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ARTICLES

“STATE OF THE JUDICATURE”

Hon Chief Justice Murray Gleeson AC

The Chief Justice of Australia customarily gives a State of the Judicature address every second year. The text of the 2003 address follows. Because it was delivered at the Commonwealth Law Conference, a large part of the address is devoted to tracing the history of the Australian judicial system and noting the organisations that are an adjunct to that system. The Chief Justice also focuses on current issues for lawyers with a concentration on the provision of adequate judicial education and notes the generally good relationship between the Australian courts and the community. 505

DIRECT DISCRIMINATION AND A DEFENCE OF REASONABLE JUSTIFICATION

Robert Dubler

Direct discrimination under Australia’s anti-discrimination legislation is said to arise where the discriminatory conduct is directly based on the complainant’s status, for example, the complainant’s race, sex, or disability. Can an alleged discriminator admit such conduct but say it was reasonably justified in the circumstances? It seems the courts have had difficulty dealing with this issue in a consistent manner. This article explores these divergent approaches. 514

CHANGING POSITION CONSCIENTIOUSLY

David O’Brien

For much of the last decade, a debate has been conducted between Lord Goff and Professor Jones on the one hand and Professor Birks on the other as to whether the restitutionary defence of change of position should be available to a defendant who has acted carelessly, but conscientiously, in changing position. Recent decisions of the Privy Council and the Queensland Court of Appeal have confirmed Lord Goff and Professor

Jones' view that conscientiousness is enough. That the defence should be informed by equitable principles is consistent with the foundation of an action for money had and received, and with the founder, Lord Mansfield's, early articulation of the defence. 530

TRADE PRACTICES ACT: RECENT DEVELOPMENTS IN ASSESSMENT OF DAMAGES

Paul Mendelow

Three recent decisions of the High Court of Australia shed light on difficult issues of causation and computation of damages under the Trade Practices Act 1974 (Cth) where there are contributory causes. Caught up in these issues are questions of apportionment, rights of contribution and where the evidential burden lies in hiving off loss or damage said not to be attributable to the defendant's contravening conduct. Some would argue that the High Court has gone too far in attempting to resolve these issues. Others call for legislative intervention. This article examines the reasoning behind these decisions and some practical ramifications going to matters such as pleading issues. 534

The Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Lawbook Co

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Trade Practices Act 1974 (Cth), s 51AC. The full citation should be repeated in footnotes.

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- Books should be cited as follows: Macken JJ, O’Grady P, Sappideen C and Warburton G, *The Law of Employment* (5th ed, Lawbook Co., 2002), p 55.
- In footnotes do not use *ibid* or *op cit*. The following style is preferred:
 - 4. Austin RP, “Constructive Trusts” in Finn PD (ed), *Essays in Equity* (Law Book Co, 1985).
 - 5. Austin, n 4, p 56.

5. Journals

- Journal articles should be cited as follows (wherever possible use official abbreviations not the full name for journal titles): Odgers S, “Police Interrogation: A Decade of Legal Development” (1990) 14 Crim LJ 220.
- In footnotes do not use *ibid* or *op cit*. The following style is preferred:
 - 6. Sheehy EA, Stubbs J and Tolmie J, “Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations” (1992) 16 Crim LJ 220.
 - 7. Sheehy et al, n 6 at 221.

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