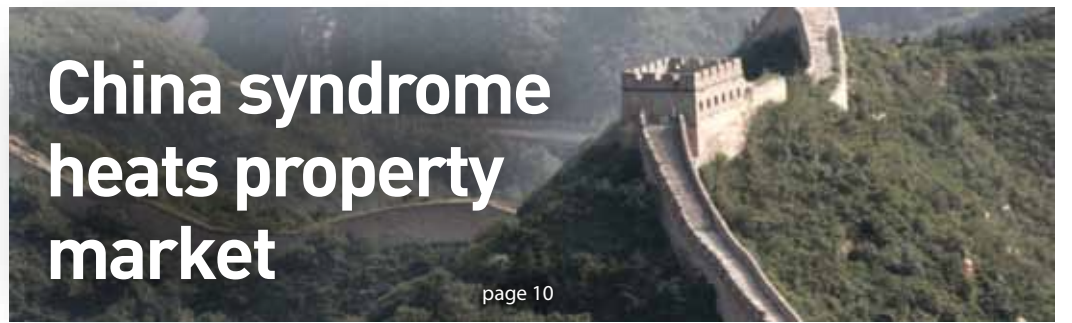




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The Virtual Truth

MH370 families wait

Errors and chance create search uncertainty

Investigators are convinced that "handshakes" signals received by a geo-stationary satellite – analysed by their "Doppler effect" for the first time in history – establish that Malaysian Airlines' Boeing 777 kept flying and will lead to the discovery of the aircraft wreck.

It was last positively identified by military radar in the Strait of Malacca, on March 8, heading north-west, after contact was lost 40 min after departure from Kuala Lumpur over the South China Sea.

A six week aerial search off Western Australia – identified as the most likely resting place after the Doppler breakthrough in early April - has revealed no trace of the aircraft or any of the 227 passengers, 5 Indians, 154 Chinese and 38 Malaysians.

The "handshake" tracking of the aircraft has it overflying the remote Cocos Islands (pop. 600, area 14 sq km) where the Australian Signals Directorate operates a listening station, presumably to spy on Indonesia. But no electronic or visual observations of the aircraft have from there, have been publicly disclosed.

Had Australia's revolu-



MH370: Legal complexities follow from unique circumstances of this mystery

tionary over-the-horizon radar been pointed to the north-west – rather than been trained on suspected asylum seeker boats due north – it might have captured the path of the aircraft.

Malaysia's four hour delay in activation of search and rescue protocols has certainly contributed to the problem of locating the wreck. Had a SAR

phase been declared immediately, an airborne response from Butterworth airbase would likely have resulted from the military radar paints registered over the following 50 min.

The scrambling of any of its 18 Russian built Sukhoi fighters or its 13 US built Northrop reconnaissance aircraft by the RMAF, would

possibly have turned around the 777 or – at the least – allowed it to be shadowed to its ditching point in the sea.

The underwater search in the Indian Ocean by 10 vessels is coordinated in Australia, because the search area – which has now been widened for a 310 sq km area to one of 50,000 sq km - is within our SAR area of responsibility

and our Flight Information Region.

The search location is however in international waters.

Malaysia's official report released on May 2 has also revealed a 17 min delay in even noticing that the aircraft was no longer showing on radar and that the "handover" to

continued to page 15 »

Court rules: Dropbox link not legal service



In a setback for cloud communication and the convenience of web users, a court has ruled that a web service embraced by business and professionals for sending large electronic files to colleagues – as well as adversaries – is not a valid means of serving legal documents.

The Supreme Court of Queensland ruled that an email sent by an engineering contractor asking its opponent in a \$270k construction dispute to "Please find attached letter, as well as Dropbox links below for the two Dispute Applications" did not constitute valid service of the documents accessible via the links.

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What do Andrew Bolt & Larry Flynt have in common?



Editorial: p 8

Jessica Alba lived in Queensland while shooting two seasons of Flipper in the 90's

Flipper of a different kind, p 7



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WHERE EXPERIENCE COUNTS

Squatter trashes rental



Squatters have been reported taking possession of homes if London owners depart, even for a weekend away

Brisbane tenant liable after hands back keys

Maid Dzidic and Natasha Pase - 12 month tenants of an Underwood residence - notified the letting agent in February 2013 that having lost their jobs, they needed to break their lease and that their friend Alen, was prepared to take it over.

A transfer of the lease was never finalised and in March they were served with a notice to leave by Julies Realty at Sunnybank Hills. In compliance with the notice, they vacated the home leaving several weeks rent owing.

That they left the property at 23 Gunalda Street clean, in good condition and had locked it up, was not disputed.

But a week or so later, Ju-

lie was surprised to see on an inspection, people occupying the property who claimed to be Dzidic's cousins.

Police were called and told the squatters they must vacate by 30 March.

A cleaner gave evidence that he thought the property had been broken into when he discovered "people hiding in the bedroom cupboards."

Then the damage was discovered: an aircon unit was smashed from wall; electrical wiring had been run from the home to the garage; walls were holed; doors smashed; and the hot water system destroyed.

On behalf of the owner, Julies' claimed a total of

\$11,266.34 for rent arrears and rectification.

The tenants admitted the rental arrears but asserted they should not be responsible for damage that occurred after they left.

"I myself locked the premises up and I still have the original keys," swore Dzidic. "I never gave any permission for anyone else to live in the premises."

Against this contention, the tribunal drew an inference that the squatters were in fact his relatives and that, it followed "such occupation was likely with the tenant's permission."

"On balance, having regard to evidence of both parties, I am reasonably satisfied that the respondents knew of the occupation of the house by others after they left."

On that basis, Dzidic and Pase were held liable for the damage done and an order was made that they pay a total of \$10,000 for the repairs for the damage done without their knowledge.

Airlines face more turbulence

Climate change blamed

Seoul to Atlanta when the aircraft encountered cruise level "clear air turbulence."

The aircraft subsequently descended and continued the flight to Atlanta, where it landed safely about 6 hours later.

The following week on February 18, a United Airlines domestic passenger flight from Denver to Billings, (Montana) carrying 114 passengers and five crew declared an emergency after severe turbulence encountered causing cabin baggage be flung into the aircraft ceiling.

United Flight 1676 completed a routine landing following which it required re-

pair.

The very same day, a Cathay Pacific aircraft en route from San Francisco to Hong Kong with 321 passengers and 21 crew encountered turbulence lasting for 2 minutes overhead Sapporo, Japan. The aircraft landed normally after 5 hours.

On 4 March a Virgin flight XR-657 from Canberra on descent to Sydney encountered severe turbulence. The air crew declared an emergency, interrupting the approach to land on runway 16R to confirm operations were normal, before resuming for a safe landing about 15 minutes later.

Qantas QF72, a A330

aircraft from Singapore to Perth on 8 October 2008 encountered a loss of control with turbulence-like outcomes. It represents the most serious turbulence event in modern airline history.

On 8 November 2013, QF-460 - a Boeing 767-300 aircraft from Melbourne to Sydney - was on approach to Sydney when the aircraft encountered severe turbulence causing the crew to execute a missed approach.

The aircraft climbed to 8000 feet and diverted to Newcastle for a safe landing about 80 minutes later. Loose objects flying through the cabin caused aircraft damage.

A second Qantas aircraft, - an Airbus A330-200 arriving from Perth - went around from low height (below 1000

feet AMSL) on final approach about 5 minutes after QF-460 and also diverted to Newcastle.

The crew of QF-582 reported to tower that they had experienced "a big bang" from the wind changing from north to east then west.

In March a United Airlines Boeing 777 descending en route from Rio de Janeiro towards Houston, encountered severe turbulence in the form of a 90 knot windshear followed shortly after by one of 22 kt. The aircraft conducted a routine landing but the next arrival also reported the same severe conditions.

No doubt there will be a controversy as to the cause of the escalation of severe turbulence events.



There has been a significant increase in the number of severe turbulence incidents in the last 3 years

The early part of 2014 provides plenty of empirical evidence supporting the theory that the prevalence of airline turbulence incidents is increasing.

According to a study published in the journal *Nature Climate Change*, global warming may be the cause.

Online air crash digest The Aviation Herald is reporting severe turbulence incidents with consequences for crew or passengers on a daily basis.

On February 12 a Korean Airlines A388 sustained severe turbulence near Kodiak, Alaska. Flight KE-33 from

Fatal traffic crash, Sunnybank, April 23

A 60 yr-old pedestrian was severely injured after a car collided with her on a Station Road intersection. She was transported to the PA Hospital where she later died.

Fatal traffic crash, Inglewood, April 25

A 61 yr-old male cyclist has died while competing in the Audax Queensland GT series. The cyclist was riding along the Inglewood-Millmerran Rd at around 3:30pm when he was struck and killed by a vehicle that failed to remain at the scene.

Fatal traffic Crash, Cowley Creek, April 26

A 43 yr-old driver was trapped in his truck following a collision between his with a utility on Cowley Creek Rd just after 4:35pm. He was extracted from the truck by authorities and airlifted to Cairns Hospital where he later died. The driver of the utility was unharmed.

Fatal traffic crash, Logan, April 20

A man believed to be in 50's was heading eastbound on Wembley Rd at around 3:30am when his vehicle crossed the westbound lanes, left the roadway and collided with a light pole. The man was pronounced dead at the scene.

