

Foreword

AP Hebert's Misleading Cases stand the test of time. Since he started writing them in the 1920s they have repeatedly been revisited in a whole variety of forms – articles, books, television adaptations, even as news items mistakenly reporting his misleading cases as if they were real cases.

Their appeal is their authenticity – they so accurately mimic the activities and attitudes of lawyers and judges that they are all too believable. The reader comes away from the case completely convinced that judges probably are concluding that there is no such thing as a reasonable woman, or that cheques might be written on cows.

Alan Herbert was a barrister, a politician and a writer. He had a real understanding of England, and of English law.

He knew the courts well and catches in his Misleading Cases the personal tics of those engaged in the practice of the law in England – the pompous self-importance of the judges (“In the whole course of my long professional career. . .”), and the unctuous deference of the advocates (“Your lordship is extraordinarily handsome and good.”)

At the heart of each one of his Misleading Cases is some principle of the law which he explains with great clarity, and which he then applies with a remorseless logic to produce a result of signal hypocrisy or unfairness – the divorce laws which positively require the parties to produce false evidence of adultery, Parliamentary privilege which in order to allow MPs fearlessly to pursue their duty as MPs means they need not be subject to the licensing laws to which everyone else is subject, the focus of the law on the standard of the reasonable man, thereby suggesting there is no such thing as a reasonable woman, how the law seeks to give precise meaning to the term “the Liberal Party” in a will, when there are at least 5 Liberal parties in existence.

Each of the cases works for the lawyer, because AP Herbert understands English Law and makes the exposition of the principle and its application accurate and convincing. You have to read very carefully to identify the flaw in the logic to avoid the apparently

ridiculous result to which the case leads. And sometimes there is no flaw.

But each of the Misleading Cases work at a much wider level than the lawyer. The clarity of the exposition and the strength of the argument which AP Herbert deploys makes the work accessible to all readers. Satire works when the argument is clear (for example the defendant in an Obscene Publications case should not have to prove that the book was not obscene), when it identifies the subject it is lampooning (for example the criminal libel laws used against criticism of politicians) and does it in a way which convinces the reader of the wrong (for example Mr and Mrs Pale's doomed attempts to get a divorce when they have both gone off with other partners demonstrates the unfairness of the divorce laws), and where it is funny. AP Herbert's Misleading Cases have that clarity and that humour which great satire requires. He continues to be read in the same way as Orwell or Swift in their gripping satires continue to be read, and will for many years to come.

Specific legal changes occurred, wholly or in part, because of AP Herbert's writing. For example significant changes in the divorce laws, the House of Lords judicial committee no longer being bound by its previous decisions, the High Court being able to send a case straight to the House of Lords judicial committee without pausing in the Court of Appeal. The humour and the clarity with which he wrote made him persuasive and effective at the time.

It also makes his work compelling long after some of the wrongs he has identified have been righted. There is hardly a work in English literature which captures more accurately and entertainingly the attitudes and approach of the English courts with their vanity, their humour and their strength.

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