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THE DISTINCTIVENESS AND INDEPENDENCE OF INTERMEDIATE COURTS
OF APPEAL

Keith Mason

This article examines how the functions and powers of intermediate appellate courts differ from those of the High Court of Australia, both formally and in practice. The differences must not, however, be used to constrict the constitutional independence of intermediate appellate courts or the duties of their judges to decide cases according to their best ability in accordance with the law as they see it to be. Rules of precedent have seen considerable tightening in recent years at the hands of our ultimate appellate court, at a cost that needs greater acknowledgment. Some constitutional limits to the High Court's newly-asserted authority to dictate rules of precedent and stare decisis for ICAs are also considered. 308

ENGLAND AS A SOURCE OF AUSTRALIAN LAW: FOR HOW LONG?

Hon Justice James Douglas

This article surveys the current position of English law as a source of Australian law, areas of divergence in the common law and statute law and recent developments in English law as it has been affected by European law. It then discusses further possible harmonisation of European and English law and attempts to reconceptualise the taxonomy of English law, notably by the late Professor Peter Birks, and the risks perceived by some members of the High Court of applying such a process of "top-down reasoning" to the common law and equity. In addressing for how long English law might influence Australian law three areas are considered in particular, human rights, contract and the recovery of damages for pure economic loss. The conclusion is that even if the rules of English and Australian law diverge further we are likely to retain the method and spirit of the common law. A failure to keep in touch with English law will remove our understanding of the historical roots of our own law. Keeping in touch will enhance our understanding of legal developments not only in England but also in Europe and elsewhere. 333

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