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OUTSIDE THE CONSTRUCTION ZONE: THREE ASPECTS OF INSURANCE LITIGATION THAT DO NOT INVOLVE INTERPRETATION OF THE INSURING OR EXCLUSION CLAUSES OF THE CONTRACT OF INSURANCE

Justice Rein

The focus of this article is upon three areas of insurance law that have important practical consequences in the conduct of insurance litigation. In relation to the topics of subrogation and contribution, attention is drawn to first principles and some recent decisions in the area; their interrelationship seems to have generated some confusion which this article seeks to reduce. The third topic (which is unconnected with the first two) also has practical significance, and this article seeks to distil the principles relevant to onus of proof in insurance cases. 163

SPRY'S CASE: EXPLORING THE LIMITS OF DISCRETIONARY TRUSTS

Justin Gleeson SC

Spry's case (*Kennon v Spry* (2008) 238 CLR 366) has attracted considerable interest amongst practitioners in family law and trust law. This article considers the history of the trust and the various amendments Dr Spry made to it over its 40-year life and the history of the proceedings through the Family Court. It then turns to the varying judgments in the High Court, seeking to ascertain precisely what is ratio, what is obiter and what issues are left open. Finally it explores nine implications from the case for a number of difficult issues in both family law and trust law. 177

RECENT APPLICATIONS OF THE RULE IN CHERRY V BOULTBEE (OR JEFFS V WOOD)

Lee Aitken

The rule in *Cherry v Boulton* (1839) 4 My & Cr 442 is a commonsense rule of fairness. If you wish to share in a fund, you must first restore any benefit you have had from it. The principle originated in proceedings to do with wills and estates but is equally applicable in a company law context when a claimant wishes to share in a dividend to be paid by an insolvent entity. Recent case law illustrates that although the rule is simple to state, its application in a particular corporate insolvency (particularly when overlaid by co-existing obligations of suretyship) may give rise to complex and difficult issues. This article examines the recent authority in the light of the classic decisions on the topic. 191

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