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ARTICLES

STATISTICS ON TRIAL

Professor John S Croucher AM

The understanding of statistics in the legal context can be a difficult task for the uninitiated. History has demonstrated numerous examples where basic errors have been made when attempting to draw conclusions from probabilities in which an incorrect application of the principles is evident. As probability is often misunderstood by most members of the public, it is not surprising that it also poses a real challenge to legal practitioners. This has led to erroneous conclusions "based on the evidence" that have become known as a variety of "fallacies", including those of both the prosecutor and defence. It is essential that lawyers can correctly understand and interpret the statistical information provided by witnesses, expert or otherwise. This article provides a step in that direction by examining four high profile cases. 462

LIMITATION OF ACTIONS AND SPECIFIC PERFORMANCE

Perry Herzfeld

There is recent English and Australian authority that, where a contract is breached, a claim for specific performance may be maintained even though a claim for damages is statute-barred. This article contends that this authority is wrong. The correct view is that, once the claim for damages for breach of contract is no longer maintainable, the claim for specific performance to remedy that breach is also not maintainable. 470

LIABILITY OF EDUCATIONAL INSTITUTIONS FOR CHILD ABUSE

Jack Maxwell

If a teacher abuses a student, is the school authority liable in damages to the student? Over the past 20 years, courts in Australia and England have invariably treated this as a question of vicarious liability. In this article, I argue that this approach is wrong and disruptive of the principled development of the law of torts. In cases of institutional child abuse, breach of a non-delegable duty of care is the more appropriate ground of liability. The prevailing approach in Australia and England reflects a continuing confusion about and between these two quite distinct forms of liability. This confusion has meant that, in Australia, abuse victims have been denied compensation while, in England, the doctrine of vicarious liability has had to be seriously distorted in order to provide a remedy. 477

FROM MOROTAI TO MANUS: THE AUSTRALIAN WAR CRIMES TRIALS OF THE JAPANESE, 1945–1951 AND THE AUSTRALIAN LEGAL PROFESSION

Narrelle Morris

After World War II, Australia joined the Allied nations in responding to the allegations of shocking war crimes having been committed by the Axis Powers. In relation to the Pacific theatre of the war, Australia participated in the International Military Tribunal for the Far East held in Tokyo from 1946–1948. Australian Military Courts also convened 300 war crimes trials of accused Japanese in various locations pursuant to the War Crimes Act 1945 (Cth). This article provides a brief overview of the legal framework and context of the military court trials. Many members of the Australian legal community served in the Australian Army Legal Corps during the war. After the war, some of them were posted to serve at the trials, as prosecuting and defending officers, as judges-advocate or reviewing officers and, very occasionally, as court members. This article briefly examines

three prominent members of the Australian legal community who dealt with atrocities committed on Ambon: John Myles Williams (NSW), Alexander Davies Mackay (WA) and Kenneth Russell Townley (Qld). The military service of these and many other legal officers at the trials is not well known and much remains to be discovered about how their service intertwined with or affected their civilian legal or judicial careers. 484

LAW SCHOOLS AND THE BURDEN OF BUREAUCRACY: RELEASE THE YOKE (A PLEA FROM THE COALFACE). PART 2: INTERNATIONAL COMPARATORS AND A PROPOSAL

Olivia Rundle and Lynden Griggs

In Part 1 of this two-part series, we spoke about how compliance obligations are stifling the ability of Australian law schools and legal academics to engage in the core activities of research and teaching. There are multiple bodies who certify, accredit, monitor and/or impose reporting requirements upon legal educators, and the legal profession is involved in more than one of these regulatory systems. The Law Admissions Consultative Committee (LACC) is currently trialling an additional and separate system of regulation of law school teaching. In Part 1 we overviewed the legal profession's role in legal education, and critiqued the LACC Standards. In this Part 2 article we draw from international experiences to compare the Australian regulatory regime; we then focus upon the underlying needs of the legal profession and law schools, and make a proposal for change. Legal academics must be released from the burden of unnecessary and duplicative administrative work. Law schools must retain ultimate control over what and how law is taught. The legal profession has a collaborative and constructive role to play with the relationship between the academe and the profession grounded in trust and respect. 499

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