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CURRENT ISSUES – Editor: Mr Justice P W Young AO

1958 & 2008	7
75 years ago	7
200 years ago	7
Famous and infamous judicial utterances (No 2)	8
Freedom of information	8
Old law	9
Remorse and criminal sentencing	9
Pro bono work	10
Two wrongs make two losers	10

LETTER TO THE EDITOR	11
-----------------------------------	----

CONVEYANCING AND PROPERTY – Editor: Peter Butt

Is a house a fixture?	12
Adding properties to an easement	14
Moot point: Corporations and life estates	15

PRACTICAL ADVOCACY – Editor: Prof John Harber Phillips AC, QC

The rights of the cross-examiner	16
--	----

FAMILY LAW – Editor: Anthony Dickey QC

Final division of property during cohabitation	18
More on section 79A and erroneous property values	19

RECENT CASES – Editor: Mr Justice P W Young AO

Accrued rights under repealed statute.....	21
Court appointed receivers: Indemnity	21
Conveyancing: Waiver of conditions	21
Statute of Frauds and profits à prendre.....	22
Corporations sole.....	22
Precedent: Privy Council	23
Partnership: Conflicts of interest	23
Landlord and tenant: Covenant to assent to assignment.....	24
Extent of parliamentary privilege	24
Votes for women	25
Arrangement for the performance of work and time limitations	25

ARTICLES

MORTGAGES, INDEFEASIBILITY AND PERSONAL COVENANTS TO PAY

Jeremy Stoljar

A number of cases have applied the proposition that a mortgagor's personal covenant to pay achieves indefeasibility on registration of the mortgage under the Torrens system. In this article it is contended that a personal covenant to pay does not attract indefeasibility. Depending on its wording, a personal covenant to pay contained in a mortgage void at general law may, on registration, operate to measure the amount of the mortgagee's charge over the land, but the mortgagee does not acquire by registration indefeasible title to any personal liability on the part of the mortgagor. 28

REFORMING THE PRESUMPTION OF ADVANCEMENT

Tsun Hang TEY

The presumption of advancement has been subject to criticisms that it is unnecessary, archaic and anachronistic. Judicial attempts have been made to marginalise and relegate it to an evidentiary rule of last resort which is easily rebuttable. This article – subjecting the presumption to a comparative analysis – seeks to advance a proper understanding of the underlying rationales of the presumption, and propose suggestions for a more consistent application of the presumption. 40

BOOK REVIEW	60
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The Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Lawbook Co

DECISIONS RECEIVED IN OCTOBER/NOVEMBER 2007

Blessington v The Queen (<i>Criminal Law; Statutes</i>) ([2007] HCA 51)	82
Carr v Western Australia (<i>Criminal Law</i>) ([2007] HCA 47)	1
Elliott v The Queen (<i>Criminal Law; Statutes</i>) ([2007] HCA 51)	82
PM v The Queen (<i>Criminal Law; Family Law</i>) ([2007] HCA 49)	57
Public Prosecutions (Vic), Director of v Le (<i>Criminal Law; Words and Phrases</i>) ([2007] HCA 52)	92
Queensland Premier Mines Pty Ltd v French (<i>Conveyancing</i>) ([2007] HCA 53)	115
Washer v Western Australia (<i>Criminal Law</i>) ([2007] HCA 48)	33
Weston Aluminium Pty Ltd v Alcoa Australia Rolled Products Pty Ltd (<i>Environment and Planning</i>) ([2007] HCA 50)	74
Weston Aluminium Pty Ltd v Environment Protection Authority (<i>Environment and Planning</i>) ([2007] HCA 50)	74