

# DIGEST

## LITERATURE

### Abortion

Hood, Kavass and Galvin, (eds), *Abortion in the United States: A Compilation of State Legislation*, Vol 1, *Abortion laws by State*, Vol 2, *Abortion laws by topic*, Buffalo, Hein & Co., 1991.

### Evidence

Thomas, E., 'The so-called right to silence', (1991) *NZULR* 299.

### Harassment

Leonard, Alice, 'Damages for sexual harassment', (1991) *NLJ* 1514.

### Legal education

Thornton, Margaret, 'Portia lost in the groves of academe wondering what to do about legal education', (1991) *Aust.Unis R* 26.

### Medicine

Sappideen, Caroline, 'Look before you leap: reform of medical malpractice liability', (1991) *Sydney LR* 523.

### Police

Baldwin, J., 'Videotaping in police stations', (1991) *NLJ* 1512.

### Provocation

Coss, G., "'God is a righteous judge, strong and patient; and God is provoked every day": A brief history of the doctrine of provocation in England', (1991) *Sydney LR* 570.

### Solicitors

Harris, N., 'Judging the quality of welfare benefits work by firms of solicitors', (1991) *Civil JQ* 311.

**BETH WILSON**

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### Discrimination

An appeal was upheld in the High Court from the decision of the Victorian Supreme Court that the introduction of 'scratch' tickets on public transport, and the removal of conductors from Melbourne trams, did not amount to unlawful discrimination against disabled persons: *Waters v Public Transport Commission* (1991) 18 Leg Rep 1. The court remitted the matter to the Victorian Equal Opportunity Board to decide according to law whether the proposals were 'reasonable' under the *Equal Opportunity Act* 1984 (Vic.). A majority of the court held that in deciding what was 'reasonable' the Board was required to take account of economic and other considerations put forward by the PTC.

### Criminal appeals

The High Court has held in *Mellifont v Attorney-General of Queensland* (1991) 13 Leg Rep C1 that it has jurisdiction in certain criminal appeals, overturning its earlier decision to the contrary in *Saffron v R* (1953) 88 CLR 523. It held that it could hear an appeal against answers given by the Queensland Court of Criminal Appeal to questions stated by the Attorney-General. It rejected earlier decisions that there could be no appeal where the answers were not determinative of the parties' rights. The case concerned charges for perjury arising out of evidence given by the appellant at the Fitzgerald Commission: the substantive appeal was dismissed.

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## CASE LAW

### Rape in marriage

The High Court has unanimously upheld the validity of the South Australian rape laws which remove any marital immunity in relation to a prosecution for rape: *The Queen v L* (1991) 17 Leg Rep C1. Marital immunity has now been removed (expressly or by inference) in all Australian jurisdictions except Queensland. The South Australian provision was challenged on the grounds that it was inconsistent with the Commonwealth *Family Law Act*, which makes no reference to marital rights. The High Court held that the SA legislation was not inconsistent with the Commonwealth Act. It also stated unanimously that it doubted that the common law was that a woman, once married, had given irrevocable consent to all sexual intercourse with her husband; further, that if this had been the common law position, it should no longer be regarded as such. The House of Lords in the United Kingdom recently came to the same conclusion.

See the brief on this subject on p. 91 of this issue of *Alternative Law Journal*

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