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Articles

[Sir Victor Windeyer: An enduring legacy](#)

— *William Gummow*

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In evaluating the legacy of appellate judges of a particular era what marks out the work of some from that of their peers? The question is considered with reference to the judgments of Sir Victor Windeyer. First, he was a master of English and Australian legal history. But he saw it as including the effect of statute and as assisting an understanding of the present law, whether a continuation of, or departure from what had prevailed. Secondly, his judgments looked beneath the immediate issues for decision to the general conceptions which underlay the development of the common law.

[The illusion of principled justice: The fiction that sentencing principle is applied consistently](#)

— *Mirko Bagaric, Gabrielle Wolf and Brienna Bagaric*

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It is widely acknowledged that there is a lack of transparency and a considerable degree of inconsistency in Australian sentencing. Courts have dismissed this potential violation of the rule of law, including the principle of equal justice, on the basis that they are applying sentencing principle uniformly, which is more important than reaching 'numerical or mathematical equivalence' between sentences in like cases. This article argues that it is not feasible for Australian courts to apply sentencing principle consistently at present because courts retain a wide discretion regarding which principles they apply and the nature and scope of many cardinal principles are obscure and poorly defined. Currently, therefore, the appeal to consistency in the application of principle is merely a convenient retort, which is used to defuse charges that sentencing is an area of the law that is inconsistent and often unpredictable. Acknowledging this shortcoming would be the first step towards making sentencing a more coherent and rational process.

[The authentic judge: French existentialism and the judicial role](#)

— *Jonathan Crowe*

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This article draws on the writings of the French existentialist philosopher Jean-Paul Sartre to offer some insights about the judicial role. It begins by exploring the existentially burdensome character of judging, making reference to Sartre's discussions of anguish and the moment of decision. The article then examines why different judges approach the demands of their role in contrasting ways, drawing on Sartre's analysis of various forms of bad faith [mauvaise foi]. The article concludes by sketching an ideal model of the authentic judge, based on Sartre's discussion of authentic love (or 'love in the world'). The authentic judge accepts responsibility for her decisions, without disclaiming her authority or denying the contingent nature of her position. She recognises her inherent fallibility, while nonetheless saying: 'this is what I have chosen'.

Loss of property ‘unattended in a public place’ — Testing the good faith of the travel insurer

— *Paul Latimer*

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Travel insurance policies require insureds to take adequate precautions to protect their personal property including their luggage. They exclude cover for the loss or theft of personal property which has been left ‘unattended in a public place’. The relevant authorities on this exclusion including the often-cited decision by Lord Denning MR in *Starfire Diamond Rings Ltd v Angel* in 1962 would appear to give the final word to the insurer. However, case law is mixed and shows that a determined insured would have a good chance of success on appeal. The fact that insurers regularly reject claims which are successful on appeal is another example of conduct of the finance sector falling below community standards and expectations as demonstrated in the recent Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (2018–19). Wrongly rejecting claims can expose the insurer to several potential legal liabilities at common law and under statute. This article recommends deleting the intricacies of the standard exclusion for property being left ‘unattended in a public place’ in favour of the standard policy condition that the insured must take adequate precautions to protect their personal property. It also recommends amendments to the Corporations Act 2001 (Cth) to empower the Australian Securities and Investments Commission to regulate the claims procedures of insurers.

A century of science in Australian criminal trials

— *Marcus Smith and Gregor Urbas*

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The use of scientific evidence in Australian criminal trials has a long history. This article considers criminal appeals involving forensic science from 1922 through to the present day, noting its role in contentious cases, including the factors involved, with a view to improving post-conviction review options and improvements in the way science is used in criminal trials. Miscarriages of justice are considered through a discussion of the relevant facts and procedural issues involved in six key cases of exoneration in Australia. Options for correcting wrongful convictions are examined, including a comparison of criminal appeals, followed by some analysis of further review options. The article then proceeds to consider opportunities for reform, including an effective approach implemented in the United Kingdom, and recent academic commentary on the issue, before discussing a national approach in Australia to address the need for an effective, uniform approach and other strategies to improve the use of forensic science.

Case Note

‘The Great *Gatsby*’ — What’s the ‘matter’? What’s in a name?

Basten JA ponders federal jurisdiction, judicial power, and the operation of state ‘courts’ and tribunals

— *Lee Aitken*

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