Australian article round-up 2011: General

Readers may be interested in a range of articles which have been published since the last Australian article round-up in 2010. Over the coming days, I will post abstracts for the articles roughly grouped into themes. Today's is a general theme.

- **John Fogarty, 'Peter Edward Nygh AM: His Work and Times' (2010) 1 *Family Law Review* 4:**

In this article the author outlines and honours the work and life of Peter Edward Nygh AM. From his early life in western Europe, through his relocation to Australia and to his subsequent contributions in academia, the Family Court of Australia and the Hague Conference on Private International Law, the article honours Peter Nygh's success as an academic, judge, reformer and internationalist, and his life as an honourable and decent man.

- **Mary Keyes, 'Substance and Procedure in Multistate Tort Litigation' (2010) 18 *Torts Law Journal* 201:**

Where a tort occurred outside the territory of the forum state, the Australian tort choice of law rule requires that the forum court must apply the law of the place where the tort occurred to resolve the dispute. Several exceptions to this principle are recognised, according to which the forum court may apply forum law instead of the otherwise applicable foreign law. This article considers these exceptions, focusing on the distinction between matters of substance, which may be governed by foreign law, and matters of procedure, which are always governed by forum law. The justifications for the separate treatment of procedural rules are critically examined. This article suggests that most of those justifications are weak and that, when taken together with the other exceptions that permit a forum court to apply its own law, they show that the Australian choice of law rule for multistate torts remains in need of further refinement.

- **Kate Lewins, 'Australian Cruise Passengers Travel in Legal Equivalent of Steerage — Considering the Merits of a Passenger Liability Regime for Australia' (2010) 38 *Australian Business Law Review* 127:**

Two Australian passengers contact their travel agent on the same day. Each books a cruise of similar duration, embarking at an Australian port for a Pacific cruise, on a different cruise ship line. One contract claims to be governed by United States law, with any claim to be brought in Florida within one year, and a limit on liability of about A$80,000 for personal injury or death claims. The second, (the lucky one), boards a ship with a contract governed by Australian law, allowing commencement in an Australian court within two years. Any legal recovery for injury or death sustained on the cruise is already fraught with complexity. But the variation between cruise ship liner's passenger contracts for voyages departing Australia can be significant. This article argues that the time has come for Australia to introduce a regime for the liability for passengers carried by sea from or to Australian ports.

- **Guan Siew Teo, 'Choice of Law in *Forum Non Conveniens* Analysis: *Puttick v Tenon Ltd* [2008] HCA 54′ (2010) 22 *Singapore Academy of Law Journal* 440:**

The overlap between questions of jurisdiction and choice of law is perhaps most visible when applying the doctrine of forum non conveniens: it is now generally accepted that the lex causae is indicative of where the natural forum is. But as the facts and holding of the decision of the High Court of Australia in Puttick v Tenon Ltd suggest, some issues remain which warrant careful treatment when considerations of the applicable law enter the jurisdictional analysis. Such difficulties relate to uncertainties on the threshold of proof, as well as the interaction between the forum non conveniens inquiry and procedural rules on pleading and proof of foreign law.

- **Rachel Joseph, 'Enabling the Operation of Religious Legal Systems in Australia by Extending Private International Law Principles' (2011) 85 *Australian Law Journal* 105:**

The current failure to recognise and accommodate religious law outside an arbitration context has led to informal religious dispute resolution processes that often lack protections (such as natural justice) which are inherent in Australia's secular legal system. This article proposes recognising and accommodating religious law through an expansion of common law principles of private international law. It argues that enabling the use of religious law outside an arbitration context would discourage the use of informal religious dispute resolution processes and enable Australia's secular legal system to

reassert control over all legal issues, including matters involving religious significance, by ensuring that the operation of religious law is governed by, and subject to, secular laws.