Fatal traffic crash, Kirwan, April 20

A 43 yr-old female motorcyclist collided with a car at the intersection of Thuringowah Drive and Burna St at around 5:15pm. She was ambulated to Townsville Hospital and later died. The driver of the car sustained only minor injuries.

Serious Traffic incident, Beerwah, April 19

A motorcyclist heading south on the Steve Irwin Way at around 9:20pm failed to stop at a police interception site and fled the scene. An officer, south of site attempted to stop the vehicle and sustained serious injuries which were treated at RBH.

my sweetopia

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\$1.2 mil loan to “fast-fading” immigrants

“Unrepayable” loan unjust

In April 2007 Steve and Iris Karamihos re-financed their Maroubra home with a \$1.2 million loan through a finance broker with Bendigo bank.

The loan, via a mortgage manager Mortgageport, was said to be for capital for their Marrickville restaurant that they had successfully operated for 27 years after their arrival in Sydney as Greek immigrants.

Bendigo “overrode” its loan age restriction policy - the borrowers were both in their 70s with obviously no prospect of repayment

from recurring income during the 25 year term of the loan.

Defaults in the monthly repayments of \$7.5k began in December 2008.

To accommodate Iris’s ill-health, they leased the restaurant to a “highly recommended” operator who defaulted when it came time to pay full rent in just the third month of the term. They lost their right of recourse against the tenant because Peperual - as mortgage manager for Australian Unity - declined to grant consent to the lease

due in part to the tenancy default at the time it processed the request.

Bendigo commenced proceedings for recovery of possession of Steve and Iris’s Maroubra home.

In their defence, the borrowers’ contended that the loan contract and mortgage over their home were unjust for the purposes of the National Credit Code (“the Code”) and the NSW *Contracts Review Act 1980*.

The lower court had ruled the loan contract was “unjust” under the Code and the CRA because it was “a bridge too far, at too late a stage in their fast-fading lives” and because the credit officer’s failure to verify the customers’ esti-

mate of \$2 million net assets “was unreasonable, to put it at its lowest.”

It ordered that the borrowers be relieved of their liability to the Bank, other than in respect of that portion of the loan that was used to pay out the existing loan, a benefit to them of about \$250k.

The NSW Court of Appeal did not accept that Steve and Iris’s \$2mil estimate of their net assets was erroneous. Thus the bank’s “neglect” to check its accuracy “could not bear on the justness or otherwise of the loan contract or mortgage.”

There were, according to the appeal judges, no other factors that warranted the conclusion that the loan was unjust.

The circumstances of prior loans were “as consistent with financial maturity as the converse.” The absence of independent legal or financial advice was not significant because “it was not demonstrated that financial advice would have recommended against the borrowing.” Finally, the fact that they were in their early 70s “did not in itself indicate an inability to protect their own interests.”

The earlier ruling in the borrow was overturned and Bendigo can now recover the entire \$1.2 million debt.



Lenders’ age restriction policies may also see a requirement for borrowers to repay home loans before age 65

Cruise Ship Incident Log

16 April 2014. Enchantment of the Seas & Adventure of the Seas, Royal Caribbean, Bahamas



The sergeant at arms of Enchantment detained a passenger with a small amount of marijuana he purchased in a Nasau market. He invited police aboard, who made an arrest. A passenger from sister ship Adventure was apprehended after making a similar purchase in the same market. Three other tourists were arrested aboard the vessels or in downtown Nassau. The five were all collectively fined \$3,100 by a local magistrate before being released after their ships had sailed.

27 April 2014. Crystal Serenity, Crystal Cruises, Spain

A rogue wave struck the 1,070-passenger ship as it was cruising the southern coast of Spain en route to Monte Carlo. It broke windows and caused damage to the ship’s main dining room which was unoccupied at the time. Temporary repairs were made by the ship’s crew during the night. The dining room was closed for breakfast and lunch but other arrangements were put in place for guests. The incident had no impact to the ship’s 13 day cruise itinerary.



15 April 2014. Marina, Oceania Cruises, Cook Islands

The Marshall Islands registered cruise ship had planned a two-day stopover at Rarotonga but shortened the stay to avoid payment by its 1,250 passengers and 760 crew of a US\$56 departure tax applicable to stops in the country longer than 24hrs. Cook Islands government blamed the cruise line’s local agent, saying that if an earlier request had been made, there may have been time to negotiate waiving the tax.

11 April 2014. Empress, Pullmantur Cruises, Brazil



Police in Santos conducting a routine inspection of crew arrested a Honduran crewmember with almost 200kg of cocaine bound for Europe. The drugs were found in 333 casings packed in coffee cans to disguise the characteristic smell of cocaine.

11 April 2014. Cuu Long 3736, Cuu Long Co, Vietnam

A cruise ship with 23 P.O.B. including 15 foreign tourists, suddenly caught fire on the return from Trong Mai Islet in Ha Long Bay. The 6 crew immediately sent distress signals. Passengers were evacuated to nearby vessels and taken ashore. Authorities have ordered a halt in operations for all cruise ships owned by Cuu Long Co Ltd and say the primary cause of the accident was an electrical fault in the cooking area.



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Lunch with Zac Casagrande

Zac Casagrande left renowned litigation firm Russells in May 2010. After nearly four years on the Australian Fencing Team following the international competition circuit in Europe he has returned to take up a position as senior associate in commercial litigation at Carter Capner Law.

reasonable cost. Small business is increasingly savvy when it comes to legal needs and cost. Well-resourced boutique firms like ours are in a good position to compete in these emerging conditions.

Is there anything in your timing?

Yes. Queensland is seeing enormous growth. International miners and gas producers are here for the long haul. Economic activity is definitely on the up.

How does the commercial climate affect litigation volumes?

ing. External administration occurs more often and starts earlier than it generally did in the past.

What other growth areas are there?

The Australian Consumer Law is even more powerful than its predecessor, the Trade Practices Act. Statutory warranties of fitness for purpose, unfair contract terms and misleading & deceptive conduct proscriptions will continue to increase in relevance in all commercial transactions. Shareholder litigation is another developing area.

The sandcrab lasagne arrives. We both say how much we enjoy this house speciality. Zac remarks he has tried other variations of the dish but even in Europe, nothing comes close to the Il Centro interpretation.

The presentation is spectacular. After enjoying the wonderful textures and flavours, we resume.

What about the culture at Carter Capner?

There is a definite streak of innovation and originality and the team is great. In the end though it's all about client service. I certainly like it. It's very refreshing, unlike anywhere I have been before.

Tell me about the innovation.

The client web portal is

Il Centro Restaurant Eagle St Pier, Brisbane	
Panini	\$3.5
1 sweet corn soup	\$19.5
2 sand crab lasagne	\$79
1 mixed salad leaves w tomato, cucumber, spanish onion & avocado	\$9.50
1 L San Pellegrino	\$4.50
1 gls Golden Grove Vermintino	\$15
1 gls Vinteloper Pinot Gris	\$11
1 Espresso	\$4
Total (incl GST)	\$146

potentially a huge money saver in complex litigation and commercial transactions. Clients can see everything that's happening on their matter in real time. The transparency and immediacy have benefits at many levels.

What's been the biggest challenge?

The paperless office is new to me. But it adds enormous efficiency to the legal process. Everything is always in its place.

Is this an improvement for clients?

Yes, I can respond immediately to client queries without having to "get out the file" and call the client back.

The firm's tag line is "Where experience counts". How does this fit with you?

I have nearly ten years experience predominately in commercial litigation and dispute resolution. I've acted for companies and individuals in all sorts of business disputes. I see myself as boosting the firm's well known litigation strengths but on the growing commercial side.

Zac's coffee arrives and he explains he has a meeting in 15 minutes. I ask for the check.

So how does it feel announcing you are now with Carter Capner?

Really good. It's well-known with an excellent reputation. I believe I am a good fit to lead growth that will be mutually beneficial. It's also great to have an opportunity to build up my own practice.

What about having your mug-shot on business cards?

That's also a new thing but I'm sure I'll be used to it before long.

Our waiter returns with the credit card. I sign and we say our goodbyes as the restaurant is still filling for lunch. Many of the tables



Zac Casagrande, Senior Associate

He arrives precisely at the appointed time and we are immediately made to feel welcome by the exceptional wait staff who show us to an inside table by the window. After exchanging pleasantries about Brisbane's mild autumn weather and sipping on sparkling water so promptly delivered to the table, I begin my questions.

You are a big ticket litigator from a major firm. Why the change?

The market has moved to firms that can provide quicker responses at more

In prosperous conditions, businesses are willing to exploit perceived advantages through the Courts. When conditions are depressed, preservation becomes the greater necessity creating a different motivation for the same process. Right now we are seeing industries operating in both sets of market conditions which makes things very interesting.

So you see insolvency arrangements as still providing a source of business?

Yes, directors are far more sensitive these days to the risks of insolvent trad-



We have a copy of Peter Carter's book "BUST - Queensland's post-GFC property collapse as played out in the courtroom" for readers who can guess the location of this billboard.

On entry per person. Email us with your name, address and guess.

The first 5, "nearest to the pin" will receive the book by post with compliments, Carter Capner Law.

appear ready for a much longer stay.

Heinz Strecker is Carter Capner's Digital Communications Director and newspaper artist.



Count-down on for re-brand launch

Delays in the development of the Carter Capner's website 4.0 have pushed back our re-brand launch.

To maintain accountabil-



ity on the part of the developers to us and from us to our clients, we have installed a countdown clock on the current homepage.

