

**BOOK REVIEW: "LEADING CASES OF THE
TWENTIETH CENTURY"****EDITED BY EOIN O'DELL****(ROUND HALL SWEET AND MAXWELL,
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To review a book of twenty seven essays on twenty-six leading cases of the 20th century is an unenviable task. At the outset it presents a threshold problem of approach. Clearly, given the limitations imposed by the editor, it cannot be a useful approach to write twenty six brief paragraphs, one on each essay. To select for mention a few representative essays only, runs the risk which the football manager runs, when, after a good game he is asked to nominate his best players.

Inevitably, in the circumstances, I cannot mention all the contributions in a meaningful way, but in selecting some for mention, I do not intend to trivialise the other contributions. My selection reflects my own personal interests, and I have no doubt that another reviewer might select totally different essays for comment and commendation. In truth, as the prudent team manager might say of his charges, this was a team performance with each contributor playing his or her part. The editor too, Mr. O'Dell, is to be congratulated in extracting such a high overall quality performance from all his players.

At the outset, one is tempted to examine what is meant by the word "Leading" in the title of the collection, and indeed several of the contributors felt obliged to justify

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their selection in this regard. I refrain from doing so, however, since I hold the view that, however one chooses to define the word “Leading” in the present context, all the cases dealt with in this publication are clearly important cases, and for that reason alone are worthy of being revisited.

The papers in the book are the proceedings of the 1999 Annual Conference of the Irish Association of Law Teachers, and this fact undoubtedly imposed a similar format and style on the contributions. Few exceed twenty pages in length and the style reflects that they were originally presented orally to an audience of law teachers enjoying a well-earned break from the demands of the classroom. This, I hasten to add, enhances the lectures and makes them more readable. There is nothing better to sharpen the speakers’ presentations than a group of academics at a weekend conference. The sound-bite must be good if one is to compete with the alternative attractions.

The selected cases cover a wide range of topics, but of special interest to this reviewer were those concerned with Constitutional issues and the four cases on European law.

The latter remind us how fundamentally changed our legal system has become since our accession to the European Communities in 1973. The significance of *Van Gend en Loos*¹ in giving individuals rights when Treaty provisions were directly effective, is eruditely dealt with by Fennelly J., who, of course, was a Advocate General of the European Court of Justice before going on to the Supreme Court, and is accordingly, in a very strong position to comment on this case. Its seminal significance for the development of the Community’s legal system was profound, and its importance can be appreciated fully only if one contemplates the situation where the ECJ might have “fucked the fence”. Not only did the Court put in place a significant cornerstone in the Community legal system, but it took a stand and signalled,

¹ Case 26/62, *Algemene Transport-en Expeditie Ornderneming van Gend & Loos NV v. Nederlandse administratie der belastingen* [1963] E.C.R. 1; [1963] C.M.L.R. 105.

when the Community was in its infancy, its intention to actively participate in the formulation of the basic doctrines and principles on which the whole legal edifice was to be erected. Mr. Tom Carney critically analyses the ECJ's celebrated *Cassis de Dijon*² case and calls for clarification in the "rule of reason" applied by the Court. Mr. Dermot Cahill examines in great detail the *Frankovich*³ case, in which the ECJ allowed an individual to sue the State for damages for non-implementation of a Directive. A huge body of literature has grown up around these two cases since they were handed down in 1979 and 1991. It is interesting to note that the analyses of these European cases focuses necessarily on the actual holding of the court and the knock-on effect and the problems and decisions had, and will continue to have, in the development of doctrine, whereas analyses of the common law cases in the collection are inevitably concerned with the judicial pronouncements, understandable of course, when there are multiple, and even dissenting judgments in the cases under scrutiny. This exercise reminds us that to discover this kind of underlying reasoning (the *ratio*) in the ECJ's holdings, one must frequently study the opinions of the Advocate Generals which precede the Court's pronouncement itself. The earlier cases of the ECJ in particular, were, in this regard, almost Delphic in their oracular pronouncements. T.P. Kennedy deals admirably with the *Bier*⁴ case where the ECJ interpreted the phrase "the place where the tort occurred".

