

2005

Statutes

The Hon Justice WMC Gummow AC

Introduction

Justice Gummow took his seat on the High Court of Australia on 21 April 1995 following nine years on the Federal Court to which office he had been earlier appointed on 3 December 1986. He was joint author (along with the late RP Meagher and JRF Lehane) of the first three editions of *Equity: Doctrines and Remedies* as well as the joint author (with the late RP Meagher) of the sixth edition of *Jacobs' Law of Trusts in Australia*. Between 1966 and 1995 he lectured at the University of Sydney in intellectual property and equity.

In this lecture he discusses statute law, a topic on which he has expressed his views more than once.¹ If there is an underlying theme, it is that statute law is ubiquitous and therefore deserves primacy over case law in legal discourse. Gummow notes, for example, the common law chauvinism inherent in the principle that statutes are not to be interpreted as impinging upon common law rights unless the parliament first expresses itself in with unmistakable clarity.² Why should the common law be held in such reverence? What does one make, for example, of the common law's insistence that contributory negligence was a complete defence, that there was no action for a wrongful death, that in certain cases the accused could not be represented and that the contractual and property rights of women were subjected to those of their husbands? At least in 2005, when this lecture was delivered, it seemed that the answer was that the common law did at least protect what Pomeroy had referred to as 'grand principles', that is, those concerning rights of property, life, body and limb. That may perhaps have marked something of a subtle move away from mere invocation of the common law rights and more generally towards what is often now referred to as the principle of legality. That principle had its roots in earlier comments of Lord Steyn in *R v Home*

1 See, for example, the Clarendon Law Lectures delivered at Oxford University in 1999 published under the title *Change and Continuity: Statute, Equity and Federalism* (Oxford University Press, 1999).

2 *Coco v The Queen* (1994) 179 CLR 427 at 435-438.