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CURRENT ISSUES – Editor: Justice François Kunc

Afghanistan – Office of Special Investigator	87
Royal Commission into Police Informants	87
Press Freedom	87
National Security and the Law	88
The AG’s Gambit: National Defamation Reform Enters Its Middlegame	88
The Curated Page	93

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

The Mortgagee’s Duty to Account – Rowe and Nom de Plume	95
---	----

AROUND THE NATION: VICTORIA – Editor: The Hon Dr Clyde Croft AM SC

COVID-19 and Emergency Regulations	98
--	----

ADMIRALTY AND MARITIME – Editor: Dr Damien J Cremean

World in a Box: Impact of Containerisation on Shipping Transactions	105
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ARTICLES

REFLECTIONS UPON CONSTITUTIONAL INTERPRETATION AND THE “ALIENS POWER”: LOVE V COMMONWEALTH

Peter Gerangelos

By an examination of relevant methodologies of constitutional interpretation, this article evaluates the decision of the High Court in *Love v Commonwealth* in order to consider the extent to which both the majority and dissenting reasoning can be supported within the range of mainstream techniques of constitutional interpretation. The case is very significant because it was the first in which the High Court had to determine the extent of Commonwealth legislative power at this intersection of indigeneity and the “aliens power” in s 51(xix) of the Constitution.

109

THE FLUCTUATING INCIDENCE OF THE BURDEN OF PROOF UNDER THE HAGUE-VISBY RULES: THE IMPLICATIONS OF VOLCAFE LTD V COMPANIA SUD AMERICANA DE VAPORES SA [2019] AC 358 FOR THE POSITION IN AUSTRALIA

Angus Stewart

The Hague-Visby Rules govern the liability of carriers of cargo by sea for loss of or damage to cargo. The key provisions are the obligations on the carrier to make the ship seaworthy and care for the cargo (Art III rr 1 and 2), and those which except the carrier from responsibility for loss or damage (Art IV r 2). The Supreme Court of the United Kingdom recently came to reconsider what had been said in the House of Lords in *Albacora SRL v Westcott & Laurence Line Ltd* [1966] 2 Lloyd’s Rep 53; 1966 SC (HL) 19 and to consider what had been said in the High Court of Australia in *Great China Metal Industries Co Ltd v Malaysian International Shipping Corporation Berhad* (1998) 196 CLR 161, and took a contrary view. The article will review these developments and consider what implications there are for the position in Australia. 126

OVERRULING CONSTITUTIONAL PRECEDENT

Joshua Thomson SC and Madeleine Durand

The circumstances in which a constitutional precedent decided by the High Court of Australia may be overturned differ from those which apply for other cases. That is due to the unique position of the Court which, practically speaking, has the last word on matters on constitutional interpretation. We seek to develop a set of principles about when constitutional overruling may occur. Despite warnings that this may be a futile exercise, we think that it is possible to provide some guidance, without necessarily being prescriptive. As with most legal problems, the prominent features generally emerge with some consistency from authority. Consequently, we think that it may be helpful to derive a set of general principles. The Supreme Court of the United States has recently attempted a similar exercise. 139

BOOK REVIEW – Editor: Angelina Gomez

The Washington Diaries of Owen Dixon, 1942–1944, by Philip Ayres 154

Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Thomson Reuters

DECISIONS RECEIVED IN DECEMBER 2020

Gerner v Victoria (<i>Constitutional Law</i>) ([2020] HCA 48)	107
Peniamina v The Queen (<i>Criminal Law</i>) ([2020] HCA 47)	85
Roy v O’Neill (<i>Criminal Law; Police; Torts</i>) ([2020] HCA 45)	64

