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ARTICLES

THE USE OF REAL EVIDENCE IN COURT: TIME TO TRUST THE COMMON SENSE OF THE JURY?

Andrew Hemming

This article examines the leading cases on the use and misuse of real evidence with a view to recommending (1) legislative reform of the uniform evidence legislation, and (2) statutorily overriding *Scott v Numurkah Corp* and *Kozul v The Queen* at common law. Where real evidence takes the form of an out of court experiment, it is contended that s 53(3)(c) of the uniform evidence legislation should be amended to include an expanded version of the Neilan test at common law. Where real evidence takes the form of an in court experiment, it is contended that s 53(4) of the uniform evidence legislation should

be amended to allow the court to conduct an experiment. The underlying cause of these present restrictions on the use of real evidence is an apparent distrust by the legal profession of the jury's capacity to properly handle and assess real evidence.	105
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JUDICIALLY IDENTIFIED LIMITS ON THE BODY CORPORATE BY-LAW MAKING POWER – COOPER V THE OWNERS – STRATA PLAN NO 58068

Cathy Sherry

Cooper v The Owners – Strata Plan No 58068 is arguably the most significant decision to date for millions of Australians who live in strata schemes. While it is the first New South Wales superior court consideration of pet regulation, as well as the s 139(1) prohibition on by-laws that are “harsh, unconscionable or oppressive”, the decision goes much further. The Court held that owners corporations have no power to make any by-law that regulates activity that has no meaningful effect on other people. This article discusses that decision in the context of wider property and political debates, in Australia and other jurisdictions.	125
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