UWSLSA LAW JOURNAL

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ULTIMATE GUIDE
To First Year Law

Guest Submission by the
Hon. Michael Kirby

BE PART OF THE LEGACY, PICK UP THE INAUGURAL ULLJ!

VOLUME 1, ISSUE 1

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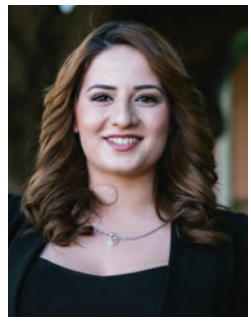

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2014 is going to be a very exciting year for the UWS School of Law and in particular the UWS Law Students' Association. This initiative to introduce a UWSLSA Law Journal, is one of many new ideas being proposed and executed. This new journal will be of interest to first year law students, just starting out at university through to fifth year final students about to graduate and hoping to obtain great legal employment. The Chief Editor, Ms Marija Yelavich, and the whole team involved, have done an amazing task to bring this project to fruition. On behalf of all the professional staff and the academics (full time and our part-time law lecturers) we are very proud of what the LSA has achieved and great things will happen in 2014.

The School of Law has built a strong reputation in career-ready law graduates and continues to grow a reputation for law graduates, with their combined degrees, to have a social justice focus. The technology that is now available for those with iPads and similar devices, lead us to develop our own "app" to help students with the referencing system, the Australian Guide to Legal Citation (AGLC). This is now used by all law students throughout Australia for free. We also have for 2014 our new iMoot Courts at both Parramatta and Campbelltown campuses. The existing Moot Courts were up-graded with IT to enable video-conferencing between the courts and also to record all moots onto a digital media for later analyse and review. We have also added more elective law units for 2014 and beyond and building on the success of Summer School, we hope to introduce a few "Winter Law School" units in July 2014.

Finally, I wish all the UWS law students a wonderful semester and look forward to chatting on campus. If you have any issues, you are welcome to email me directly on Dean.Law@uws.edu.au.

Professor Michael Adams
Dean, School of Law
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About the ULLJ

Formed in 2013, the University of Western Sydney Law Students' Association Student Journal (ULLJ) strives to engage students, academics and professionals with current issues that concern our local and international community. A reflection of the passionate and focused, yet audacious University of Western Sydney student, the ULLJ promotes a balance between study and life. Encouraging and supporting the involvement of the Greater Western Sydney region, this publication is the platform of communication that allows students to grow in their awareness of their local community. Celebrating diversity and critical thinking, the ULLJ is the living embodiment of the motto,
"Sapere Aude" - Dare to Know.

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Editors Note

It is Christmas Day and I have told all my peers to rest.

I have sent kind emails reminding editors of deadlines, but also the importance of balancing the festive season and work.

And yet, I am sitting here - though quite comfortably- typing away on my laptop for a journal that will be published in two months' time. This piece must be drafted, written, edited and finalised in a matter of weeks. It will be the inaugural Editor's Note for the first student-run law publication from the University of Western Sydney.

Am I listening to my own homily? Apparently not.

Next to me lay the two latest editions of the TIME publication. One includes a tribute to the late Nelson Mandela, and the other includes the TIME Person of the Year feature of Pope Francis. On my right hand sits my signature pearl ring, and since I am being so vivid, there is also a teacup full of ice-cream sitting with me - tea is rich, but so is ice-cream and there are no rules when it comes to food at Christmas time…

I have two months. Two. And I am justifying my desire for ice cream as opposed to tea.

A dear friend once told me to- 'just be' -My mother usually whispers that I am invincible too. Maybe I can eat ice-cream every day, but my father tends to bring things back to reality with gentle reminders to- 'count my blessings' -.

Yes, you are reading the Law Journal- this ice-cream and tea analogy does have a point. We all have the freedom of choice. I can choose to eat like its Christmas every day or I can choose to treat myself and make it an annual celebration. Whilst this Journal focuses on more serious issues than my diet, we must recognise that as students we have the freedom to choose. The sentiment of Mandela was the unnaturalness of hate, while Pope Francis has championed gratitude and understanding; two distinct characters that chose to lead. Like you, their acts were inspired by passion and fuelled by education. Whether it is an article, speech or intimate whisper that inspires this thought, our choices are the forces that transform nations.

It is my hope that this Law Journal will inspire our readers, being fellow students, to enter the world with an open mind and an awareness of the freedom to make choices. Whilst we have access to the voices of thousands ringing through our minds daily, and access to millions of articles weekly, I endeavour to create an exclusive publication that will allow the University of Western Sydney students and Greater Western Sydney citizens achieve their goals. My vision is that this publication will be a place where writers can 'just be-' and the wise words of someone's hero can be critiqued or praised; where readers aren't bombarded with information, but rather invited to share with and critically analyse their local and international community. This is a journal where law is brought back to The People, and most importantly, where diversity of culture, intellect and opinion is celebrated.

Finally, I wish to thank everyone for their ongoing patience and support - this idea would not have flourished without the countless hours discussing drafts. To my first executive, editorial and submissions personnel, you have each made this Journal a prime representation of the promising future that University of Western Sydney holds.

In the spirit of writing on Christmas Day, I hope that our readers had a lovely holiday. In a year of firsts, may our community unite to produce a piece worthy of your next read.

Until then,
Marija Yelavich

Online Auctions and the Protections of Consumers

January 2014
By Firas Hammoudi
B Business and
Commerce / B Laws

"Life is like riding a bicycle. To keep your balance, you must keep moving."
–Albert Einstein

INTRODUCTION

With the proliferation of a digital economy, Australians tend to err on the side of savings and seek the 'better deals' post the Global Financial Crisis in 2008. Recent research shows that more than 50% of Australians have been labelled 'digital buyers' who are more inclined to shop online than in retail stores.[1] Whilst a significant portion of Australians purchase online, there are no laws that deal specifically with online shopping or expressly outline the consumer's rights and reservations.[2] It is reported that online shopping scams are likely to increase in the absence of measures to protect consumers.[3]

The Australian Consumer Law[4] ('the ACL') limits the operation of all the Consumer Guarantees with respect to transactions not conducted in trade or commerce or the supply occurring by way of auction.[5] The Sales of Goods Act 1923 (NSW) ('the SoGA') may apply in the alternative if the transaction is not conducted in trade and commerce.[6] As such, it is imperative to note that the analysis of whether many of the auction sites falls within the definition of 'sale by auction' holds value as to the extent of protection of consumers.

Furthermore, an important question relevant to this discussion is which law will apply when consumers purchase goods from an overseas jurisdiction and whether consumers may still be protected. This paper will seek to outline the consumer protections available to consumers who purchase goods through means of online auctions.

DO CONSUMERS NEED PROTECTION?