The new stationery will be co-launched with the website on 9 June with the updated signage and shopfronts at our Princess Alexandra Hospital and Brisbane CBD locations being unveiled as close as possible to that date.



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Developer defeats default lawsuit

“Hardship” claimed

A buyer who managed to get a development site under contract with a 12 month settlement, secured only by a “small deposit”, has defended a specific performance lawsuit on the basis “there was no way he could raise \$1.2 million purchase price.”

The buyer signed up the site in September 2012 and obtained a development approval for a 54 room hotel.

When the settlement date came and went 12 months later, sellers John and Alison Evans demanded performance.

After the buyers failed to complete on any of the several further opportunities given to them to do so, they filed proceedings in Brisbane’s Supreme Court.

Funds “expected to materialise from other develop-

ment projects have not become available,” Scott swore. His company had no assets and he was in the same position but with 5 children to support.

He also gave testimony that he had tried to resell the land and to raise funds by prospectus, both of which proved unsuccessful.

Justice Peter Lyons referred to similar rulings where “if there was no source from which the purchaser could reasonably obtain the funds necessary to settle”, specific performance should be refused.

It noted similar outcomes when a specific performance order would “cause disproportionate hardship so as to give rise to injustice.”

In this instance, the court refused summary judgement for specific performance and the matter will eventually go to trial when at the very least - subject to any further defences being raised - the seller is likely to recover an order for damages arising from the purchaser’s failure to complete.



No hardship here: Ivanka Trump is the VP of real estate development and acquisitions in her father’s company.

Monthly cycling giveaway

To celebrate Carter Capner Law’s 70th anniversary and the launch of its new colours, CCL is giving away two GBP £20.00 and one GBP £50.00 Wiggle gift voucher every month to members of the Strava “CCL Cycling” club as follows. Entrants must:

1. Be a member of the “CCL Cycling” club on Strava; and
2. Like us on facebook.com/carcaplaw; and
3. Subscribe to youtube.com/user/CarterCapnerLaw; and
4. Join Strava’s Monthly Training Series (“MTS”) Challenge for the relevant month; and
5. Cycle at least 200km in Queensland for the relevant MTS Challenge as a CCL Cycling member.

Each month, starting May 2014, each entrant who satisfies the above criteria, will go into the draw to win one of two Wiggle gift vouchers (valid for 12 months) valued at GBP £20.00.

In addition, the entrant who satisfies the above criteria (1 to 5) and who also cycles the most kms for the relevant Strava MTS Challenge, will win a Wiggle gift voucher (valid for 12 months) valued at GBP £50.00.

At the conclusion of each month, winners will be contacted on Strava via a message from the club’s administrator informing them of the prize so that delivery can be arranged by email. Full T&C on club message board.

Enjoy your cycling!



\$100 REFER A FRIEND PROMOTION.

PLEASE RETURN by fax: (07) 3221 6058, by mail: Carter Capner Law, GPO Box 1860, Brisbane QLD 4001, by email: mailbox@cartercapner.com.au or complete online** www.cartercapner.com.au/rewards/refer/

Any referral of legal matters to CCL by an eligible entrant where the referred person and CCL sign an unconditional client agreement during the promotion period, is an “eligible referral”, except: Clients or matters referred but not accepted by CCL; referrals of existing clients or potential clients previously referred; if referrer’s identity is not specified at or before time of person’s enquiry; if referral’s not acknowledged by authorized CCL personnel at or before time of enquiry or referral; referral is for a personal injury claim where payment or reward prohibited by law.

Not valid in association with any other CCL promotion or discount offered to referred person. See online at cartercapner.com.au/makeanenquiry/referral/index.html for full terms and conditions.

WE’VE JUST PUT A VALUE ON FRIENDSHIP.

YOUR DETAILS

Title: Mr / Mrs / Ms / Miss / Other:

First Name:

Family Name:

Your CCL 6-char ref:
(if applicable)

YOUR FRIEND’S DETAILS

Full Name:

Postal Address:

POSTCODE:

Daytime Phone:

Email:

Please give brief details of your friend’s legal query:

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WHERE EXPERIENCE COUNTS

The tourist's A-Z guide

Queensland's laws & legal traps



■ ABN

This is an 11 digit identifier that is produced by federal revenue authorities to specify the taxation status of persons and organisations carrying on a business. Subject to visa conditions, a person can apply to the Australian Taxation Office (ATO) for an ABN. Thereafter the ATO will monitor the timely filing of the business's annual tax returns.

■ Civil rights

Australia has no constitutional instrument like a Bill of Rights. "Freedom of Speech" is a judicial construct said to arise "impliedly." There are no guarantees of media freedom or freedom of assembly. Persons are able

to speak their mind, subject to laws of "sedition" and "antirrorism" introduced during the "war on terror." The giving of "support" to Al Qaeda and even the political organisations of Hezbollah and Hamas (as well as dozens of other proscribed groups) is a serious crime.

■ Consumer compensation

Australian law protects consumers against "misrepresentation" and "misleading and deceptive" conduct by businesses. Goods must generally be fit for the purpose for which they were purchased and retailers and manufacturers will be liable to the consumer for compensation if they are not. Retailers and

manufacturers are also responsible for ensuring the availability of spare parts. Consumer rights can generally be enforced in a court with a lawsuit for compensation.

■ Courts

Local, State and Federal courts have jurisdiction to determine disputes between persons or between a person and an organisation. There are also a number of tribunals that can determine disputes. By far the greatest proportion of all matters that become before courts (criminal, civil and administrative) are cases against or by government or related bodies.



■ Discrimination

Discrimination in most commercial and government activities on the grounds of race, sex, sexual preference, religion and age (and some other grounds) is prohibited by state and federal law. Compensation is available for proven acts of prohibited discrimination. Racial prejudicial acts are frequently reported against Indigenous Australians and people of non-caucasian ethnicity. The politicisation of Australia's refugee policy has generated additional medium-level intolerance to peoples of middle-eastern and south-asian ethnicity.

■ Employment

Work conditions are subject to state and/or federal laws and minimum conditions as to wages, paid leave and some entitlements. Casual employees have no holiday leave entitlements. Others are entitled to 4 weeks/year paid holidays. Paid leave also applies for illness, and bereavement. Employers must pay workers compensation insurance and superannuation benefits, except for "contractors" employed under an ABN. The Queensland Department of industrial relations will investigate non-payment of wages. Federal law restricts employment for visitors. Consult the terms of your visa.

■ Gambling

Gambling is permitted at state licensed venues and is strictly regulated. Licensees are permitted to adjust odds for wagers and gambling machines so that they always favour themselves. The placing of wagers with unlicensed persons is an offence. The holding of even small private gambling events at home is also illegal but this law is rarely enforced.

■ Hostels

Hostels must be registered, accredited and maintained in a condition so as not to create a fire or health hazard. Occupants may use rooms only for residential purposes; not for any illegal purpose; not interfere with the peace, comfort and privacy of other residents in their rooms or in



common areas. Animals are not to be kept without permission and occupants must not intentionally or recklessly damage any property at or on the premises.
your visa.

continued next month

French dreams cut short

They came seeking adventure but did a moment's inattention end their hopes?

Jeremy Landru, 25, and 3 friends packed their belongings into a station wagon and left Stanthorpe to travel the New England Highway in search of farm work.

Just 10km into their journey on January 7 a month after arriving in Australia, one was dead, two were critically injured and Jeremy was facing a criminal charge.

Police say early investigations indicate the car was travelling at only 50km/h when it turned into the path of an oncoming 6.8-tonne truck at Glen Aplin.

The right rear passenger side of the car was obliterated, killing a 24-yr-old passenger, hurled 30m from the vehicle.

"Devastation-wise it's right up there with the worst

I've seen," said Sen-Sgt Phill Percy.

"They were looking for a farm to work at ... they've gone 'look at this place' ...and then bang. When I turned up there I just thought: What another waste of life."

Communicating with the two surviving passengers, aged 26 and 29 was hampered by their injuries and lack of



English language proficiency.

The police investigation will consider the circumstances under which the men bought the car, which had South Australian plates.

Sen-Sgt Percy said young backpackers often traded cars and had difficulty adjusting to Australian roads.

"About half of our ac-

cidents here would involve backpackers, which is quite high."

Landru has been charged with dangerous operation of a motor vehicle causing death. He was granted bail from Warwick watchhouse and is staying with a community group as part of bail conditions, which included

surrendering his passport.

In March, Stanthorpe Magistrate Graham Lee heard Landru's legal aid counsel note that extensive police tests found no alcohol involvement. The matter will proceed to hearing later in 2014.



“Overseas visitors can call for legal help 24/7”

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WHERE EXPERIENCE COUNTS

Flipper's \$95k re-sale profit slashed

Gross disparity of price to value

A buyer who took for granted a seller's statement that his property was worth "\$250,000 any day of the week" has convinced a court to reduce the sale price by \$72k to reflect its actual value because the "gross disparity" between them.

In September 2010 John Gray and Narelle Steinwede moved from Cairns to purchase a dilapidated three-bedroom home at Swan Bay - that they discovered on a website - for \$145,000.

Gray answered a newspaper ad from Geoff Latter - an out of work local - offering handyman services and hired him to renovate the cottage between Newcastle and Port Macquarie.

A rapport developed between them and when Latter's rental in nearby Raymond Terrace expired, the idea was floated that he and his partner move in and purchase the Swan Bay property under rent-to-buy vendor finance terms for two years with payments at \$300/week.

