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ARTICLES

JURISDICTION, SUBSTANTIVE RELIEF AND THE ASSET PRESERVATION ORDER

Lee Aitken

In *Cardile v LED Builders* the High Court (Gaudron, McHugh, Gummow and Callinan JJ) severed the need for the plaintiff to demonstrate some proprietary claim from the making of an asset preservation order. The "old" basis for the *Mareva* "injunction" was gone and there was no need to show a specific proprietary interest in the assets over which the injunction was sought. As the neologism suggested, the asset preservation order was aimed rather at preserving the process of the court by preventing an intended defendant from making himself judgment proof by the anticipatory dissipation of otherwise exigible assets. 453

THE POLITICS, PURPOSE AND REFORM OF THE LAW OF NEGLIGENCE

Justice David Ipp AO

In recent times, indemnity insurance has had to grapple with two features of the law of negligence that are endemic and which materially affect the insurance market. The first is the inconsistencies that have become the bane of the law of negligence. The second is the political influences of the different groups who have interests affected by the law of negligence. The second feature is a major cause of the first. 456

PROCEDURAL FAIRNESS AS IT APPLIES IN THE ADMINISTRATIVE APPEALS TRIBUNAL

D G Jarvis

Many decisions of the Australian Government or its agencies are subject to merits review, and the Administrative Appeals Tribunal is generally the final arbiter in this process. This article examines the processes that exist to ensure the observance by the Tribunal of procedural fairness. The article also discusses the structure of the Tribunal, the basis on which hearings are conducted in order to arrive at the correct or (where a discretion exists) preferable decision, and areas where legislative provisions dealing with issues of national interest or security impact on procedural fairness in matters that arise in the Tribunal. 465

INSTITUTIONAL INVESTORS AND SHAREHOLDER CLASS ACTIONS: THE LAW AND ECONOMICS OF PARTICIPATION

Michael Legg

This article examines the role of institutional investors in Australian shareholder class actions by drawing on US experience since the enactment of the *Private Securities Litigation Reform Act of 1995* which sought to encourage institutional investors to take the lead in US class actions. The article argues that whether institutional investors will participate in a class action will depend upon the potential recovery and costs involved.

The costs include direct costs such as legal fees, as well as indirect costs such as management time. However, those costs can be ameliorated through litigation funding or through the role taken in the class action, namely lead plaintiff, a group member or a free-rider (an absent member of the class who only comes forward to collect a recovery). The article concludes that, as in the US, it is economic incentives which will determine the role that institutional investors play in shareholder class actions. 478

UNREGISTERED ACCESS: WHEELDON v BURROWS EASEMENTS AND EASEMENTS BY PRESCRIPTION OVER TORRENS LAND

Lyria Bennett Moses and Cathy Sherry

The introduction of Torrens legislation inevitably led to some traditional property interests being eliminated or limited in operation. Such has been the fate of implied and prescriptive easements, at least in some states. Uncertainty remains as to the circumstances in which such easements are enforceable, in particular whether they can constitute an in personam exception to indefeasibility. 491

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Gould v Magarey (*Constitutional Law; High Court and Federal Court*) ([2007] HCA 23) 1155

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