The authorities of consumer protection are being alerted to the increase in online fraud and scams in Australia.[7] The Australian Competition and Consumer Commission ('the ACCC') conducted research in 2012 into the level of scamming activity over the year.[8] The ACCC stated that it had received over 84,000 internet complaints relating to fraud with a financial loss of more than $93 million to Australians.[9] The ACCC reported that there had been a 65% increase in scams relating to online shopping and auctions.[10] The ACCC maintains that with the increasing number of Australians shopping online, greater consumer protection is required.[11]

Key areas of concern to the authorities are scams relating to online transactions that are false and misleading by suppliers and non-delivery or failure to deliver the goods within a reasonable period of time.[12] The ACCC notes that 'global market mechanisms can be particularly attractive to unethical traders'.[13] It can be observed that many online auction websites have responded to the increase in fraudulent sales. For example, eBay have employed full time fraud investigators to tackle this increasing concern.[14]

THE TAXONOMY OF ONLINE AUCTIONS

In support of the analysis as to whether a purchase made through a prima facie online auction is indeed a traditional auction, the definition of 'sale by auction' must be considered.[15] Sale by auction, in relation to the supply of goods by a person, is defined as 'a sale by auction that is conducted by an agent of the person (whether the agent acts in person or by electronic means).[16] For an effective analysis, online auctions must be assessed on an individual basis.

There are various forms of online auctions, all of which require consideration in determining whether protections are available to consumers. A common classification is often branded as 'marketplace' online auctions.[17] Marketplace online auctions facilitate and provide 'a forum for buyers and sellers to deal with one another through a bidding process'.[18] An example of this is eBay. Subject to the below, consumer protections may be available to consumers for marketplace online auctions.

Another classification is the 'traditional' online auction whereby someone acts as agent for the seller,[19] in a similar manner to auctions in the real estate industry.[20] As expressly formulated within the consumer law, sale by auctions, that is the traditional online auctions, are not afforded the majority of consumer protections.[21]

CONSUMER GUARANTEES

To trigger the application of the consumer guarantees in online frameworks, the sale must be made to a consumer.[22] A person is considered a consumer if the 'amount paid or payable for the goods… does not exceed $40,000',[23] or if the 'goods were of a kind ordinarily acquired for personal, domestic or household use or consumption'.[24] This definition of a consumer expressly excludes the acquiring of goods for resupply.[25]

If a person indeed acquired particular goods as a consumer, a total of nine consumer guarantees are afforded to the consumer.[26] Online transactions are typically subject to the guarantees of acceptable quality,[27] guarantees relating to the supply of goods by description,[28] and guarantees relating to the supply of goods by sample or demonstration model.[29] As addressed above, the consumer guarantees only apply to transactions in trade and commerce. In instances where the supply was not made in trade and commerce, only guarantees as to title, undisturbed possession and undisclosed securities are available.[30]

Despite the limitation under the ACL that the transaction be in trade and commerce, the SoGA may also apply in transactions not made in trade and commerce. Where goods are purchased

according to its description, there is an implied condition that the goods correspond to its description.[31] In instances where goods are purchased from a seller who deals with such goods, there is also an implied condition of merchantable quality.[32] Moreover, many online auctions still have the option to purchase the goods 'buy it now' or by placing an 'offer'. In this case, the buyer is completely protected by all of the consumer guarantees provided by the ACL, except if the transaction is a private sale, albeit the transaction not completed in trade and commerce.[33]

EBAY AND ITS APPLICATION TO THE LAW

The User Agreement which governs eBay's Australian members expressly provides that eBay 'is not an Auctioneer'.[34] The User Agreement further explains that eBay 'acts as a venue to allows members to offer, sell, and buy' goods and eBay does not interfere between the transacting members.[35] It has been settled that eBay does not conduct itself as an agent for the seller but provides a forum for both the seller and buyer to engage in the bidding process.[36]

As already emphasised, in transactions not made in trade and commerce, the guarantees of title, undisturbed possession and undisclosed securities will only be available. For example, if a consumer purchases a Sony Bravia from Joe Bloggs on eBay, the consumer will have no other available protections pursuant to the ACL in this regard in relation to defects.

In the above scenario, the SoGA may apply as it excludes the limitation that the sale be in 'trade and commerce'. The SoGA takes a more flexible approach and relies on the common law concept of contracts.[37] If a transaction is conducted through eBay, it may be argued that there is no direct contract between the seller and the buyer, but between the seller and eBay on one hand and eBay and the buyer on the other.[38] In Smythe v Thomas,[39] Rein AJ held that the acceptance of eBay's terms and conditions constituted a contract between the seller and the purchaser.[40]

Many individuals purchase goods from eBay or other marketplace auctions, only to realise that the goods are damages upon receipt. The law provides that if the buyer has not had the privilege of inspecting the goods prior to the purchase, the buyer is not deemed to have accepted the goods until the buyer has a reasonable opportunity to examine them.[41] The buyer also holds no obligation to return the goods to the seller, but should notify the seller of his/her refusal to accept the goods.[42]

ONLINE AUCTIONS AND CROSS BORDER TRANSACTIONS

Where a consumer enters into an online transaction with a non-Australian seller, a question arises as to the laws that will govern the transaction. It must be determined whether the seller is a signatory to the United Nations Convention on Contracts for the International Sale of Goods 1980. If that requirement is established, the Sale of Goods (Vienna Convention) ('the Convention') will apply to both contracting states.[43] Thus, the consumer protections afforded by the Convention will be available to the consumer.

In commercial arrangements, it is commonplace that an agreement ought to specify the jurisdiction of which the contract wishes to be governed by.[44] Similarly, in online auctions, a majority of the internet sites specify the jurisdiction that will apply.[45] For example, the law of New South Wales governs the transactions on eBay Australia,[46] whereas eBay America is governed by the laws of Utah.[47] This is not to say that if a consumer purchases goods from America, the Convention will not apply in conjunction with the governing law of Utah. In fact, in this case, where both Australia and America are contracting states, the Convention will apply alongside the governing law.

The Convention will only intervene and prevail over 'any provision of local law' where there is inconsistency.[48] Where the Convention does not apply, the contract must conform with the proper laws of the state.[49]

WHAT PROTECTIONS ARE AVAILABLE TO CONSUMERS

For actions under the ACL, it is necessary to characterise the breach as either major or minor in order to identify the appropriate remedy available to the consumer.

A major breach occurs in situations where consumers would not have purchased the goods if he or she knew about the fault, where the goods do not match the description, sample or demonstration and the goods are unfit for the purpose commonly supplied for. Also it is a major breach where the goods are not of acceptable quality warranting it as unsafe.[50] Where a major breach has occurred, the consumer will be entitled to reject the goods, terminate the contract and seek compensation or damages.[51] A minor breach, on the other hand, may be remedied by the supplier[52] and the Consumer may be entitled to seek a refund, replace or repair the goods.[53] It is at the consumer's discretion to apply the option it sees fit.[54]

If the consumer is protected by the SoGA, the buyer may be entitled to rescind the contract at common law for a full refund and may be also entitled to damages.[55] The SoGA preserves the common law position of repudiating the contract for 'a sufficiently serious breach'.[56] In instances of non delivery of the goods, the buyer may seek damages from the seller.[57] This requires the buyer to purchase similar goods in the market and may only claim the amount paid that exceeds the contract price, if any.[58] If the goods purchased are unique in nature, for example a stamp collection on eBay, and damages would be an inadequate remedy, the buyer may be able to press an order for specific performance of the contract.[59] Otherwise, if the transaction is subject to the Convention, and if the goods are not in conformity with the contract, the buyer has a right to claim damages for the non-conformity.[60]

If the seller is unresponsive in remedying the defect, the buyer may lodge a complaint with the ACCC or relevant ombudsman, take Court action or lodge a claim with Consumer Trade Tenancy Tribunal.[61] If a buyer has purchased goods from an eBay seller, it may be beneficial to first try resolving the dispute using eBay's online resolution process.

