

CASENOTES: FEDERAL COURT

Last year, I received a note from the President of the New South Wales Bar to the effect that he was concerned that there was insufficient coverage of Federal Court decisions in the casenote section of the Journal. I gave my reasons as to why this was so, but added that if members of the Bar contributed casenotes of these decisions of sufficient quality of case of general interest to the profession, I would publish them.

Earlier this year, the New South Wales Bar published a note calling for barristers to respond to this invitation. So far I have received 10 responses.

I want to say two things about this.

First, the "offer" is open to *all* Australian lawyers. Thus, if any reader wishes to be considered as a casenote contributor, please let me know.

Secondly, as I have said in a letter to the New South Wales barrister respondents, persons interested in being involved in this way should select a Federal Court case decided later than April 2004, and prepare a casenote in ALJ style and submit it to me by 30 June. I will then select two or three persons who will be invited to submit casenotes on a regular basis.

By "ALJ style" is meant that the casenote should be a sufficient exposure of the case so that the vital points decided are noted and so that lawyers can decide from the note whether it is worthwhile pursuing the full text report. This is in contradistinction to a law review casenote where the writer critically examines the judgment and points out the faults.

Indeed, the Journal is always happy to receive submissions from casual contributors of ALJ style casenotes about any interesting recent court decision.

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HISTORY: LORD MANSFIELD

William Murray, first Earl of Mansfield (1705-1793) is widely acclaimed as the greatest English judge of the 18th century.

After being called to the Bar at Lincoln's Inn in 1730, Lord Mansfield entered Parliament and, in 1742, was appointed Solicitor General. He prosecuted the Jacobite Lords involved in the Rebellion of 1745 and became Attorney General in 1754. In 1756, he was appointed Chief Justice of the Kings Bench, a post that he retained until 1788. Following his appointment, he remained active politically in the House of Lords.

Lord Mansfield's greatest contribution was with respect to commercial law. Steering English law to cope with the demands of Britain's industrialisation and overseas expansion, he founded marine insurance law to service the nascent London industry and followed international practice to shape the law governing bills of exchange, promissory notes and the then new bank cheques.

The foundation of commercial law is contract and his contribution there is more controversial. He held, in 1765, that consideration was not essential to the validity of a contract; it was only evidence that the parties intended their agreement to be binding (*Pillans v Van Mierop* (1765) 3 Burr 1663; 97 ER 1035 at 1038). The House of Lords disagreed (*Rann v Hughes* (1778) 7 TR 350; 2 ER 18). It was one of only six reversals in 32 years; more than 200 years later the doctrine of consideration is still under attack.

In 1772 he decided *Sommersett's Case* (1772) 20 ST 1 in favour of a slave, James Sommersett, who had been brought to England where he left his master. The master recaptured and detained him with the intent of selling him in Jamaica. On a writ of habeas corpus, Lord Mansfield said: "The state of slavery ... is so odious, that nothing can be suffered to support it, but positive law." The ratio of the case is that an allegation that the person is the respondent's slave is an insufficient return to a writ of habeas corpus in England. The case did not turn upon rights in contract. Lord Mansfield said that "a contract for the sale of a slave is good" in England.

Mansfield's contributions were not limited to his judicial reasoning. It was Mansfield who suggested to Blackstone that he give a course of lectures on English law. When Blackstone did so, in 1753, they were the first such lectures ever given in a university. The first volume of Blackstone's *Commentaries* was published in 1765.



Kenwood House, the home of Lord Mansfield
(The photograph is taken and published with the permission of English Heritage.)

Kenwood House was remodelled and extended by architect Robert Adam to neoclassical style between 1764 and 1779 and displays a portrait of Lord Mansfield (after the original by David Martin, 1775) as well as masterpieces by Rembrandt, Vermeer, Hals, Van Dyck and others. The house is in Hampstead Heath, London, and can be reached from Hampstead, Highgate or Archway tube stations. The photograph is taken and published with the permission of English Heritage.

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