From revisiting these cases one is constantly reminded of the rules of interpretation adopted by the Court of Justice to achieve perceived ends, and the powerful and dynamic (if controversial) role which the Court carved out for

² Case 120/78, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein* [1979] E.C.R. 649.

³ Cases C-6 and 9/90, *Francovich v. Italy* [1991] E.C.R I-5357; [1993] C.M.L.R. 66.

⁴ Case 21/76, *Handelskwekerij GJ Bier BV and Stichting Reinwater Foundation v. Mines de Potasse d'Alsace SA* [1976] E.C.R. 1735.

itself at the formative stage of the European Communities, when the other institutions seemed incapable, or unwilling, to take the political and the legislative steps necessary to launch the Community. That such judicial activism should emerge from a court forged in the civil law tradition, where the academic rather than judge was the central figure, is something worth noting also in this context.

On the constitutional front, Professor Scannell admirably deals with *Murphy v. the Attorney General*,⁵ which successfully challenged the unfair treatment of married women in the tax system. As Professor Scannell was personally involved in mounting this action, she has an unusually good perspective from which she can comment. Mr. Neville Cox perhaps cheats a little in dealing with two cases in his contribution: *Roe v. Wade*⁶ and *X. v. the Attorney General*.⁷ Perhaps selecting cases from two jurisdictions might even merit a yellow card from the editor. His lucid exposition of the judgments, however, and the various criticisms neutrally rehearsed by the author fully justifies his approach and merits a commendation rather than a rebuke. At a time when the government has just announced its intention to have another referendum on the abortion problem, Mr. Cox's contribution is timely indeed. Other constitutional cases dealt with are *The State (Ryan) v. Lennon*,⁸ where Dr. Gerard Hogan brings his unusual incisive insights to bear in discussing the issue whether the Oireachtas had the power to override the 1922 Constitution, and in drawing to our attention Kennedy C.J.'s willingness (in a dissenting opinion) to invoke Natural Law to invalidate a Constitutional amendment in 1935. *Deaton v. the Attorney General*⁹ which outlawed any role for the Executive in the selection of

⁵ [1982] I.R. 241.

⁶ 410 U.S. 113 (1973); 35 L. Ed.2d 147.

⁷ *The Attorney General v. X.* [1992] 1 I.R. 1.

⁸ [1935] I.R. 170.

⁹ [1963] I.R. 170; 98 I.L.T.R. 99.

punishment, is the case selected by Mr. Tom O'Malley and it is handled with the insight and erudition which we have come to expect from the learned author in this area of expertise.

Contract cases are selected, not surprisingly, by Professor Robert Clark (*Grealish v. Murphy*¹⁰) and by Ms. Oonagh Breen (*High Trees House*¹¹), and both deal expertly with the topics, including the subsequent fallout in Irish law for unconscionable bargains (by Professor Clark) and for the concepts of proprietary estoppel, promissory estoppel and legitimate expectations (by Ms. Breen). Mr. O'Dell, the learned editor, also contributes to the contract area, with a fine treatment of *Sinclair v. Brougham*,¹² which he describes as "the case that fell to earth".

If all of this was not enough, there are also essays relating to leading cases in the U.S.A., Australia, New Zealand and Holland. The Dutch case deals with the *Chabot* case¹³ which addresses the question of criminal liability for physician-assisted suicide.

This reviewer is not one to recommend that law books should decorate the bedside locker: "There is more to life than law...". And there is so much literature, and so little time. Still, if law is your bag, and if poetry does not induce sleep, this volume might merit a place near your pillow. For me, it's as near as it gets.

"Leading Cases of the Twentieth Century" edited by Eoin O'Dell (Round Hall Sweet & Maxwell, 2000), 519 pages.

¹⁰ [1946] I.R. 35.

¹¹ *Central London Property Trust Ltd. v. High Trees House Ltd.* [1947] K.B. 130.

¹² [1914] A.C. 398; [1914-1915] All E.R. 622.

¹³ H.R. June 21, 1994, N.J. 1994, 656.