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CURRENT ISSUES – Editor: Mr Justice P W Young AO

DNA problems: Accuracy and delay 783

Sledging the courts 783

Juries 784

The Riot Act 784

Should there be an expanded tort of invasion of privacy? 785

The end of Volume 85 786

Quiz 787

CONVEYANCING AND PROPERTY – Editor: Peter Butt

The complete guide to notices to complete or eight paradoxes in search of a principle 788

RECENT CASES – Editor: Mr Justice P W Young AO

Wills: "Dependant relative revocation" – Informal wills 793

Statute of Frauds: Is an email a "note or memorandum" "signed" by person to be charged? 793

Trusts: A receiver can be appointed to a revocable trust who can revoke the trust and use its assets to pay creditors 794

Discovery: Disputed public interest immunity claim – Appointment of special counsel to assist in resolving dispute 795

Mortgages: The vice of "asset lending" 795

Landlord and tenant: What is structural damage? 795

Shipping: Piracy – Ransoming of cargo – Whether total loss for insurance purposes 796

Validating the invalid 796

ARTICLES

UNIFYING SENTENCING LAW: A PRINCIPLED APPROACH TO SENTENCING JUSTICE

Steven Thomson

This article examines parity of sentencing and identifies an underlying concept of fairness and consistency which can be described as a fundamental principle of "sentencing justice" applicable to all aspects of sentencing law. 798

ABOLISHING "HIGH CRIMES AND MISDEMEANOURS" AND THE CRIMINAL PROCESSES OF IMPEACHMENT AND ATTAINDER

Graham McBain

Previous articles in this journal have considered the crimes of treason, treason felony, sedition and criminal libel under English law, which crimes have been replicated in many Commonwealth countries and the United States. The articles have asserted that these crimes are obsolete, being superseded in most instances by more modern legislation. This article considers some of the most potent weapons the state possesses in its legal armoury in which Parliament itself is involved. "High crimes and misdemeanours" was the means employed to accuse royal favourites and powerful ministers who might otherwise avoid, or suborn, the ordinary courts. The usual process after 1399 was that of impeachment in which the House of Commons acted as the accuser and the House of Lords as judges. Where there was a risk that the Lords might not convict, a coup-de-gras could be administered by the Act of Attainder, in which the Commons, Lords and sovereign legislatively declared a person guilty of a crime punishable with death (or by an Act of Pains and Penalties in the case of a lesser penalty).This article argues that "high crimes and misdemeanours", impeachment, Acts of Attainder and Acts of Pains and Penalties should be abolished. Further, that Parliaments should no longer seek to act as courts and that, in a fully-fledged democracy, there should be a clear separation between Parliament as the lawmaker and the courts as the interpreters, and enforcers, of the law. In this way much bad law and grave injustice arising from political trials may be avoided. 810

Answers to Quiz 880

The Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Thomson Reuters

DECISIONS RECEIVED IN OCTOBER 2011

AB v Western Australia (*Health Law; Statutes*) ([2011] HCA 42) 1233
AH v Western Australia (*Health Law; Statutes*) ([2011] HCA 42) 1233
Hargraves v The Queen (*Criminal Law*) ([2011] HCA 44) 1254
Public Prosecutions (Cth), Director of v Poniatowska (*Criminal Law; Social Welfare*) ([2011] HCA 43) 1243
Shoalhaven City Council v Firedam Civil Engineering Pty Ltd (*Contracts*) ([2011] HCA 38) 1220
Stoten v The Queen (*Criminal Law*) ([2011] HCA 44) 1254
Westport Insurance Corporation v Gordian Runoff Ltd (*Arbitration; Insurance*) ([2011] HCA 37) 1188