

Verbatim

Bar News recently scoured the High Court web site for evidence that counsel are framing their submissions in terms of the strict logic and high technique of the common law espoused by Sir Owen Dixon and recently defended by Heydon J in his *Quadrant* article. We found Jackson QC (the former Queenslander and not the other Jackson) seeking to persuade the High Court that the heads of damage recoverable where a doctor's negligence has caused an unwanted birth do not include the costs of maintaining a healthy child. Judge for yourself whether the submissions of Jackson QC display that 'strict logic and high technique, rooted in the Inns of Court, rooted in the year books, rooted in the centuries' demanded by Sir Owen:

Mr Jackson: Returning to what your Honour the Chief Justice was putting to me, in our submission, expenditures of that kind do not fall within the legal categorisation of a loss and the reason why, ultimately, in our submission, your Honours, is that one is speaking about maintaining a child. A child is not like a cat or a dog or an animal and, without seeking in any way to minimise the tragedy of what was involved, the notion that there is something special about human life can be seen by the different reactions one would have, on the one hand, to the death of seven astronauts, to, on the other hand, the death of seven monkeys dressed in space suits. One is speaking about something which is a central part of humanity...

...Now, your Honours, could I just say in relation to that, one of the arguments that is advanced on behalf of our learned friends is that no principled reason is put forward against allowing this head of damages. Your Honours, we would say that the reason why the set of damages is not available is that one is speaking about a human being and, your Honours, if I can put it, I do not mean to do it unduly brutally, but one cannot readily treat the claim or treat this

head of damages as being similar to one for the cost of extra dog food, because a vet did not spay the dog properly; there is a different thing involved - a human being.

Gleeson CJ: Thank you, Mr Jackson. We will reserve our decision in this matter.

From a case before Bergin J ...

First the audit manager gave evidence...

Carnovale: Leave aside what the ultimate form of the audit report was. You, yourself, were not prepared in your own mind to take his word for the bona fides of the transaction, were you?

Witness: We raised the matter on numerous occasions up until audit committee and at the end of that process Mr [X, the audit partner] was satisfied with the transaction.

Carnovale: You know in the last question I asked you about your mind, don't you?

Witness: I didn't have a mind. I just work for my audit partner.

Carnovale: And how can an auditor do any work at all if he doesn't have a mind?

Witness: Because he raises the issues for the deliberations of his more senior legal - or his more senior accounting partner.

Then the following evidence was given by one of the defendants, who is an accountant...

Carnovale: At the top of the second page you seem to be charging him for the false statements you say you made in the letter that you wrote to his solicitors. Is that what you're doing there?

Witness: Yes.

Carnovale: Why would you want to charge the man for false statements that you wrote to his solicitors?

Witness: I charged everybody for everything.

The following exchange occurred in the District Court in Parramatta in a personal injuries case in which the plaintiff was claiming damages as a result of the alleged negligence of a horse riding school. They had not tightened the girth of the horse upon which the plaintiff was riding. The plaintiff alleged that the girth had slipped and he had fallen. During the course of cross-examination counsel for the defendant was attempting to suggest that the slipping of girths was a frequent occurrence when pressure was applied to one stirrup as opposed to equally between them. This caused the trial judge to interject. The conversation went as follows:

Delaney DCJ: Have you been to a rodeo recently Mr Minehan?

Mr Minehan: No

Mr Adam Johnson (counsel for the plaintiff): I have been to the Court of Appeal, your Honour.

His Honour: That remark will be sure to get you there Mr Johnson.

Bill Walsh of William Owen Chambers at Orange reports the following extract from transcript of evidence given recently in the Bathurst District Court. The matter was an all grounds appeal being heard by a well-known, all-knowledgeable judge with a passion for trout fishing. The evidence was being given by the mother of the appellant and the appellant's christian names were 'Shannon Leah'.

His Honour: Why did you pick Leah as a second given name?

Witness: Hebrew.

His Honour: Yes, I know. You know what it means?

Witness: Yes I do.

His Honour: Given of God - yes go on do you know what Shannon means?

Witness: It's the River Shannon in Ireland.

His Honour: There was one in Tasmania called the Shannon from which there was a beetle called the Shannon Moth that rose every year - trout fishermen loved it - it's now under water. The Shannon rises no more.
