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Restoring Legitimacy: The Subpoena to Produce in Civil Litigation – *Talitha Fishburn*

An essential component in any civil litigator's toolkit is the subpoena to produce. But it is by no means a given that it will offer a straightforward means of access to an opposing party's documents. The path to production and access to documents is often obstructed by interlocutory disputes regarding the legitimacy of the request for documents. For some time, a degree of uncertainty has surrounded the proper test for determining the legitimacy of a notice to produce. A smorgasbord of different expressions has emerged to characterise the requirement of a legitimate subpoena to produce. Questions have arisen as to whether they are different tests, or the same test expressed differently but to some extent synonymously. In light of this semantic haze, the recent clarification on the correct approach provided in a decision of the New South Wales Court of Appeal is a welcome light at the end of the tunnel. 93

The Future of Common Fund Orders in Australian Class Actions After BMW Australia Ltd v Brewster – *Michael Legg*

Litigation funding is a key source of financing for class actions. However, its availability depends on the litigation funder being able to recover a fee for the risk that they undertake in an effective manner. One approach to paying the funder is a court-ordered common fund order. The common fund order was adopted in a number of class actions before being subject to a successful, but limited, challenge before the High Court of Australia. This article reviews the legality of common fund orders in Australia class actions and the calls for legislative reform in aid of certainty. 101

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