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RIGHTS OR WRONGS? THE HUMAN RIGHTS ACT IN THE COURTS

Rt Hon Lord Carswell

In October 2000 the Human Rights Act 1998 (UK) came into force, incorporating the European Convention for the Protection of Human Rights and Fundamental Freedoms into United Kingdom domestic law. The article examines the impact of the Act on the courts, and its effects on judicial thinking. The article considers the challenges faced by a judiciary accustomed to common law traditions which is now obliged to consider the compatibility of legislation with the Convention, as well as grapple with matters of public policy traditionally held to be the responsibility of the Parliament and the Executive. 36

FROM ACORN TO OAK TREE: THE SPREADING BRANCHES OF S 52 OF THE AUSTRALIAN TRADE PRACTICES ACT 1974

Russell Miller

The Trade Practices Act set new standards for corporate behaviour. One of those new standards was a simply stated section, s 52, which contained a simple invocation not to engage in misleading or deceptive conduct. Over the 30 years since s 52 was first introduced this “small acorn” has grown into a fully fledged oak. This article traces the development of s 52 in the many branches of the law to which it has so far been applied.. 43

DEFENCE OF OBEDIENCE TO SUPERIOR ORDERS RECONSIDERED

Patrick White

Australian soldiers are by law and military custom called upon to act with unfailing obedience to superior orders, often while under extreme pressure; at the same time they are citizens subject to criminal law. This article canvasses the traditional responses to the “soldier’s dilemma” and suggests that the manifest illegality principle is the best compromise which accommodates the competing interests of military discipline, legal supremacy and individual justice. The author explores the legal basis for the manifest illegality test, and proposes legislative and practical reforms which better ensure both executive and individual accountability within the context of a defence to superior orders. 50

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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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