

Con, like my husband's uncle and former partner, Leonard Chippindall, had been decorated for courage under fire in France. In the manner of their generation, neither of these veterans spoke of their wartime experiences. I do remember that while Bill Deane, John Chippindall and their friends as young men were profuse in their scorn of 'old fools' generally, a special respect was reserved for the surviving Anzacs from both world wars. In the 1950s, the cynicism and disillusionment which were to be engendered by the Vietnam War and later skirmishes had not yet touched them. They were haunted by the poignancy of men dying young.

The most lengthy essay, 'The longing in our hearts', describes the movement towards Aboriginal reconciliation. In this context, Sir William's Lingiari Lecture entitled 'Some signposts from Daguragu', has been reproduced in its entirety. Delivered in Darwin in 1996, the address was prepared after much research. It was written with the clarity and precision of language which characterised his High Court judgments. For many readers, however, the photograph of Bill with children on the Tiwi Islands may be more affecting than any words. His love for children, and obvious acceptance by them, shines out from the page.

The courage of Lady Deane, speaking out herself on behalf of Aboriginal women, was most inspiring to her friends, although not surprising. We were always aware of the intelligence and strength of character beneath Helen's self-effacing manner. After her speech at the Australian Reconciliation Convention in Melbourne, Lady Deane received a standing ovation. Her voice had quavered slightly at first, from emotion, but to her audience it bespoke a deep sincerity and commitment to the cause.

Other chapters deal with multiculturalism: 'The greatest achievement'; and Sir William's concern for the underprivileged: 'The work of a bleeding heart' and 'In the land of the fair go.' 'Don Bradman and slow racehorses' delivers 'the Don's' funeral oration and provides some light relief. The Deanes' horse, Man About Town was slow to start and seldom finished.

There are some good jokes here about Bill's own sporting experiments which should not be spoilt by repetition.

The final chapter, 'Celebration and mourning', contains excerpts from some of the governor-general's finest speeches: eulogies delivered upon the deaths of notable Australians including Dame Roma Mitchell, Sir Mark Oliphant, Dr HC Coombs and Shirley Smith, better known as 'Mum Shirl', and on occasions of national disaster such as Thredbo, Port Arthur, the Black Hawk helicopter collision, the Swiss Canyon tragedy and Childers.

People have often asked Bill's old law school mates what he was like as a youthful student. The caring instinct was already there, especially where Anthony Gallagher was concerned. When Bill embarked for Europe en route to Trinity College, Dublin, after his graduation in 1954, his last words to John Chippindall were 'Look after Gallagher!'

Thus, John became chauffeur/custodian to the intellectual behemoth of our generation at Sydney University, the former dux of St Joseph's College, university medallist in Latin and Greek, Shakespeare and opera buff, and mesmerising orator, who was blessed with the *embonpoint* and gravitas of one of the more self-indulgent popes. Keeping Gallagher 'on track' proved to be a formidable responsibility. The acclaimed scholar tended to quote Horace, '*Nunc est bibendum*', rather frequently. Nothing could induce him to study the boring practical subjects of the law school curriculum.

As Stephens notes in the biographical chapter 'From altar boy to High Court', 'Gallagher could not pass conveyancing, so dropped out of law, became a teacher and ran a bookshop. He suffered from obesity and was dead at 50.'

Recently we saw an epitaph which might have been written for Tony Gallagher: 'Give me, O Lord, Thy early grace, nor let my soul complain that the young morning of my days has all been spent in vain.'

Tony's lasting achievement may have been that he brought together his school friends Gus Nossal (whom he met at St Aloysius College) and Bill

Deane (whom he met later at St Joseph's College). The two men, the scientist and the lawyer, having reached the pinnacles of their respective professions, were to be reunited in 1997 in a common cause: their concern about the standards of health in Aboriginal communities.

In practical terms Stephens's book passes every test: it is a superior paper back (262pp.), reasonably priced, with fine typesetting and photographic reproduction.

The book, written with Sir William Deane's co-operation, handsomely meets its brief as a re-examination of the personal and public concerns of a remarkable governor-general. The cover photograph of Sir William captures the quality, which, above all others, transcended his term of office: a loving-kindness seldom encountered in public life, and already greatly missed. O rare Bill Deane.

Reviewed by Pamela Chippindall



Forum shopping and venue in transnational litigation

*By Andrew Bell
Oxford University Press, 2003*

When Andrew Bell arrived back from Oxford some 10 years ago clutching his D Phil thesis under his arm, a poorer and leaner figure than he currently cuts, few (but Andrew) could have predicted how productive his thesis would become. It was entitled *Venue in transnational litigation*. Over the last decade it has become a source for an extensive practice which Bell has

developed in private international law cases as a specialty within a general commercial practice. Oxford University Press has now published, in its prestigious Oxford Private International Law Series, an updated version of Bell's thesis under the title *Forum shopping and venue in transnational litigation*.

