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- The ALJ Index covers all the material in the Journal. In addition there is an Index of Authors covering the feature articles. The Table of Cases is a table for this volume of all English, Australian, and other decisions, which have formed the subject matter of explanation and comment in articles and in notes and paragraphs in the various departments of the Journal.
- The ALJR Index and Table of Cases relate solely to the cases reported in the Reports, that is, to cases decided by the High Court of Australia.

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Hague, Ralph M, Hague's History of the Law in South Australia 1837–1867, 473

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Kimble, Joseph, Lifting the Fog of Legalese: Essays on Plain Language, 623

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* Indicates a more important reference.

Book Reviews — continued

- Megarry, R E, *A New Miscellany-at-Law: Yet Another Diversion for Lawyers and Others*, 475
- Prest, Wilfred (ed), *The Letters of Sir William Blackstone 1744–1780*, 500
- Purdon, Susan and Aladin Rahemtula (eds), *A Woman's Place: 100 Years of Queensland Women Lawyers*, 781
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- Waters, Donovan W M, Mark Gillen and Lionel Smith, *Waters' Law of Trusts in Canada* (3rd ed), 472
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Page 186, counsel for second respondent

For “H Somnez” read “H Sonmez”.

Page 1177 [38], line 4

Delete “appellants”.

Page 1177 [39], lines 1-2

For “The appellants’ arguments in this Court fastened upon” read “The arguments in this Court focused upon”.

Page 1177 [39], column 2, line 1

For “(emphasis added). The appellants submitted, and the” read “(emphasis added). The”.

Page 1177 [39], column 2, line 7

Delete “the appellants submitted, and”.

Page 1177 [39], line 15

Delete comma after “held”.

Page 1177 [39], lines 18-19

For “jurisdiction. The appellants argued that a plea” read “jurisdiction: a plea”.

Page 1177 [40], lines 2-3

For “reasons upon which the appellants fastened must be read in context of the reasons as a whole” read “reasons upon which the argument fastened must be read in the context as a whole”.

Page 1179 [46], line 14

For “yield the rule, for which the appellants contended” read “yield a rule”.

Page 1250, catchwords, third block, line 3

For “s 688E(1A)” read “s 668E(1A)”.

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CORRIGENDA

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Page 186, counsel for second respondent
For “H Somnez” read “H Sonmez”.

Page 1177 [38], line 4
Delete “appellants”.

Page 1177 [39], lines 1-2
For “The appellants’ arguments in this Court fastened upon” read “The arguments in this Court focused upon”.

Page 1177 [39], column 2, line 1
For “(emphasis added). The appellants submitted, and the” read “(emphasis added). The”.

Page 1177 [39], column 2, line 7
Delete “the appellants submitted, and”.

Page 1177 [39], line 15
Delete comma after “held”.

Page 1177 [39], lines 18-19
For “jurisdiction. The appellants argued that a plea” read “jurisdiction: a plea”.

Page 1177 [40], lines 2-3
For “reasons upon which the appellants fastened must be read in context of the reasons as a whole” read “reasons upon which the argument fastened must be read in the context as a whole”.

Page 1179 [46], line 14
For “yield the rule, for which the appellants contended” read “yield a rule”.

Page 1250, catchwords, third block, line 3
For “s 688E(1A)” read “s 668E(1A)”.

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