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ARTICLES

THE VARIETY OF CONSTITUTIONAL IMPLICATIONS, AND HOW THEY ARE IDENTIFIED

**Jeffrey Goldsworthy**

In *Zurich Insurance Co Ltd v Dariusz Koper*, a disagreement emerged on the High Court concerning an influential dictum of Mason CJ in *Australian Capital Television Pty Ltd v The Commonwealth*. Mason CJ distinguished between "textual" and "structural" implications, the former able to be inferred from legislative intentions manifested according to accepted principles of interpretation, but the latter having to be "logically or practically necessary"

to preserve the integrity of some constitutional structure. The majority in *Zurich Insurance* endorsed that distinction, but a minority denied that there are different types of implication, subject to different rules, and reinterpreted "logical or practical necessity" as requiring merely that an implication be "securely based" in the text and structure of the Constitution. I show that there are different kinds of implications, identified in different ways, and that a requirement of practical necessity is appropriate for one of them but not others. ..... 822

SOUNDING OUT A PRESUMPTION FROM SILENCE

**Harry Sanderson**

This note identifies a presumption that has arisen in Australian law, the presumption from silence: Where words in an Act have received a judicial construction and the legislature has not amended the provision following the decision, it is presumed that parliamentary intention accords with the construction. It charts the presumption's use in courts across America, England and Australia, noting its relationship to the presumptions from re-enactment and amendment. It argues the presumption is flawed as a matter of logic, proves useless as guide to parliamentary intention, contravenes rules on post-enactment material, and is otherwise unnecessary to the process of statutory interpretation. ..... 837

THE INTERSECTION OF TORT AND CONTRACT: HISTORY, TAXONOMY AND STATUTE

**Michael Taurian**

The role of statute in the historical development of the juridical divide between tort and contract has been under-studied and under-theorised. This article argues that the divide in Australia is to be understood as a product of what Leeming has elsewhere described as the "complex entanglement" of statute and the common law. It examines the processes, both legislative and judicial, which have informed and continue to inform this development, and argues that the convergence of the realms of tort and contract have extinguished the need for legislatures in the 21st century to maintain procedural distinctions between actions framed in tort and actions framed in contract. ..... 848

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