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ARTICLES

ESTOPPEL AND ENFORCEMENT OF INTERNATIONAL ARBITRATION AWARDS

Richard Garnett

A losing party to an arbitration award (award debtor) has traditionally enjoyed complete freedom when seeking to resist enforcement of an award. The debtor may challenge the award in the courts of the seat of arbitration, it may rely on a defence to enforcement in the courts of country B or it may pursue both options. Two questions have recently arisen however: first, whether the debtor should be estopped in proceedings in country B from raising an objection that it unsuccessfully pleaded in the seat and second, whether

the debtor should be precluded from invoking a defence in country B proceedings that it could have raised in the seat but failed to do so. This article examines the doctrines of issue and Anshun estoppel in the context of international arbitration awards and the related principles of finality and enforceability of awards and comity towards foreign courts. 337

DEFAMATION: SERIOUS HARM AND CONTEXTUAL TRUTH

James O'Hara

The Model Defamation Amendment Provisions 2020 make two fundamental changes to Australia's uniform defamation laws. They introduce a serious harm threshold and amend the contextual truth defence. By those changes, at once, the extent of harm to reputation caused by publication of defamatory matter is made a question inherent in both an element of the cause of action and a complete defence under the amended provisions. How are those two principles to be reconciled? If the court determines that the serious harm threshold is satisfied, can the contextual truth defence ever succeed? Can contextual imputations be taken into account at an interlocutory stage such as on a serious harm determination? What is clear is that there is a necessary relationship between serious harm and contextual truth, which courts will need to address in due course. This article is a forward-looking assessment of how Australian defamation law will grapple with the relationship between these two principles. 348

TOWARDS A COHERENT SENTENCING JURISPRUDENCE FOR ANIMAL CRUELTY OFFENCES

Gabrielle Wolf, Mirko Bagaric and Jane Kotzmann

In recent years, there has been growing community concern regarding the high incidence of animal cruelty offences. A large number of offenders are sentenced each year for these crimes. Despite this, there is no established, or even emerging, jurisprudence regarding the proper approach to sentencing animal cruelty offenders. Consequently, sanctions imposed for animal cruelty offences are often perceived to be inappropriate and inconsistent. This is unsurprising, given that some of the main sentencing objectives, such as protection of the community, are ostensibly irrelevant to animal cruelty offences. This article proposes a framework for sentencing animal cruelty offenders. We argue that the principle of proportionality should be the main consideration that informs the sentences imposed for animal cruelty offences. An examination of scientific evidence about animals' capacity to feel pain and philosophical theories about their moral status suggests that animal cruelty offences can be extremely serious and hence often warrant the imposition of harsher penalties than are often currently imposed. The recommendations in this article will enhance the integrity of this area of law and provide principled guidance to judicial officers in sentencing animal cruelty offenders. 368

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