

***A DIGEST OF AUSTRALIAN CONSTITUTIONAL CASES***, 3rd edition by P. H. Lane, North Ryde, Law Book Company Limited, 1988. xxi + 487 pp. \$49.50 (soft) \$79.50 (hard).

In the third edition of this work, Professor P. H. Lane, recently retired Challis Professor of Law at the University of Sydney, produces yet another contribution to the field of Australian constitutional law. However, as with most of Professor Lane's current publications,<sup>1</sup> this work stands alone as being a unique contribution in its own right. A glance through the index shows that in only 487 pages there are found extracts on 212 High Court and Privy Council decisions concerning the Australian constitution. Yet the major feature of the *Digest* is the manner in which these collected constitutional cases are reproduced with a succinct summary of the facts, isolation of the relevant constitutional issues, summary of the court's decision and extracts from key judgments. In this respect the *Digest* differs considerably from other 'casebooks' on constitutional law which reproduce extensive passages from a select case list in conjunction with a commentary on the cases and law.<sup>2</sup> 'Traditional' students and practitioners casebooks on constitutional law have been previously criticised in this Review,<sup>3</sup> but the *Digest* with its entirely different philosophy presents an alternative offering to these publications.<sup>4</sup>

Compiling extracts from major constitutional cases may not seem to be a difficult task, but closer examination reveals that the distinguished compiler of the *Digest* has very consciously worked to ensure that there is a symmetry between the extracted case law and the actual law on our Constitution. An excellent example of this is the collection of 29 cases which represent that portion of the *Digest* devoted to Section 92—the freedom of interstate trade. In 1982 when the second edition of this work appeared, there were twenty-three extracted cases on this subject. However, since that edition the High Court decided *Cole v. Whitfield*,<sup>5</sup> giving an unprecedented unanimous judgement on the interpretation of section 92. Given the significance of this decision, a student of constitutional law might argue that the subject could now be treated with a substantially smaller case list than it previously warranted. Instead twenty-nine cases are reproduced in this edition. A close inspection of the extracts shows, however, that much of the previous lengthy discussion by High Court and Privy Council judges over the meaning of the words

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<sup>1</sup> *A Manual of Constitutional Law*, 4th ed (1987); *An Introduction to the Australian Constitution* (1987); *Lane's Commentary on the Australian Constitution* (1986).

<sup>2</sup> Examples are P. J. Hanks, *Australian Constitutional Law*, 3rd ed (Butterworths: 1985); Leslie Zines & G. J. Lindell, *Sawer's Australian Constitutional Cases*, 4th ed (Law Book: 1982).

<sup>3</sup> See the extensive review of Sawer's *Australian Constitutional Cases* (4th) by James A. Thomson in 10 (1984) *The Sydney Law Review*, 469-479.

<sup>4</sup> As Professor Lane writes in his Preface at page v "Here is a vade mecum for readers of federal constitutional law—and my contribution to less knowing and more thinking."

<sup>5</sup> (1988) 62 A.L.J.R. 303.

'absolutely free' have been deleted. Instead the cases contain extracts concerning matters which are still contentious following *Cole v. Whitfield*. Hence issues such as what constitutes trade, commerce and intercourse, and the extent to which laws imposing basic standards of health and safety infringe section 92 are the main features of the collected cases on this topic.

To ensure the reader does not confuse the consideration by a single court of various constitutional issues, portions of such relevant cases have been extracted throughout the *Digest* under different headings. Consequently, a case such as *Australian National Airways Pty Ltd v. The Commonwealth*<sup>6</sup> can be found under the introductory section dealing with Commonwealth powers generally, Section 51(i)—Trade and Commerce Power, and Section 92. Each extract gives a cross reference to the other locations where extracts from the same case can be found. While there may be some room for criticising the cases selected under each particular heading, such as why the *Tasmanian Dams*<sup>7</sup> case is only found under the External Affairs heading and not also Commonwealth-State Relations, the extracted cases more than adequately represent those which are vital to a basic understanding of the Constitution.

The *Digest* therefore allows its readers to focus on a selection of the relevant cases dealing with the interpretation of a particular section or issue in our Constitution without fear of being distracted by other irrelevant issues. The lack of commentary, a feature which is usually an addition to most 'casebooks', allows the cases to speak for themselves. The author's design of the extracts and selection of individual judgments is the commentary. As Professor Lane notes in his Preface,

... I have not chosen to photograph innumerable pages from the judgments of the reported cases and leave the reader to thumb through these. For it seems to me that too much time is consumed in hauling in the sheer contents of the law, and little time left for leisurely thinking.<sup>8</sup>

While the reader is given considerable scope to achieve this objective, the task could have been made simpler if a number of organizational problems had been overcome.

For example, page references to the law report from which a case has been extracted are found in mid sentence and at the conclusion of a paragraph. At the conclusion of an extract, either the single judge or judges responsible for the extracted text are identified and a summary is given of the page numbers from which the text was extracted. This can lead to confusion as occurred in the extract of the *Engineers* case.<sup>9</sup>

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<sup>6</sup> (1945) 71 C.L.R. 29.

<sup>7</sup> *Commonwealth v. Tasmania* (1983) 158 C.L.R. 1.

<sup>8</sup> Page v.

<sup>9</sup> *Amalgamated Society of Engineers v. Adelaide Steamship* (1920) 28 C.L.R. 129 at pp. 471-474 *Digest*.

Page numbers are scattered throughout this judgment with no obvious indication as to whether a quote comes solely from one or two pages, so that eventually the final extract from the judgment seems to come from page 157 of the Commonwealth Law Reports yet the concluding summary indicates that it may be from page 159.<sup>10</sup> In another instance a page reference divides the word 'Commonwealth' into 'Common wealth'.<sup>11</sup> While this is an accurate reproduction from the Commonwealth Law Reports, surely some consideration could have been made for the reader so as to avoid such an unnecessary splitting of words.

Another difficulty is encountered in the method adopted to cross reference cases reported throughout the *Digest*. At times references made in the extracted judgments to cases reported elsewhere in the *Digest* are noted with 'see above', or 'see below', or with the full case citation giving no indication that an extract of the case is found elsewhere at all. This attempt at cross referencing can create absurd results such as where *D'Emdem v. Pedder*<sup>12</sup> is referred to as both 'see below' and 'see above' on the same page of an extract from the *Engineers* case.<sup>13</sup>

On their own these problems in presentation and style are no more than an annoyance, but when combined throughout the text they are a continual distraction for the reader. There is certainly scope for the publisher to overcome these problems in any future edition in a way that does not detract from the unique presentation of the material for which the *Digest* is noted.

In conclusion it can be said that the *Digest* does not attempt to give the reader a complete picture of Australian constitutional law cases. Merely reading these short extracts does not allow anyone to come to grips with all the difficulties the High Court has faced over the years with constitutional interpretation. This can only properly be achieved by a thorough reading and analysis of the major cases. However, what the *Digest* does achieve, and this seems to have been the goal of its author, is to give the reader a preliminary introduction to Australian constitutional law and the High Court's development of constitutional jurisprudence. On this basis, it is thoroughly recommended for both students and practitioners of the subject.

DONALD R ROTHWELL  
Lecturer, Department of Law,  
University of Sydney

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<sup>10</sup> Page 474, *Digest*; why also is it that the extract of the *Engineers* case, surely one of the most significant decisions in Australia's constitutional history, is the third last extract in the *Digest*?

<sup>11</sup> Page 459, *Digest*.

<sup>12</sup> (1904) 1 C.L.R. 91.

<sup>13</sup> Page 472, *Digest*.