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# THE AUSTRALIAN LAW JOURNAL

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## ARTICLES

### GOD, DETAILS, JUSTICE AND THE RULE OF LAW

**Rabbi Jeremy Lawrence**

Under the theme God is in the details, the author expounds that the administration of justice in society is a truly holy enterprise and while it is easy to find God in great principles, we cannot be a kingdom of priests or a holy nation until we extend godliness to the details. Further, recognising the spiritual force of laws, the author encourages justice through deeds, to right wrongs and to restore what is taken when acting within our rights becomes oppressive, because we, as members of the legal profession are accountable to the cries of the oppressed. .... 377

### RECOVERY OF CHATTELS IN THE COMMON AND CIVIL LAW: POSSESSION, BAILMENT, AND SPOILIATION SUITS

**Lee Aitken**

Questions of possession, custody, and ownership of chattels frequently give rise to difficult legal questions. The terminology, while old, has no fixed meaning and much turns on the context in which the issue arises. This article explores recent cases which look at the concepts as they arise in claims in bailment, and for the immediate return of chattels. The civil law remedy by way of spoliation suit to vindicate a claim for recovery of possession of a chattel is also examined. The large number of recent cases underlines the practical importance of the topic. .... 379

### ROLE OF EXECUTOR IN CONTEXT OF PRE-EMPTIVE RIGHTS PROVISIONS

**Justin Gleeson SC and Michael Elliott**

A recent case, which settled, threw up difficult questions for which there are no easily ascertainable answers concerning how the estate of a deceased person may deal in shares in a private company whose constitution contains pre-emptive rights provisions. This article identifies the problem and suggests some tentative answers. .... 392

### CLIENT LEGAL PRIVILEGE IN ADMINISTRATIVE “PROCEEDINGS”: KILLING OFF THE ADVERSARIAL/ INQUISITORIAL DISTINCTION

**Christos Mantziaris**

There is now conflicting intermediate appellate authority on whether the “litigation” arm of client legal privilege is available in respect of administrative proceedings. The better position is that the privilege is available. The common law doctrine needs to be restated as follows: In the absence of a clear legislative statement to the contrary, client legal privilege protects from disclosure confidential client/lawyer communications prepared for the dominant purpose of (i) seeking or being furnished with legal advice or (ii) preparing for the client’s actual or contemplated participation in a decision-making process involving the exercise of judicial or (statutory or non-statutory) executive power. Under the rights-based justification for the privilege advanced in *Daniels Corporation International Pty Ltd v ACCC* (2002) 213 CLR 543, the troubled distinction between adversarial and investigative proceedings no longer serves any purpose; nor does the concept of a “judicial or quasi-judicial proceeding”. Recent law reform proposals addressing the statutory form of the privilege have not resolved the issue. .... 397

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