

JOURNAL OF CIVIL LITIGATION AND PRACTICE

Volume 5, Number 4

December 2016

DOCTOR DAMIEN J CREMEAN – A TRIBUTE	207
COMMENTS	208
CASE NOTE – <i>William Fotherby</i> and <i>Samuel Beswick</i>	
<i>Don't tell me what the papers say: PJS v News Group Newspapers Ltd [2016] FSR 33; [2016] UKSC 26</i>	212
CASE NOTE – <i>Timothy Gorton</i>	
<i>Federal judicial power to reinstate discontinued proceedings: Chen v Monash University</i>	221
CASE NOTE – <i>Mark Fisher</i> and <i>Michael Legg</i>	
<i>The High Court of Australia confirms practice of receiving agreed civil penalty submissions from regulators and wrongdoers</i>	228
ARTICLES	
<i>When does a consent order operate as or evidence a contract? – Alexander Sloan</i>	
This article discusses the factors that the courts have taken into account in determining whether a consent order operates as, or evidences, a contract between the parties to a court proceeding. Whether a consent order is deemed a contract is of particular significance in litigation, as it creates added difficulty in convincing a court to have the order set aside or varied. Courts are reluctant to interfere with or destroy contractual rights, given the prejudice that will likely flow from breaking a free and voluntary agreement. Unless there is some basis for rendering the contract void or voidable, the party seeking variation will need to show “good reason” or “exceptional circumstances” justifying the court’s interference with the consent order. As such, whether a contract underpins the consent order may have significant ramifications for a party’s ability to assert or dispute a right in a matter. This is an important question for practitioners to consider.	234

VOLUME 5 – 2016

Table of Authors	247
Index	249