Gray said he had wanted \$250k but "would sell to them the \$240,000."

An enquiry by Latter's partner, Sonia Perkins, as to whether they would accept \$220k, was rebuffed with Steinwede "reiterating the asking price of \$240,000."

No discussion was had as to whether any portion of the \$300/week - the maximum the buyers could afford - would be attributed to interest rather than principal.

It was agreed however that "the loan will be set up just as a bank would. We will need to enter into a mortgage."

Perkins asked, whether in such a case, a valuation would be obtained to which Steinwede replied "no, we know what the property is worth."

The court found that she may not have known what the property was worth but did know that it was "not worth \$240k."

Contracts prepared by a solicitor were entered into in November 2010 as was a mortgage specifying each \$300 payment would comprise \$150 in interest and \$150 in principal.

That was the first time that the buyers realised that the outstanding principal they would have to come up with after two years would be as high as \$218,000.

Settlement occurred in January 2011. Come January 2013, they couldn't raise a loan to pay out the vendor financed principal and the sellers sued.

The NSW Supreme Court ruled however that under that state's Contract Review Act, the contract was "unjust" because of the "gross disparity between price and value" regardless of the absence of reliance on the value statement.

In such circumstances the buyers argued, the court should order the purchase price be reduced to \$167.5k, the value on sale date, established by expert evidence.

"The buyers were, on one view, too polite and too trusting and on another view, insufficiently impertinent to interrogate the sellers" over the price or what they had paid for it.

On another view they were perhaps even careless.

Regardless, "the purpose of the legislation is not restricted to the protection of the careful or the astute", so ruled Judge Adamson.

The court accepted the buyers' contentions and ordered that the amount to be repaid under the mortgage should be reduced.



Locations for the 1990s Gold Coast filming of "Flipper" included Sea World, Ephraim Island, Runaway Bay and on set at Warner Bros. Movie World



Swan Bay near Port Stephens, north of Newcastle

Aircraft Crash Log

29 April 2014. BAe-146, Perth, Cobham Aviation. Domestic passenger flight.



The four engine jet carrying 90 FIFO workers to Barrow Island 50 km off the Pilbara coast of Western Australia, was climbing after take-off from Perth at 10.45am when a fire occurred in engine No.2 on the inner port side. Passengers reported seeing the flames ignite from spilling fuel. The crew declared an emergency, shut off fuel, shut down the engine and extinguished the fire. Ground observers reported seeing flames extending 10m - 20m out of the engine. It safely returned to for landing on runway 21 at 10.53am and disembarked the passengers.

9 April 2014. Quest Kodiak 100, Doyo Baru. Private charter

On climbing after take-off from Doyo Baru in northern Papua (Indonesia) to a height of about 4m, the left wing tip of the turboprop single engine aircraft hit the edge of a bridge located at the end of the runway and crashed onto a highway. Two passengers died and five were injured. Two passing motorcyclists were also injured. The aircraft was destroyed. The failed takeoff was likely due to inadequate power or engine failure.



1 April 2014. Airbus A321, Munich. Lufthansa. International passenger flight

After departure from Munich, Germany, a male passenger threatened a flight attendant with a razor blade and dragged her into a toilet. He shouted demands in Albanian but

was not understood. Other attendants came to her assistance. The aircraft diverted from the planned route to Budapest, returned for a routine landing at Munich and all passengers and crew deplaned. The hijacker, a 28-year old Kosovo national, was persuaded by police to surrender.

22 March 2014. Socata TBM-700, Montrose. Private charter

A high performance 7 seat single engine aircraft en route from Gadsden, Alabama crashed into Lake Ridgway about 25 miles from its destination at Montrose Airport in Colorado. Guests attending a wedding on the lakeshore saw the plane drop out of the clouds and plunge into the water in a flat spin. The turboprop aircraft appeared to conduct several orbits around the lake before the accident and was several miles off its planned route. The bodies of the pilot and four passengers were recovered by a specialized dive team, 60' below the lake surface.



17 March 2014. Boeing 737, Berlin. El Al Airlines. International passenger flight

As the aircraft was climbing away from Schoenefeld airfield en route to Tel Aviv, an emergency was declared as bird strikes were recorded in both engines. The aircraft was vectored for a return to the field and the right hand engine was shut down on approach. It landed safely on runway 25R about 30 minutes after departure. Six birds of the flock hit the aircraft damaging the engine which was required to be replaced, nose cone, leading edge of right hand wing and a pitot tube that created an additional hazard due to unreliable airspeed indications.

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Editorial

Freedom of speech or just bunkum?

Federal attorney general George Brandis has summoned the virtue of freedom of expression to his side of the debate over the repeal of a federal law that saw a newspaper columnist sued for inaccurately claiming "fair-skinned" indigenous Australians abused their position by claiming aboriginal welfare benefits.

"Never again in Australia will we have a situation in which a person may be taken to court for expressing a political opinion," Senator Brandis says. "Political censorship must go, people have the right to be bigoted".

He was talking of section 18C of the Racial Discrimination Act that allows

a lawsuit if a person is offended, insulted, humiliated or intimidated on the basis of their racial or ethnic origin.

Brandis' antidote to the perceived severity of the law is - in the name of speech freedom - to widen the defence to a suit for racial vilification from the current "if made in reasonably and in good faith" to "if made in a discussion of any political, social, cultural, religious, artistic, academic or scientific matter".

To some, the coalition's move is a play to its conservative constituency, incensed by the muzzling of News Corp columnist, Andrew Bolt's, right of centre views. Those advocating against the change, also claim its sym-

bolism gives racial bigotry "a green light".

Anti-censorship civil libertarians have been swept up by the speech freedom rhetoric and flocked to the government's side. They correctly point out that the new vilification defence is wider and more readily ascertainable.

But will the Brandis changes mean people really have the right to say anything "that other people would find insulting, offensive or bigoted" as he contends?

While the law change would make Bolt's comments lawful, they would not for example, protect the equally controversial depiction by ABC's Chaser programme of another News Corp journalist - and vocal ABC critic - Chris Kenny, having sex with a dog.

In that case, the party of Brandis takes a very different view. Rather than touting freedom of speech, Prime Minister Abbott has urged the ABC to throw in the towel to Kenny's NSW Supreme Court defamation suit.

The obvious inconsistency demonstrates that at best, the government is tentative in its libertarian foray.

The worst case is it merely wishes to redress the Bolt insult and has no intention of delivering a brand of freedom of speech that puts the state beyond having any

censorship power whatsoever, as is the case for example, in the United States.

There, the Chaser caricature would always be permissible, courtesy of Larry Flynt's 1983 Supreme Court victory that won him the right to parody conservative evangelist Jerry Falwell having sex with his mother in an out-house.

While in Australia it is an offence to even insinuate association with cricketer Don Bradman, the US Supreme Court recently struck down a federal law - in the name of free speech - that made it a crime to lie about having been awarded military medals. In June it will likely even rule on the same grounds, against a state law that criminalises making false statements about election candidates.

What is regarded here as "sedition" or "giving support to" a terrorist organisation, is considered undesirable but nevertheless permissible in the USA. One can, with impunity, call for the armed overthrow of government or openly speak about how good a job Al-Qaeda is doing in Afghanistan. A US government may only curb violent speech if it is likely to incite, imminent lawless action.

The most powerful antidote to offensive speech is, according to US founding father and architect of



Hustler publisher and speech freedom pioneer, Larry Flynt

"freedom of the press", Thomas Jefferson - more free speech. Not a tinkering with the extent of government regulation of discourse.

Naturally this frequently results in, what are undesirable (Klu Klux Klan), distasteful (Hustler magazine) and even lunatic (Westboro Baptist - "Thank God for dead soldiers") sproutings.

That US courts have been so determined never to dilute the freedom, is because they recognize the extraordinary power and energy that true freedom of expression imparts to the nation.

The Attorney General is asking Australians to accept the undesirable and distasteful as a by-product of free speech, but only in a fraction of daily discourse.

Do George Brandis et al, really have what it takes

to deliver true freedom of speech? Dare they endow the nation with newfound vitality? Will their constituency allow them to be so audacious?

Although Australians are bold enough to accept the undesirable and distasteful across all channels of communication, the worst case scenario is odds on, the most likely.

Unless of course George Brandis is able to transform himself into a modern day Thomas Jefferson.

Until then, one could thus be forgiven for judging the virtuous argument he summonses to support the change to the Bolt law, as just plain bunkum.

- Peter Carter



Plenty to say, Attorney General George Brandis



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“Stuff the Banks” ugly house scheme

Homes for \$700!

Brother and sister wheeler dealers operated a “rent to buy” scheme which matched sellers attracted by “no agent’s commission” to buyers attracted by vendor finance.

They devised the enterprise around taking options-to-buy from their sellers to create sales stock; and offered the stock to would-be buyers on an instalment basis.

Buyers’ instalments during the 12 month or more option period comprised principal and interest. If the option expired or was terminated, all payments were forfeited. When a buyer exercised an option, they had to take out a conventional



Inventive schemes to lure desperate home sellers are a worldwide phenomenon. Leonardo Di Caprio in “Wolf of Wall Street”.

loan to pay the balance due to the marketers and their sellers. In the meantime they occupied the home as tenant.

The pair, Bryan Artawijaya Susilo and his sister Patricia Mirawati Susilo, paid an upfront fee and instalments credited against the purchase price. They also secured a right to renew the

option for further periods in their discretion.

