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THE INDIVIDUAL JUDGE

Hon Justice Susan Kiefel AC

This article explores the relationship between judicial independence, individualism and judgment writing. While it is the duty of a judge who disagrees with his or her colleagues to express that disagreement, the issue is more complicated where a judge does agree, but nevertheless deems it necessary to write separately. The current practice of the High Court of Australia encourages the production of joint judgments, without judges having to publish a separate concurrence. Although not suggesting that judges in appeal courts should never write separately from their colleagues, the article considers the reasons for favouring the production of joint judgments, rather than multiple separate judgments.

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“DELIVERY”, “ESCROW”, RECITALS AND ESTOPPEL, AND ATTESTATION: CURRENT QUESTIONS WITH DEEDS

Lee Aitken

The law of deeds is of ancient provenance but continues daily to throw up difficult questions with respect to their meaning and enforceability. Recent authority has considered fundamental issues with respect to when a deed is “delivered”, what effect a recital in the deed has, and how it should be attested. The great attractions of using a deed to give effect to a contractual or proprietary intention means that the maker must take constant care to keep in the forefront of the mind those formalities and special rules which affect deeds and their validity.

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THE PREROGATIVE WRITS AND THE ORIGINS OF ENGLISH ADMINISTRATIVE LAW

Clare Langford

This article outlines the development of the prerogative writs, focusing on the writs of prohibition, certiorari, mandamus and habeas corpus, and their contribution to the shape of Anglo-Australian administrative law. These writs were the remedies which gave meaning to the maxim, expressed as early as the 13th century, that the King was under the law. In the 17th century, they permitted lawyers to enforce a particular conception of the English Constitution which has influenced the structure of Australian public law to a great degree. At the same time, these common law remedies offered inadequate protection against governmental excesses in the absence of institutional reform; most importantly, the formalisation of judicial independence.

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