Australian Law Journal

GENERAL EDITOR

Mr Justice P W Young AO

ASSISTANT GENERAL EDITORS

Angelina Gomez Jennifer Single Barrister-at-Law Barrister-at-Law

PRODUCTION EDITOR
Cheryle King

The mode of citation of this volume is (2006) 80 ALJ [page]

The Australian Law Journal is a refereed journal.

Australian Law Journal Reports

PRODUCTION EDITOR
Carolyn May

CASE REPORTERS

Gabrielle Anderson

Clare D'Arcy

Colleen Tognetti

Angie Zandstra

The mode of citation of this volume is **80 ALJR [page]**

THE AUSTRALIAN LAW JOURNAL

Volume 80, Number 5

May 2006

CURRENT ISSUES – Editor: Mr Justice P W Young AO	
Unanimous appellate judgments	279
Extending the limits of tort law	279
Judicial accountability	280
Funding of federal and State courts	280
Time costing	280
The internet and the courts	281
Effects of national practice	281
Appeals via the press	281
Reserve jurors	282
Computers in court	282
E-courts	282
New Assistant Editors	283
CONVEYANCING AND PROPERTY – Editor: Peter Butt	
Landlord's liability for defective premises	284
High Court appeal updates	285
Chandelier not a fixture	286
"Failing agreement" on revised rent	286
Damages for breach of "keep open" obligation	286
No remedy for trifling encroachments	287
FAMILY LAW - Editor: Anthony Dickey QC	
Provision in a financial agreement for no future spousal maintenance	288
Recognition of potentially polygamous marriages	288

PRACTICAL ADVOCACY – Editor: Prof John Harber Phillips AC QC	
No – no – no –	290
RECENT CASES – Editor: Mr Justice P W Young AO	
Easements: When obsolescent	293
Conversion: Domain name	293
Revising judgments	293
Conflict between House of Lords and Privy Council	294
'Fusion" and the Corporations Act	294
Deeds poll executed by two parties	295
Diminution of legal professionsal privilege	295
Conflicts of interest and the administration of justice	297
ARTICLES	
LAW REFORM, HUMAN RIGHTS AND MODERN GOVERNANCE: AUSTRALIA'S DEBT TO LORD SCARMAN	
Hon Justice Michael Kirby AC CMG	
Leslie Scarman was one of the most influential judges of the 20th century. His influence on Australian law came chiefly from his judicial decisions and his work in establishing the Law Commission as a template for Australian law reform agencies. He was a leading proponent of the Human Rights Act 1998 (UK). The author suggests that this too has lessons for Australia given the imperfections of our governance that Scarman helped to identify.	299
CAUSATION AND REMOTENESS UNDER THE TRADE PRACTICES ACT	
David Wright	
Causation and remoteness are common to most areas of law, including the Trade Practices Act 1974 (Cth). However, they remain complicated. One reason why these concepts are complicated is that certain subjective judgments are introduced. The changes introduced following the Ipp Report did not alter this fundamental point, rather, the role of particular subjective judgments was entrenched. But recently the High Court has limited the operation of the Ipp Report's recommendations and, certainly within the Trade Practices Act, has attempted to give some objective measure to the existing subjective judgments required. However, it has proposed utilising a different subjective judgment	316
BOOK REVIEW	329
OBITUARY	
Professor Joseph Gabriel Starke QC	331

The Australian Law Journal Reports

HIGH COURT REPORTS - Staff of Lawbook Co

DECISIONS	RECEIVED	IN MARCI	H/APRII	2006

Adams v Lambert (Bankruptcy) ([2006] HCA 10)	679
Hutchison 3G Australia Pty Ltd v City of Mitcham (Energy and Resources;	
Environmental Law; Post and Telecommunications; Procedure) ([2006] HCA 12)	711
Nominal Defendant v GLG Australia Pty Ltd (Insurance; Statutes) ([2006] HCA 11)	688
Sweedman v Transport Accident Commission (Constitutional Law; Private International Law) ([2006] HCA 8)	646

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 for forwarding to the Editor. Licence agreements can be downloaded via the internet at http://www.thomson.com.au/support/as_contributors.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:

Ricketson 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 http://www.thomson.com.au/legal/

SUBSCRIPTION INFORMATION

The Australian Law Journal comprises twelve parts a year.

Customer Service and sales inquiries:

Tel: 1300 304 195 61 2 8587 7980 Fax: 1300 304 196

Web: http://www.thomson.com.au/legal/p index.asp

Email: <u>LRA.Service@thomson.com</u>

Advertising inquiries:

JENNIFER OSBURN
National Advertising Manager

Tel: 61 3 9205 0606 Fax: 61 3 9853 0342

Email: jennifer.osburn@thomson.com

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