
Australian Law Journal

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The mode of citation of this volume is
(2004) 78 ALJ [page]

The Australian Law Journal is a refereed journal.

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78 ALJR [page]

THE AUSTRALIAN LAW JOURNAL

Volume 78, Number 1

January 2004

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ARTICLES

THE TRUTH CAN COST TOO MUCH: THE PRINCIPLE OF A FAIR TRIAL

Hon J J Spigelman AC

The principle of a fair trial permeates the common law in both civil and criminal contexts. The principle is regularly applied in determining stays of proceedings, matters of trial procedure, the exclusion of evidence and the formulation of directions to juries. These applications commonly involve the judicial balancing of competing interests, for example, in the criminal context, the interest of the accused, and the public, in a fair trial must sometimes be weighed against the public interest in the prosecution of persons who commit offences. A similar process is evident in the United Kingdom where the right to a fair trial under Art 6 of the European Convention on Human Rights is given force by the Human Rights Act 1998. By reason of the common areas of content and application of the principle or right of a fair trial, the case law of the United Kingdom remains significant for developments in Australian law in this field. 29

PAKISTAN'S LAW AND JUSTICE SECTOR REFORM EXPERIENCE: SOME LESSONS

Livingston Armytage

The aim of this article is to review the ongoing experience being gained in Pakistan's Access to Justice reform program with a view to distil lessons learned for the emerging discourse on law and justice development programs. The article approaches the subject in four parts: history, objectives, progress to date, and lessons learned. 50

JUDGE'S ROLE IN SETTLEMENT OF REPRESENTATIVE PROCEEDINGS: LESSONS FROM UNITED STATES CLASS ACTIONS

Michael J Legg

Group proceedings are a significant challenge to any legal system because they epitomise the conflict between efficiency and fairness. Settling a dispute, rather than litigating it, is one of the most accepted ways in which the trade-off between efficiency and fairness can be managed. However, settlement of a group proceeding creates new challenges for the legal system as absent group members are unable to monitor their representatives effectively, making the absent group vulnerable to mistreatment. This article seeks to draw lessons from the United States' experience of settlements in class actions to argue that judicial supervision is necessary to ensure Australian representative proceedings function fairly, and written guidelines are needed to guarantee the extension of due process into the settlement context. 58

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5. Austin, n 4, p 56.

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7. Sheehy et al, n 6 at 221.

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ISSN 0004-9611

Typeset by Lawbook Co., Pyrmont, NSW
Printed by Ligare Pty Ltd, Riverwood, NSW