

CRIMINAL LAW JOURNAL

Volume 35, Number 4

August 2011

EDITORIAL

The revived Kable doctrine as a constitutional protector of rights? 197

ARTICLES

Both giving and taking: Should misuse of ATMs and electronic payment systems be theft, fraud or neither? – *Alex Steel*

Although transactions via automatic teller machines and other computerised cash payment systems are now very widespread the criminal law relating to their misuse remains confused. Unauthorised withdrawals can be prosecuted as both theft and fraud. By contrast, similar behaviour involving interactions with human tellers is generally not criminal. The result is a deeply flawed and contradictory legal landscape. This article provides an analysis and critique of the case law and legislation that has led to this result and proposes an alternative statutory offence that better reflects the commercial and consumer realities of electronic transactions. 202

Company directors' liability for workplace deaths – *Karen Wheelwright*

This article considers the scope of the law of manslaughter to respond to deaths at work, with a particular focus on charges against company directors. It shows that the principles for establishing manslaughter have very limited and problematic application to the directors of companies. The article then examines whether the newer “culpability” offences introduced into some occupational health and safety (OHS) legislation over the last eight years have overcome these difficulties, and canvasses the longstanding debate about what role the law of manslaughter ought to play as part of the legal response to deaths at work. The article outlines the new offences that will be introduced as a result of the move to harmonised OHS legislation from 1 January 2012. It is argued that some aspects of the new offences are problematic, in particular the need to prove recklessness rather than criminal negligence, and the fact that it is not clear that officers have the necessary duty to workers that is a required element of prosecuting a Category 1 offence. 223

CASE AND COMMENT

Marital rape in South Australia: R v P, GA – *Kellie Toole* 237

PHILLIPS' BRIEF

“My car is my castle” – or is it? – *Edward Stratton-Smith* 252

DIGEST OF CRIMINAL LAW CASES 253

