THE AUSTRALIAN LAW JOURNAL

Volume 94, Number 4

April 2020

CURRENT ISSUES – Editor: Justice François Kunc

Introduction 239

The Case for Principled and Practical Propensity Evidence Reform 239

The Curated Page 246

CONVEYANCING AND PROPERTY – Editors: Robert Angyal SC and Brendan Edgeworth

Solar Panels and Restrictive Covenants 247

Cryptoassets: Property or Not? 249

CLASS ACTIONS – Editor: Justice Michael B J Lee

Recent Developments in Security for Costs Applications in Class Actions 251

EQUITY AND TRUSTS – Editor: Justice Mark Leeming

Six Differences between Trustees and Company Directors 254

AROUND THE NATION: TASMANIA – Editor: Justice Stephen Estcourt AM

The Mason – Dixon Line 258

ARTICLES

THE LAW OF SORCERY IN MADAYIN

Dr Danial Kelly

This article examines the sources and purpose of authority in relation to sorcery in the Madayin Aboriginal legal system of Arnhem Land in the Northern Territory of Australia. In the Madayin system, sorcery may be considered legally authorised or not legally authorised. While Australian (and English) law has sometimes outlawed sorcery and sometimes allowed it, Madayin has always allowed the authorised forms of sorcery. Acts

of sorcery may even be approved as legal punishments in the Madayin system. The article draws upon recognised authors, Aboriginal and non-Aboriginal, to introduce the reader to this topic. 261

STRATEGIES FOR AVOIDING A JURISDICTION CLAUSE IN INTERNATIONAL LITIGATION

James O'Hara

International contracts will almost always contain a jurisdiction clause designating a particular venue for the resolution of disputes. That is because, in international litigation, venue matters. Generally, parties should be held to their bargain. But there may be exceptional reasons, making it unfair to be forced to litigate abroad. Consequently, over time, a number of different strategies have emerged, which can be deployed by a litigant seeking to extricate itself from a jurisdiction agreement. This article examines those strategies. 267

THE QUALIFICATION TO THE BIRTHRIGHT DOCTRINE AND BEYOND: THE JUDICIAL ATTITUDE TO ADAPTING THE COMMON LAW TO AUSTRALIAN CONDITIONS

Dr Sonali Walpola

This article examines the judicial willingness to consider local conditions in developing the common law of Australia. While there were a few notable exceptions, neither colonial judges nor the Privy Council were inclined to adapt English common law rules to Australian conditions despite having scope to do so pursuant to the so-called "colonial birthright" doctrine. It is highlighted that resistance to examining local conditions in a common law setting persisted for most of the 20th century, as reflected in High Court decisions of the 1970s. However, it is shown that the High Court has been willing to consider Australian-specific factors after the complete abolition of Privy Council appeals. In overturning particular English rules (assumed to be part of the received law), the court has variously reasoned that they were not appropriate to the condition of the Australian colonies or cannot be justified in light of subsequent developments in Australia. 294

Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Thomson Reuters

DECISIONS RECEIVED IN FEBRUARY/MARCH 2020

Australian Securities and Investments Commission v King (*Corporations*) ([2020] HCA 4) 293

BHP Billiton Ltd v Federal Commissioner of Taxation (*Taxes and Duties*) ([2020] HCA 5) 326

Love v Commonwealth (*Aboriginal and Torres Islander Peoples; Citizenship and Migration; Constitutional Law*) ([2020] HCA 3) 198

Thoms v Commonwealth (*Aboriginal and Torres Islander Peoples; Citizenship and Migration; Constitutional Law*) ([2020] HCA 3) 198