CONCLUSION

No doubt, the laws relating to online auctions are intermeddled with the emerging change in the technological framework. From the outset, the advantages of online shopping are ample. However, consumers ought to assess the risk of the transactions on an individual basis and calculate the risks that one may be exposed to. The finding that eBay is not a traditional auction has ultimately increased the protections available to the online Australian community.[62] With the increase in protections for consumers, the likelihood that online auctions would be prone to scams is decreased.

"If they treat us like that, how are they treating our clients?":

Needle and Syringe Program Service Provision in Western Sydney

By Kenneth Yates
January 2014

Kenneth is a PhD candidate at the Centre for Social Research in Health at UNSW, investigating needle and syringe programs (NSP) in Western Sydney. His fieldwork involved observation of service sites, conducting surveys with clients, and in-depth interviews with clients and staff. Kenneth's work deploys concepts drawn from theories of assemblage and Actor-Network Theory to explore the intersections between service provision, social and political contexts, material realities and the emergence of service provider and service user identities.

Introduction

A paper I presented at the Australian Human Rights Centre at UNSW Law School in December 2013 presented an account of the empirical realities of service provision, from the perspectives of people who work at needle and syringe programs. This 'coalface' view addressed some key issues affecting service provision, which I wish to outline here in this present work. Before proceeding to addressing some of these issues, it is worth outlining just what exactly needle and syringe programs are.

Needle and syringe programs

Needle and syringe programs (NSPs) are public health services that provide sterile needles, syringes, and other injecting equipment, free of charge, to people who inject drugs (PWID)[1]. They reduce the risks of transmission of blood borne viruses (BBVs) such as hepatitis C virus (HCV) and HIV by reducing and preventing the circulation and reuse of used and potentially contaminated needles and syringes[2]. NSPs also work to provide information and education to clients around drug related harm, as well as facilitating referrals to health and social services[3].

In the Australian context, NSPs have averted substantial numbers of HIV and HCV infections[4], estimated at over 32,000 HIV infections, and over 96,000 HCV directly averted by NSPs[5]. They are cost-effective in the short term (ten years), and cost-saving over the medium to long term[6], with an estimated $27 in cost savings for every one dollar invested[7].

NSPs operate according to principles of harm reduction, which are a somewhat stark contrast to the zero-tolerance approaches of prohibition, (the so-called 'war on drugs'). Harm reduction is about stopping drug harms rather than drug use, and as such, harm reduction promotes strategies for reducing the harms of ongoing drug use, such as using drugs in different and safer ways[8]. Harm reduction advocates such as Lenton and Single maintain that the 'war on drugs', unlike harm reduction, in practice enacts a war on people, as people are jailed, but not their drugs[9].

The lesson to take is one of context – NSPs provide sterile needles to drug users. While this may seem odd to some people, in terms of harm reduction it is a reasonable and effective strategy. While harm reduction may struggle to address some of the macro-social factors affecting problem drug use, it does have material effects on the everyday lives of drug users. The fact is that global prohibition is still the structuring framework for drug policy and harm reduction must work within those constraints.

What I wish to do next is outline a few findings from my fieldwork with NSPs, staff, and clients in Western Sydney. Specifically, the findings that I felt related in some way to human rights, in the following sense: if health is conceived of as a human right, and NSPs are phenomena that enact the production or provision of health, then things that hinder the capacity of an NSP to deliver health or health-enabling services, by extension, hinder the realization of the human right to health.

"NSPs provide sterile needles to drug users. While this may seem odd to some people, in terms of harm reduction it is a reasonable and effective strategy."

I will spare readers an in-depth exploration of ontology and epistemology (as thrilling as I find it) and give a very succinct outline of methodology. I interviewed NSP staff, and analyzed the interview transcripts using a form of thematic analysis[10-11] with the aid of computer software (NVivo). I cannot be too specific about which members of staff I interviewed, for reasons of ethical research conduct. It suffices to say that, for the present work, the interviews were conducted at several NSPs across Western Sydney.

Discrimination against NSP clients

One member of staff discussed an incident that occurred on site, at the NSP, out the front of their syringe vending machine. Police officers were harassing an NSP client about something. The staff member approached the scene and asked what was going on – by their account the police officer gave a flimsy excuse about their partner 'dropping something' nearby and asking the client if they had seen it. As far as the staff member was concerned, this was a thinly veiled ploy to simply search NSP clients right out the front of an NSP. In many respects this is like shooting fish in a barrel. An NSP client is at an NSP because they need equipment to inject, and there is a decent chance they may very well have illicit drugs in their possession. There are guidelines around this sort of practice[12] – police are supposed to, within reason, turn a blind eye to the NSP – page two of the NSP guidelines for NSW police, quite explicitly states: "Without restricting their day to day duties and obligations, police should be mindful not to carry out unwarranted patrols in the vicinity of NSPs that might discourage injecting drug users from attending"[13]. Unfortunately, in practice, these sorts of situations do happen, where police are picking on easy targets, and this no doubt can frustrate the provision of services, as well as the clients themselves!

In my view, this is deeply troubling, not only in terms of how police 'behave' themselves, but also in some sense of fairness or reasonableness. Is it reasonable that a drug user, who is more or less maligned and stigmatized for their health problem, comes into confrontation with police when otherwise trying to do the 'right thing' and taking responsibility for their drug practices? Someone who has taken the initiative to obtain sterile equipment, or perhaps even to dispose of it at a sharps bin out the front of an NSP, coming to what should be a safe haven, only to be harassed and possibly arrested for looking after their own health and that of the community? From the staff perspective – they are trying to do their job and instead they are stuck trying to mediate an encounter with the police.

> "…police should be mindful not to carry out unwarranted patrols in the vicinity of NSPs that might discourage injecting drug users from attending…"

Discrimination against NSP staff

The problem of discrimination towards people who inject drugs does not restrict itself to only directly affective the people whom it targets. Unfortunately, many of the NSP staff I spoke with had their own stories of experiencing stigma and discrimination – from other health care workers! Prior to my immersion in the world of NSP the possibility of health professionals expressing prejudice against other health professionals, based not on internal rivalry per se but on the nature of their clientele was simply unimaginable to me. Perhaps an indication of my naivety, but I would venture a speculation that it may be something that other people outside of the space of health care and provision may never have contemplated either.

One NSP staff member recalled being derided by other health care workers, usually at the community health level, labeling NSP workers as "scumbags', and keeping NSP staff at "arm's reach". Upon my own reflection, there is workplace politics everywhere you go – indeed some political thinkers such a Chantal Mouffe argue that the politics and political are inherent components, as well as constitutive of, our social identities and realities[14]. However this is not enough to fatalistically accept these conditions as is. It makes for an unpleasant working experience, to say the very least. Indeed, practices of discrimination have deeply personal effects on NSP staff. Another staff member recounted that all but one of the NSP staff in their particular local health district had been brought to tears by other health workers, who discriminated against NSP staff because of the work NSPs do and the clients they serve. Which leads one to ask, in the words of this particular NSP worker:

"if they treat us like that, how are they treating our clients?". If the treatment of NSP staff can be a proxy for the treatment of marginalized clients, one cannot help but wonder what sort of problems and barriers clients might face in accessing health care.

