
The concept of a ‘leading case’ is an interesting one and the idea that such cases should be gathered into published collections apparently dates back to one Samuel Warren, a barrister on the northern circuit and a master in lunacy between the years of 1859-77, who published A Popular and Practical Introduction to Law Studies in 1835. In this volume, he advised law students that “[f]ifty or sixty leading cases, thoroughly understood and distinctly recollected, will be found of incalculable value in practice—serving as so many landmarks upon the trackless wilds of the law.”

Warren's friend, John W. Smith, took up this idea in his Leading Cases in Various Branches of the Law, published in two volumes, between 1835 and 1840. Smith's Leading Cases went through thirteen editions in England, the last one published in 1929 and edited by a struggling and penniless barrister, one A.T. Denning, as well as nine editions in the United States. The book was the inspiration for Christopher Columbus Langdell's great discovery that by combining leading cases with the Socratic method of inquiry, the ideal form of legal education would result.

The idea that there are ‘leading cases’ reflects an understanding of the law as a science, in relation to which it is possible to discern and define fundamental principles of doctrine, which are synthetic and integrated, and through the application of which, the right answer might be found for almost every legal problem. Although it has been fashionable in academic circles in recent years to ridicule this notion and its leading advocates, such as Professor R.M. Dworkin, the idea is ripe for renewal in a day when QuickLaw searches for a case whose facts are ‘just like the one on my desk’ threaten to bring doctrinal disintegration and chaos to the study of the law. Surely, a millennium of human thinking about and conceptualizing the law amounts to more than contemporary academic scoffers would suggest. The common law was not born yesterday and its practitioners, over the centuries, have frequently been the brightest and the best of their generation. Chaos and confusion can just as frequently be found in the mind of the academic beholder than in the thing beheld.

Legal doctrines are characterized by a level of abstraction similar in relation to the reality of the cases from which they are derived, as are scientific theories in relation to the natural world, in which organisms and mechanisms function and operate. This abstraction does not ipso facto render them mythical or fictitious. Rather, students of abstract principles are simply required to draw the connection between principle and fact in the law, or between natural process and the underlying biochemistry or physics, as the case may be. Both legal and scientific theories are sometimes wrong or useless. But just as many scientific theories prove beneficial to human comfort and progress, so too, do many legal doctrines prove themselves beneficial by producing justice and fairness. Doctrines and theories evolve and are superseded in time, but the growth in

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3 Supra note 1 at 5-7.
human understanding is no reason to jettison an entire project, as many contemporary law professors would suggest, just because society has outgrown or outpaced doctrines which served well in the past.

It is to the past—to nine ‘leading cases’ by which the common law has been moved—that Professor Simpson devotes his most recent book, Leading Cases in the Common Law. In his earlier books, Cannibalism and the Common Law: A Victorian Yachting Tragedy ⁵ and In the Highest Degree Odious: Detention without Trial in Wartime Britain, ⁶ concerned respectively with R. v. Dudley and Stephens ⁷ and Liversidge v. Anderson, ⁸ Professor Simpson pioneered a genre of exploring and interpreting famous legal cases primarily as historical events, rather than as sources of legal principle. Out of curiosity, Professor Simpson has explored the historical context of various decisions to cast greater light on such matters as their cast of characters, geographical location and aftermath, matters about which the law reports are necessarily silent.

Professor Simpson's perspective is not entirely dissimilar to that of People magazine. Nonetheless, his historical miniatures are valuable. As cases proceed through the courts, contextual information immaterial to the narrow doctrinal issues is stripped away. Indeed, legal argument proceeds on the assumption that legal argument is self-sufficient, or as E.P. Thompson has put it: “The law itself evolves, from case to case, by its own impartial logic, true only to its own integrity, unswayed by expedient considerations.” ⁹ Nevertheless, human curiosity remains as to the context and Professor Simpson seeks to satisfy such prurient interests. By unearthing extra-judicial historical material about leading cases, Professor Simpson seeks, in his own words, simply to throw greater light on the cases:

The aim is a fuller understanding not simply of the particular decision discussed, but of more general issues about the nature of judicial decision in the common law system, the extent to which the evolution of legal doctrine and its persistence over time requires separate explanations, the degree to which decisions can be shown to be politically motivated, or the products of accidental circumstances. I shall, however, try in the main to let these issues emerge from the stories told, and offer no general theories of judicial decision in the course of telling them. Greater understanding of cases does not generate general theories; instead it brings out the complexity of affairs and the extreme difficulty of producing generalizations which have any empirical validity. ¹⁰

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¹⁰ Supra note 1 at 12.
The nine cases selected for the volume are well-known by the end of the first year in law school: *Shelley's Case;*11 *Keeble v. Hickeringill;*12 *Jee v. Audley;*13 *Priestley v. Fowler;*14 *Raffles v. Wichelhaus;*15 *Tipping v. St. Helen's Smelting Co.;*16 *Rylands v. Fletcher;*17 *Regina v. Keyn;*18 and *Carlill v. Carbolic Smoke Ball Co.*19 Each of the stories told is fascinating in its own way. Particularly interesting to this reviewer were the sad tales of mortality, especially infant mortality, in the Shelley family, a well-to-do Elizabethan recusant gentry family, concerned to retain its wealth and position, during the difficult third quarter of the 16th century; the intricate pre-industrial technology used to ensnare wild ducks, whose successful utilization in *Keeble* resulted in litigation with a more than modern ring about the distinction between lawful competition and unlawful interference; the true story of Charles Priestley's role in his own accident, compensation for accidents available through the Poor Laws and the sad story of how his father, a Particular Baptist, ended in debtor's prison, losing his hard-earned financial position in the litigation; and the equally sad, self-made Victorian cotton spinner turned squire, William Whitmore Tipping, whose joust with the local smelting company which had fouled his Palladium mansion, casts doubts on the economic theories of Professor Ronald Coase, the only law professor to win a Nobel Prize for Economics.

It would be insidious for a reviewer to reveal the fascinating contextual details of each of these leading cases. For each case, Professor Simpson spins 'a ripping good yarn' which each reader should enjoy for themselves. Each historical interlude is well-researched, sympathetic and well-written in Professor Simpson's laconic and ironic style. The volume is particularly recommended to beginning law students, to reassure them that the real world of the law is firmly placed in the real world of human passions and desires. As such, the volume is a bracing antidote to the political correctness nonsense about the irrelevance of cases and the common law, spouted in the classroom by law faculty. Professor Simpson's book is a better preparation for practice than many law courses.

This brings us back to the term 'leading cases'. Each of these 'leading cases' is a turning-point in the evolution of some aspect of the common law. The strength of Professor Simpson's approach is to demonstrate how social and economic change comes to be reflected in a real dispute which is ultimately settled in the courts. The issues are complex and the courts must struggle to accommodate changes which are more multifaceted, subtle, patent and latent, than simplistic class, gender or racially-based theories of the law would suggest. Professor Simpson's litigants are real people, who, for better or for worse, became enmeshed in the common law, gaining some measure of temporal

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12 (1707), Holt K.B. 14, 17, 19, 90 E.R. 906, 907, 908.
13 (1787), 1 Cox 324, 29 E.R. 1186 (Ch.).
16 (1865), 1 Ch. App. 66, L.R. 12 L.T. 776 (H.L.).
18 (1876), 2 Ex.D. 63, 13 Cox C.C. 403.
immortality as a result. It is to Professor Simpson's credit that his accounts of the contextual circumstances of the cases illuminate this underlying humanity. Ordinary people make leading cases, whose abstract principles of law, in turn, help to shape and define how we all should live.

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