
Australian Law Journal

GENERAL EDITOR

Acting Justice Peter W Young AO

THOMSON REUTERS EDITOR

Cheryle King

ASSISTANT GENERAL EDITOR

Angelina Gomez

Lawyer, Perth

The mode of citation of this volume is

(2013) 87 ALJ [page]

The Australian Law Journal is a refereed journal.

Australian Law Journal Reports

PRODUCTION EDITOR

Carolyn May

CASE REPORTERS

John Carroll

Celina Creek

Sarah-Jane Greenaway

Alan Luchetti

Colleen Tognetti

The mode of citation of this volume is:

87 ALJR [page]

THE AUSTRALIAN LAW JOURNAL

Volume 87, Number 1

January 2013

CURRENT ISSUES – Editor: Acting Justice Peter W Young AO

Happy New Year!	7
Criminal law: Trial by judge or trial by jury	7
Judgment writing	8
Ex parte injunctions	9
Ex parte injunctions: Strategic weapon or procedural necessity?	9
Spousal privilege	10
Cautions by arresting police	11
World wide policing	11
Loose ends	11

CONVEYANCING AND PROPERTY – Editor: Peter Butt

Sea changes in coastal protection laws	15
Interpreting registered Torrens title instruments: To what extent is extrinsic evidence admissible?	17

LETTER TO THE EDITOR	12
-----------------------------------	----

FAMILY LAW – Editor: Anthony Dickey QC

Pre-nuptial contributions to property	21
Death of a judge before delivering a judgment	21

OVERSEAS LAW – Editor: Colin Picker

Speech for sale: Commerce and free speech in ICANN’s new gTLD process	24
---	----

RECENT CASES – Editor: Acting Justice Peter W Young AO

Carbon rights: Fraudulent transfer of permits	27
Probate: Shifting executors	27
Election at common law	28
Charities: Dissolution of named beneficiary – Whether general charitable intent	28
What is a “house”?	29
Precedents: Decisions of judges of equivalent status to be followed – Bankruptcy – Effect – Pending action by bankrupt as trustee	29
Penalty doctrine revisited	30

ARTICLES

LEGAL COHERENCE IN THE HIGH COURT: STRING THEORY FOR LAWYERS

Professor Michael Gillooly

The law is not a disjointed grab bag of unconnected instances, bearing no relationship to each other. Rather it comprises a coherent and consistent whole. The fundamental importance of this notion of legal coherence has been emphasised in the recent jurisprudence of the High Court of Australia, mainly but not exclusively in the realm of negligence law. In this article, the notion of legal coherence is explored, the recent jurisprudence examined, and a strategy for dealing with incoherence issues outlined. 33

CLAIMED PROPERTY RIGHT DOES NOT HOLD WATER

John R Corkill OAM

Evidence advanced for the proposition that “governments and legislatures cannot ignore the fundamental right of property owners to protect their land from the sea” is reviewed to test the veracity of this bold claim. The origin of this right and the courts’ clarification of its limited nature in English common law are explained, the impacts of modern statutes on common law rights are considered and the powers of State Parliaments to enact legislation are examined. By referring to decisions of superior courts and citing current NSW statutes applicable to the construction of coastal protection works, the article concludes that the claimed fundamental property right does not hold water. Coastal landowners are encouraged to recognise NSW shoreline law as it currently exists and challenged to abandon the claim to a right which has long ceased to exist in NSW. 49

THE CONSUMER AND THE PERSONAL PROPERTY SECURITIES ACT 2009: DOES THE REGIME PROTECT CONSUMERS?

Nicholas Mirzai

There has been a series of legislative movements aimed at reducing the disparity between commercially sophisticated parties and their consumer client base in recent years. Some notable examples include the Australian Consumer Law imperatives and the introduction of the National Consumer Credit Protection Act 2009 (Cth) and accompanying Credit Code. Whilst commercial in focus, the Personal Property Securities Act 2009 (Cth) (PPSA) also offers some important protection to consumers when dealing with property affected by the regime. As this article demonstrates, the protections contained within this important statutory regime are potent and the consequences of misunderstanding their effect could prove fatal to an interest which would otherwise benefit from a position of priority under the regime. The article analyses the nature and extent of the consumer protection rationale underpinning some important sections of the PPSA with a view to arming commercial participants and their legal advisers with some pragmatic steps to prevent being caught unprepared. 59

BOOK REVIEWS – Editor: Angelina Gomez

Williams & Kawharu on Arbitration, by David A R Williams QC and Amokura Kawharu 72

OBITUARIES

Charles Comans 75

Jeremy Pope 76

The Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Thomson Reuters

DECISIONS RECEIVED IN NOVEMBER/DECEMBER 2012

Cooper v The Queen (<i>Criminal Law</i>) ([2012] HCA 50)	32
Kizon v The Queen (<i>Corporations</i>) ([2012] HCA 49)	20
Mansfield v The Queen (<i>Corporations</i>) ([2012] HCA 49)	20
Mills v Federal Commissioner of Taxation (<i>Taxes and Duties</i>) ([2012] HCA 51)	53
Montevento Holdings Pty Ltd v Scaffidi (<i>Equity</i>) ([2012] HCA 48)	15
RCB v Justice Forrest (<i>Family Law and Child Welfare</i>) ([2012] HCA 47)	1
Stanford v Stanford (<i>Family Law</i>) ([2012] HCA 52)	74
Taxation, Federal Commissioner of v Consolidated Media Holdings Ltd (<i>Corporations; Taxes and Duties</i>) ([2012] HCA 55)	98
Westfield Management Ltd v AMP Capital Property Nominees Ltd (<i>Corporations; Statutes</i>) ([2012] HCA 54)	86