Frustratingly, discrimination against NSP clients and staff does not only manifest in the form of health care workers having a go at each other. This sort of discrimination concretely prevents the provision of services. NSP workers, as part of their regular work, will visit emergency departments in hospitals to provide injecting equipment in 'Fitpacks', which are small black boxes containing several syringes and needles, sterile swabs, ampoules of sterile water and plastic spoons. The box itself doubles as a personal sharps container, with a section of the box acting as a sharps bin covered by a one-way flap. Outside of NSP opening hours, vending machines and emergency departments act as alternative sources for sterile injecting equipment. In principle, at least. One NSP worker described visiting an accident and emergency department at a Western Sydney hospital and being told by the doctor on duty that day that there was no way they would be handing out injecting equipment over the counter, which left the NSP worker shocked.

Another NSP worker recalled an incident where they had gone through the approval processes to set up a free dispensing unit at an emergency department [ED]. Dispensing units are basically simple chutes on a wall where you can pull out a Fitpack at a time, from the opening at the bottom of the chute, and gravity pulls the remaining stock down. The general manager at the ED had agreed to the having the unit installed. Unfortunately, however, the administration staff at the ED apparently frustrated the process. It was apparent that admin were against the idea of providing injecting equipment to drug users, and, according to this particular NSP worker, admin at the ED effectively white-anted the process, wearing down the emergency department staff specialist. The specialist informed the NSP workers that they could not "stand it" anymore, and had to choose keeping their admin staff happy over keeping the service.

I find this both troubling, and unsurprising. Unsurprising in light of the fact that in many instances, stigma and discrimination towards drug use and drug users is normalized to the point it becomes 'doxa'[15-16], that is, to the point that the arbitrariness of such social distinctions as those enacted by stigma, and their historical and constructed nature, is not even questioned. Discrimination toward drug users, for many people, simply seems 'natural'.

"if they treat us like that, how are they treating our clients?"

While there are accounts of the historical emergence of drug use and intoxication as a problematic social identity, grounded in ideas around temperance, industrialization, productivity and neo-liberal subjectivity[17, 18, 19, 20] as well as the nature of non-normative desire and consumption[21], the problem remains that addiction, itself a problematic notion[22], drug use, and drug users, are subjected to discrimination and stigma that materializes harm and inequality, and hinders the delivery of health care. NSP staff are tarred by the same brush as NSP clients in the eyes of some health workers, and while simple rudeness in the workplace, as unacceptable as it is, might be managed or ignored to some pragmatic extent, the fact is that this discrimination is having material effects of the provision and delivery of care and services. That this happens is made all the more frustrating by the fact that the discrimination and stigma is grounded in a fundamental misunderstanding of what addiction and problem drug use is, as well as a misunderstanding or even complete ignorance of what the lived experience of drug users is like.

Discussion/Conclusion

While this paper has ostensibly been about outlining research findings, it is also in some ways an advocacy piece. For all the critique of harm reduction principles[23, 24, 25,] as it stands, interventions such as NSPs are effective ways of minimizing drug related harm at a very pragmatic and everyday level. I make no pretense about being a legal scholar per se. There is, however, a quote that I have observed, sprawling across the inside walls of my university's law building, that I wish to share. It is attributed to Emeritus Professor Hal Wootten AC QC. It reads:

[A] law school should have and communicate to its students a keen concern for those on whom the law may bear harshly, either because they cannot afford its services, or because it does not sufficiently recognise their needs, or because they are in some way alienated from the rest of society.

It strikes me that NSP clients fit these criteria. Maligned, marginalized, poor, alienated, and subject to the ever-watchful eyes of law enforcement. This is the experience of many NSP clients. Over the course of this paper, we have touched upon the everyday discrimination that clients face, such as being harassed by police on site at an NSP. We have touched upon the experiences of NSP staff, sometimes as equally maligned as the people they help, making service provision difficult or near impossible. We have touched upon the 'face work' that staff have to do to simply justify their own existence as a service, and as professionals.

With a view that health is a human right, all of these disruptive events and encounters, discrimination towards clients, discrimination and suspicion towards staff, hinder the realization of health and the right to health. How do we communicate and act upon a concern for those whom the law may bear harshly? Part of my work is giving voice to the empirical realities of service provision that may otherwise never be voiced outside the world of NSPs, by making some realities more 'present'[26]. This is the limited contribution I can make in my position as a researcher. Perhaps the readers of this journal have other, specialized insights as to how they can themselves engage with the provision of health and care to marginalized affected communities, and the things that hamper such provision.

How is it that certain staff at a hospital can white ant the provision of specialized services to one affected population whilst letting others be? How is it that one group of people should be excluded from their access to health? How is it that one group of health workers can be subjected to the stigma of the people they try to help, a discrimination enacted upon them by their own peers? When thinking about the law bearing harshly on people, the intra-organizational politics of health departments may seem abstract. Think back, as well, to the NSP client, standing out the front of an NSP, face to face with the face of power, the police, the enforcement of law made manifest in the flesh and blood of another human being. Why is it that a person visiting an NSP should put up with police harassment, whilst someone visiting a National Diabetes Services Scheme (NDSS) outlet to get insulin needles may never face a similar prospect? How is it that the law can bear more harshly on one than the other? One could conceivably map out the empirical practices of inclusion, exclusion, discrimination, and the politics, that produces such a situation, so the question, really, is how is it that we allow it to continue? Why should we let this continue? Is it the naivety of a legally ignorant social scientist? Quite possibly that is part of my present concern. I maintain, however, that it is still a legitimate question, one that raises further questions. What can we do, given our own different, individual, and collective capacities, to address this problem of providing health, and the right to health, to marginalized and stigmatized affected populations?

Is a healthy environment a human right?

A critical evaluation of the effectiveness of the international law in protecting the environment as a collective good. I consider key actors and whether placing the environment in the context of a 'human right' is appropriate.

September 2013
By Marija Yelavich

"You cannot find peace by avoiding life." Virginia Woolf

A relatively modern phenomenon, the human right to a healthy environment has witnessed a gradual and complex development. The term 'healthy environment' is broad and encompasses a balanced consideration of environmental sustainability and human objectives. In the 20th century, the international law collaborated with state actors regarding the need to protect the environment as a collective good. It was a crucial period of state diplomacy where the need to protect the environment was recognised as a basic human right. However, the 21st century rise of complex interdependence and trans-national organisations replaced the traditional relationship between state and international law. The value of corporations in producing effective change has legitimised the role of international law and revitalised hopes of enforcing a healthy environment as a fundamental human right.

"In the globalised and industrialised context of the modern world, the environment is a collective good imposing a collective fate."

A healthy environment considered in the context of international human rights is viewed as both an individual and collective right applied to all inhabitants of particular vicinities, encompassing flora, fauna and humans. The two tiers of environmental rights include an ecologically sustainable physical environment, and the consideration and maintenance of human objectives, otherwise known as basic human rights, such as access to employment and education.[1] In the globalised and industrialised context of the modern world, the environment is a collective good imposing a collective fate. Never before has the notion of complex interdependence[2] been so relevant, where international actors have a responsibility to the collective. While it is important to consider economic and cultural factors in the application of human rights, the right to a healthy environment is an indiscriminate prerequisite that imposes automatic responsibilities to governments and people. By adopting environmental rights as an integrational policy that requires intergenerational commitment, the first tier of environment rights, ; -the maintenance and development of the physical environment, will automatically heighten appreciation of fundamental human rights. A clean and proactive environment does not discriminate economically or geographically, and forces leaders to consider all inhabitants of a state, systematically improving the application of fundamental human rights. Therefore, this essay proposes that a healthy environment is more than a fundamental human right; it is the essential factor required for the appropriate application of human rights that dictates a state's living standards. The adoption of these individual and collective rights in the context of international law, aided by the power of corporations, therefore, will flawlessly improve human rights and thus the health and state of the world.

