THE QUEENSLAND LAWYER

Volume 31, Number 3

September 2011

EDITORIAL

Court salutation – or when not to say hello 147

COMMERCIAL LAW – *Dr Clive Turner*

Cheques – Conversion – Inadequate pleadings – Amendments statute barred: Westpac Banking Corp v Hughes [2011] QCA 42 151

CRIMINAL LAW – *Andrew West*

Pre-sentence reports 156

HEALTH AND GUARDIANSHIP LAW – *Lindy Wilmott* and *Dr Ben White*

The commercial surrogacy dilemma – *Pip Trowse* 160

Parental responsibility and removal of life sustaining treatment: Re Baby D – *Donna Cooper* 162

INDUSTRIAL LAW – *Kristy Richardson*

Applying the Manual Tasks Code of Practice 2000 to the workplace: Griffiths v State of Queensland [2011] Aust Torts Reports 82-083; QCA 57 165

ARTICLES

Miami advice or California dreaming: A statutory presumption of testamentary undue influence in Australia? – *John Meredith*

There is ample support in favour of a change in the law as it relates to testamentary undue influence. The applicability of principles established in this field in the United Kingdom in the 19th century have been questioned and subsequently not followed in a number of recent single judge decisions sitting in Australian Supreme Courts. With respect, whether such rulings will find wide spread acceptance throughout Australia will perhaps be dependent upon a High Court determination on point. In the meantime, a consideration of these decisions and statutory models presently being investigated in the United States holds some interest. Although mindful of over regulation in an ever regulated society, statutory control to some extent might well be justified when the mischief that is sought to be remedied can be readily established and conveniently dealt with. 170

"Do not resuscitate" orders in Queensland: Examining the need to obtain consent – *Jayne Hewitt*

While advances in the understanding and treatment of many medical conditions have extended the lives of many patients, there may still come a time when it is appropriate to consider limiting the provision of certain life-saving procedures, such as cardio-pulmonary resuscitation. In circumstances where it has been determined that such treatment would be futile, health care providers are able to institute a not for resuscitation order that

communicates this decision to all members of the health care team. Currently, the law in Queensland requires that for those patients lacking capacity, consent be obtained prior to instituting such an order. This article examines the content of this law, and explores the ethical principles that underpin the need to obtain consent; ultimately concluding that it does not support autonomous decision-making. 195

Assessment of the strength of the prosecution case in a bail application in Queensland: A necessary requirement? – *Dr Clive Turner*

In exercising its discretion whether to grant an application for bail pending the trial of an accused, an important consideration by the court is the strength or otherwise of the prosecution case. However, in *Sica v Director of Public Prosecutions (Qld)* [2010] QCA 18 the Queensland Court of Appeal rejected the proposition that assessment of the strength of the prosecution case is a mandatory requirement. This article questions the correctness of the decision and its potential effects. 208

The Land Valuation Act 2010 (Qld): Moving to site valuation and the provisions relating to objections – *Terry Boyd* and *Kristy Richardson*

With the passing of the *Land Valuation Act 2010* (Cth) Queensland will move from the concept of "unimproved value" and adopt the concept of "site value" as the basis upon which land valuations under the *Land Valuation Act 2010* (Cth) are assessed. This concept will alter the valuation methodology which underpins the assessment of land value. This article examines the concept of "site value" and comments upon the new valuation process. The article also examines the changes made to the objection and appeal process available to landowners under the Act in anticipation of the new valuation process. 213

PRACTICE POINTS

Withdrawing trust money to pay costs under general authorisation in a costs agreement – *Kevin Johnson* 222

BOOK REVIEWS – *Judge Michael Shanahan*

Principles of Cybercrime by Jonathon Clough – *Michael Shanahan* 224
Australian Real Property Law by Adrian J Bradbrook, Susan V MacCallum, Anthony P Moore and Scott Gratten – *Stacey McEvoy* 225
The Australian Consumer Law by Stephen G Corones – *Renee Gregor* 226
Assessing Lawyers' Ethics: A Practitioners' Guide by Adrian Evans – *MCB Griffiths* 227

REPORT – *Federal Magistrate Michael Jarrett*

Robertson v Moran (Criminal law, Procedure) 230