By way of example, on one project they paid their sellers an option fee of \$2100 per month with a right of immediate occupation. To their buyers, they charged an upfront option fee of \$1000 and monthly instalments of \$5,600 of

which about \$5 was allocated to reduction in the purchase price and \$600 to rent.

The businesses operated in Perth under the names \$700 houses.com and sell-houseseasy.com but neither of the innovative siblings held a real estate licence.

A typical add placed to find sellers with homes to

place under option ran like this:

We’re part of a group of real estate investors who buy houses and units directly from you. We buy: Expired Listings, Vacant Houses, Ugly/Smelly Houses, Almost Finished Houses, Debt Ridden Houses \ We Buy Houses Australia Wide - Any Price, Any Condition! If you don’t want it, we do! We can buy your house fast. Agents can’t. We do not charge any commissions or fees to buy your house.

To find buyers, the ad ran: *WA \$558 per week. OWN MY HOME! Must Sell. ‘STUFF THE BANKS! Move in today. No Banks Needed. \$558 p.wk + outgoings.*

Many of the representations were exaggerated and inflated: bank finance was ultimately needed; they did earn commissions or similar; they did not buy homes;

for the sellers the transaction was anything but fast; and they were not part of a group of investors.

There was no suggestion of an outright scam of either buyers or sellers - the amounts due to sellers appear to have been paid - but the exorbitant advertising claims amounted to misleading and deceptive conduct for which the WA Department of Consumer Affairs took exception.

While there were many buyers and sellers apparently enticed by the concept; not many were enamoured by the detail and hence the numerous complaints.

The business recorded only a modest \$20,000 profit on their two projects.

Facing maximum penalties of \$660k, the court imposed fines of \$17,500 on Patricia and \$12,000 on Bryan.

“Asset lending” unconscionable

Mark Pearson made urgent application for a “stay” to prevent Pioneer Mortgages executing a warrant to recover possession of his unit at 1/296 the Esplanade Miami over which it held security.

Pioneer obtained judgment in October 2013 against Pearson “by default”, ie by reason of Pearson not filing a defence to its claim within the specified period.

Pearson who claimed that Pioneer’s proceedings were served at an “ineffective” PO Box address - although it was indeed his and one in respect of

which the lender had obtained an order of substituted service - applied to have the default judgment set aside in December.

He contended Pioneer’s loan was “unconscionable” because the transaction taken out to pay out the NAB in July 2008, was approved on the basis of income figures that had been “fudged” by his mortgage broker. He had, he claimed, signed a partly completed application that the broker amended without his knowledge and consent to “grossly overstate his income.”

He had gone into arrears as

from January 2011 and made no payments since. After repossession by Pioneer, he “interfered with premises by changing locks and challenging tenants.”

Pearson asserted that because “he assumed responsibility for a debt which he could not service”, Pioneer’s conduct amounted to “asset lending.”

The District Court in December ruled against all of his arguments. It refused to set aside the default judgment because “there were no real prospects of any successful defence to the mortgagee’s claim.”

Had the deal been a consumer loan to which the Queensland consumer credit code was applicable - rather than for business or investment purposes - Pearson may have had been entitled to hearing to determine whether or not the transaction was “unjust.”

The April court thought in relation to the appeal “its lack of merit is palpable.” It refused to grant the “stay” to prevent recovery of possession of the Miami unit, pending the appeal’s finalization in coming months.



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WHERE EXPERIENCE COUNTS

China syndrome heating market



Auction clearance rates at a high

Overseas residential real estate buyers have been so active in major cities, but the scale of their investments risks affecting local first home buyers entering the market, former Macquarie Bank boss, Bill Moss, has warned.

This is the unwelcome feature reported by Reserve Bank governor, Glenn Stevens in his March parliamentary briefing on the recovering housing market.

The prior three months had seen an increase of 27% in applications for dwelling approvals, over those one for the same period a year earlier. It was also the highest three-month total ever recorded in the 30-year history of reporting.

But the percentage of first home buyers is at an all-time low. In Melbourne and Sydney first home buyers traditionally represent 20% of buyers, now it is about 6%.

Young people starting out, have never had to pay and borrow more to enter the market, than they are required now to do. Overseas buyers are holding up prices.

According to Stevens "the growth of the Chinese middle class has been so explosive, and on such a scale, that it has the capacity to affect Australia in ways that will need to be controlled if some trends continue to accelerate. Notably home buying."

Online real estate broker Juwai.com - which connects buyers with overseas properties - estimates there are 63 million in the P.R.C. who can afford to buy property in Australia, and the most popular home price bracket is \$550,000 to \$750,000.

On the other hand, according to residential property pundit Michael Matusik, "Australian investors in the main, need to limit their expenditure

to under \$450,000 for resale or second-hand stock and to under \$550,000 for newly built or off-plan investment stock."

Both local and overseas investors are therefore mopping up housing stock while owner occupier buyers and especially first home buyers, are waiting on the sidelines.

Bill Moss has called for a foreign investor stamp duty surcharge of 5% "in order to cool the property market."

He cites Vancouver in Canada as a location where property prices had soared due to overseas investment.

Hong Kong has proposed an extra 15% stamp duty surcharge on apartment purchases by non-permanent residents.

Matusik agrees that some measures must be taken "if we are going to keep the Australian market alive for new first home buyers."

Pre GFC Hilton investor cops \$278k re-sale bill

Overseas investors who contracted in May 2008 to purchase a luxury off-the-plan Gold Coast condominium, but failed to settle, must pay the developer's re-sale loss representing 30% of its value.

Hai Chang and Ge Wen Wu - from the Peoples' Republic of China - signed up for the condo on level 12 of Hilton Surfers Paradise's Orchid Tower at a price of \$935,000

They paid a 10% deposit on signing, at a time when the full wrath of the GFC was yet to reveal itself.

When settlement was called for in September 2011 and then extended until October, the buyers failed turn up with a cheque.

Developer Brookfield Multiplex - who lender ANZ recruited to complete the project after the demise of its originator, Raptis group - terminated the contract on 1 November 2011 and forfeited the deposit.

The unit was resold in September 2012 at \$675k, settling in December 2012. Brookfield sued for its loss.

The Southport District Court scheduled the case

for "additional consideration" because of "the marked difference in the respective sale prices" but ultimately accepted that the re-sale was a bone fide arm's length transaction and the \$278k loss resulted from "a function of market forces in play between the respective dates of sale."

Taking into account the \$93k deposit already held, the court ordered the buyers - who were unrepresented at the hearing - to pay an additional \$183k including commission and marketing expenses.

According to on-line commentator, Property Observer, "the Hilton development will go down in

history as one of the worst loss-making Gold Coast high rises, with virtually every initial off-the-plan buyer losing their money."

Some of the worst losses, it reports, were at the prestige end. Unit 2205 originally sold in June 2012 for \$2.4 million. It then sold six months later for \$1.7 million - a loss of \$760k.

Even investors who bought as recently as 2012 also lost badly. For example, its website states, unit 3603 sold in June 2012 for \$1.1 million, and sold four months later for a \$121k loss.



Surfers Paradise - a popular investment destination for investors from China

Fatal traffic incident, Beaudesert, April 17

A 67 yr-old woman was struck by a station wagon while crossing William Street at around 9:50am and died en route to Beaudesert hospital. The driver and two passengers of the vehicle did not sustain any injuries.

Traffic Crash, Tewantin, April 17

A 47 yr-old male cyclist was airlifted to Nambour General Hospital after colliding with a truck at the intersection of Corroy-Noosa Road and Beckmans Road at around 7:45am having sustained significant injuries.

Serious traffic crash, Herber-ton, April 16

Two vehicles collided head on at Longlands Gap-Herberton Rd at Wondecla around 11:25am. One male driver was taken to Cairns Hospital with life threatening injuries. The female driver of the other car was taken to Atherton hospital with serious injuries.

Traffic crash, Mackay, April 10

17 people were injured after a bus rolled near the intersection of Eversleigh Rd at around 12:30am. The 54 yr-old male driver and 10 female passengers were taken to Mackay Hospital and a further six passengers were sent to Sarina Hospital. All were treated for non-life threatening injuries.

Serious traffic crash, Mareeba, April 10

Two utilities collided head on, on the Kennedy highway west of Tichum Creek shortly after 2pm. The female front passengers of both utilities suffered serious injuries and were airlifted to Cairns hospital. The remaining occupants were all treated at the scene.

Serious traffic crash, Harlin, April 8

Around 6:45pm a cattle truck crashed into a sedan along the Brisbane Valley Highway. A 16 yr-old girl sustained serious injuries while a 51 yr-old woman suffered minor injuries. Both were taken to the RBH for treatment. The truck driver sustained minor injuries.

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Lawyer defends \$250k negligence claim

Advice on tricky termination issues "not good enough"?

The complex settlement scenario faced by his developer client demanded the highest order of skill and experience. But a Supreme Court has held a solicitor negligent for failing to distil from the comprehensive advice already given, the most favourable client option and clearly recommending that such a course be followed.

More than 12 years ago, Dean and Paulette Lucantonio paid a 10% deposit when they signed up for the buy of a council approved redevelopment site in a Sydney waterfront suburb for \$2.2 million.

A special condition in the November 2001 contract specified that the buyer must not raise any objection to the terms of the annexed development approval and site plans that incorporated architecturally innovative elements.

