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## Giving a Gift that Works

Running down the stairs on Christmas morning nine-year-old Kevin's eyes are wide as he surveys the presents before him. Kevin's parents give him an "extra special" gift to open, sent from his grandfather who lives interstate. As he opens it, Kevin's excitement knows no bounds as he sees a brand new train engine for the train set he and his grandfather had built together when he visited the family earlier in the year.

Setting up the shiny new engine on the tracks, Kevin could hardly wait to try out his special new train. As he started it up the engine throbbed to life, causing untold glee.

As the train began to chug forward, however, a curious smell began to permeate the room. Soon a wisp of smoke appeared from the front of the engine, a few sparks, and it was quickly realised that the smell was melting plastic. The train's engine was defective. As Kevin cried about the loss of his special new gift his parents called the manufacturer's



hot line, only to be told that because their grandfather purchased the train four months ago it was outside of the "30 day return" period.

If this had happened last Christmas, Kevin's Christmas may have been ruined, as laws did not necessarily protect consumers who were not the original purchasers of a product, and manufacturers could often specify short return periods for faulty products. Earlier this year, however, the new Australian Consumer Law came into effect, which should help ensure this Christmas will be a lot happier for families like Kevin's.

The new consumer laws provides for uniform laws throughout Australia for the first time, not only ensuring better protection in case a consumer is injured by a faulty product, and protection from misleading and deceptive conduct on the part of a seller, but more protection for purchasers of faulty products.

### Words to the Wise

**"To give without any reward, or any notice, has a special quality of its own"**

Anne Morrow Lindbergh

Faulty products may be returned if they were not of 'acceptable quality'. Considerations in determining "acceptable quality" will be the nature of the goods, the price of the goods (if the model train only cost \$20, a short life may be more "acceptable" than a train which cost \$500), statements made about the goods on any packaging (e.g. "best quality, most durable train on the market!"), any representation made about the goods by the supplier or manufacturer of the goods and any other relevant circumstances relating to supply of the goods. In all likelihood, the new consumer laws will make Kevin's Christmas a lot happier this year.

When you give a gift this Christmas, you can have greater confidence knowing that there are now comprehensive protections in place for consumers. For more information, visit <http://www.consumerlaw.gov.au>.

## Happy Christmas

We have enclosed with this edition of the newsletter a complimentary bookmark – we trust it will be useful in conjunction with a relaxing, good book during the upcoming Christmas holidays.

## Picture Calendar

Next year we are considering putting together a Hutchinson Legal calendar featuring Australian coastal photographs taken by our staff and clients. If you have a photo you have taken which you would like us to consider for inclusion, please email a high resolution version of it to our office – although due to the number of photos received please understand we cannot use every photo submitted.

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Email Address

If you would like to receive an electronic version of Legal Insight, please:

- call Tristan Tottenham of our office on 9870 9870
- write to us at PO Box 450, Ringwood 3134
- send an email to [office@hutchinsonlegal.com.au](mailto:office@hutchinsonlegal.com.au)

# Staying on the Right Side of the Law while Travelling

Planning on heading overseas this summer for holidays? Relaxed, fun and worry free is how most readers would describe what they want from such a holiday. Legal difficulties are usually the last thing on people's minds when they travel, and little thought is generally given to the fact that activities, which may be considered normal or acceptable in their home country may cause huge legal headaches if engaged in overseas.

When considering the perils of foreign legal systems many think of extreme cases such as those in Indonesia, where courts have handed down the death penalty for drug smuggling, a crime which would only result in a jail sentence in Australia. Other more subtle pitfalls exist for the unwary tourist, however.

An Italian politician inadvertently created a media furore on his recent visit to Sweden with his family when they gathered at a restaurant to sample some classic Swedish cuisine. Unfortunately for the father, his 12-year-old son didn't share his love for the Swedish fare, and ran for the door saying he wanted pizza instead. In an attempt to avert this embarrassing situation the father grabbed his son by the hair and kept him from leaving.

Apparently unbeknown to the father, Sweden has extremely strict anti-corporal punishment laws. After bystanders called the police the man was arrested and had to endure three nights in prison before the Stockholm District Court ruled the incident was minor in nature, given the fact the child had not been injured.

Other recent cases include tourists travelling in Middle Eastern countries where Westerners have been jailed for what would not be considered an illegal act in Australia (e.g. extra-marital relations).

These instances serve as illustrations to be careful when travelling, as matters which may not be illegal in Australia can land the unwary traveller in significant trouble overseas.



# Email Address

Did you receive the recent email news flash regarding our complimentary Seminar on resolving neighbourhood disputes we held on 29 November? If not, we likely don't have your email address on file. To receive this newsletter electronically and enable you to receive other occasional communications, please send your details to Tristan at [office@hutchinsonlegal.com.au](mailto:office@hutchinsonlegal.com.au).

## Defamation and Social Networking Sites

Online Social Networking sites such as Facebook, Twitter and Myspace have seen a significant increase in popularity over the last decade, and today there are over 500 million active users on Facebook alone. These networking sites allow people to create profiles, connect with other users, to share photos and post comments. Despite the many positives associated with these sites, in some instances, they have been used to post defamatory material. Users need to be aware that they can be held liable for the content that they write and/or share.

The premise around which all defamation laws revolves is that harm or injury ought not to be done to the reputation of another which is unjustifiable, malicious or wrong. In 2002 the High Court case *Dow Jones & Company Inc v Gutnick* set a precedent for online defamation in an Australian jurisdiction. Online media, it would appear, is no different from a phone call, a mobile phone text message, a radio signal or a television broadcast and it fits reasonably well into the definition of 'electronic communication' found in section 4 of *The*

*Defamation Act (Vic) 2005* as a means by which defamatory messages can be communicated. This definition also extends to social networking sites, and as such users must be sensitive as to how these messages will be viewed and interpreted by audiences who are sometimes not intended to view the material.

There has been a notable increase in Plaintiffs seeking compensation for online defamation on social networking sites across the globe, particularly following the well known case of *Applause Store Productions Ltd. & Anor v Raphael* where a former friend was found liable for defamation on Facebook for creating a false account in the Plaintiff's name that was damaging to his reputation. Since then, there have been several cases in Australia, including a Criminal Defamation charge of a South Australian man for comments made on Facebook about a police officer.

The message for users of social network is, although anyone can publish material, the laws that apply to traditional media will still apply.

## Staff Updates

**Condolences:** We extend our condolences to Henry Dixon, the founder of HS Dixon Lawyers (being the Practice which existed prior to Hutchinson Legal) on the passing of his wife Helen Dixon.

**Congratulations:** Edmund Saw is becoming a Senior Associate as of December 2011.

**Welcome:** We welcome Janine Johnston to the Hutchinson Legal team.

HUTCHINSON LEGAL  
per Grant Hutchinson & Con Nottas

Tel: **(61 3) 9870 9870**  
Fax: (61 3) 9870 5704  
Email: [office@hutchinsonlegal.com.au](mailto:office@hutchinsonlegal.com.au)  
PO Box 450, Ringwood 3134.

Visit us at [hutchinsonlegal.com.au](http://hutchinsonlegal.com.au)

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