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CURRENT ISSUES – Editor: Justice François Kunc

Options for the Voice to Parliament Released	163
From “young” to “one” by Proclamation	164
Constitutional Unwritten “norms” in the United States	166
Courtroom Drama in England	167
The Curated Page	167

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

Ben-Pelech v Royle: Adverse Possession Alive and Well in Western Australia	169
--	-----

ADMIRALTY AND MARITIME – Editor: Dr Damien J Cremean

“World in a Box” What Legal Issues Might Yet Need to Be Resolved and by What Mechanism?	173
---	-----

EQUITY AND TRUSTS – Editor: Justice Mark Leeming

When Is an Express Trust Not a “Trust”?	176
---	-----

FAMILY LAW – Editor: Dr Richard Ingleby

Pell v The Queen, Unacceptable Risk and Relevant Findings as to the Risk of Harm	178
--	-----

RECENT CASES – Editor: Ruth C A Higgins SC

Negligence – Public Authorities – Costs – Plaintiff Succeeded against Council and Trust but Failed against State and Grandparents – Trial Judge Declined to Make Bullock or Sanderson Order – Whether Error in Failing to Find That Council Caused Plaintiff to Join Other Parties – Non-acceptance of Calderbank Letter – Whether Trial Judge Erred in Making Partial Indemnity Costs Order	181
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ARTICLES

SERIOUSLY CONSIDERING “SERIOUSLY CONSIDERED DICTA”: PRECEDENT AFTER FARAH CONSTRUCTIONS

Bernice Chen

In 2007, the High Court in *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* introduced the concept of “seriously considered dicta”, a species of judicial dicta which could apparently be binding on lower courts in certain circumstances. This article undertakes a comprehensive case law analysis of “seriously considered dicta” in lower court judgments and finds that the concept is beset with doctrinal uncertainties. It argues that “seriously considered dicta” undermines the normative justification of precedent, by “textualising” precedent and ignoring the context in which it was made. “Seriously considered dicta” is also contrary to the settled constitutional conception of the judicial function as being fundamentally adjudicative, undermining institutional discipline. It should therefore be abandoned. 186

LEADERSHIP SPILL RULES FROM THE CONSTITUTIONAL PERSPECTIVE

Greg Taylor

Recently both major political parties have adopted rules increasing the security of tenure of their federal parliamentary leaders. Both parties now require a specially high majority of their parliamentary members to bring about a vacancy in the leadership. For example, a Prime Minister who is federal Australian Labor Party leader cannot be removed from the latter post unless 75% of the members of the parliamentary party support such action. This article documents and analyses those rules and then asks three questions. First, can the rules be repealed by ordinary motions in the two party rooms without any special majority, restoring the previous position under which a bare majority was sufficient to unseat the leader? Second, are the new rules legally enforceable? And third, what should the Crown and the courts do if there is a dispute about who the rightful parliamentary leader and thus Prime Minister is? 203

BOOK REVIEWS – Editor: Angelina Gomez

Church, State and Family: Reconciling Traditional Teachings and Modern Liberties, by John Witte 218

Victor Windeyer’s Legacy – Legal and Military Papers, edited by Bruce M Debelle AO QC 220

Interpreting Executive Power, by Janina Boughey and Lisa Burton Crawford (eds) 223

The Foundations and Future of Public Law, by Elizabeth Fisher, Jeff King and Alison L Young (eds) 226

Statutory Interpretation in Private Law, by Prue Vines and M Scott Donald (eds) 227

Rectification of Documents, by John Tarrant 230

Lord Devlin, by Justice John Sackar 232

Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Thomson Reuters

DECISIONS RECEIVED IN FEBRUARY 2021

Immigration and Border Protection, Minister for v Makasa (<i>Citizenship and Migration; Statutes</i>) [2021] HCA 1)	117
Oakey Coal Action Alliance Inc v New Acland Coal Pty Ltd (<i>Administrative Law; Energy and Resources; Environment and Planning</i>) ([2021] HCA 2)	128
Westpac Securities Administration Ltd v Australian Securities and Investments Commission (<i>Corporations; Superannuation</i>) ([2021] HCA 3)	149