The Appellate Jurisdiction of the Courts in Australia


The Hon Justice Dean Mildren has prepared a guide to appeals in Australia. It is intended, among other things, as a practical introduction for lawyers new to the practice from a judge's perspective.

Justice Mildren was appointed to the bench of the Supreme Court of the Northern Territory in 1991, retiring in 2013, and continues to sit as an acting judge.

Justice Mildren writes in an engaging style, at times matter-of-factly: “Appeal Court judges are human and, just as an ordinary listener will become bored by a long-winded and rambling dissertation by a counsel who fails to come to the point, so will they”. There is also technical treatment of important principles and cases.

An issue of great interest was the treatment of running weak points, as it is always a fraught forensic decision which points to run and which points to abandon even at trial level. “Before you reach the end of your speech, you should either abandon the weak points in your outline of argument, or simply tell the court that you rely on your written submissions in relation to them. My own advice is that abandonment will earn you gratitude from the bench, because that is one less issue they have to deal with, and you are likely to be raised in the esteem of the judges as a counsel who has given a lot of thought to their case and whose answers to the problems raised by the appeal are likely to be right.”

Tasman Ash Fleming, barrister

Admiralty Jurisdiction Law and Practice


To those uninstructed in the subject, it might seem a short comic step from the “Laws of Oleron and Wisbury” and the “Black Book of Admiralty” to “walking the plank”. However, admiralty law has a venerable history no doubt based on the ubiquity of international maritime commerce. It does not differ greatly from country to country and all modern systems are based ultimately on international conventions. Nevertheless, there are differences.

Practitioners in, and students of, admiralty and maritime law will be familiar with the previous editions of this text by Dr Cremean which considered the law in Australia and New Zealand. This fourth edition goes further and skilfully interweaves the law in Hong Kong, Singapore and Malaysia into the narrative. It also updates the position in Australia and New Zealand. The result is readable, accessible, scholarly and comprehensive.

In *Owners of SS Kalibia v Alexander Wilson* (1910) 11 CLR 689, the High Court emphasised that s76(iii) of the Australian Constitution does not give the federal parliament power to legislate substantively on admiralty and maritime law. Inevitably, therefore, maritime claims which can give rise to in personam or in rem proceedings arise principally through causes of action well established at common law. The text skilfully considers maritime claims, mainly but not exclusively proprietary and general, and in the context of both
in personam and in rem proceedings. The unique nature of the in rem proceeding is fully explored as is the maritime lien. The text fully explores practice and procedure. Given the nature of international maritime trade, the appropriate forum is considered as well as the relationship between proceedings and international arbitrations. The procedures relating to the arrest, bail, sale and release of ships as well as priorities on sale will be familiar to practitioners. The text not only brings the law in Australia up to date on those important practical matters but also incorporates the rules and procedures in other jurisdictions covered in the text.

Helpfully there are also some very useful precedents at the end of the text for the assistance of practitioners.

The text is well-indexed and has a very useful bibliography. Dr Cremean should be congratulated on this marvellous book.

Cahal Fairfield, barrister

Zines’s The High Court and the Constitution

James Stellios, Zines’s The High Court and the Constitution (8th edn), Federation Press, 2015, hb $165

This is part historical account, part critique, of the High Court’s interpretation of the Constitution since Federation. The book, in production since 1981, is an arduous labour of collection and analysis of High Court decisions over that period. The manner in which the vast array of judgments are synthesised, evaluated and compared is truly remarkable. It is a classic.

Owing to recent High Court developments, James Stellios has been able to make a significant contribution to this edition while preserving much of Zines’ original text. Detailed attention is given to the line of cases rationalising the Kable doctrine (Kirk, Totani, K-Generation and Gypsy Jokers). Similar attention is given to Pape, and Williams (No 1) and (No 2) when addressing executive power. The Melbourne Corporation benefits from the new insight provided by Clarke, as does s92 with Betfair (No 1). Stellios has been able to weave various other new cases into the analysis without disturbing Zines’ style.

Most infamous and thought-provoking is Chapter 17 (The High Court: Methods, Techniques and Attitudes), devoted to theorising the judicial method behind the interpretation of the Constitution. Zines charts a spectrum with Dixon’s “legalism” at one end and Mason’s “policy orientated interpretation” at the other. Students and the academe have much to gain from Zines’ analysis, but from a practitioner’s perspective, one questions the utility of theorising interpretation in this way. The Constitution is a statute of the Westminster parliament, and is to be interpreted according to its text, purpose and context, and must be related to the facts before the Court. But more importantly, it is an instrument of government. Aspects of the Constitution obviously require a rigid interpretation to ensure certainty and stability within the Federation. Other aspects of the Constitution are open-textured and capable of being interpreted to meet changing needs and social values.

The High Court and the Constitution is not a complete commentary. The focus is on the more important issues thrown up by the Constitution. For practitioners, it will best serve as a reference tool to assist in understanding the more important elements of the Constitution. It does not need to be read continuously: you will find more than enough stimuli leafing through a few pages on any given topic.

Leigh Howard, senior associate, Clayton Utz