

CRIMINAL LAW JOURNAL

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ARTICLES

PROBATIVE VALUE, ILLEGITIMATE PREJUDICE AND THE ACCUSED'S RIGHT TO A FAIR TRIAL

Don Mathias

Determinations of the admissibility of evidence in criminal trials, by means of a comparison of probative value against illegitimately prejudicial effect, are illogical, vague and difficult to predict. The apparent tolerance for some illegitimate prejudice in the face of highly probative evidence is contrary to recent international trends in cases that emphasise the primacy of the accused's right to a fair trial. Common law and legislative approaches to formulating how this admissibility decision is to be made are reviewed, by reference to Australian and New Zealand law. The ability of the common law to embrace improvements is seen as preferable to the enactment of rigid criteria. Competing models of how the right of an accused to be tried fairly is placed within the wider interests of justice are described, and the movement away from compromising the right to a fair trial, when other interests are strong, is noted in the context of the Privy Council's response to human rights legislation..... 8

ADMISSIBILITY OF POLYGRAPH (LIE DETECTOR) EXAMINATIONS

James Edelman

This article considers the issue of the admissibility of polygraph examinations in common law jurisdictions. It is an issue that is especially topical in Australia because it was recently considered for the first time in history by a superior Australian court (the Western Australian Court of Criminal Appeal). Special leave to appeal to the High Court was granted in that case but not in relation to the issue of the appellant's polygraph examination. 21

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SENTENCING REVIEW 2003-2004: PART II

Kate Warner

The first part of this review dealt with the issue of abolition of short terms of imprisonment and the first Australian guideline judgment for a summary offence (Attorney-General's Application (No 3 of 2002) [2004] NSWCCA 303). In this part, two recent High Court decisions are discussed: *GAS and SJK v The Queen* (2004) 78 ALJR 786; 206 ALR 116 which deals with sentencing aiders and abettors and raises the issue of plea bargaining and *Johnson v Queen* (2004) 78 ALJR 616; 205 ALR 346 which deals with sentencing offenders convicted of multiple counts.46

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