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ARTICLES

The non-uniformity of the “uniform” Evidence Acts and their effect on the general law – JD Heydon

This article sets out the background to the Evidence Act 1995 (Cth) and the goals of its founders. It summarises some of the evidentiary of evidence-related topics those Acts do not deal with, and describes fields of evidence law dealt with in other statutes. It notes numerous differences between the Acts, before examining the question whether that Act, and the other Acts substantially modelled on it, are codes. It analyses various statutory pointers indicating codification and various other statutory factors to the contrary. It considers how the courts are to construe provisions in the Acts that raise doubts as to whether they preserve the pre-existing law or slightly modify it. Finally, it considers how far the cases on the pre-existing law survive and how far they will have an influence on the construction of the Acts.

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Dealing with querulous litigants – part two – Judge Roderick Joyce QC and William Fotherby

In part one of this series (see (2012) 1 JCivLP 66), the authors addressed how players within the justice system might best approach the growing number of querulous litigants – ie those who litigate fervently the same action, or variations on that theme, to all possible levels and in all possible fora. That discussion took place broadly within civil procedural rules as they presently stand. To end, the article promised a follow-up suggesting procedural reform to help address this issue. Below, the authors propose reform in the areas of vexatious litigant statutes, registry discretion, fee waiver, costs, referral to mediation, and suggest that recourse to litigation guardian rules will be inappropriate in nearly all cases.

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The regulation of conflicts of interest in Australian litigation funding – Wayne Attrill

Until recently, there was no formal regulatory scheme for litigation funders in Australia. In July 2013, Regulations were introduced to require funders to have “adequate practices” for managing any conflicts of interest that might arise in litigation they fund. Non-compliance attracts criminal sanctions and may invalidate funding agreements. The Regulations have

been augmented with a detailed Regulatory Guide published by the Australian Securities and Investments Commission and represent the first national scheme to (at least partially) regulate litigation funding. The article discusses the new conflicts management regime and argues that it will improve funders' practices, to the advantage of consumers of litigation funding. The Regulations also apply to entities that lawyers might establish to fund litigation in which they act, although the appropriateness of them doing so is currently being considered by the Federal Court. However, the Regulations are unlikely to be the last word in regulation with continued calls for mandatory licensing and prudential supervision of funders. 193

Section 63 of the Civil Procedure Act 2010 (Vic): A new test for summary judgment?
– Peter Booth and Eleanor Madden

Section 63 of the Civil Procedure Act 2010 (Vic) introduced a new test for summary judgment, namely “no real prospect of success”. The Court of Appeal has recently considered s 63. The decision provides some principles for its application and states that the test is liberalised from the common law. However, the court does raise some questions as to whether the statutory test is any different in practical application. 205

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