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(speech, articles, case note and book review included in this part are linked to the two LexisNexis platforms)

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Speech

My first judges — Ten lessons — *The Hon Michael Kirby AC CMG* 215

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In this talk originally given to the conference of District Court judges, the author describes his memories of his original encounters with judges when a clerk and young solicitor. He derives 10 lessons for their contemporary colleagues. These include the need to remember the life long impressions left by judicial performance on new legal recruits; the standards set for one's own professional performance; the need for efficiency but flexibility; the value of courtesy and the avoidance of foibles that are long remembered; the rules for avoiding the appearance of bias; the special vigilance necessary on circuit; the imperative of providing convincing reasons; the need for efficiency in preparing judgments; and the vulnerability to personal memories.

Articles

Unauthorised practice of law — *G E Dal Pont* 224

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Legal profession legislation has long proscribed the unauthorised practice of law, as an adjunct to the core notion of lawyers as professionals. This article probes and then unpacks the rationales for this proscription, before inquiring as to how these inform its justifiable parameters, which both legislators and judges have often found difficult to prescribe with precision.

Subsequent conduct and the objective theory of contract
— *Timothy Pilkington* 244

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Under the current law, although subsequent conduct is inadmissible when construing a contract, there is support for its being admissible when determining the express terms and terms implied in fact. The primary basis upon which subsequent conduct has been said to be inadmissible in respect of questions of construction is that to allow evidence of such conduct would be inconsistent with the objective theory of contract. Lacking, however, is an adequate explanation of why evidence of subsequent conduct is at odds with the objective theory, and why subsequent conduct is admissible in respect of matters of incorporation on an objective analysis, but not construction.

Contractual severance: A unified approach?
— *Felicity Maher*

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Contractual severance is an important and frequently litigated issue that has received limited academic attention. It is also difficult. This article reviews the case law on severance at common law of contractual provisions void for uncertainty and those unenforceable for illegality. It considers what tests are applied by the courts and what lies behind those tests. It asks whether the approach is different, in form or substance, in respect of uncertain and illegal contractual provisions and, if so, whether it should be. And it argues that the law would benefit from a single, unified approach to contractual severance, which is flexible enough to permit consideration of all relevant circumstances. On that basis, the article proposes an approach to severance applicable to all contracts.

Implied waiver of legal professional privilege: A search for consistency — *Ahmed Terzic*

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The law will impute waiver of legal professional privilege where the conduct of a client is inconsistent with the maintenance of the confidentiality that the privilege is intended to protect. In applying this test, a court may be informed by considerations of fairness. This article first considers the role of fairness in the application of the inconsistency test. As with any question of waiver, the question of inconsistency is a matter of fact and degree. By drawing on principles derived from cases involving the disclosure of privileged communications to a third party, this article highlights two factors to which a court should give primacy in applying the inconsistency test, thereby instilling some certainty and predictability in an area of the law that is heavily litigated and devoid of guidance.

Case Note

Uncertainty of trust property within a pool of shares
— *Henry Cooper*

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Book Review

The Veiled Sceptre — Reserve Powers of Heads of State in Westminster Systems by Anne Twomey — *Murray Gleeson*

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