

LITERATURE

Abortion

Brooks, Joel, 'Abortion policy in western democracies; a cross-national study, (1992) *Governance* 342.

Administrative law

Council on Tribunals, 'Model rules of procedure for tribunals', London, HMSO, 1992.

AIDS

Kirby, Michael, 'AIDS and human rights' (1992) *Aust. Gay & Lesbian LJ* 1.

Children and parents

Bateman, Margaret, 'Gay and lesbian relationships and the law of New South Wales, (1992) *Aust. Gay & Lesbian LJ* 15.

Bates, Frank, 'Child law and the homosexual partner; recent developments in the United States', (1992) *Aust. Gay & Lesbian LJ* 6.

Drugs

Chesher, G., 'The scientific basis for our drink driving laws', (1992) *Current Affairs B* 4.

Law reform

NSW Law Reform Commission, 'People with an intellectual disability and the criminal justice system', Issues Paper, May 1992.

Rape

Victorian Law Reform Commission, 'Rape: reform of law and procedure; supplementary issues', Report 46, 1992.

BETH WILSON

Beth Wilson is a Melbourne lawyer.

CASE LAW

Constitutional law: the Empire strikes back!

Empire Shipping Co Inc v Shin Kobe Maru (1991) 32 FCR 78 Justice Gummow — General Division of the Federal Court in Admiralty.

The plaintiff brought an action *in rem* asserting a proprietary maritime claim within the meaning of s.4(2) of the *Admiralty Act* 1988 (Cth). One objection raised by the defendant was that the *Admiralty Act* was invalid to the extent that it purported to confer jurisdiction beyond that permitted by s.76(iii) of the *Australian Constitution*. In this connection the ambit of s.76(iii) is restricted to the meaning of 'Admiralty and maritime jurisdiction' which was current in the United Kingdom in 1900. The object of this submission was to restrict such a jurisdiction to common law, and so to exclude the possibility of equitable remedies.

Justice Gummow rejected the defendant's argument. His Honour observed that maritime claims often involve a foreign element, and so it would be unfortunate if issues of ownership could be decided only according to common law. His Honour added that it would be '... a mistake to proceed on the footing that for all purposes the law always requires or assumes the existence of two different kinds of interest, the legal and the equitable...' (p.103).

Even if the Imperial connection had been important in the framing of a provision in the *Constitution*, 'changes in the nature of Imperial relations' (p.104) had to be accommodated by the subsequent operation of the *Constitution*. Nevertheless, in determining the scope of Admiralty and maritime jurisdiction, unlike the external affairs and defence powers, it is not appropriate to consider contemporary usage and practice in other countries (pp.109-10). The power extends to 'matters' arising out of '... controversies relating to or dealing with the commerce or navigation of the sea, including the means by which or with the assistance of which those activities are or may be conducted' (p.111).

Impact assessment

Vaughan-Taylor v Mitchell-Melcann (1991) NSW Court of Appeal (CA No. 40403/91).

Extension of the area of land required for extraction of minerals requires consent: s.109(2) *Environmental Planning and Assessment Act* 1979 (NSW). Before granting a new mining lease the Minister must comply with s.112 concerning environmental impact assessment.

Leases

Tasita Pty Ltd v Papua New Guinea (1991) NSW Supreme Court (ED No. 3938/91).

Tasita leased premises through the Consul-General. Tasita wished to vacate the premises before expiry of the lease. The Consul-General orally agreed to termination. Tasita vacated and returned the keys. The managing agent claimed there had been no effective termination. Papua-New Guinea made appropriate submissions to jurisdiction.

Held: The defendant was estopped from denying that the lease was at end. Section 42 of the *Fair Trading Act* 1987 (NSW) would have applied if the Act bound a foreign government, but it does not.

TO SUBSCRIBE

Alternative Law Journal

(Includes Aboriginal Law Bulletin)

Concession \$33
(full-time students, unemployed)

Individual \$44

Institutions \$57
(offices, schools, libraries etc.)

Cheque enclosed \$

or please charge my
Bankcard/Mastercard/Visa

No

Signature

Expiry date

Return to: LSB Co-op., C/- Law Faculty,
Monash University, Clayton 3168
Tel. (03) 544 0974 Fax (03) 565 5305

Name

Address

..... Pcode

Occupation