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# Australian Law Journal

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# THE AUSTRALIAN LAW JOURNAL

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## ARTICLES

### TAMPA INCIDENT: SOME SUBSEQUENT LEGAL ISSUES

**Michael White**

The controversy surrounding the “Tampa incident” commenced in August 2001 and continues. This article concentrates on some legal issues arising from the incident. In particular, it describes and discusses the litigation in the Federal Court of Australia and High Court of Australia, the retrospective legislation removing substantive rights, and the interception of communications to and from the Tampa by the Defence Signals Directorate. Some conclusions about such matters are set out including that the Australian law on habeas corpus may need development for circumstances such as arose in the Tampa incident. Also discussed are concerns that the rule of law was denied the people on board the vessel, that the Australian Defence Force acted unlawfully and that no full and frank inquiry has been made into it, and that information unlawfully gathered by the Defence Signals Directorate and passed on to Australian government officers who had the conduct of the litigation for the Commonwealth may have been misused. .... 249

### THE STATUTORY RIGHT OF ACTION IN REM

**Michael Jonsson**

One of the legacies of the tumultuous history of the High Court of Admiralty is the heavy reliance upon statute within the contemporary Anglo-Australian law of admiralty. This article will examine the statutory revival of the law of admiralty that has been progressing since the early 19th century, with an emphasis upon the Australian experience. While statute has, for the most part, provoked modernisation and reform of the jurisdiction, it will be seen that the contemporary formulation of the action in rem remains influenced by institutional pressures which preceded the judicature reforms. This feature of admiralty jurisprudence may possess a continuing relevance to the constitutional foundation of a significant part of the contemporary Australian jurisdiction. .... 262

### SIMILAR FACT EVIDENCE: A PITTED BATTLEFIELD

**Kylie Downes LLB (Hons), BCL (Oxon)**

The High Court in *Pfennig v The Queen* (1995) 182 CLR 461 held that the trial judge, when faced with the tender of similar fact evidence, must ask whether there is a rational view of the evidence that is consistent with the innocence of the accused. This is an exercise in the assessment of the probability of the accused’s innocence in the light of the similar fact evidence. The decision to admit similar fact evidence in a criminal trial, in the absence of any legislation, has always required such an assessment. Additionally, and despite expressing opposition to such an approach, Courts have always permitted evidence to be tendered to encourage propensity reasoning. This article evaluates the approach taken by the courts to similar fact evidence and considers whether there has been any real development or change in this rule. .... 279

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  7. Sheehy et al, n 6 at 221.

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