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ARTICLES

A RESPONSE TO PROFESSOR FINN'S "FIDUCIARY REFLECTIONS"

Andrew Eastwood and Luke Hastings

Given his status as one of the most respected commentators in Australia on fiduciary law, the latest contribution by Professor Paul Finn (Fiduciary reflections (2014) 88 ALJ 127) is

very much to be welcomed. His article provides food for thought in a number of important areas. The purpose of this article is not to comment generally on the matters raised by Professor Finn in his article, but rather to respond to the criticisms that Professor Finn makes of the decision of Jacobson J in Australian Securities & Investments Commission v Citigroup Global Markets Australia Pty Ltd [No 4] (2007) 160 FCR 35, and, more briefly, the New South Wales Court of Appeal's decision in Streetscape Projects (Australia) Pty Ltd v City of Sydney (2013) 295 ALR 760. 314

THE PRINCIPLE IN SUTTOR V GUNDOWDA PTY LTD: BACK TO THE DRAWING BOARD

Paul A Walker

The principle in Suttor v Gundowda Pty Ltd (1950) 81 CLR 418 provides for an essentially uniform construction of contractual provisions which are intended to bring about an automatic or self-executing termination of a contract, upon the happening of an event that may be caused by the default of one or both of the parties. This article argues that the principle in Suttor should be re-evaluated on the basis that it is not well adapted to achieve the policy goals which underpin it. In its place, the courts should directly apply the rule or presumption that a party may not take advantage of their own wrong. 320

UNDER THE OAK TREE: INSTITUTIONAL REFORM IN THE DEEP NORTH

Andrew Trotter and Harry Hobbs

Strong institutions are a prerequisite to good governance and a critical aspect of the rule of law. The independence of a legally qualified judiciary and the transparency and accountability of government are the cumulative result of many centuries of progress. Recent reforms to the legislature, the judiciary, and the Executive in Queensland place these important principles under threat. This article places these reforms in their historical context to illustrate that they weaken the institutions of the state in a manner inconsistent with the course of history. 335

Correction

In Rein N, "Raising the flag: Revisiting choice of law rules for shipboard torts" (2014) 88 ALJ 247 at 251, at the end of the second main paragraph, two sentences were omitted. The paragraph should have read:

"*Zhang* thus left open the question of whether a tort occurring on a ship or aircraft is to be governed by the law of the place in whose waters or air space the ship or aircraft was proceeding. The High Court had no reason to reserve the question of application to maritime torts on the high seas since such torts would not be within the territory of another state. *In this connection see the subsequent decision in Blunden at [20], [25]. There would have been no need for consideration of MacKinnon, or a detailing of the precise features of the accident which included details of the connection of the ship's conveyor from the barge to shore (see Morgan at [11]) and the ship's proximity to shore, if Zhang was determinative of the matter*."

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Achurch v The Queen (*Criminal Law; Procedure; Statutes*) ([2014] HCA 10) 490
Attorney-General (NT) v Emmerson (*Constitutional Law; Criminal Law; High Court and Federal Court*) ([2014] HCA 13) 522
NSW Registrar of Births, Deaths and Marriages v Norrie (*Family Law and Child Welfare; Human Rights*) ([2014] HCA 11) 506
Taylor v Owners – Strata Plan No 11564 (*Damages; Statutes; Torts*) ([2014] HCA 9) 473
Thiess v Collector of Customs (*Taxes and Duties*) ([2014] HCA 12) 514
Western Australia v Brown (*Aboriginals; Energy and Resources*) ([2014] HCA 8) 461