

BOOK REVIEW

CASES THAT CHANGED THE LAW

BY GRAHAM FRICKE

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As someone who enjoyed Graham Fricke's *Libels, Lampoons and Litigants*, I looked forward to reading his latest book: *Cases that Changed the Law*. I was not disappointed. As the title indicates, his new offering discusses cases that have significantly impacted upon the development of the law. It is a 'light read' — almost conversational in tone and devoid of technical jargon and detailed exegesis. Indeed, a most attractive feature of the book is the clear prose and the engaging style in which it is written. The tone is informal and the evaluations are wise. The analysis is sometimes quirky and idiosyncratic. The book is likely to appeal to the general public and law students, rather than those trained in the law (who will already be familiar with much of the material). However, the book should not be dismissed because of this. There is a good case to be made for publications that popularise the law and contribute to informed public discussion.

The cases Fricke has chosen come from Australia, the United States and England — all jurisdictions with a common law tradition. They range from a seventeenth century case on the role of the jury to contemporary cases dealing with the right to a fair trial and the impact of the internet on the law. As expected, Australian cases such as *Mabo*, *Dietrich* and *Franklin Dams* are covered. Standard cases such as *Donohue v Stevenson* and *Roe v Wade* also find a place in the pantheon of cases that Fricke identifies as changing the law. Issues such as mistaken eyewitnesses, the onus of proof in criminal trials,

defamation and free speech are also covered in the twenty chapters of the book. Occasionally, cases of profound legal significance, although less familiar to the general public, are included. Thus, the discussion of the *Mareva* injunction is a welcome inclusion in a book that is likely to be read by those without any specialised knowledge of the law. Moreover, there is a strong historical and literary emphasis. The historical orientation is most clearly manifest in the chapter dealing with Edward Bushell's and William Penn's fortitude in 1670 and their contribution to the development of an independent jury. The analysis clearly demonstrates how earlier understandings of the role of the jury differ from contemporary views. Fricke's admiration for the key players is transparent.

The commentary is erudite and insightful. If criticism is to be made, it is that the analysis is mostly undeveloped — as might be expected in a book that deals with some twenty cases in two hundred pages. The brevity of the coverage of each topic is both a benefit and a source of dissatisfaction — it means that the book is perfect for dipping into, facilitating a quick overview of a particular topic. But the brevity of the coverage is also somewhat frustrating. For example, the analysis of the *Franklin Dams* case is merely expository and its significance as a 'case that changed the law' is never fully developed. Similarly, the discussion of the Makins and baby farming was limited. The case provided a marvelous opportunity for the consideration of 'similar fact' evidence. It is a bold person who would attempt a popular exposition of this principle but Fricke — following the path of those 'bold spirits' in the law whom he so clearly admires — is up to the task. But how frustrating that this matter is dealt with so briefly! Finally, it is not clear what the author thinks of the outcome of many of the cases that he considers. He hints, rather than elaborates. I suspect that Graham Fricke wants to encourage his readers to form their own views on these cases. However, more detailed evaluation and comment by the author would have strengthened the book.

In summary, the cases discussed in *Cases that Changed the Law* are generally predictable, although diverse. There are no common themes or unifying principles other than the fact that the author has selected cases from common law countries and believes that these cases have profoundly impacted upon the development of the law. And there is no doubt that the selected cases have had that impact. However, the true value of this book is identified in the introduction. Fricke quotes Tennyson's description of the law as 'That codeless myriad of precedent, That wilderness of single instances'. This is the very thing that Fricke seeks to cut through. His historical analysis, location of cases within changing political and social contexts and straightforward language ensure that he helps to 'beat a pathway' to a clearer understanding of what the law is and how it got to be that way. By providing a brief, engaging

and informed review of the selected cases he has contributed to popular awareness and discussion of these issues in Australia. Given the degree of misunderstanding or ignorance that exists in relation to many of the matters discussed, that is no mean feat.