Shortly after signing, the buyer obtained a design opinion that the number of car spaces required by council could only be provided if a basement car park was added, raising doubts as to

the feasibility of the project and availability of finance.

The buyer's solicitor, Otto Stichter, advised Dean of his various options: seeking an agreed reduction in the purchase price; settling and claiming damages later; or promptly going off to court for specific performance and/or damages for misleading

and deceptive conduct.

The course chosen was the third of the foregoing: proceedings were filed in December for specific performance and damages for misleading and deceptive conduct.

When settlement did not occur as specified in the contract on 16 January, the seller's solicitors gave a Notice to Complete, calling for settlement on 6 February.

The buyer did not tender and on 7 February, the seller, Jaime Kleinert, terminated, forfeited the deposit and later re-sold at the same price.

They sued the solicitor for the lost deposit of \$220k plus

other expenses, for not giving proper advice.

The New South Wales Court of Appeal dismissed the Lucantonios' contentions. Even if clear "safest option" advice was given earlier, the buyers - they ruled - would not have followed it. Dean had never seriously contemplated that course of action - requiring as it did, an immediate settlement - but rather, was insistent on completion at a reduced price.

Stichter escaped liability and the Lucantonios are at the unfortunate end to their years of torment.



Is this the face of a solicitor hardened by decades of legal practice?

Hobby Drones in first near misses with commercial aircraft



A web-cam drone - being flown for a mine site aerial survey - came within 100m of colliding with a \$200k agricultural aircraft in Australia's first "near miss" involving an Unmanned Aerial Vehicle (UAV).

In a recent bulletin published yesterday, the Australian Transport Safety Bureau (ATSB) reported that in September 2013 an Ayres S2R crop duster had no visual identification of a remotely controlled drone "so small it can fit into a case the size of a carry-on bag"

and failed to establish radio communication with its operator.

The aircraft commenced aerial agricultural operations on a property about 37 km south-southwest of Horsham aerodrome in Western Victoria at about the same time the drone was launched by hand at the nearby Echo mineral sands mine site.

The UAV operator heard the crop duster operating about 1-1.5 km away and broadcast on the Area Frequency advising his intention to conduct

operations but received no response.

After dumping his first load of fertilizer, the contractor pilot was relayed a message via the farm's owner there was an 'aircraft' conducting photography over the mine.

The pilot did not realize the aircraft he needed to keep a look-out for, was a drone - with a wingspan of just 3' - nor that it would be flying at the same low altitude.

Becoming airborne for the next dump, the Ayres almost flew into the path of the UAV and came within about 100m horizontally.

The pilot reported he never saw the drone.

The aerial survey drone deployed over the Echo mine is sold by Parrot senseFly. Parrot market a range of hobby drones popular in Australia, retailing from as little as \$400.

It is not available in the USA on the same basis, because FAA regulatory limitations exclude it there.

Although an Australian first, there have been other

near misses.

In March 2014, a Westpac rescue helicopter was forced to take evasive action to avoid an unidentified UAV when returning to its base from Newcastle Hospital.

In March 2013, an Alitalia Boeing 777 arriving from Rome at JFK airport in New York was making its final approach when the pilot saw an unidentified UAV within 200ft of the cockpit at an altitude of 1,750', 3 miles out from the runway threshold.

The drone was close enough for the Italian pilot to be able to report that it was "a completely black quadcopter with a 3' wingspan."

Legal liability for a resulting crash would depend on various factors. It shows though that even a small UAV - and its operator - could potentially be liable for hundreds of thousands of dollars in compensation for any such catastrophe, or many millions in a case like that of the Alitalia 777 in NYC.

Recent Results

from Carter Capner Law

Construction tragedy



35-yr-old David was deployed as a labourer on a remote North Queensland project. In October 2013, he was assisting a crane operator get a transmission pylon into position. While the dogman was dealing with another issue, he entered the foundation area to push the suspended pylon section across. He suddenly slipped as the section lowered onto his torso crushing his body. Despite the best efforts of medical crews, David died at the scene. His wife and two children needed help to access superannuation and insurance death benefits and for representation at a future inquest. A superannuation and death benefit payment of \$350k was realized.

\$700k flood claim

West End residents lodged a claim with the Financial Ombudsman's Service for refusal by Westpac insurance to extend cover to their home that was badly damaged in the January 2011 floods and their furniture and effects that were destroyed. Michael and Julie's total damages bill was close to \$700k. The damage had come from stormwater backflow but Westpac claimed its flood exclusion applied. The FOS upheld the insurer's decision but the survey it conducted produced useful evidence to support a claim against their insurance broker for recommending an unsuitable insurance product.



Sibling's estate dispute

Disagreeing siblings, who received a western Queensland property

through their mother's estate, have asked the Supreme Court to adjudicate a debt reconciliation between them and to have the property sold up. One had occupied the farmhouse on the \$2.5 million wheat and cattle property with his family and managed the agistment of cattle. It became apparent that the business was not being properly attended to so the other sibling will ask the court to force a sale even though the third does not agree.

\$1 mil super dispute

Days before Shem died from a respiratory illness in Mooloolaba 2010, his girlfriend of 3 months purchased a will kit from the local newsagent. He completed and signed it but because of his state of health, doubts were raised as to his mental capacity. With little value in his estate, his two children, the girlfriend and his former wife, all turned to a \$1 million superannuation and death benefit to be divided. The Superannuation Complaints Tribunal ordered the proceeds be divided pending the proving of the newsagency will or an earlier will made 10 years earlier.



Daughter to get super

The tragic premature death of a Brisbane IT manager has resulted in squabbling between the remaining family. The 40 year old died unexpectedly, leaving behind a grieving teenage daughter, ex-wife and parents. Without a will, the parents applied to the court to distribute the assets of the estate. This was challenged by the ex-wife, who sought the rights to administer the estate on behalf of the deceased's son. The parties agree that the superannuation benefit of about \$100k should be paid to the deceased's daughter.



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▶ **Johnny Depp** and fiancée **Amber Heard** were seen stepping out in the Big Apple while showing off their extra-large headwear. Over Again. According to some reports, Heard, 27, is expecting her first child with the 50-year-old actor. Heard's last relationship was with female Hawaiian photographer Tasya van Ree.



▶ **Keira Knightley** went for the understated, in her 2013 nuptials by dusting off a pale pink strapless tulle confection from her closet for her secret South-of-France ceremony. "I'd worn the dress lots. I liked not making a big deal about it," she told The Telegraph. The tiny town hall ceremony (11 guests) and cozy reception (50 guests) stamped the affair as down-to-absolute-earth.



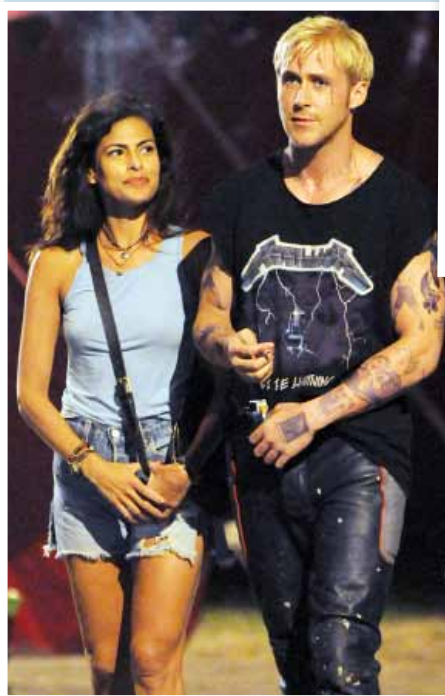
▶ **Margot Robbie** is living it up in-between her hectic filming schedule, this time in the new location of tropical Nicaragua. The 23-year-old continues to wow her Instagram followers by with snaps of herself soaking up the sun in the pictur-

esque central American jungle. Robbie will soon begin filming for her role as Tarzan's love interest Jane in the new 3D production to be released in July 2016.



▶ **Johnny Depp** and **Mia Wasikowska** are reteaming for Disney's Alice in Wonderland 2, which will hit theatres in May 2016. Disney announced the news that the

second instalment will be directed by James Bobin. The first Alice was a runaway hit at the global box office, grossing \$1.02 billion in 2010.



▶ Are **Ryan Gosling** and **Eva Mendes** secretly engaged? With Gosling's *Lost River* (formerly *How to Catch a Monster*) heading to Cannes soon, the couple's secret engagement could come to light. The rumour is a wild departure from the notion that Gosling was reconnecting with ex-girlfriend and co-star, **Rachel McAdams**.



Attention "*Summer Heights High*" devotees: another one of your top three favourite characters from **Chris Lilley's** legendary comedy series is getting their own spinoff. Rebellious Australian-Tongan teen **Jonah Takalua** will finally star in his own show.

Jonah will reveal island life as a bored teenage delinquent. His Poly-posse will continue to spread his signature 'Dicktation' tags all over the school.



SPLENDOUR LINE-UP

The cast of 2014's Splendour in the Grass in Byron starting Friday, July 25, will headline Outkast and Lilly Allen

For a better Splendour, bear in mind these tips

- **Water, Aqua, H2O!**
This is the most important tip! Many camping festival rookies are so excited for their first weekend of festival bliss that they forget to drink water! Very

dangerous when mixed dancing, alcohol and sun. Drink at least 1 litre of water every 4 hours.

