally* (1999) 161 ALR 318. Peter Nygh completes Part III by discussing issues of choice of law in the federal context. He too devotes some space to the problems of the cross-vesting scheme as well as traversing key provisions of the *Judiciary Act*, a little appreciated area of knowledge vital to federal practice. The central issue of what constitutes a 'matter' within Chapter III is raised at several points in these papers.

In Part IV, Andrew Goldsmith, Anthony Blackshield and Fiona Wheeler (the other editor) combine to give the book a more flesh

and blood analysis by concentrating on the members of the federal judiciary themselves. This covers their profile, their method of appointment and removal, and some of the institutional problems when, schizophrenically, federal judges act in other capacities.

Overall the book provides an acute analysis of key theoretical and conceptual issues while at the same time it discusses many matters of everyday relevance to legal practice. Its one deficiency is, however, due to neither the editors nor the contributors. This is the fact that in the period of the last couple of years the High Court has continued to hand down decisions that have raised new aspects of the substantive issues dealt with in the book. These include *Australian Securities and Investments Commission v Edensor Nominees Pty. Ltd.* [2001] HCA 1 (8 February 2001), *Re Macks; Ex parte Saint* [2000] HCA 62 (7 December 2000), *Re Refugee Review Tribunal; Ex parte Aala* [2000] HCA 57 (16 November 2000), *The Queen v Hughes* [2000] HCA 22 (3 May 2000) and *Residual Assco Group Limited v Spalvins* [2000] HCA 33 (13 June 2000). Likewise, the case of *John Pfeiffer Pty Limited v Rogerson* [2000] HCA 36 (21 June 2000) presents a new view of the choice of law principles within the Australian Federation.

The novel aspects these cases explore means that in a few instances the commentary in the

book is already a little dated. To some extent this deficiency is remedied by the fact that the Australian Law Reform Commission has recently put out for consideration Discussion paper No. 64, *The Judicial Power of the Commonwealth*, concerning possible amendments to the *Judiciary Act*. This covers similar issues to those in the book and hence can be read as a supplement to it on specific points where litigation has occurred since the book's publication.

To those in the forefront of federal litigation or involved in teaching advanced constitutional law courses, the book is a significant addition to the literature. It will interest both the academy and the profession. For many reasons the book is essential to understanding the difficult but nevertheless unavoidable problems of the judicial aspects of the Constitution.

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E-Business: Law and Management for the 21st Century

By **Eugene Clark, George Ho and Arthur Hoyle** (and seven other contributing authors)

Info Sys Law International, 2000

ISBN 0858898195 \$99

This text purports to be targeted at undergraduate and postgraduate university students, working business managers, and advisers to e-business. The result is a text which doesn't reach any of those targets satisfactorily. The text is overly long and too often repetitive, no doubt the result of the three chief authors and seven contributing authors, combined with the apparent lack of an overall editor. For example, remedies available under the *Trade Practices Act* are discussed in at least three different sections, and there are repeat discussions of Freedom of Information laws, outsourcing issues, the *Electronic Transactions Act*, taxation issues and privacy law. The need of a good editor and proof reader is also evident in the many spelling and grammatical errors throughout the text.

The text worked best when it implemented its avowed intention to apply the general law to specific e-commerce case studies, but overall the text reads like a poorly edited generic business law survey, with some e-commerce examples thrown in. There are too many lengthy discussions of legal areas without any specific application to an 'e-business'

environment. While these treatments provide a useful review of commercial law, there is nothing to distinguish them from other business law texts. The long discussions on government outsourcing, franchising and product recall applications under the *Trade Practices Act* are superfluous without any specific application to an e-commerce context. Conversely, the areas of law which do raise difficult legal issues in a digital environment did not receive the attention they deserved. For example, intellectual property receives little attention when compared to less relevant legal topics.

In summary, there are the bones of a decent e-commerce law survey in this text, but they are currently obscured by excess weight and poor organisation.

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