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ARTICLES

THE THREE HIGH COURT DECISIONS ON ESTOPPEL 1988-1990

Hon Justice KR Handley

In Giumelli v Giumelli (1999) 196 CLR 101, the Gleeson Court rejected dicta of three of the judges of the Mason Court in Waltons Stores (Interstate) Ltd v Maher (1988) 164 CLR 387 and Commonwealth v Verwayen (1990) 170 CLR 394. The dicta formed an important part of the general reasoning of the judges in those cases. This invited a reappraisal of the three estoppel decisions of the Mason Court which has been undertaken by the author. 724

CLASS ACTIONS ON BEHALF OF CLIENTS: IS THIS PERMISSABLE?

Dr Peter Cashman

In two recent decisions, both the Federal Court and the Victorian Supreme Court have refused to permit shareholder class actions to proceed because the group members in each case comprised only clients of the law firm acting in the class action proceeding. This article reviews these decisions with reference to various problems often encountered in seeking to determine the ambit of the group affected by particular conduct and in seeking to define or limit the group to be represented in class actions or representative action proceedings. 738

VALUATION DEFAULT CLAUSES: EVERYBODY BEWARE

Paul Castley

In the world of mortgage lending, one-sided provisions in favour of the lender are nothing new. In recent years many lenders have written business in a strong market and sought market share by pioneering products such as "low-doc" mortgages, with declarations as to income relied upon without any examination of expenses, and "no-valuation" mortgages. One response by lenders to their own creativity has been to seek some cover and a potential advantage over competitors by introducing the valuation default clause. These novel clauses provide that the borrower, despite paying instalments with diligence, is in default when the lender decides that it is unhappy with the value or title of the property secured. This article examines the legal effect of this type of provision by looking at the position of the various categories of parties to these mortgages, as well as that of valuers and lawyers. 754

THE END OF KNOWING RECEIPT? A RIPOSTE TO UNJUST ENRICHMENT

Brad Strahorn

In recent times, the equitable doctrine of knowing receipt has been under sustained attack from unjust enrichment theorists, advocating a strict approach to liability, subject to defences. In the recent New South Wales Court of Appeal decision of Say-Dee Pty Ltd v Farah Constructions Pty Ltd [2005] NSWCA 309, that attack made some considerable ground; for the first time, a court expressly adopted that strict liability approach. Here a closer look is taken at the unjust enrichment approach to knowing receipt as it is applied in Say-Dee and in subsequent cases, and of the coherence of that approach generally. As the author here argues, however, despite that Say-Dee has now been followed in Australia, the development is not one to be celebrated, or repeated. 765

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Peldan v Anderson *(Bankruptcy)* ([2006] HCA 48) 1588
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