"a healthy environment is more than a fundamental human right; it is the essential factor required for the appropriate application of human rights"

Mechanisms that observe environmental protection ranges from customary international law, soft law documents and multilateral treaty regimes. The fundamental document that recognises the environment as a collective issue in need of international concern is The International Covenant on Economic,

Photo sourced from: Gynelle Juan

Social and Cultural Rights.[3] Adopted in 1966 by the United Nation's General Assembly, aArticle 12 specifically recognises the two tiers of environmental rights. It affirms the importance of indiscriminate environmental protection.

Article 12 states:

1. The States Parties to the present Covenant recognisze (sic) the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization (sic) of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Evidently, the article supports the notion that environmental protection is a necessity. Scholars and environment Summits have applied this reasoning to their agendas, affirming the importance of international law in providing a framework to achieve global environmental health.

An example of this reasoning is the Human Rights Watch 2013 campaign against the Chinese government. Writer, Jane Cohen discussed, "the problem… is you can't have meaningful…human rights without…" a healthy environment, and until China commits to clean air, water and soil, "the right to a healthy environment will be hidden in the smoggy skies."[4]" Laura Westra[5] also discusses the interrelatedness between the environment and justice, highlighting the role of the environment as contained in the Convention on the Rights of a Child[6] ('CROC') in providing adequate nutrition and housing for children. Westra advocates intervention by foreign actors to ensure the protection of human rights and the environment for future generations. This reasoning reflects the history of international law towards the recognition of a healthy environment as a human right.

Reflecting the cantankerous period of the 20th century was the amorphous discourse regarding environmental protection. Despite the recognition of environmental degradation as a global issue, the inefficiency of the archaic relationship between international law and state law wasere evident.

The 1972 Stockholm Conference involved over 114 countries, spanning between industrialised and developing states. The consensus identified the impact of human industrialisation. This included concerns of growing population trends and vanishing forests, against the need for food.[7] The result of the Conference was the Declaration of Principles for the Preservation and Enhancement of the Human Environment[8] ('Stockholm Declaration'). Principles two to,seven2-7 focused on rational planning and management. As an incentive, principles 11-13 provided financial and technical assistance to developing states willing to incorporate these methods into their government planning. In support, the United Nations Environmental Programme ('UNNEP') was established through the United Nations General Assembly Resolution 2997.[9] The environmental programmeUNNEP embodied the principles of ICESCR, aArticle 12 and recognised the need to support developing states. Accordingly, Kenya was the first state to host the UNNEP body. The practical principles also saw the 1987 Philippines and 1992 Norwegian domestic incorporation in legislation and the constitution. Although a minute figure, it successfully 'connected the protection of the environment to human rights'[10] and provided a high standard for future deliberation.

Embracing international diplomacy and extending on the Stockholm focus on the disparity between industrialised and developing states, was The World Commission on Environment and Development ('Brundtland Commission'). Hosted by the United Nations Security Council and chaired by Gro H. BHrundtland in 1983, the Brundtland Commission defined the term 'environment' as 'where we live' and 'development' as "'what we do in attempting to improve our lot within that abode'.[11] Although the definitions are not legally binding, it consolidated the international focus and provided additional pressure on states to accept their environmental responsibility. In addition, the notion of 'sustainable development' was recognised in the publication of the Our Common Future Report.[12] Encouraging interdependence, the report considered collective challenges such as global warming, and suggested multilateral communication. The deliberation affirms the need to consider the environment as a collective good, prone to a collective fate.

The 1992 Rio Conference solidified the seemingly few gains of the Brundtland Commission and designed

the international focus for the next century. Incorporating over 176 states, 50 inter-governmental organisations ('IGOs') and thousands of non-governmental organisations ('NGOs'), the international community gathered in Brazil for the United Nations Conference on Environment and Development ('UNCED'). The Brundtland CcommissionConference formerly recognised the 'sustainable development'[13] principle established in the Brundtland Commission, and focused on 'economic development whilst simultaneously protecting the environment'.[14] To ensure enforcement of the UNCED, several legal doctrines were adopted, including the Convention on Biological Diversity[15], Agenda 21: A Programme for Action on Sustainable Development[16] and the Non-legally Binding Principles of Forests.[17] Therefore, the 1992 conference incorporated the principle of interdependence with shared economic prosperity, finally introducing an incentive to protect the environment.

> "The shift towards self-regulation has encouraged businesses to recognise the value of implementing environmentally friendly practices."

The early years of the 21st century, as Bodansky[18] observed, was a period of consolidation for international environmental law. Reconciling the conflict between theory and fact,[19] the traditionally state-centric focus is broadened to a global, intergenerational appreciation of the role of non-state actors, particularly trans-national corporations ('TNCs').

The 2002 South Africa for World Summit on Sustainable Development ('Johannesburg Summit') placed the concept of 'sustainable development' in an economic, social and environmental context. The Johannesburg Summit extended on the 2000 Millennium Development Goals, and created quantifiable targets for 2015, including safe water, proper sanitation and clear energy services. This produced two non-legally binding documents: the Johannesburg Declaration on Sustainable Development ('Johannesburg Declaration')[20] and the Johannesburg Plan of Implementation.[21] The documents represent a consensus of 200 voluntary partnerships between businesses and NGOs. These partnerships are the lynchpin of the principles of complex interdependence that define the 21st century. It reflects the shift from the traditionally technocratic and economic discourse regarding environmental law.

The changing regulations of the modern corporate world exemplify the effectiveness of placing the environment in the context of human rights and international law. Ramon Mullerat[22] explores the growing importance of Corporate Social Responsibility ('CSR') in guiding the responsibilities and powers of major corporations. Emphasising the notion of 'environmental responsibility,'. Agenda 21 defines it as the '…responsible and ethical management of products and processes from the point of view of health, safety and environmental aspects…Appropriate codes and initiatives should be integrated into all elements of business planning and decision-making and fostering openness and dialogue with employees and the public'.[23] In addition, the Johannesburg Declaration places environmental stewardship[24] in the global context of business, promoting incentives for eco-efficient solutions that embrace bio-diversity. The shift towards self-regulation has encouraged businesses to recognise the value of implementing environmentally friendly practices. An example is the elimination of particular chemicals and improving energy efficiency, which conversely reduce disposal and energy costs.

Further, the signatories to the Minerals Council of Australia Code for Environmental Management[25] began to publish environment reports in 1996 as a response to the Global Reporting Initiative.[26] Mandatory reporting requirements also exist, such as the United Kingdom Companies Act 2006,[27] which requires the director's report to include a consideration of environmental matters. Promoting the role of CSR, in 2009, the Dow Jones Sustainability Index[28] reported that companies who included factors of the '"Environment, Social and Governance'[29] plan generally performed and managed better. It affirms the effectiveness of international law and corporations in regulating and producing effective, environmental change.

