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CURRENT ISSUES – Editor: Justice François Kunc

The Year Ahead 7

The Curated Page 11

EQUITY AND TRUSTS – Editor: Justice Mark Leeming

Unconscionable Transactions – The Roles of Knowledge and “Predatory State of Mind” 13

INTERNATIONAL FOCUS – Editor: Professor Stuart Kaye

The Election of Hilary Charlesworth as a Judge of the International Court Of Justice 19

ARTICLES

Judicial Legitimacy – *The Hon Stephen Gageler AC* 28

The Section 75(v) Injunction: History and Principles – *Declan Noble*

Accounts of the s 75(v) injunction explain its inclusion in the Constitution by reference to a supposed jurisdiction enjoyed by courts of equity before Federation to restrain the “unlawful” or “invalid” acts of public bodies and officers. This work challenges that position. It argues that, before Federation, injunctions were only granted against public bodies and officers on the same grounds as they were granted against other parties, such as to restrain certain torts or to protect property. The modern position – whereby a party with requisite standing can obtain an injunction to restrain mere want or excess of power – emerged gradually in the 20th century. Its development reflects peculiar aspects of Australian federalism, as well as attitudes to the relationship between the courts and the Executive rooted in the nature of government in colonial Australia. These matters will continue to inform developments in the scope of the s 75(v) injunction. 35

Questioning the Mistaken Payment Constructive Trust – *Bernard Porter KC*

Wambo Coal v Ariff recognised that a constructive trust arose over money paid by mistake at the time the recipient acquired knowledge of the mistaken payment (the Wambo trust). This article questions the recognition of the Wambo trust. It suggests that such a development in the law of constructive trusts is unnecessary, difficult to reconcile with general equitable principles and apt to cause injustice in particular cases. It also suggests that the arguments in favour of that development are open to question. It respectfully suggests that the principle not be applied in future cases. 58

BOOK REVIEW – Editor: Angelina Gomez

Pensions, Contracts and Trusts: Legal Issues in Decision Making, by David Pollard 74

| General Editors of the Australian Law Journal | | |
|---|---|--------------------------------------|
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Allianz Australia Insurance Ltd v Delor Vue Apartments CTS 39788 ([2022] HCA 38)
(Contracts; Estoppel; Insurance) 1

