

# THE AUSTRALIAN LAW JOURNAL

Volume 94, Number 2

February 2020

## **CURRENT ISSUES – Editor: Justice François Kunc**

The Future Is Here Today .....	87
Digital Platforms and Australian Law .....	87
The Curated Page .....	91

## **CONVEYANCING AND PROPERTY – Editors: Robert Angyal SC and Brendan Edgeworth**

From Immediate to Deferred to No Indefeasibility for Some Registered Mortgages .....	93
Contractual Consistency is Key in Conveyancing: Playford Vineyard v Wishford Nominees .....	95

## **COMPETITION AND CONSUMER LAW – Editor: John Kettle**

EU Antitrust Policy Leads the Way on Digital Platforms .....	99
--	----

## **TECHNOLOGY AND THE LAW – Editors: Lyria Bennett Moses and Anna Collyer**

Lawyers and the Black Box of Technology .....	107
---	-----

## **CRIME AND EVIDENCE – Editor: Justice Phillip Priest**

Trial by Judge Alone: Time for a Rethink? .....	110
---	-----

## **RECENT CASES – Editor: Ruth C A Higgins SC**

Restitution – Unjust Enrichment – Work and Labour Done – Where Land Owners and Builder Entered into Contract to Which Domestic Building Contracts Act 1995 (Vic) Applied – Whether Builder Entitled to Recover in Restitution as Alternative to Claim in Damages for Breach of Contract – Whether Contract Price Operated as Ceiling on Amount Recoverable by Way of Restitution .....	113
--	-----

## **ARTICLES**

### **MAHLA PEARLMAN ORATION 2018: ADVOCACY LAWYERING – CLIENT RESPONSIBILITY AND CHANGE AGENDAS**

<b>The Hon Robert French AC .....</b>	<b>118</b>
---------------------------------------	------------

LIMITATION PERIOD FOR BREACH BY A TRUSTEE OF THE “SELF-DEALING” AND “FAIR-DEALING” RULES

**Daniel Butler**

Trustees are subject to two important rules which do not attract frequent attention. First, a trustee must not purchase trust property and second, a trustee must not purchase a beneficiary’s beneficial interest in the trust. These rules are known, respectively, as the “self-dealing” rule and the “fair-dealing” rule. This article begins with a brief introduction to those rules. The focus of this article, however, concerns the limitation period for claims based on contraventions of those rules by an express trustee. Surprisingly, this issue has not been the subject of any Australian decision until recently. The article concludes by suggesting that an action for breach of the self-dealing rule is likely to have either no statutory limitation period, or a 12-year limitation period, depending on the jurisdiction (except in Western Australia where the limitation period is likely to be six years), whereas an action for breach of the fair-dealing rule, in the absence of fraud, is likely to have a six-year limitation period (except in the Northern Territory where the limitation period is likely to be three years). ..... 128

ANTI-SUIT INJUNCTIONS IN AID OF LEGAL OR EQUITABLE RIGHTS

**Daniel Reynolds**

One basis on which anti-suit injunctions may be granted in Australia is to aid legal or equitable rights. Beyond the paradigm example of exclusive jurisdiction clauses, it becomes less clear just which rights will suffice. This article considers three possible boundary cases: statutory rights conferring a juridical advantage on defendants in the forum; contractual rights arising from choice of law clauses; and rights arising from estoppel or election. Bringing the strands together, a general definition of legal or equitable rights capable of supporting the grant of an anti-suit injunction is proposed. .... 137

BOOK REVIEWS

*The Impact of Equity and Restitution on Commerce*, by Peter Devonshire and Rohan Havelock (eds) ..... 155

*Encounters with Constitutional Interpretation and Legal Education Essays in Honour of Michael Coper Editor James Stellios*, including a select list of Michael Coper’s publications, by James Stellios (ed) ..... 157

# Australian Law Journal Reports

## HIGH COURT REPORTS – Staff of Thomson Reuters

### DECISIONS RECEIVED IN DECEMBER 2019

BMW Australia Ltd v Brewster ( <i>Constitutional Law; High Court and Federal Court; Procedure</i> ) ([2019] HCA 45) .....	51
Boensch v Pascoe ( <i>Bankruptcy; Equity; Real Property</i> ) ([2019] HCA 49) .....	112
CNY17 v Minister for Immigration and Border Protection ( <i>Administrative Law; Citizenship and Migration</i> ) ([2019] HCA 50) .....	140
De Silva v The Queen ( <i>Criminal Law</i> ) ([2019] HCA 48) .....	100
Westpac Banking Corporation v Lenthall ( <i>Constitutional Law; High Court and Federal Court; Procedure</i> ) ([2019] HCA 45) .....	51