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ARTICLES

RESPONSIBLE JURIMETRICS: A REPLY TO SILBERT’S CRITIQUE OF THE VICTORIAN COURT OF APPEAL

Brian Opeskin and Gabrielle Appleby

In a recent article in this Journal, (“The First 24 Years of the Victorian Court of Appeal in Crime” (2020) 94 ALJ 455) Gavin Silbert QC examined the frequency with which criminal decisions of the Victorian Court of Appeal (VCA) have been reversed by the High Court on appeal and contended that the VCA’s performance over its first 24 years has declined significantly over time. We argue that his analysis offers an inaccurate and misleading account. Utilising more sophisticated jurimetric analysis, we conclude that the VCA’s reversal rates have indeed risen from historic lows, in both criminal and civil matters, but that the Court’s performance lies within the historical experience of Australia’s intermediate courts of appeal over the past two decades. At a time when practitioners and scholars are making increasing recourse to the allure of statistics, our reply advocates for a more nuanced understanding of the role of intermediate courts of appeal, and highlights the dangers to public confidence in the judicial system of quantitative analysis that lacks methodological rigour. 923

DIRECTORS’ DUTIES IN A POST-HAYNE WORLD: “THE COMPANY” AS MORE THAN THE SUM OF ITS SHAREHOLDERS

Philip Sales

Companies are the principal legal form for business undertakings, reflecting the advantages of a separate legal personality which is continuous across time, limited liability of investors and a sophisticated organisational and decision-making structure which gives extensive business discretion to company directors. Their primary responsibility is to act in the interests of shareholders. Comparing English and Australian law, the article examines how decision-making by companies can be incentivised to take account of business, social and environmental externalities via regulation, taxation and the imposition of duties on company directors. It discusses how the tensions between shareholder interests and those of creditors, employees, consumers and the environment are managed in the course of decision-making structured around the business discretion allowed to directors. Civil society can play a substantial role in setting the environment for commercial activity, regarding what is acceptable and not acceptable. 936

SOME RESERVATIONS ABOUT THE USE OF ARTIFICIAL INTELLIGENCE IN SENTENCING DECISIONS

Adrian Staples

In this article I consider the capacity of artificial intelligence to assist judges with sentence determination. I argue that once we are clear both about the capabilities of artificial intelligence and about how these capabilities differ from what judges do and are capable of

doing, we will better understand why we must resist the potential of artificial intelligence to remove the responsibility for decision-making from judges in sentencing matters. I make my considerations with reference to current Australian sentencing practises. 949

100 YEARS OF SPEAKING: GENDER EQUALITY AMONG BARRISTERS BEFORE THE HIGH COURT

Winsome Hall and George Williams

The participation of women as advocates before the High Court of Australia has never been higher. Nonetheless, female barristers are still underrepresented in appearances and in speaking roles before the nation's highest court. This article continues the empirical study of female barristers before the High Court. It conducts an analysis of appearances before the High Court in 2019 to present a statistical overview of the rate at which women are appearing and speaking before the High Court. 960

BOOK REVIEW – Editor: Angelina Gomez

A History of Criminal Law in New South Wales Volume 2: The New State 1901–1955, by GD Woods 971

Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Thomson Reuters

DECISIONS RECEIVED IN NOVEMBER 2020

Calidad Pty Ltd v Seiko Epson Corporation (Courts and Judges; High Court and Federal Court; Intellectual Property) ([2020] HCA 40) 1044
Deguisa v Lynn (Real Property) ([2020] HCA 39) 1020
GBF v The Queen (Criminal Law) ([2020] HCA 40) 1037