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ARTICLES

ALGORITHMIC DECISION-MAKING AND LEGALITY: PUBLIC LAW DIMENSIONS

Dr Will Bateman

Automating the exercise of statutory powers through algorithmic decision-making carries high levels of legal risk. Fundamental public law doctrines assume that legal powers will be exercised by a particular kind of decision-making agent: one with sufficient cognitive capacities to understand the interpretative complexity of legal instruments and respond to highly dynamic environments. Public law doctrines also assume that clear reasons can be given for the exercise of public power and, by default, attribute legal responsibility for the exercise of statutory powers to a human being bearing political and social responsibility. Those doctrines provide the standards against which the legality of algorithmic decision-making in the public sector must be tested and until they are met lawyers should be very sceptical of suggestions that statutory powers can be automated. 520

SIR LEO FINN BERNARD CUSSEN: THE CENTENARY OF A HIGH COURT TRAGEDY – PART 1

Paulina Fishman

Sir Leo Finn Bernard Cussen was one of Australia’s greatest judges. Born in the colony of Victoria, he lived through federation and the First World War. Not only that, but Cussen had a personal experience of both. Before becoming a Justice of the Supreme Court of Victoria, he tried his hand at politics: standing as a candidate in the first federal election. Having lost one son already, he was apart from his two eldest while they fought in World War I. Yet Cussen persevered in his judicial work and the statutory consolidations for which he received the thanks of Victoria’s Parliament. This article is Part 1 of his extraordinary story. 531

LIMITATION AND THE RETURN OF TRUST PROPERTY

Jonathon Moore QC

The law relating to limitation periods in equity is justifiably described as “confused”, “inconsistent” and “tangled”. One particular issue that remains uncertain concerns limitation of actions in respect of trust property. The issue exists in those jurisdictions with legislation equivalent to s 21 of Limitation Act 1980 (UK), such as Victoria, South Australia, Western Australia, Queensland and Tasmania. When a third-party volunteer receives misdirected trust property from a trustee, can a beneficiary recover the property or its traceable proceeds if more than six years have passed since the initial breach of trust? Answering that question requires consideration of issues fundamental to the law of trusts. This article contends that in the example given, the third party is, for the purposes of the legislation, a trustee, and holds the property on trust for the beneficiaries. The property may therefore be recovered from the third party. 549

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