Prior to the 1990s, in Australia at least, private international law was a rather esoteric subject taught at law school. Most practitioners would encounter it but rarely. Occasionally there would be a choice of law question requiring the pleading and proof of foreign law. Slightly more often there would be an application in a superior court for leave to serve proceedings outside the jurisdiction, which would be a matter of applying the terms of the court rules. Venue disputes between courts of different states of Australia or the Federal Court, though once prevalent, largely disappeared with the 1987 cross-vesting scheme. What has mushroomed in Australia in the last 10 – 15 years has been litigation over where to litigate. This sometimes takes the form of the so-called anti-suit injunction, whereby the local court restrains a party subject to its jurisdiction from instituting or maintaining proceedings in a foreign court. On other occasions the remedy is a stay order — whereby the local court, although seized with jurisdiction declines to exercise it — so as to permit proceedings to continue in a foreign court. Other available remedies are the anti-anti-suit injunction — whereby the Australian court issues an order restraining a person within its jurisdiction from seeking an anti-suit injunction from the foreign court which might prevent the continuance of Australian proceedings. A further remedy is the use of the negative declaration — whereby the Australian court is asked to issue a declaration which effectively negatives a claim or right which might otherwise be brought in a foreign court.

Bell's book traces the reasons for the growth in litigation over where to litigate and analyses in detail remedies such as those referred to above. The perspective is not limited to Australia. Common law authorities are discussed from the UK, Canada, New Zealand,

Singapore, Malaysia, Hong Kong, the US and Europe. There is also substantial discussion of UK and European decisions based on the Brussels and Lugarno Conventions or now upon European Council Regulation 44/2001. While these conventions are not as yet directly relevant to Australian courts, the book provides a valuable discussion of how problems which Australian courts are grappling with in venue disputes might at some point be solved by means of a convention whereby both the Australian and nominated foreign courts strive to apply a common set of rules.

The book explores the tensions involved in venue disputes. For the individual litigant, to win the venue battle may be to win the war. The chosen venue may have procedural devices, such as discovery, depositions or a jury trial, not available in the alternative forum. Similarly the chosen venue may offer substantive law principles or remedies not available in the alternative forum. Often the battle over the appropriate forum is a prelude to settlement. However, from the viewpoint of the courts, additional considerations arise. There is a concept of comity with courts of other jurisdictions, which is easy to state but difficult to apply. Local courts should not be too chauvinistic in assuming or holding on to jurisdiction where a foreign court may be better suited to determine the matter. On the other hand, the local court should not be too deferential in allowing a foreign court to assume jurisdiction. In commercial and insurance disputes a conflict will often arise between the Australian and the US courts. The US courts administer a long arm jurisdiction whereby conduct occurring outside the United States but with effects on commerce within the United States may be justiciable there. Further, by means of a jury trial and the availability in some cases of statutory or triple damages, the ultimate award in the United States could far exceed that which is available in Australia. One of the tensions explored in the book is the extent to which Australian courts should deprive litigants, in particular Australian citizens, of access to their local court to resolve the dispute where

the consequence will be to subject those litigants to justice in the American courts.

The book also contains a useful analysis of the role of agreements between parties to resolve disputes either in the courts of a particular country or via arbitration. This extends to the steps which litigants can take either to seek to enforce such agreements or alternatively to circumvent them by the commencement of traditional court action.

The style of Bell's work is not that of a conventional textbook. Rather, it reads as an extended analysis, discussion and reflection on the themes and principles at work in the area, and with detailed reference to the authorities. It is best read as a whole and in detail so as to come to terms with the fundamental principles and concepts at work and then used thereafter as a useful reference work.

The authorities canvassed are, as mentioned, from a variety of jurisdictions and also stem from a variety of subject matters. The problems of venue are thrown up in disputes ranging from personal injury, insurance, commercial, industrial, family law and product liability. There would be great benefit for many barristers in obtaining familiarity with the principles at work in venue disputes and this work provides an authoritative and masterly statement of these principles. Like constitutional law issues, issues of venue potentially arise in many litigious situations and a barrister who may be specializing in one of the areas of law referred to above needs an understanding of the principles of venue to recognise the problem when it arises. This book will be the standard reference in the area.

This work is highly recommended to all barristers and practitioners. It contains both a scholarly survey and a practical exposition of the authorities and principles of work in this burgeoning area of law.

Reviewed by Justin Gleeson SC
