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EDITORIAL

The need for legislative action to negate the impact of *Barbaro v The Queen* 133

ARTICLES

The admissibility of forensic science and medicine evidence under the Uniform Evidence Law – *Gary Edmond*

This article offers a re-examination of the treatment of expert opinion evidence under the uniform evidence law. Focusing on the terms of s 79, particularly the need for “specialised knowledge”, and drawing upon recommendations by scientists, judges and attentive scholars, it argues that reliability should be read into “specialised knowledge” and trial judges should be provided with criteria that will assist with admissibility decision making in criminal proceedings. Rather than rely upon traditional admissibility heuristics – based around considerations such as formal qualifications, experience, the existence of a field, and whether a technique has been previously admitted – the article recommends moving to criteria that are more consistent with mainstream scientific practice and much more likely to provide substantial insights into the probative value of expert opinion evidence. 136

Retrials of persons acquitted of indictable offences in England and Australia: Exceptions to the rule against double jeopardy – *Marilyn McMahon*

The rule against double jeopardy comprises a core rule of criminal procedure, and was significantly expanded in the mid-20th century. However, by the beginning of the 21st century legislatures in many common law jurisdictions had enacted reforms that significantly limit the operation of the rule. In England and several States in Australia, the reforms have restricted the scope of the plea of *autrefois acquit* and the exercise of the courts abuse of process power by creating exceptions to the rule against double jeopardy. The reforms have also invested prosecutors with a right to appeal certain acquittals. There are two grounds on which the prosecution can apply to have a person’s acquittal quashed and a new trial ordered: where the acquittal was “tainted”, and where “fresh and compelling evidence” exists. The accused may also be charged with an “administration of justice offence” arising from the original trial. Courts must also consider the interests of justice and whether the accused could obtain a fair trial; no such principles guide courts when considering whether to order a retrial following a successful prosecution appeal. This articles analyses the applications made to have an acquittal quashed and a new trial ordered in both England and Australia, as well as prosecution appeals against acquittal under the new legislation. The analysis suggests that a key task for the future will be to determine how considerations of finality, fairness and freedom from oppressive re-litigation – key principles underlying the rule against double jeopardy – should inform such decision-making. 159

DIGEST OF CRIMINAL LAW CASES 185

