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AUSTRALIA'S CONTRIBUTION TO THE COMMON LAW

Murray Gleeson

This article, originally presented as the Singapore Academy of Law Annual Lecture 2007, surveys some of the High Court's distinctive contributions to the common law. The selection is necessarily subjective. The court's jurisprudence defies simplistic characterisation. Innovation, sometimes the result of particular features of Australian legal history, and careful attention to legal coherence have been equally influential. On some occasions the court has taken a lead; on others it has declined to follow what it regarded as departures from principle, even when appeals still lay to the Privy Council. Whether cautious or rebellious, the High Court's contributions are the product of the application and, where necessary, orderly and predictable development of common law principle. 247

THROWING STONES: COST/BENEFIT ANALYSIS OF JUDGES BEING OFFENSIVE TO EACH OTHER

Justice Keith Mason

In acting without fear or favour appellate judges are sometimes justified in adopting strong language when overturning a judgment. Such language may be chosen deliberately because of perception of a recurring problem either systemically or in the decision-making of individual judges. This obligation, however, does not authorise the use of offensive language even where error is clearly established. Offensive discourse is unproductive and unattractive except to the media. It affects the morale of the lower court, it undermines the mutual respect that should exist between all judges and it reinforces perceptions that the higher court lacks an understanding of life in the lower court. This article explores the relationship between appellate and lower courts in the language of their public discourse and raises for further discussion categories of offensive discourse that should be avoided in accordance with best practice. 260

A BUYER'S "INTEREST" IN LAND UNDER AN UNCOMPLETED CONTRACT: A RETURN TO PRINCIPLE

Chris Boge

The buyer's equitable "interest" in land under an uncompleted land contract has always been a controversial matter. Although a majority of the High Court in *Tanwar Enterprises Pty Ltd v Cauchi* (2003) 217 CLR 315; 77 ALJR 1853 banished the "trust" concept from the discussion, there remain unresolved issues about the "interest's" link to the availability of specific performance. This article asks whether the buyer's "interest", if there is one at all, can only rest on specific performance in its true sense. If so, the "interest" may sit more comfortably with the buyer's acceptance of the seller's title on completion of the conveyance. 266

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