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CURRENT ISSUES – Editor: Mr Justice P W Young

| | |
|--|-----|
| Fiji Constitution..... | 555 |
| Innocent yet guilty..... | 561 |
| Women’s duty to other women lawyers..... | 562 |
| Judicial plagiarism..... | 562 |
| Politics and the ALJ..... | 563 |
| Headless whore challengers..... | 564 |

| | |
|------------------------------------|------------|
| LETTERS TO THE EDITOR | 565 |
|------------------------------------|------------|

CONVEYANCING AND PROPERTY – Editor: Peter Butt

| | |
|---|-----|
| The right to emblements and alteration by contract..... | 567 |
| Merger of roles of executor and devisee..... | 569 |

PRACTICAL ADVOCACY – Editor: Chief Justice John H Phillips AC

| | |
|---------------------|-----|
| “Disclosures” | 571 |
|---------------------|-----|

OVERSEAS LAW – Editor: Ross Buckley

| | |
|--|-----|
| Canada takes steps to change provincial law to accommodate indirect holding system for securities..... | 572 |
|--|-----|

FAMILY LAW – Editor: Anthony Dickey QC

| | |
|--|-----|
| “Special contribution” to property and the case of Figgins | 575 |
|--|-----|

PEOPLE IN THE LAW – Editor: Geoff Lindsay SC

| | |
|---|-----|
| Mr Justice D P Drummond (Cth)..... | 579 |
| Hon Justice J W Shaw (NSW)..... | 579 |
| Bar Association Centenary – June 2003 (Qld) | 580 |

RECENT CASES – Editor: Mr Justice P W Young

| | |
|---|-----|
| Part-time judges..... | 583 |
| Issue estoppel..... | 583 |
| No trade marks for smell | 584 |
| Executor’s liability for judgment in tort after distribution..... | 585 |
| Charitable trusts: Whether trust now inexpedient..... | 586 |
| Rugby union: Liability of referee for negligence | 586 |
| Rights and duties of the legal profession..... | 587 |
| Distribution of funds in failed investment schemes..... | 587 |
| Is a clergyman an employee?..... | 588 |

ARTICLES

JUDICIAL SELECTION AND TRAINING: TWO SIDES OF THE ONE COIN

Murray Gleeson

In a paper originally presented to the annual colloquium of the Judicial Conference of Australia, Chief Justice Gleeson points out that it is idle for governments to preach that the pool of lawyers who might be appointed to the Bench be expanded unless they are prepared to spend real money on pre-judicial education. To date the Bar has borne this cost. Governments still show great reluctance adequately to fund judicial colleges. 591

STRIKING A BALANCE BETWEEN PROTECTING COMMERCIAL REPUTATION AND PROMOTING COMPETITION

William van Caenegem

Recent emphasis on the effect of the grant of intellectual property rights on competition has focused largely on “substantive” intellectual property rights (copyright, patents, designs), rather than on reputation (registered and unregistered marks, passing off). Arguably the nature and extent of rights in goodwill has a more direct and significant effect on the competitive operation of markets because established reputation is a formidable barrier to entry. In this light, the recent expansion of legal protection for trade marks should be closely scrutinised. It is important to maintain a productive balance between the legitimate ambitions of individual traders and the public interest in dynamic markets. 598

WHISTLEBLOWING IN THE INSURANCE INDUSTRY

Paul Latimer

Whistleblowing is a word not regularly used in Australian financial services regulation. The whistleblower is the person who reports wrongdoing to the company and to the appropriate regulatory and law enforcement authorities. The legal system treats the whistleblower with ambivalence, with the practical consequence of recognising the whistleblower as both traitor and hero. The General Insurance Reform Act 2001 (Cth), which provides for whistleblower obligations and protections on the part of insurance

auditors and actuaries, was indorsed by the HIH Royal Commission (2003), but the Commissioner held back from recommending any extensions to any proposal to impose on corporate officers more generally positive whistleblowing obligations. This article supports initiatives to extend whistleblower obligations and protections to insurance directors and officers, and recommends extension of whistleblowing obligations and protections to anyone in the insurance industry who can expose wrongdoing. 614

OBITUARIES

| | |
|---------------------------------------|-----|
| Hon D M Campbell QC..... | 621 |
| Hon Richard Elgin McGarvie AC QC..... | 622 |
| R J B St John QC..... | 624 |

The Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Lawbook Co

DECISIONS RECEIVED IN JULY/AUGUST 2003

| | |
|--|------|
| Cattanach v Melchior (<i>Damages</i>) ([2003] HCA 38) | 1312 |
| Dhanhoa v The Queen (<i>Evidence</i>) ([2003] HCA 40) | 1433 |
| Gibbs v Mercantile Mutual Insurance (Australia) Ltd (<i>Insurance</i>) ([2003] HCA 39) | 1396 |

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 - 5. Austin, n 4, p 56.

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 - 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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