

# PUBLIC LAW REVIEW

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## ARTICLES

### **Constitutional limitations on State choice of law statutes – *Perry Herzfeld***

This article considers the limitations upon a State that wishes to enact statutory choice of law rules. Such rules apply in cases involving some out-of-State contacts. Any such statute therefore concerns extraterritorial subject matter. This article identifies three limitations implied from the federal structure established by the Commonwealth *Constitution* that provide a minimum threshold for the validity of such statutes. First, a State may only legislate extraterritorially within the Australian federation over subject matter with a direct and significant connection to the State. Second, a State may not legislate in a way that impermissibly interferes with the functions of another State. Third, a State may only prescribe application of the law of a particular State if that latter State has a direct and significant connection to the subject matter. .... 188

### **Section 48A of the Australian Capital Territory (Self-Government) Act 1988 (Cth) – *David Mossop***

Section 48A of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) invests in the Supreme Court of the Australian Capital Territory “all original and appellate jurisdiction that is necessary for the administration of justice in the Territory”. In *Kelly v Apps* (2000) 98 FCR 101 the Full Federal Court held that these words were sufficient to create a right of appeal where no other right of appeal was granted by statute. This article examines the decision in *Kelly v Apps* and the cases that have followed it. It examines the legislative history, constitutional function and scope of s 48A so as to determine whether indeed s 48A provides an entrenched right of appeal to the Supreme Court of the Australian Capital Territory. .... 213

### **Judges and the Lord Chancellor in the changing United Kingdom Constitution: Independence and accountability – *Professor Diana Woodhouse***

Recent constitutional developments in the UK have brought the issues of judicial independence and accountability to the fore, raising questions about the function, meaning and requirements of independence, the needs of accountability, and the relationship between the concepts. They have also drawn attention to the position of Lord Chancellor and raised questions about whether it is appropriate for a government Minister to have responsibility for defending judicial independence, what such a defence requires

and how effective it is likely to be. It is argued that the best defence for judicial independence is an open and accountable judiciary. ....227

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5. Austin, n 4, p 56.

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