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Article

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This article is a reflection on the nature of and relationship between truth and justice according to the rule of law. Within the Western legal tradition, and even within the common law system, the concept of truth and the concept of justice as reflected in available forms of civil procedure have not remained constant. The relationship between truth and justice has evolved through many phases.

Speech

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Articles

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Nelson v Nelson contains a dictum, adopting a statement of Scott, that when a presumption of advancement is rebutted the outcome is a resulting trust. Scott puts that statement on two bases. The first is that as a matter of 17th century legal history, rebuttal of a presumption of advancement led to a resulting trust. The second is that some North American cases support it. This article contends that Scott's statement is true sometimes but not always. His proposition of legal history is not supported by the cases on which he bases it, and the North American cases on which he relies are not persuasive precedents for Australian law. It contends that sometimes when rebuttal of a presumption of advancement occurs the doctrine that a statute cannot be used as an instrument of fraud becomes operative, leading to a constructive trust. Sometimes rebuttal of the presumption leads to an express trust. There are other possibilities also. Sometimes equitable doctrines other than those concerning trusts decide the outcome.

for a common law, or even a statutory, cause of action — no enduring legal criteria had been identified. The European-based privacy principles in the Privacy Act provided a limited source of privacy protection but with little teeth. The near final nail in the coffin has been the recent lack of application to metadata of the Australian Privacy Principles. More recently, developments in 2012 in relation to the Human Rights Framework have given no substantive content to the existence or protection of privacy in Australia. However, the recent enactment of the notifiable data breach legislation has potentially resurrected privacy in Australia. New life has been breathed into privacy protections which are reportable to the Australian Information Commissioner, the subject of significant penalties and, most importantly, involve the very real potential of judicial involvement.

Damages for breaches of discrimination law — The contemporary Australian jurisprudence and practice — *Kenneth Yin* 333

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This article critiques the oft-quoted proposition that tort principles should be applied to the assessment of damages for unlawful discrimination. We argue that the jurisprudential foundation for the recovery of damages for unlawful discrimination differs to that for damages in tort, and explain how this difference can lead to practical differences in their assessment. While it is legitimate to be guided by the principles in analogous tort cases, there is a fault line beyond which the application of tort principles must yield to the statutory direction for the assessment of damages for unlawful discrimination. We identify this fault line in our article. The remainder of the article is devoted to exploring the contemporary jurisprudence in the practical assessment of damages for unlawful discrimination. We incorporate here a discussion of the broad principles that apply to the discretion to award damages, followed by a brief analysis of the criteria that govern the award respectively of aggravated and exemplary damages.