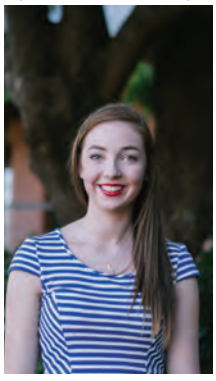
The Kyoto Protocol[30] reflects the recognition by international law and state of the value of corporations. Established at the United Nations Framework Convention on Climate Change ('UNFCCC') in Kyoto 1997, the principles were ratified under Kevin Rudd in 2007.[31] It committed Australia to two periods, 2008-2012, and 2013-2020, to reduce greenhouse gas emissions. Joining over 90 states, the Protocol regulates and reduces 80% of global emissions, providing Australian businesses access to international credit under the Clean Development Mechanism.[32] The result not only provided Australia an opportunity to engage in diplomacy, but also symbolised the 21st century role of corporations in recognising and addressing environmental health as a beneficial human right.

Overall, the role of international law in protecting the environment and promoting the concept of a healthy environment as a human right has been effective. Where the 20th century Summit meetings provided the opportunity for discussion and recognition, the international law has responded profoundly to the 21st century rise of complex interdependence and the value of corporations.[33] By utilising the opportunities forged by international law, non-state actors have the potential, as has been witnessed, to protect the collective good and enforce regulations to ensure the maintenance of a healthy environment as a human right.

Government approves on coal port expansions on World Heritage Listed site

Photo sourced from: http://www.flickr.com/

January 2014
By Edelle Gettings



"How wonderful it is that nobody needs to wait a single moment before starting to improve the world."
–Anne Frank

A massive coal boom is amongst us and in the process it is turning our beloved Great Barrier Reef into a massive industrial estate. On the 31st of January 2014, the Environmental Minister, Greg Hunt and environmental authorities have approved the expansion of mining and coal ports located along the Great Barrier Reef, commonly known as Abbot Port.[1] The federal government's planned mining and coal ports development will see to be three times bigger than anywhere else in the world.[2]

Even though coal exports are fundamental for Australia's economy to survive, it is all about 'location, location' and the Australia Government's choice of the world heritage listed site is seen environmentally and ethically wrong by many. Minister Greg Hunt has danced around commonwealth and state legislation to allow the expansion of coal mining by the use of the terms 'monitoring and reducing risks',[3] but *when it comes to 3 million cubic metres of seabed being dumped into our Great Barrier Reef are reducing the risks sufficient enough or should the legislation be reformed to align with new environmental threats?*[4]

The expansion of these coal ports will include a heavy amount of what is called dredging. This is the act of digging up earth and minerals to expand waterways, harbours and in the case of the Great Barrier Reef, create port infrastructure and enable easier coal exports and imports.[5] Dredging is a large risk to the already eroding reef as it will increase the chance of derogation of water and smothering of native flora and fauna. The campaign manager, Felicity Wishart, of the Australian Marine Conservation Society, expresses her concern for new port infrastructure where she said *"It seems the mining interests that are proposing this want to go with the cheapest and the fastest option, and that's just to dump it on the reef."*[6]

> "It seems the mining interests that are proposing this want to go with the cheapest and the fastest option, and that's just to dump it on the reef."

The issue of the eroding reef has been present since the industrialisation of Queensland and the need for more fossil fuels. Just over 40 years ago in 1971 a similar case took place where a 2560 kilometre section of the Great Barrier Reef was classified as 'dead coral' by the cane growers of Cairns.[7] This dead coral was further depicted as the next step in expanding the mining of limestone minerals. The case went to the Queensland Mining Wardens Court where the evidence presented by the Wildlife Preservation society of Queensland and another environmental activists gave the judge reasonable doubt that this mining would damage the Reef. Furthermore the Queensland government brought up the issue of sovereignty and the ownership of the reef as there was no clear ownership expressed under the 1900 constitution It was later ruled that the mining would not commence under the grounds that the industrialisation would cause criminal folly as according to John Burrst 'The so called "dead reef" provides the vital feeding and breeding of multiple organisms… The so called "dead reef" is in fact the very basis and living heart of the Reef.'[8]

This past case would be applicable to the dredging of the Great Barrier reef if the actual issue was presented before the courts, but due to the introduction of the Marine Parks Act 2004, agreements can be made without the courts intervening.[9]

The issue is the legislation put into place in 2004 where under division one of the Marine Parks Act it explores the restrictions on entering into an agreement in concern of the use of the marine parks. This is seen in more detail in section 52 of division 1 where it clearly states 'A commercial activity agreement cannot authorise the carry out of major earthworks, or installation of a permanent structure, in a marine park.'[10] Technically under this piece of legislation a major earthwork would include dredging as it would cause a disturbance to the 'natural or cultural resources in a marine park.' The government has planned the proposed mining infrastructure to be three times larger than anywhere else in the world,


Photo sourced from: https://www.getup.org.au/

and increase ship traffic from less than 2000 ships annually passing through the Great Barrier Reef in 2011, to 10,000 by the end of the decade.[11] This increase will threaten the ecosystem in the Marine Park. It appears to be straightforwardly illegal for the proposed Abbot Port to go ahead, but the Marine Parks Act is not all black and white.

There is one legal loop hole that is keeping the mining companies smiling, where in section five of the Environmental protection (Sea Dumping) Act 1981 it exempts the dumping of controlled waste.[12] This means that technically seabed dredging is legal as it is not seen as radioactive material which is classed as 'material that has an activity of more than 35 becquerels per gram'.[13] This legislation then overrides the legalities of the *Marine Park Act 2004*, as federal legislation does in fact over rule state. The combination of the federal legislation and the compromising words of 'monitoring and reducing risks' is slowly allowing the governments coal exports to be approved.

The big question is should legislation be reformed so the state and federal combined create a clearer, more black and white picture of the legislation? At the moment environmental legislation is vague and contradicting, it creates many loop holes that the large mining companies can skip around. *Due to this the Great Barrier Reef is now slowly moving from a prestigious world heritage listed site to the list of the most endangered heritage listed sites in the world.*[14] The combination of increased ship traffic and the dredging of the seabed will mean up to 200 million cars worth of pollution being pumped into our air, an increase in spills and less chance are beloved reef will survive.

Indigenous sentencing in Australia

January 2014

By Andrew Montgomery

"For art to be 'un-political' means only to ally itself with the ruling group."

—Bertolt Brecht, A Short Organum for the Theatre (1949)

I Introduction

Note: the term 'Indigenous' is used in this article to describe both the Aboriginal and Torres Strait Islander population.

Indigenous Australians experience stricter sentencing than non-Indigenous people in the 21st century. However, this is not a new occurrence. Since European settlement in Australia, Aboriginal people have been subject to white law – despite it not being their own law. This has resulted in the institutionalisation of Indigenous people, with many, such as Mr William Bugmy, beginning their prison lives at the age of just 12. Some have called the Indigenous jail rates 'shameful', with Aboriginal youth being '25 times more likely to be imprisoned than their non-Indigenous counterparts'.[1] These kinds of statistics have led to the establishment of sentencing guidelines such as the Fernando Principles.[2] Prior to the establishment of these principles, however, tragedy had already struck in the form of Malcolm Charles Smith – an Aboriginal man who commit suicide whilst in custody, sparking the Royal Inquiry into Aboriginal Deaths in Custody.

