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(2016) 90 ALJ [page]

The Australian Law Journal is a refereed journal.

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90 ALJR [page]

THE AUSTRALIAN LAW JOURNAL

Volume 90, Number 1

January 2016

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ARTICLES

MAGNA CARTA AND THE EXECUTIVE

James Spigelman

In this his third article on Magna Carta, the author makes the point that the real significance of Magna Carta is not its status as a sacred text, but rather its introduction of four themes which were developed over the centuries into basic principles of government. These four themes are identified and their development traced in detail as government by a feudal absolute king was transformed into today's democratic system. 29

MUCH ADO ABOUT NOTHING: WHY ACCEPTING AN INVITATION DID NOT MAKE DYSON HEYDON AC, QC APPEAR BIASED

Louise Floyd

This article analyses the reasons for rejecting the recent apprehended bias application made by unions against Royal Commissioner Dyson Heydon – not for anything he had done in running the Royal Commission into Trade Union Governance, nor in writing his 1,700-page interim report, but because of his accepting an extra-curricular invitation to give the Sir Garfield Barwick Address. Apprehended bias requires proof of prejudgment, rather than suspicion of possible private predisposition (which is where the unions failed). Relevantly, the author argues that law schools should emphasise the positive role judges play in society; and that a greater emphasis should be placed on those who send emails to make key points abundantly clear. 38

THE TYRANNY OF SMALL DIFFERENCES: CULPABILITY GULF BETWEEN SUBJECTIVE AND OBJECTIVE TESTS FOR EXTENDED JOINT CRIMINAL ENTERPRISE IN AUSTRALIA

Laura Stockdale

At present there is an imbalance in the legal scholarship on extended joint criminal enterprise (EJCE) in Australia. While the subjective test applied in the common law jurisdictions has been widely criticised for extending liability too far, legal scholars have overlooked the objective test in the criminal codes of Queensland, Western Australia and Tasmania. This article seeks to remedy this situation by comparing the subjective and objective tests for EJCE in detail and evaluating each test by inquiring whether it limits criminal liability to secondary participants who are sufficiently culpable. It argues that only the subjective test limits liability to secondary participants who are sufficiently culpable, as only those participants who have consciously taken the risk that the additional crime will occur are liable for that crime. 44

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