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CURRENT ISSUES – Editor: Justice François Kunc

A Referendum on the Voice Comes Closer	621
The Rule of Law in the Pacific	621
Judiciaries Upholding Judicial Independence in Pacific Island States	621
The Curated Page	627

FAMILY LAW – Editor: Richard Ingleby

Nails in the FA Coffin?	628
-------------------------------	-----

PERSONALIA – Editor: Emily Vale

International Court of Justice Professor Hilary Charlesworth AM	631
Commonwealth Justice Scott Goodman	631
Australian Capital Territory Justice Lucy McCallum	631
Justice Geoffrey Kennett	632
New South Wales Chief Justice Andrew Bell	632
Justice Hament Dhanji	632
Queensland Chief Justice Helen Bowskill	633
Justice Declan Kelly	633
Justice Kerri Mellifont	633
South Australia Justice Laura Stein	633
Tasmania Appointment of Senior Counsel	634
Retirements Chief Justice Helen Murrell	634

RECENT CASES – Editor: Ruth CA Higgins SC

Quistclose Trusts in the Privy Council	636
--	-----

ADMIRALTY AND MARITIME – Editor: Dr Damien J Cremean

Sea Pilots: Issues of Liability	638
---------------------------------------	-----

ARTICLES

INJUNCTING UNCONSCIONABLE CALLS OF DEMAND GUARANTEES IN CONSTRUCTION INDUSTRY: COMPARATIVE AND EMPIRICAL ANALYSES OF AUSTRALIAN PRACTICES

Didi Hu

Unconscionability is one of the three exceptions injuncting calls upon unconditional undertakings to pay on demand given under construction contracts. This article examines the Australian approach to the unconscionability exception, empirically by extracting four indicia from decisions granting or rejecting injunction applications, and comparatively by juxtaposing Australia’s eclectic position with Singapore courts’ vigorous use of the exception and English market’s reservation about the instrument itself. In doing so, this article proposes to demonstrate that Australia’s self-restrained approach to the unconscionability exception prescribes a normative standard of “conduct”, not merely proscribing a matrix of unfair, unreasonable or unjust “result”. 643

TAKING THE KING’S HARD BARGAIN

Samuel White

Historically, personnel who join the armed forces agree to take what has been known as the King’s Hard Bargain – a unilateral contract to give all, and expect nothing. Little has been written however on the nature of this power, an arguably outdated concept inconsistent with modern concepts of employment law. This article looks to explore the notion of accepting the King’s Hard Bargain, and whether or not the Governor-General has, and retains in the face of Regulations, the power to dismiss members of the Australian Defence Force. In doing so, it challenges the notion that the Commander-in-Chief is merely titular, a line of thinking that has been twisted from its original meaning to a near-rule of constitutional interpretation, and concludes with questioning whether or not the King’s Hard Bargain should remain so, or whether or not the legislation should be amended to reflect the Public Service’s conditions. 666

BOOK REVIEWS – Editor: Angelina Gomez

<i>Bench and Book</i> , by Nicholas Hasluck	687
---	-----

<i>Discretion in Criminal Justice</i> , by Nicholas Cowdery, AO QC	690
--	-----

Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Thomson Reuters

DECISIONS RECEIVED IN AUGUST/SEPTEMBER 2022

Aristocrat Technologies Australia Pty Ltd v Commissioner of Patents (<i>Intellectual Property</i>) ([2022] HCA 29)	837
Google LLC v Deferos (<i>Defamation</i>) ([2022] HCA 27)	766
Nathanson v Minister for Home Affairs ([2022] HCA 26) (<i>Administrative Law; Citizenship and Migration</i>)	737
Stephens v The Queen ([2022] HCA 31) (<i>Criminal Law; Statutes</i>)	871
Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (<i>Citizenship and Migration</i>) ([2022] HCA 28)	819