- **Sunscreen**
Bright sun or clouds: sunscreen is a safety and comfort must.
- **Comfortable shoes**
You will be on your feet for at least 13 hours during each day. Trendy footwear may seem cool for the first hour but by midnight you will wish you had worn something more practical.
- **Take a photo of your contact information**
If you plan on bringing a digital camera, snap a pic of your name and phone number. If someone finds your camera and peeks through your photos, they'll know who to contact.
- **Buy merchandise on the first day**

Merchandise tents turns into zoos every night as all the festival goers are heading for the exits. Waiting in a merch line for 2 hours only to learn that the hat you wanted was sold out, is no fun.

- **Decide a physical meeting spot**
And by meeting spot, we mean something unambiguous and unique. Think of a place that you will be able to find your way to in any state of sobriety.
- **Text affirmative statements**
Cell phone reception at camping festivals is usually spotty at best. So never text "where are you?" Instead, text an affirmative statement like "meet at the merch tent at 8:00pm"
- **Bring a positive attitude**
Everyone comes to festivals to see their favourite bands

and to have a good time. Don't bring eggy vibes and ruin other peoples good times. Don't block other people's view of the stage with a sign or your girlfriend on your shoulders. If you want to be up close for your favourite band, get there early!

- **It takes time to get from stage to stage**
If there's a band you really want to see, make sure you leave early to get there
- **Print out the set list** (bonus tip!) - Print out the set times before you arrive and highlight the artists you want to see. Making a plan is the best way to maximize your enjoyment.
- **Most of all - have fun!**

Borrower's penalty defence to hold out bank

Most mortgages contain a clause requiring immediate payment of all "moneys owing" should any default occur especially in relation to regular monthly instalments.

In a recent Queensland District Court decision concerning a 10 year loan over commercial property, the defaulting borrower - Melbourne solicitor Frank Di Giandomasso - contended that the acceleration clause extended only to the instalment arrears, rather than to the entire principal and interest.

The default clause simply provided "If you default under this agreement we may require that you repay all the money owing to us immediately."

Bank of Queensland contended that the amount due upon the instance of the default was the entire sum namely \$357,000 and took enforcement action under the mortgage including recovery of possession on that basis.

The court agreed. "The term 'money owing' very clearly means the total of the facility amount which has not been repaid."

As a second string to his bow, borrower Di Gi-

domasso contended that the accelerated payment default provision - requiring as it did payment of a sum higher than would have been the case had no default occurred - constituted an illegal penalty.

The court likewise dismissed that argument explaining that a creditor who allows a debt to be repaid over time may agree to ac-

cept a lesser sum if re-paid by a particular time. That does not mean that the acceleration of the over-time instalment in the event of default of an instalment, is a penalty.

"If a sum of money is payable by instalments and it is specified that in the event that an instalment is not paid punctually the whole sum shall immediate-

ly become payable", the acceleration of payment is not a penalty because the debt is a "present debt",

Judgement was entered against the borrower for arrears, interest and costs.

A Notice of Appeal has been filed.



Contested bank repossessions as a fallout from the GFC are at record levels in Australian courts

Easement obstruction costs dearly



Bowen Airport

Neal and Helen Smith operate a commercial and industrial crane hire business, BCH Lifting at 351 Bootooloo Road between the Bruce Highway and the Don River, south of the Bowen airport.

They faced an injunction lawsuit in the District Court in Townsville in January over their obligations under a right-of-way easement over a shared access entry on their land (lot 8) in favour of the neighbouring site at 353 (lot 9) owned by Kevin Norman.


Norman presented photographs depicting large BCH cranes and other vehicles parked on the easement denying or significantly restricting his ingress and egress.

The explanation for

the obstruction to Norman's entry by Neal Smith, owner of BCH - a 40 yr old family company - was "necessary work" on the physical access. He emphasized the blocking of the easement was temporary and for a "legitimate work purpose."


The court declined to grant the injunction sought, because an enforceable undertaking was offered as an assurance that the easement terms in Norman's favour, would be honoured.

The court made clear that an injunction would be granted if the undertaking was not provided or honoured and the Smiths were ordered to pay Norman's legal costs of the application.



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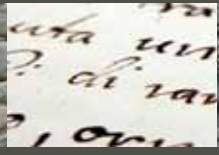



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“Overwhelmed” agent pays expenses from trust account

A real estate agent who made 38 personal payments from her trust account, including for her own business rent, claimed to have been “overwhelmed” by accounting requirements and that she was acting out of personal stress.

Christine Jury - who operated Sparkling Real Estate in Moura - secured the management of 48 rental homes within a few months of starting but ignored a staff member’s plea to get “professional help” when the trust ledger could not be reconciled.

The QCAT judgement records that expenses paid from the account include “magazine advertising, business rent, advertising, software fees, laptop purchase, printer ink, school fees, postage, phone account, doctor’s fees, real estate application fees, RP Data fees, and news-agent charges.”

The agent fully admitted to paying a total of \$27,006.51 from trust for business and personal expenses because of the absence of sufficient working capital for starting the business.

All funds were eventually repaid as was her intention all along. “I have broken the rules regarding use of the



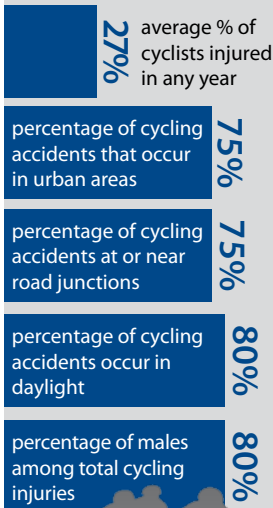
Overworked celebrity, Jennifer Lawrence

trust account but my intention was never fraudulent, only short sightedness,” she said in a statement to the QCAT tribunal.

The OFT view was “In short she treated the trust account as if it was her own bank account, never manifest any real intention to address the situation and places blame onto others for her own conduct.”

Ms Jury was banned from the real estate industry for 15 years and fined \$2,000.

By the numbers



Qld Payday Loan Rates 25% higher than US capped rate

Low income earners with debt commitments often resort to a ‘fringe’ lender offering a short term loan to meet rent or other expenses until their next pay cheque.

The loans are often for small amounts at high cost and for relatively short periods. Before the Queensland government implemented a ceiling rate of 48% p.a., inclusive of all interest, fees and charges, prevailing ‘payday loan’ rates ranged (on an annual basis) from 250% to over 1300%.

In the USA the highest annual rate for the same



service has recently been reported at 580% in the states of Idaho, South Dakota and Wisconsin.

Fifteen US states either ban payday loans or cap interest rates at 36%.

The researchers found that competition amongst lenders had little or no effect on prevailing rates.

Collapse in US home sales an omen for local market?

By comparison to Australia’s healthy real estate climate, the US homes sales market has dramatically crashed into a brick wall.

Mortgage lending to homeowners declined to the lowest level in 14 years in the first quarter of 2014, down 58% from the same period a year ago.

Commentators put the decline down to the end of the era that began in 2000, of generally falling interest rates. The average 30-year fixed-rate mortgage stood in May at 4.5% in April, up from 3.6% a year before.

A surge in prices also helped depress sales of new single-family homes by 14.5% in March, as compared to February and 13.3% from a year earlier.

The median price of a new home in the US in March was \$290,000, its highest level ever and a gain of 11.2% from February. The high during last decade’s housing boom was \$262,600, in March 2007.

This coincides with reports that April price growth in Australia’s capital cities has slowed to just 0.3%

Investors should always take a precautionary view of the effect of potential interest rate increases on demand and prices and how they can manage increased mortgage payments.



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MH370 families...

» from page 1

Vietnamese air traffic control was incomplete.

Sightings of the wreck have been reported in the Bay of Bengal, near Bali and in the

of 1999 which applies to MH-370 limits compensation coverage for cargo, baggage and personal effects to a fraction of their real value.

thorities has though, provided some practical relief to families.

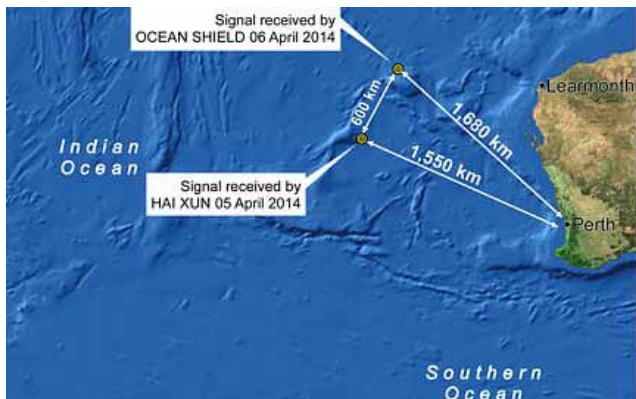
Australia, Malaysia and New Zealand could otherwise require a period of 7 years to elapse before a death presumption could be made.

Armed with the certificates, MH370 families can access bank accounts and call on insurance companies to pay out life policies to beneficiaries. But probate courts may have further requirements for distribution of assets given the certificates have issued on the presumption of death.

Another legal issue in the case of spouses killed in the same calamity, is the order in which they died. This often has major consequences particularly in "blended families" where each leaves their assets by Will to their own children.

When the black boxes are finally found, the full story can be told – one that will fill the world with even more fascination and no doubt pose even more compelling questions.

Peter Carter is an aviation lawyer and pilot with a command instrument rating.



Search areas in Australia's SAR zone

South China Sea – all adding up to what is a genuine enigma.

