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CURRENT ISSUES – Editor: Mr Justice PW Young AO

The best way of appointing silk.....	635
Territorial ambit of decrees in equity	636
Control orders.....	636
House v The King.....	636
Family provision legislation	637
Meaningless statistics	638

CONVEYANCING AND PROPERTY – Editor: Peter Butt

Deeds poll and covenants enforceable at the suit of a non-party.....	639
Writs of execution	640
No set-off against purchaser of reversion.....	642

FAMILY LAW

Position under s 79 of property held by discretionary trusts	643
Which costs rules apply for family law services prior to proceedings?.....	644

OVERSEAS LAW

The not-so-uniform Commercial Code.....	646
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RECENT CASES – Editor: Mr Justice PW Young AO

Cross border insolvency	650
What is an insecticide?	650
Limitation of actions: Acknowledgment	651
Partnership: Dissolution – trading with assets thereafter.....	651
Compensation for grant of easement	652
Is the right to a cherished car licence plate a chose in action?.....	652
Stamp duty avoidance.....	653

ARTICLES

WHO IS TELLING THE TRUTH? PSYCHOLOGY, COMMON SENSE AND THE LAW

Hon Justice Peter McClellan

There are two levels of truth. Real truth and perceived truth. Although real truth is what actually happened perceived truth informs most of our understanding of the world. The law has traditionally devised its own rules of human behaviour and created its own norms for interpreting that behaviour. The jury system is both a symbolic and practical manifestation of the faith the community places in a process in which lay people are required to decide who is telling the truth. Juries are directed to employ their “common sense” and experience of the world in coming to their decision. Although “common sense” is a helpful guide, commonly held perceptions may not always accord with the scientific record. There is a need for a constant dialogue between the lawyer and the psychologist in the search for truth. 655

PROBLEMS WITH FACT-FINDING

Justice David Ipp

There are many pitfalls in determining whether a person is telling the truth and whether a truthful witness is giving accurate evidence. Psychological research shows that cognitive and other illusions apply to most humans, including judges. These affect the reliability of demeanour findings. There is a need for self-understanding and self-knowledge on the part of judges. Judges should focus on probabilities and inconsistencies rather than demeanour. Appellate courts should regard demeanour-based findings of fact, contrary to the probabilities, as appealable error if adequate reasons are not given for them. 667

UNINTENDED CONSEQUENCES: INTERNATIONAL ACCOUNTING STANDARDS, PUBLIC UNIT TRUSTS AND THE RULE AGAINST PERPETUITIES

Associate Professor John Glover and Professor Paul von Nessen

Australian adoption of international accounting standards from 1 July 2005 has had a number of unintended consequences. When unit trust deeds have “buy-back” provisions, operative on pre-determined vesting days, international accounting standards re-classify units in those trusts as “debt” rather than “equity” interests. Responsible entities of

managed investment schemes structured as unit trusts are among those affected. Unit buy-back provisions operative on vesting day are a common feature of scheme constitutions because of the widely-held belief that unit trusts are void unless they vest within a period defined by the rule against perpetuities. This article examines that belief and concludes that the rule against perpetuities does not generally affect Australian unit trusts. Attempts to elude the perpetuities rule are then reviewed. An apparently insuperable problem involving unit trusts and perpetuities in the conflict of laws is identified. Mutually inconsistent perpetuity periods may apply to unit trusts which hold real property in several jurisdictions. 675

CYBERCRIME IN THE PRIVATE SECTOR: PARTNERSHIPS BETWEEN THE PRIVATE SECTOR AND LAW ENFORCEMENT

Janine Wilson

The large scale of cybercrime in the financial services industry, and the private sector in general, creates many challenges for both the private sector and law enforcement. This article considers the nature and scale of cybercrime in the private sector and in particular, the financial services industry, and the need for effective public and private partnerships to stem the tide of rising incidences of cybercrime, obtain recovery of lost funds and pursue the perpetrators of cybercrime. 694

The Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Lawbook Co

DECISIONS RECEIVED IN AUGUST/ SEPTEMBER 2006

Australian Liquor Marketers Pty Ltd v Berney (<i>Procedure</i>) ([2006] HCA 41)	1441
Campbells Cash and Carry Pty Ltd v Fostif Pty Ltd (<i>Procedure</i>) ([2006] HCA 41)	1441
Central Bayside General Practice Association Ltd v Commissioner of State Revenue (<i>Payroll Tax</i>) ([2006] HCA 43)	1509
Composite Buyers Pty Ltd v Williamson (<i>Procedure</i>) ([2006] HCA 41)	1441
IGA Distribution Pty Ltd v Gow (<i>Procedure</i>) ([2006] HCA 41)	1441
IGA Distribution (Vic) Pty Ltd v Whelan & Hawking Pty Ltd (<i>Procedure</i>) ([2006] HCA 41)	1441
IGA Distribution (SA) Pty Ltd v Neindorf (<i>Procedure</i>) ([2006] HCA 41)	1441
McKinnon v Secretary, Department of Treasury (Administrative Law) ([2006] HCA 45)	1549
Mobil Oil Australia Pty Ltd v Trendlen Pty Ltd (<i>Procedure</i>) ([2006] HCA 42)	1503
Queensland Independent Wholesalers Pty Ltd v Murray (<i>Procedure</i>) ([2006] HCA 41)	1441
Vasiljkovic v Commonwealth (<i>Constitutional Law; Extradition</i>) ([2006] HCA 40)	1399