However, despite all of this, the sentencing of Indigenous Australians is still disproportionately high – and on the rise.[3] One man who experienced the force of the stricter sentencing for Indigenous Australians was Mr William Bugmy. Beginning his criminal record at the young age of just 12, William was regularly convicted and detained in juvenile detention centres. Being transferred to an adult prison at the age of 18, Mr Bugmy had numerous charges – including violent offences. William Bugmy had a history of suicide attempts, after spending most of his adult life in prison. In his most recent offence, Bugmy was charged with two counts of assault against law enforcement officers (other than police officers), and one count of wounding or grievous bodily harm with intent, pursuant to ss 60A and 33 of the Crimes Act 1900 (NSW) respectively.[4] The Bugmy case is a case of high importance, receiving media attention all over Australia, due to its discussion of Indigenous sentencing in the current day and age.[5] Stricter sentencing for Indigenous Australians has resulted in not only higher incarceration rates, but also the institutionalisation of Aboriginals and Torres Strait Islanders in Australia.

II Indigenous Sentencing

The rates of Indigenous incarceration in New South Wales are disproportionately high, and still on the rise, with the number increasing 37 per cent between 2001 and 2008, while non-Indigenous imprisonment rates rose by just seven per cent within the same time period.[6] This could be due to the fact that police are more likely to detain an Indigenous Australian who allegedly commits a minor offence, as opposed to their non-Indigenous counterparts.[7] It has been shown, however, that the higher levels of child abuse and neglect, as well as alcohol use, within Indigenous communities increase the likelihood that they will become perpetrators of both violent and non-violent crimes.[8] It is the recognition of these kinds of potentially mitigating factors that have led to the introduction of the Fernando Principles, a series of principles to be considered when sentencing Indigenous Australians.

(A) The Fernando Principles

The Fernando Principles, first established in 1992, were a series of principles that outlined certain factors that were a series of principles that outlined certain factors that frequently occur in Indigenous communities that have the potential to lower a person's criminal responsibility, and needed to be recognised.[9] Whilst the principles were not a decision on actually convicting Aboriginal people, they were used to recognise during sentencing that some social disadvantages occurred frequently within particular cultural groups (no matter the ethnicity) – and that often these social disadvantages preceded the commission of various crimes.[10] The principles suggest that, while it is important to apply the same sentencing principles to every case, regardless of the ethnicity of the offender, facts that exist because of a person's membership to an ethnic group should not be ignored.[11] Further, while Aboriginality in itself is not a mitigating factor, it can explain the particular offence and the circumstances under which the offence was commit.[12] The principles also point out that, often, lengthy prison sentences imposed on Indigenous people can be both harsh, and even counter productive, when considering that they can have little knowledge or understanding of the European laws and ways.[13]

However, despite the Fernando Principles meaning well, it is important to ensure that they do not unintentionally devalue the impacts that crimes have on victims, including when the victim is also subject to the same social disadvantages that are tied in with belonging to a particular ethnic group.[14] The application of the Fernando Principles have ranged from being mentioned with no discussion,[15] to being found to be applied only within a certain period of time,[16] and every possible application in between. These kinds of sentencing principles have remained from their establishment in 1992 right up until the present day, due to their importance in recognizing the potentially mitigating factors of belonging to particular cultural or ethnic backgrounds. While these backgrounds

themselves are not necessarily mitigating factors, the characteristics that come as a result of them can explain offences and the circumstances they are commit under, allowing for fairer sentencing of Indigenous Australians.

(B) William Bugmy

The case of Mr William Bugmy is one that reinforces the use of the Fernando Principles when sentencing Indigenous Australians. In early 2011, Mr Bugmy threw a pool ball at a Broken Hill Correctional Centre prison guard, ultimately leaving him blind in one eye. Bugmy plead guilty to two counts of assault against law enforcement officers (other than police officers),[17] and one count of wounding or grievous bodily harm with intent.[18] After being sentenced to a non-parole period of 4 years and 3 months with a balance period of 2 years, the Director of Public Prosecution appealed on the following grounds:

> (1) His Honour failed to properly determine the objective seriousness of the offence.
>
> (2) His Honour failed to properly acknowledge the category of the victim as a serving Prison Officer in the lawful performance of his duties.
>
> (3) The weight his Honour afforded the respondent's subjective case impermissibly ameliorated the appropriate sentence.
>
> (4) The total sentence imposed was manifestly inadequate.'[19]

After considering the grounds for appeal, Hoeben JA allowed the appeal, stating that 'with the passage of time, the extent to which social deprivation in a person's youth and background can be taken into account, must diminish'.[20] Hoeben JA increased Bugmy's sentence to a non-parole period of 5 years with a balance period of 2 years and 6 months.[21] However, that was not the end of the case. Following the increased sentence, Bugmy appealed, represented by the Aboriginal Legal Service (NSW/ACT) Ltd. The appellant submit that 'the effects of childhood deprivation do not diminish with time and with repeated incarceration.'[22] The High Court of Australia allowed the appeal, remitting the case back to the Court of Criminal Appeal for resentencing. This established that the profound effects of deprivation do not, in fact, diminish and must be taken fully into consideration when sentencing Indigenous Australians – reinforcing that which the Fernando Principles have been suggesting for so long.

III Conclusion

While the incarceration rates of Indigenous people are increasing over time, many have seen the Bugmy case as a 'win' for Aboriginal people. Providing precedent that full weight must be given to a person's Aboriginality during sentencing has been considered giving Indigenous Australians a 'special advantage in the criminal justice system.'[23] Alternatively, some people see it not as a win for Indigenous people, but rather a 'victory for a return to the status quo.'[24] Whether you consider the Bugmy case a win or not, there is no doubt that Indigenous people are more likely to become incarcerated, and experience stricter sentencing, in both New South Wales and Australia. While the Fernando principles have been established in an attempt to counter this, cases of stricter sentencing still occur amongst Aboriginal and Torres Strait Islander people, as shown in the case of Mr William Bugmy.

I don't want to be racist but…

January 2014
By Arun Krishnan

"Reality is wrong. Dreams are for real."
—Tupac Shakur

In 2009 conservative News Limited commentator, Andrew Bolt released a series of articles titled "White is the new black"[1], "It's so hip to be black" and "White fellas in the Black". The nature of the articles were to outcast fair-skinned individuals of Aboriginal descent and suggest that they were "too white" to be Aboriginal. After consulting the articles, it was easy to see that Bolt strongly implied that the reason these individuals claimed Aboriginality was for social and economic benefits.

A lawsuit was subsequently brought against Bolt by nine of the individuals that Bolt had defamed in his article. In the lawsuit it was uncovered that for some parts of research Bolt had simply conducted an online search and had not interviewed any of the individuals he called out in his articles[2]. The lawsuit found that Bolt had breached Section 18C of the Racial Discrimination Act 1975[3], the provision against offensive behaviour because of race, colour or national or ethnic origin.

In the aftermath the right side of politics led by Andrew Bolt stirred an outcry in the name of impeding free speech. After the Coalition government was elected in September 2013, newly-appointed Attorney-General George Brandis has been at the forefront of talks to introduce a bill to Senate to repeal Section 18C on the grounds that it limits an individuals' right to free speech[4].

During the discourse the purpose of s18C has often been overlooked. This provision of the Racial Discrimination Act states it is unlawful to publish or communicate material to the wider public that would be classed as "offensive behaviour" on the grounds of race[5].