The costs of solving it – for just the first month - exceeded \$50 mil, more than that of the entire two year search for Air France's Airbus that spiralled into the Atlantic in 2009.

Airline insurance covers all manner of risks including search and rescue costs. So Australia can expect that a large part of its costs can be billed to MAS for payment by their insurer.

But that cover is not open-ended and given Prime Minister Abbott's pronouncement that Australia search is a "duty to the international community", Malaysia and MAS could justifiably stiff on the bill.

The tragedy presents other unique legal issues.

Does the Australian coordination of the SAR operation and the likely repatriation of wreckage and the black boxes to Perth, give Australian courts additional jurisdiction to deal with compensation claims?

The Montreal Convention

Do the missteps of Malaysian Authorities open up additional compensation rights for those affected?

The cargo for example, included valuable lithium ion batteries – which some speculate could have been the cause of an on-board fire – and exotic fruit destined for sale to up-scale Chinese restaurants.

With authorities now urging relatives to "return to the comfort of their homes", they are being prepared for a long wait.

The early issue of death certificates by Malaysian au-



MH370 flight path overflew Cocos Islands where Australia has a "listening station".

Landlord refused lease termination

Multiple arrears notices signals agent "not serious"

A Gold Coast agency that served eight rental arrears notices on its residential tenant, without a notice to leave has been held by a court to have "unintentionally signalled" that it was not serious about enforcing the terms of the tenancy agreement.

Luxury realtor, Shores Realty of Southport brought a lease termination suit in QCAT to end the tenancy because of recurrent fails on prompt payment of rent. The suit was dismissed because the tenant got payments up to date by the time of the QCAT hearing, prompting the first tribunal to dismiss

the agent's proceedings on the basis that the tribunal thought it could not evict in those circumstances.

Shores appealed, contending that the relevant date for determining if there were a breach entitling termination was the date of issue of the "Notice to Leave" not the hearing date.

The appeal member agreed. Regardless that the rent was up-to-date at the time of the hearing, breach as at the date of Notice would ordinarily be sufficient to justify termination.

However if, like Shores Realty, the lessor allows the breach behaviour to con-

tinue past one or two breach Notices, the "tenant may have a legitimate expectation that the lessor will conduct business this way and that the lessor will tolerate minor breaches."

In this instance, the tenant - although clearly in breach for a series of payment delays - the amount outstanding was large, the delay in payment was short.

By issuing eight notices to remedy breach, without a Notice to Leave, "Shores Realty was signalling to the tenant, perhaps unintentionally, that it was not serious about enforcing the terms of the tenancy agreement."

The tenant succeeded in resisting the lease termination, but will no doubt be mindful to ensure all future payments are made on the dot.



This agent found getting the keys back prejudiced by lack of follow through

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Dropbox link...

» from page 1



Electronic communication

While the recipient – a Brisbane lawyer – read the email relating to the supply of components for water treatment facilities at a LNG workers camp near Miles in Queensland's west, she didn't open the Dropbox links until about a week later.

The sender couldn't convince the court that the lawyer's receipt of the email alerting her to the linked documents meant that the linked documents were received at the same time.

Because Dropbox is a service "by which an electronic file is stored by a third party remotely so that any computer (with the relevant authority) can view the file," the link received was not the electronic version of the document and therefore receipt of the link was not the equivalent of receipt of the documents themselves.

Thus even though Drop-

box "is indisputably practical and convenient" for parties to convey and get access to electronic files, it does not amount to "sending" documents.

Not even Queensland's *Electronic Transactions Act* which facilitates the use of electronic communication by treating it the same as its written counterpart – provided the other party consents – could assist the sender's argument.

That's because the ETA, that came into law as long ago as 2001, specifically defines "electronic communication to be that of 'information in the form of data, text or images by guided or unguided electromagnetic energy'."

The only way such service would have been valid is if a) the sender could have proved the lawyer had actually opened the Dropbox links to 'receive' the items; or b) the parties had agreed in their original transaction documents that "receipt of a Dropbox link by email will be deemed to be receipt of the document accessible by such link and any document requiring personal service may also be served by such means."

Buyer wins \$320k for rent error in sale IM

An information memorandum prepared by Centro shopping centres for the sale of its CBD Launceston mall – together with documents made available in its "data room" – gave incorrect data on the turnover rent a prospective buyer could recover from the anchor tenant.

So claimed the buyer's owner in his company's \$700k compensation lawsuit, even though the rent discrepancy was apparent from a 2 page variation document discovered by titles office search that his solicitor failed to pass on.

The variation to Kmart's 12 year lease – entered into in December 2009 but not part of the documents handed over for due diligence – effected a change to the gross sales "breakeven" threshold for the tenant's obligation to pay 2% percentage rent.

The IM was erroneous in that it quoted a breakeven figure of \$21 million, when the correct figure calculated by the new formula specified in the lease variation, was \$24.3 million.

Following its "data room"



Small difference in rent formula means big loss in revenue

due diligence and its experts pouring over the figures and rent formulae (minus the altered "breakeven" formula in the unseen variation document), the buyer's Chris Burgess decided to proceed.

The sale settled uneventfully but when the variation and its consequences to revenue were discovered soon after, buyer Merost Pty Ltd immediately went for the seller.

Merost's case was that had it known the correct

breakeven, it – naturally enough – would not have paid the same price.

Centro was liable to it for misleading and deceptive conduct under the Australian Consumer Law, so it claimed, for the resulting \$700k loss of revenue for the balance of the lease term.

But Centro argued the variation was discoverable on the public register in the titles office and thus it was afforded a complete defence. Ignoring

such information was akin to recklessness, it argued.

The court found Centro principally liable for the loss in anticipated rental income but Burgess' company was nevertheless held partly at fault for its own misfortune to the order of 20%.

Damages were assessed at \$325k but with the 20% reduction, judgment was entered in February against Centro for \$260k.

Collingwood Park compo claims wiped out



This sink hole in Waihi New Zealand swallowed up whole houses in 2001

The compensation claims of 18 homeowners in Collingwood Park west of Brisbane arising out of the collapse of disused coal mine shafts deep beneath the surface of their suburban streets

in April 2008, came to an abrupt close in Brisbane's Supreme Court.

In December the court ruled that the State was liable for failing to impose adequate conditions in the mining

lease granted for the Westfalen No 3 mine in 1967.

Coal was hauled from the shafts from 1967 to 1972 by an extraction process that left pillars of the coal seam remaining between

the bored out "drives."

The mine was abandoned after the January 1974 floods when a wave of water rushed through with so much force that the velocity of air it pushed through the shafts destroyed buildings on the surface as it vented upward.

Queensland Housing Commission, as owner of most of the land in 1967, objected to the mining lease. But it was granted by the then Mines Minister, with the support of the Nicklin Coalition Cabinet.

The State had already paid for repairs to the homes damaged by the subsidence. The plaintiffs were suing for loss in value to their residences from the stigma that associated their locality with the sink hole event.

The court found that the coal pillars were weakened by water. Investigations also established that the operator had over-mined the drives by extracting more than the 60% of the coal seams as

permitted, causing the remaining pillars to be smaller than specified.

The mines department had failed to enforce the pillar requirement "despite having access to accurate mine plans which evidenced the non-compliance and performing monthly inspections."

But did the State owe a duty of care to the owners whose land values were allegedly affected by the 2008 sink hole event?

In this case, "yes," the department owed a duty to impose mining restrictions appropriate for safety of the community including surface owners and to monitor, supervise and enforce them.

Because mining "inspectors knew that pillar stability was dependent upon the size of the pillar and that a failure to supervise and enforce compliance with conditions gave rise to a foreseeable risk of subsidence of the surface

land."

But the court also ruled that a diminution in value caused by the sink hole "blight" was only shown in respect of those six properties directly adjacent to the 2008 subsidence event.

His Honour preferred Herron Todd White's Tom Gillespie – called for the defence – whose valuation evidence he thought was "cogent, reasonable and logical" and who applied "orthodox valuation principles with no hint of any preconceived" bias.

As a consequence, the court ruled that not only were there just six properties whose values had been affected, the impact on even them was only temporary "with any change in the value of the remaining properties being attributable to market forces from 2010 unrelated to the 2008 subsidence event."



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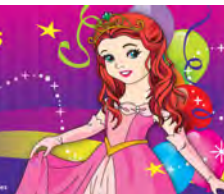
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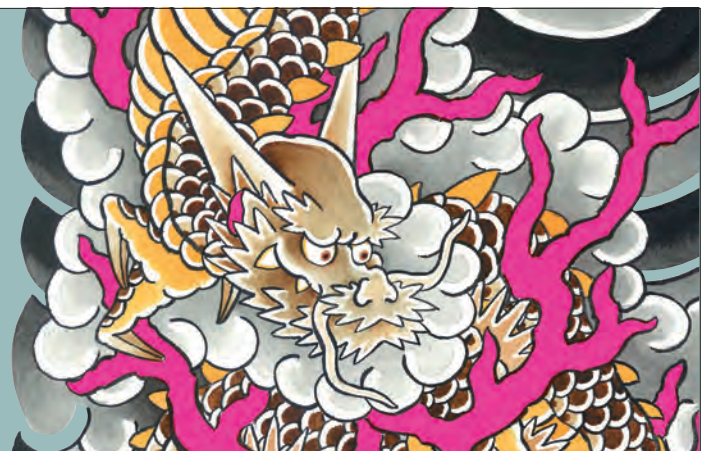
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