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ARTICLES

DIFFERENTIAL ADVOCACY IN APPELLATE COURTS

Hon Michael Kirby AC CMG

This article examines the skills needed for differential advocacy before multi-member appellate courts. Those skills are deployed in gathering a majority of the participating judges to favour orders sought by the advocate's client. Sometimes this requires holding the support of judges whose view is based on a notion of legal doctrine different from other judges, but without irritating those with contrary views. The author dispels the suggestion that an advocate should aim for a dissenting opinion, except in intermediate courts where this can sometimes support a grant of special leave in the High Court. Advocates are cautioned against assuming that opinions expressed during argument are necessarily final. Illustrations are given to demonstrate these and other points. Practical suggestions are added, including the need for awareness of any treatment of relevant or analagous points of law by any of the participating judges, the special interests of those judges and the desirability of sharing eye contact with all of the judges in turn. 220

WHAT CHEESES ME OFF ABOUT CHARITIES? AND WHAT CHEESES CHARITIES OFF?

Hon Justice Peter Young AO

This article is the keynote address to the 2010 conference of the Charity Law Association. It is printed more or less as delivered and the style of the address has been retained. The address commends the work of charities, but points out that there are some objectionable features of the way in which some of them seek donations from the community. 230

AFTER GALLO WINERY V LION NATHAN: DOES A PARALLEL IMPORTER OF TRADE-MARKED GOODS INFRINGE THE MARK?

Graeme S Clarke SC

The High Court in Gallo Winery v Lion Nathan left open the question whether a parallel importer of trade-marked goods uses the trade mark. However the court's non-use decision has implications for parallel importers. This article seeks to resolve uncertainties about whether a parallel importer infringes the registered mark. 234

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