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The mode of citation of this volume is
(2008) 82 ALJ [page]

The Australian Law Journal is a refereed journal.

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82 ALJR [page]

THE AUSTRALIAN LAW JOURNAL

Volume 82, Number 2

February 2008

CURRENT ISSUES – Editor: Mr Justice P W Young AO

The federal election	71
Court support.....	71
The jury system	72
“Judge looks to simplify cases and cut costs”	73
Don’t ring the judge.....	73
Who said it?	73
Equity for accountants.....	74

CONVEYANCING AND PROPERTY – Editor: Peter Butt

Transfer of mortgage does not transfer rights to sue under collateral agreements	75
What is land “use”?	76
Severance of joint tenancies	77
Application of funds not authorised by power of attorney	77

RECENT CASES – Editor: Mr Justice P W Young AO

Interest at common law	79
Time and conveyancing contracts	79
Strata titles: Right of one owner to exclude people from common property	80
Drunkenness: Effect on contract.....	80
Magistrates: Moonlighting	80
Cost agreements.....	80

ARTICLES

CONSTRUING UNDERTAKINGS AND COURT ORDERS

John Tarrant

Court orders can be open to a number of interpretations and two different approaches have been taken by the courts on the issue of whether reference to the reasons for judgment is appropriate in construing court orders. On one view, unless a court order is ambiguous, it is not permissible to examine the reasons for judgment in interpreting the

court order. On this view the judgment is considered to be extrinsic material. But a second line of authority has emerged that supports the proposition that court orders must always be examined in the context of the reasons for judgment. This approach recognises that judgments provide a primary source for interpreting court orders and are critical to the interpretation process. The purpose of this article is to examine the competing lines of authority in interpreting court orders and to examine the type of extrinsic material that is used in construing court orders. Specific issues that relate to interpretation of consent orders, undertakings and injunctions will also be examined.	82
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FACILITATION PAYMENTS IN INTERNATIONAL BUSINESS: A PROPOSAL TO MAKE CRIMINAL CODE, S 70.4, WORKABLE

Ross P Buckley and Mark Danielson

Doing business abroad often requires the payment of minor sums to secure the provision of routine government services. Such payments are not meant to render Australian businesses liable under the provisions that make bribery of foreign public officials a crime in Australia. However, under the present legislation the availability of this defence is often uncertain. This article argues it is time to revisit the language of the defence and for the government to offer some simple services that would assist Australian businesses operating abroad.	92
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RETRIBUTIVE JUSTICE VS RESTORATIVE JUSTICE: THE RWANDAN EXPERIENCE

Angelina Gomez

This article investigates the possibilities of retributive and restorative justice approaches to the victim-perpetrator relationship by using an extreme example, that is, the 1994 Rwandan genocide, and the attempts made by Rwandans and the international community to establish the rule of law in its aftermath. This article argues that the breakdown of the rule of law and of Rwandan society that enabled the 1994 genocide in Rwanda, was brought about by a process of framing, that is, "ethnic framing". It will be argued that the act of framing dehumanised the framed object, the victim, to such an extent that violence, even genocide, was an acceptable reaction to it and dialogue with both sides is needed to rehumanise the framed. The effectiveness of retributive justice in transforming the victim-perpetrator relationship to destroy Rwanda's "ethnic framing" will be examined. Restorative justice, in particular, truth and reconciliation commissions, will also be considered as an alternative to retributive justice. The Rwandan hybrid of restorative and retributive justice, the Gacaca Courts, will also be briefly examined.	105
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BOOK REVIEW	139
--------------------------	-----

ANSWER TO "WHO SAID IT?"	140
---------------------------------------	-----

The Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Lawbook Co

DECISIONS RECEIVED IN DECEMBER 2007

Australian Finance Direct Ltd v Director of Consumer Affairs (Vic) (<i>Consumer Credit; Statutes</i>) ([2007] HCA 57)	202
Bluebottle UK Ltd v Deputy Commissioner of Taxation (<i>Corporations; Personal Property; Taxation</i>) ([2007] HCA 54)	127
Evans v The Queen (<i>Criminal Law; Evidence</i>) ([2007] HCA 59)	250
Foots v Southern Cross Mine Management Pty Ltd (<i>Bankruptcy; Statutes</i>) ([2007] HCA 56)	173
Gately v The Queen (<i>Criminal Law; Evidence</i>) ([2007] HCA 55)	149
WGC v The Queen (<i>Criminal Law</i>) ([2007] HCA 58)	220