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ARTICLES

JAPANESE WAR CRIMES, RETROACTIVE LAWS AND MR JUSTICE PAL

J D Heydon

Mr Justice Pal was nominated by India to serve on the Tokyo War Crimes Tribunal. He dissented from orders convicting all the defendants. The primary point of law on which he disagreed turned on his denial that any crime against peace was known to international law. This article centres on examining the merits of his approach against the background of the procedures employed at Tokyo and the principal personalities involved

in applying them. It concludes by inquiring whether Mr Justice Pal’s difficulties have been resolved by an amendment to the International Crimes Court Statute in 2010 defining and prohibiting the crime of aggression and providing a jurisdictional regime for the trial of those accused of it. 627

“DOING JUSTICE”: THE ERROR PRINCIPLE AND SENTENCING APPEALS

Steven Thomson

This article discusses the central role of the “error principle” in sentencing appeals, the scope of judicial discretion at common law and the different purposes that may be served by a system of sentencing appeals. 668

TENDERING FOR GOVERNMENT BUSINESS: PROCESS CONTRACTS, GOOD FAITH, FAIR DEALING, AND PROBITY

Lindsey Alford and Eden Bird

The recent conviction of former Queensland Minister of State, Gordon Nuttall, for awarding \$3.6 million in building contracts to associates in exchange for “kickback” payments, presents a timely reminder of the susceptibility of government procurement processes to corruption. This article draws together the contract law cases following *Hughes Aircraft Systems International v Airservices Australia* (1997) 76 FCR 151, which have continued to come before the courts, notwithstanding the adoption of apparently strict rules for tendering and procurement throughout Australian jurisdictions. The article examines remedies for aggrieved tenderers under administrative law, trade practices legislation, and also estoppel. The article will assist not only government lawyers, but also private practitioners advising government, or advising commercial entities tendering to government. Some of the material is relevant to private commercial tenders. The conclusion also makes “best practice” suggestions for governments involved in tendering. 678

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