
Australian Law Journal

GENERAL EDITOR
Mr Justice P W Young

PRODUCTION EDITOR
Cheryle King

ASSISTANT GENERAL EDITOR
Dr Paul Gerber

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

The Australian Law Journal is a refereed journal.

Australian Law Journal Reports

MANAGING EDITOR
Carmel Jones

PRODUCTION EDITOR
Carolyn May

CASE REPORTERS
Clare D'Arcy
Paul Govind
Colleen Tognetti
Susan Waywood
Angeline Wong

The mode of citation of this volume is
78 ALJR [page]

THE AUSTRALIAN LAW JOURNAL

Volume 78, Number 7

July 2004

CURRENT ISSUES – Acting Editor: Justice R I Barrett

The general editor.....	423
Legislated human rights.....	423
Industrial manslaughter	424
Corporate governance.....	424
In-house lawyers	425
Remunerating judges.....	426
Rejuvenating court buildings.....	427
Lawyers' time based charging.....	427
What do young lawyers want?.....	428
Offending while on bail.....	429
Plagiarism.....	429

CONVEYANCING AND PROPERTY – Editor: Peter Butt

“Cadaver” emptor and the vendor’s duty of disclosure	430
Rights above and below the surface	431
Easements: some US cases.....	432

FAMILY LAW – Editor: Anthony Dickey QC

Scope of intention to defeat an order under s 106B.....	434
De facto proceedings shortly after arrival in the jurisdiction.....	434

PRACTICAL ADVOCACY – Editor: Prof John Harber Phillips AC FAIM

“And courage never to submit or yield”: Milton, “Paradise Lost”	436
---	-----

PEOPLE IN THE LAW – Editor: Geoff Lindsay SC

Justice Kevin H Parker AO RFD (International).....	438
Queen’s Birthday Honours List (Cth).....	439
Compensation Court of New South Wales (NSW).....	439
Justice Michael Campbell (NSW)	439
Justice John David Hislop (NSW).....	440
Justice Robert McDougall (NSW).....	440
Mr Justice B W Ambrose (Qld).....	441
Justice R J M Anderson (WA).....	442
Justice Narelle Johnson (WA)	442
Hon Justice R L Simmonds (WA)	444

RECENT CASES – Acting Editor: Justice R I Barrett

Judicial notice	445
Religious discrimination.....	445
Employer’s contractual duty in advising employee.....	446
Nervous shock	447
“Signed by”	447
Written offer accepted by conduct.....	448
Oral argument in special leave applications	448
Unrepresented litigants	449
Will merely appointing executor held invalid	450
Renvoi	450
Builder’s duty to subsequent owners of commercial property	451

ARTICLES**18TH LAWASIA CONFERENCE AND 10TH CONFERENCE OF CHIEF JUSTICES
OF ASIA AND THE PACIFIC****David K Malcolm AC**

This article summarises presentations to the Combined Plenary Session of the 10th Conference of Chief Justices of Asia and the Pacific and the 18th LAWASIA Conference on the topic of “The Independence of the Judiciary as the Base of Business and Economic Development in the Asia-Pacific Region”. The Asia-Pacific region is unique in its diversity of legal jurisdictions. This is reflected by papers which were delivered from a wide variety of governing bodies, including the Asian Development Bank and the International Development Law Organisation. 453

INDEPENDENCE OF THE JUDICIARY IN THE ASIA-PACIFIC REGION

David K Malcolm AC

This article explores the principles of the independence of the judiciary in the context of the wide range of jurisdictions in the Asia-Pacific region. In 1991, Chief Justice Malcolm recommended to the Conference of Chief Justices of Asia and the Pacific that the Chief Justices develop a regional statement of the principles of the independence of the judiciary. In a remarkable achievement for democracy, the Chief Justices drew from their vastly differing judicial and cultural histories and collaborated to draft the Beijing Principles. Whilst their origins stem from the Asia-Pacific region, the Beijing Principles are applicable in all democratic jurisdictions. 458

QUIDDITIES, QUILLITIES, TENURES AND TRICKS: SHAKESPEARE AND THE LAW

Dr Lloyd Davis

This article explores Shakespeare's use of legal language and concepts to convey and explain the impact of the law on everyday life. It further considers the playwright's extensive knowledge of the law, his observations of the law as conveyed in his plays and poems, and his contribution to the legal culture of today. 470

The Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Lawbook Co

DECISIONS RECEIVED IN MAY 2004

Applicant S v Minister for Immigration and Multicultural Affairs (<i>Citizenship, Immigration and Emigration</i>) ([2004] HCA 25)	854
GAS v The Queen (<i>Criminal Law</i>) ([2004] HCA 22)	786
Insurance Commission (WA) v Container Handlers Pty Ltd (<i>Third Party Liability Insurance</i>) ([2004] HCA 24)	821
Muir v The Queen (<i>Criminal Law; High Court of Australia</i>) ([2004] HCA 21)	780
Pinkstone v The Queen (<i>Appeal and New Trial; Constitutional Law; Criminal Law</i>) ([2004] HCA 23)	797
SJK v The Queen (<i>Criminal Law</i>) ([2004] HCA 22)	786
Taxation, Commissioner of v Hart (<i>Taxes and Duties</i>) ([2004] HCA 26)	875

Guidelines for Contributors

Submission and licence agreement instructions

All contributions to the journal are welcome and should be sent, with a signed licence agreement, to the Production Editor, *The Australian Law Journal*, Lawbook Co, PO Box 3502, Rozelle, NSW 2039 (mail), 100 Harris St, Pyrmont, NSW 2009 (courier) or by email to alj@thomson.com.au, for forwarding to the Editor. Licence agreements can be downloaded via the internet at http://www.lawbookco.com.au/authorsupport/d_authorJournals.asp. If you submit your contribution via email, please confirm that you have printed, signed and mailed the licence agreement to the attention of the Production Editor at the mailing address noted above.

Letters to the Editor

By submitting a letter to the editor of this journal for publication, you agree that Thomson Legal & Regulatory Limited, trading as Lawbook Co, may edit and has the right to, and may license third parties to, reproduce in electronic form and communicate the letter.

Manuscript

- Manuscript must be original, unpublished work that has not been submitted for publication elsewhere.
- Personal details (name, qualifications, position) for publication and a delivery address, email address and phone number must be included with the manuscript.
- Manuscript must be submitted electronically via email or on disk in Microsoft Word format.
- Manuscript should not exceed 10,000 words for articles or 1,500-2,000 words for section commentary or book reviews. An abstract of 100-150 words is to be submitted with article manuscripts.
- Proof pages will be sent to contributors. Authors are responsible for the accuracy of case names, citations and other references. Excessive changes to the text cannot be accommodated.
- Contributors of articles receive 25 free offprints of their article and a copy of the part in which the article is published. Other contributors receive a copy of the part to which they have contributed.
- This Journal complies with DEST Specification 4.3.4 for the peer review process. Each article is, prior to publication, reviewed in its entirety by a qualified expert who is independent of the author.

Style

1. Levels of headings should be clearly indicated (no more than four levels).

2. Cases:

- Case citation follows case name. Where a case is cited in the text, the citation should follow immediately rather than as a footnote. Give at least two and preferably all available citations, the first listed being the authorised reference.
- Australian citations should appear in the following order: authorised series; Lawbook Co./ATP series; other company series (ie CCH, Butterworths); media neutral citation.
- "At" references should only refer to the best available citation, eg: *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 34; 66 ALJR 408; 107 ALR 1.
- Where only a media neutral citation is available, "at" references should be to paragraph, eg: *YG v Minister for Community Services* [2002] NSWCA 247 at [19].
- For international cases best references only should be included.

3. Legislation should be cited as follows:

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

4. 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 should be cited as follows:

- Odgers S, "Police Interrogation: A Decade of Legal Development" (1990) 14 Crim LJ 220.

- Wherever possible use official abbreviations not the full name for journal titles.

- 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.

6. Internet references should be cited as follows:

- Rickatson S, *The Law of Intellectual Property: Copyright, Designs and Confidential Information* (Lawbook Co, subscription service) at [16.340], <http://subscriber.lawbookco.com.au> viewed 25 June 2002. Underline the URL and include the date the document was viewed.

For further information visit the Lawbook Co website at <http://www.lawbookco.com.au> or contact the Production Editor.

SUBSCRIPTION INFORMATION

The *Australian Law Journal* comprises twelve parts a year.

Customer Service and sales inquiries:

Tel: 1800 650 522

Fax: 61 2 8587 7200

Web: www.lawbookco.com.au

Email: service@thomson.com.au

Advertising inquiries:

JENNIFER OSBURN

National Advertising Manager

Tel: 61 3 9205 0606

Fax: 61 3 9853 0342

Email: jennifer.osburn@thomson.com.au

Editorial inquiries:

Tel: 61 2 8587 7000

HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

Tel: 61 2 8587 7000 Fax: 61 2 8587 7100

THOMSON



LAWBOOK CO.

© Thomson Legal & Regulatory Limited ABN 64 058 914 668 trading as Lawbook Co.

ISSN 0004-9611

Typeset by Lawbook Co., Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW