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*(**Articles** and Book Review included in this part are linked to the LexisNexis platform)*

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Articles

Administrative law values — A response to Chief Justice Gageler

— *Matthew Groves* 113

In his paper titled 'Administrative Law Within the Common Law Tradition', Chief Justice Gageler identified four values as fundamental to the common law tradition of judicial review. Those values are: the autonomy of the individual; the subordination of power to law; the subordination of law to democracy; and the hegemony of the courts over the declaration of the law. This paper considers those four values and argues that they are an incomplete explanation of the values of administrative law. The paper also considers how administrative law values can and should be articulated by judges. It argues that the 'administrative' aspect of administrative law values remains relatively neglected by both judges and scholars.

Appellate review of stays on the ground of *forum non conveniens*

— *Oscar Clark* 135

The doctrine of forum non conveniens works to restrain the continuation of proceedings where the chosen forum is considered clearly inappropriate to hear the matter. It is one among a suite of inherent powers upon which a court may call to protect the integrity of its processes. Despite its increasing utility in the wake of the rise of transnational litigation, there remains a significant degree of uncertainty as to the proper characterisation of the doctrine for the purposes of appellate review. As it stands, the grant or refusal of such a stay is approached with the restraint afforded to discretionary decisions in the House v The King sense. This paper explores the alternative position, that this form of stay is the product of an evaluative, albeit non-discretionary judgment, more suited to the Warren v Coombes standard of review.

Species apart: The rational distinctiveness of Australia's common intention constructive trust

— *Aidan Mansfield* 160

Australian courts and commentators remain divided on whether the common intention constructive trust is doctrinally distinct from the constructive trust imposed to satisfy an equity raised by proprietary estoppel ('proprietary estoppel constructive trusts'), or whether both are underpinned by a unifying concept of unconscionability. This paper applies a rational taxonomy of constructive trusts to argue that on a proper analysis, the common intention constructive trust arises from the formation of a common intention coupled with detrimental reliance and gives effect to a primary right-duty relationship that exists independently of repudiatory wrongdoing. By contrast, the proprietary

estoppel constructive trust is engaged only upon an unconscionable departure from an induced assumption and gives effect to a secondary, compensatory right through a discretionary remedial response. Treating the doctrines as underpinned by broad notions of 'unconscionability' obscures these important differences and risks producing inconsistent outcomes on the same evidence.

Scientific expert evidence — The use of court-appointed referees and of experts appointed to assist the court
— *Michael Christie SC* 186

In civil proceedings, a judge may be required to choose between competing scientific expert evidence. This can be extremely difficult. The notion of a non-expert adjudicating upon conflicting scientific expert evidence is inherently problematic. Yet that is a feature of civil litigation in many common law jurisdictions including Australia. The law has long provided two means of dealing with this problem, but it is surprising that those means are not commonly employed. In some Australian jurisdictions, they are almost never employed. This article examines those means.

Book Review

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