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BOOK REVIEW

Peter Condliffe

The book as supermarket ...

Dispute Resolution in Australia: Cases, Commentary and Materials
(2nd Ed, Thomson Reuters, 2009)

As a legal pragmatist who thinks that law is predominantly best thought of as being based in the specific context at hand, without secure foundations, instrumental, and always attached to a perspective, I am sometimes nervous about picking up a casebook. It reminds me of the heavy bags of similar tomes once toted nervously around the law school. These tomes were the lifeline of law students but were also curiously circumscribed and limited because they never seemed to have quite 'enough' in them to explain everything we needed.

We were constantly trapped in a race between content and a process we did not quite understand. Of course they not only had the *feel* of bibles, they were our bibles, and like bibles they required some faith to be attached to them, though unlike their holy counterparts they have a relatively recent lineage.

Casebooks for law students were first used in the 1870s. Harvard Law School Dean Christopher Columbus Langdell put the first casebook together in 1870 as an educational tool and he bundled this type of book with a Socratic style of teaching that still retains some significance in legal practice and education today. It was a combination reinforcing the classical view of law that emphasises the universal and foundational quality of specifically legal facts, the meticulous analysis of precedent and argument from analogy. I wondered as I picked up this weighty (over 700 pages) tome if it was following in this tradition.

My conclusion is that I think it does follow in this classical tradition but perhaps more in form than substance. Interestingly while there are almost five pages of case citations there are seven pages of acknowledgements of authors whose papers and books have been

used in the compilation. As I perused its 14 chapters I was impressed with the breadth and range of the selected readings.

For that is what a casebook is — a compilation of the works of other people interlaced with the summaries, musings and questions posed by the authors. It is like a cookbook of the best or most interesting recipes in a particular area of culinary cuisine. While the breadth and relevance of the various sources is the main strength of these compilations I think the quality of the authors' comments woven throughout the text is what makes it interesting and provides the structural coherence required.

The authors have achieved both these things admirably. This reflects their long-standing interest and research in the field as well as their 'feel' for what students and practitioners would want and need to read. They are importantly ready to embrace a range of views and sources that makes this a decidedly non-traditional casebook. Of course unlike most books one picks up there are things in a casebook you would not want to read or in which you have no interest — which reminds me of the supermarket.

When I go supermarket shopping and am in a relaxed mood I will pick things from the shelves with some abandon. This book is like that. It is something you can wander through, pick something out and then move on without the need for a longer term commitment. It is not a boutique store specialising in the exotic in the sense that it delves deeply into its subject-matter. While one does not get a flowing narrative to follow one does get a series of snapshots of 'particular angles' of the field that can then be explored in greater depth by searching the sources. However, it provides most things you need when something more defined is not readily apparent.

Such a book is definitely an asset to



have on hand. For example, I was recently rushing out the door to deliver a presentation on 'Advanced negotiation' and wanted some information on the 'sources of or types of conflict'. I found something from this book in a few minutes as I reacquainted myself with the subject (at page 54). It shows that the book is easy to navigate despite its length. The contents and index sections are good and throughout there are little gems and surprises.

There is, for example, a 'non-exhaustive' list of statutory dispute resolution schemes and a good chapter on culture and conflict. It even has some short and succinct sources on the now increasingly controversial s 131 of the Commonwealth *Evidence Act*. The book definitely passes the litmus test for the practitioner despite it being obviously aimed at the student market as a textbook.

In the Google age with increasingly fast and efficient electronic search engines the days of hardcopy casebooks may be numbered. The main reason is not that they are heavy to cart around but that they become out of date so quickly. Despite this the book is a most valuable resource and one that I will put in an accessible place in my library because of what the electronic services cannot offer.

A good compilation like this has the distinct advantage of the authors' selections being based on years of study and experience. Professor Spencer has been a leading light for many years on the interface between ADR and the law, especially in his writings on dispute resolution clauses. Associate Professor Hardy brings her deep knowledge of collaborative law and pedagogy to bear. It is a fruitful partnership. In accepting their selections one takes a leap of faith that they are indeed good selections



and I was not disappointed. This is what the reader cannot get when plunging onto the internet in search of the sources. Perhaps casebooks are more similar to bibles than I may originally have thought.

The structuring of the tome is improved over the first edition with good additions in collaborative law, recent family law developments, the national accreditation standards for mediators and a new chapter about the future of dispute resolution. The chapters run as follows:

1. Introduction
2. Understanding Disputes
3. Negotiation
4. Conciliation
5. Mediation
6. Other Dispute Resolution Processes
7. Arbitration
8. Legal Issues
9. The State and Dispute Resolution
10. Dispute Resolution in Family Law
11. Online Dispute Resolution
12. Culture and Dispute Resolution
13. Ethics, Standards and Dispute Resolution
14. The Future of Dispute Resolution

This is definitely not the traditional casebook even if it feels, weighs and looks like one. The contents also point to something more than the traditional. The second edition of *Dispute Resolution in Australia* is a solid pillar in the Australian dispute resolution literature. ●

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- **Conflict Resolution Service (CRS)** is delivering **Mediation Training** in Canberra from 14 October–13 November, the course is part of the Certificate IV in Mediation and complies with the NMAS. CRS also runs diverse Mediator Professional Development sessions in the ACT. For further information go to <www.crs.org.au> or email <executive@crs.org.au>.
- **The Bond University Dispute Resolution Centre** has upcoming **Basic Mediation** courses in Melbourne on 21–24 October; and on the Gold Coast on 2–5 December. For more information email <drc@bond.edu.au> or visit <www.bond.edu.au/faculties-colleges/dispute-resolution/index.htm>.
- **Resolve Advisors** is offering a workshop on **Confronting Conversations – 6 Stepping Stones** on 13–14 October. Email <shirli@resolveadvisors.com.au> or phone 02 9380 6466 for further details.
- **LEADR** is holding a **Mediation Workshop** in Adelaide on 31 August–4 September; in Alice Springs on 31 August–4 September; Melbourne 11–15 October; Perth on 26–30 October; and Sydney on 18–22 October. For further information go to <www.leadr.com.au/training.htm>.
- **ACDC** is offering **Mediation Training** in Sydney on 18–22 October; and **Accreditation** day on 1 November. For further information, visit <www.acdcltd.com.au>.
- **The 5th Asia-Pacific Mediation Forum Conference** will be held in India from 21–27 November 2010. For further information go to <www.apmec.unisa.edu.au/apmf>.
- **The Trillium Group** in association with **AGSM Executive Programs** is holding 5 day **Mediation Skills Training** in Sydney on 13–17 September. See <www.thetrilliumgroup.com.au/> for further details. They are also running an Advanced Negotiation and Influence program on 28–29 October. For further information on this course go to <www.agsm.edu.au/ani>. ●

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