

Notes: **1** Sir Anthony Mason, 'A Bill of Rights for Australia' in Geoffrey Lindell (ed) *The Mason Papers* (2007), 213. **2** George Williams, *A Charter of Rights for Australia* (2007), 87-9. **3** Chief Justice David Malcolm, 'A Human Rights Act for Australia' (2006) 8 *University of Notre Dame Australia Law Review* 19; Simon Bronitt and Prita Jobling, 'Constitutional Protection of Rights: the Australian Exceptions' (2005) 17(3) *Legal Date*, 1. **4** *Ibid*, 16. **5** *Al-Kateb v Godwin* (2004) 219 CLR 562. **6** Williams, above n2, 11. **7** *Al-Kateb v Godwin* (2004) 219 CLR 562, 595. **8** *Magna Carta 1297* (UK) s29. **9** Chester Porter QC, *The Conviction of the Innocent* (2007). **10** Justice Michael Kirby, 'Remembering Wolfenden' (2007) 66(3) *Meanjin*, 127. **11** *Croome v Tasmania* (1997) 191 CLR 119. **12** AV Dicey, *Introduction to the Study of the Law of the Constitution* (10th ed, 1965), 195. **13** John Stuart Mill, *On Liberty* (1985). **14** Justice JW Shaw, 'The Rule of Law – and A Bill of Rights' (2003) 75(5) *Australian Quarterly*, 10. **15** James Bryce, *Studies in History and Jurisprudence* (1901), 441. **16** *Constitution* s80. **17** *Ibid*, s116. **18** *Ibid*, s51(xxxi). **19** *Ibid*, s41. **20** *Ibid*, s117. **21** *Ibid*, s92. **22** *Ibid*, s75(vi). **23** *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106. **24** (1758) 97 ER 29. **25** *Opinion on the Writ of Habeas Corpus* (1758) 97 ER 29, 38. **26** Fleur Johns, 'Human Rights in the High Court of Australia 1976-2003: The Righting of Australian Law?' (2005) 33 *Federal Law Review*, 287. **27** (1994) 179 CLR 427. **28** *Coco v The Queen* (1994) 179 CLR 427, 437 (Mason

CJ, Brennan, Gaudron, McHugh JJ). **29** (1992) 177 CLR 292. **30** *Dietrich v The Queen* (1992) 177 CLR 292, 297-298 (Mason CJ, McHugh J). **31** Williams, n2, 44. **32** *Ibid*. **33** *Universal Declaration of Human Rights*, GA Res 217 (1948). **34** Opened for signature 16 December 1966, [1980] ATS 23 (entered into force 23 March 1976). **35** Opened for signature 16 December 1966, [1976] ATS 5 (entered into force 3 January 1976). **36** *International Covenant on Civil and Political Rights* [1980] ATS 23, art 1. **37** Williams, n2, 79; Melissa Castan and David Yarrow, 'A Charter of (Some) Rights ... For Some?' (2006) 31 *Alternative Law Journal*, 132. **38** *Constitution of the United States of America*, Amendment II. **39** *Universal Declaration of Human Rights*, art 1. **40** *Ibid*, art 13. **41** *Ibid*, art 14. **42** *Ibid*, art 17. **43** *Ibid*, art 18. **44** *Ibid*, art 19. **45** *Ibid*, art 26. **46** Similarly, the *Human Rights Act 2004* (ACT). **47** *Charter of Human Rights and Responsibilities Act 2006* (Vic), s13. **48** *Universal Declaration of Human Rights*, art 12. **49** *Charter of Human Rights and Responsibilities Act 2006* (Vic), s5. **50** George Williams, 'The Victorian Charter of Human Rights and Responsibilities' (1961) 30 *Melbourne University Law Review*, 880, 885-92.

This article is an edited version of Martin Hill's winning essay in a competition organised by NSW branch of the Australian Lawyers Alliance. Email martinhill@gmail.com

Windmills of my mind

By Andrew Stone

This is a new column about nothing in particular! In the course of legal practice, all sorts of interesting, unusual and just plain weird items float across one's desk. The idea behind this column is to share some of those oddities that every so often prove useful or illustrative. Contributions from readers would be very gratefully received.

PS: All that should be read into the title of this column is that Sir Robert Megarry thought to use 'miscellany at law' first.



DRIVERS SHOULD SLOW FOR RUTTING MOOSE

In *Baker v Russell* [2008] NLCA 51 the Court of Appeal of Newfoundland and Labrador considered the liability of a driver who collided with a moose on the Trans Canada Highway.

Russell was driving along the highway at dusk. The road was wet, and visibility was fairly poor. He had just passed a yellow reflective moose warning sign (posted by the local highway authority) with a caption at the bottom of the sign reading '3km'.

Russell observed two moose ahead, one in the driving lane and one on the shoulder of the highway to his right. He swerved to the left and hit a third moose, which had come from the centre of the road. Russell's passenger,

Baker, was severely injured.

The trial judge found that there was no liability, as Russell had been travelling at no more than the designated speed limit – 100km/h.

The Court of Appeal reversed this decision. The moose warning sign was sufficient to put the driver on notice of the need to adjust his speed having regard to the potential hazard of moose combined with the light and road conditions. The driver had admitted at trial that he was aware of the risk of moose by the side of the roadway, especially during rutting season.

It is noted in passing that a highway engineer from the Department of Transportation gave evidence that between 1998 and 2004 there were three to four hundred highway

accidents a year in Canada involving moose!

Although there are not many moose in Australia, there is plenty of other wildlife, including kangaroos. A driver in rural areas does have a responsibility to set his or her speed according to the circumstances. On a slippery gravel road at dusk with kangaroos coming out to graze, a prudent driver would reduce speed below the maximum allowable for the roadway. Note that in *Commissioner of Main Roads v Jones* [2005] HCA 27, the High Court found no liability on the part of the Commissioner for failing to erect warning signs that might have caused a driver to slow down and avoid a collision with a wild horse. ■

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