There is no Orwellian style thought police. There is no arm of the law trying to stop the functioning of free press. All the law is trying to do is stop publications of being offensive to people on the basis of their ethnicity.

One does beg the question, where during the debate did the concept of free speech enter the debacle. Attorney-General George Brandis lays his basis for the push to repeal Section 18C by stating that "you cannot have a situation in a liberal democracy in which the expression of an opinion is rendered unlawful because somebody else ... finds it offensive or insulting"[6].

This is true. In a democracy all citizens have the equal right to have their voices' heard regardless of whether it may offend an individual or a group. However, context is imperative to be able to understand where these assertions are drawn from.

Furthermore, it spurs the question what is Free Speech? Does free speech have limitations? Should the right to free speech and the right to free press be free of all regulation and limitations? Where does one draw the line between unaccountability of the press and an over-regulated press? Where does one draw the line between freedom of speech and racially offensive?

The Racial Discrimination Act 1975 was implemented by the Whitlam government two years after the White Australia Policy was completely dismantled[7]. It has served as a legal mechanism and safeguard to deter racial persecution for ethnic minorities that migrated to Australia, as integration of ethnic minorities into mainstream Australia has not been void of troubles.

A text message that was circulating prior to the 2005 Cronulla Race Riot was broadcasted by Alan Jones on his radio program. The Australian Communications and Media Authority found that Jones had communicated material to the public that was "likely to encourage violence or brutality and to vilify people of Lebanese and Middle-Eastern backgrounds on the basis of ethnicity"[8]. From more obvious and direct forms of racism to subtle and covert forms of racism as researched by the Australian National University outlined in a paper the forms of bias that spawned from the cultural background of a name whilst applying for a job[9].

Because of the Racial Discrimination Act 1975, and provisions within it (including s18C), ethnic minorities have not (to some extent) had to fear persecution or demonisation on the basis of race. It is for these reasons that when Attorney-General Brandis proposed repealing s18C that alarm bells began to ring in within various cultural groups.

Funding has just been reduced to National Aboriginal and Torres Strait Islander Legal Services by $9 million over the next three years[10]. Self-determination and cultural identity are both battles that Australia's First Peoples are losing against bureaucracy and systematic failures.

Repealing s18C would create a forum for a new type of debate. However the participants of the debate all seem to come from the same demographic. Until there is a level playing field and ethnic minorities can actively engage and communicate with commentators like Bolt, through the means of the media, the survival of s18C ensures that mainstream Australian society is not divided and polarised on the basis of race.

As Waleed Aly, lecturer at Monash University, lawyer, academic and Muslim stated:

> *"I believe free speech is one of the most fundamental features of a plural, open, democratic society like ours. But it's not the only one. The equality of citizens is another. Equal opportunity of democratic participation is another still. I don't think it is good enough simply to declare the supremacy of free speech over all other social interests as though it is some unproblematic truism."*[11]

The European Union Court of Justice on surrogacy & paid maternity leave: a case note on CD v ST (C-167/12)

January 2014
By Kate Gauld

Bio: Kate is a lawyer currently working at Redfern Legal Centre. Previously she was a solicitor at the NSW Office of the Director of Public Prosecutions. Prior to her career in law she worked in a variety of digital strategy, community and policy roles at the ABC, Oxfam Australia and The Big Issue.

'Does a woman have the right to receive maternity leave where it is not she herself but a surrogate mother who has given birth to a child?' So begins Advocate General Kokott's opinion in CD v ST (C-167/12) in the Court of Justice of the European Union (CJEU) on 26 September 2013.

Kokott ultimately affirmed that a woman who has a baby through a surrogacy arrangement does has the right to receive maternity leave under Article 2 and 8 of the 1992 European Union Pregnant Workers Directive, as long as surrogacy is permitted in the Member State concerned and the national requirements are satisfied.

The Advocate General further confirmed that the right to maternity leave extends to both the surrogate and intended mother for a minimum of two weeks each, in recognition of the child's best interests and the health of the surrogate mother. However the total combined paid leave for the two women remains as it would for the one mother at fourteen weeks.

Facts:

While surrogacy is permitted in the United Kingdom under certain conditions, there are no specific rules on maternity leave for 'intended mothers', or the woman who assumes responsibility for the child after it is born.

The claimant and intended mother, CD, was employed at a National Health Service Foundation hospital. CD and her partner had arranged for a surrogate mother to bear their child. The surrogate mother gave birth on 26 August 2011, and CD began mothering and breastfeeding the child within the hour. As required under UK law, a parental order was granted some four months later.

Prior to the child's birth, CD had requested paid leave for surrogacy under the hospital's adoption leave policy. Her employer denied this request as there were no specific legal or workplace rules around surrogacy. CD made a further application two months prior to the birth, and this time her employer did grant her paid leave under the adoption leave policy.

Based on that initial rejection of her paid leave, the matter came before the United Kingdom's Employment Tribunal Newcastle upon Tyne. CD brought claims of unlawful discrimination on the grounds of sex and/or pregnancy and motherhood. She further claimed to have been subject to detriment by reason of pregnancy and maternity, and that she sought to claim maternity leave. Her employer contended that paid maternity leave was reserved for women who have given birth to or adopted a child, and that she was not entitled to paid leave.

The Tribunal stayed proceedings and requested a preliminary ruling from the CJEU regarding two European Union Council Directives about pregnant workers and discrimination. The Tribunal asked whether the Pregnant Workers Directive provides a right to receive maternity leave to an intended mother who has a baby through a surrogacy arrangement, and whether this right extends to intended mothers who breastfeed or may breastfeed following the birth.

Introduced in 1992, the Directive's objective is 'to encourage improvements in safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding'. Article 2 of that Directive identifies workers who are pregnant, have recently given birth or who are breastfeeding as being subject to the directive. Article 8 governs maternity leave, allowing for at least 14 weeks of continuous leave, including at least two weeks before and/or after 'confinement.'

Secondly, the Tribunal asked whether it is a breach under the Recast Equal Treatment Directive (2006/54/EC) for an employer to refuse to provide maternity leave to an intended mother, and whether an intended mother has been discriminated against by reason of her association with the surrogate mother. This more recent Directive of 2006 implements equal opportunity principles and requires the equal treatment of men and women in the workforce. Article 1 defines direct and indirect discrimination, and Article 2 stipulates that discrimination includes any less favourable treatment of women related to pregnancy or maternity leave.

Decision:

A. The Pregnant Workers Directive, 92/85/EEC

In answering whether and if so under what conditions the Directive confers a right to maternity leave on an intended mother, Advocate General Kokott recognised that the Directive was entirely silent on the matter of surrogacy. Further, that 'the structure and general scheme of [the Directive] do in fact suggest a surrogate monistic concept of motherhood'. The Defendant certainly argued as much, submitting that the Directive is solely referable to the surrogate mother of that child.

Kokott therefore queried the objectives of the Directive and whether it was necessary for intended mothers to fall within the scope of the Directive's protection. She considered the historical context of surrogacy, and that when the Directive was drafted in the early 1990s the practice was not as common as it is today. She therefore reasoned that the legislature may not have specifically considered that 'pregnant and breastfeeding workers can be different persons'.

Beginning with Article 2, Kokott found that the intended mother is clearly excluded from the Article as by definition she could not have been pregnant nor have recently given birth. However, as was the case with CD, Kokott found the intended mother may well breastfeed and therefore be covered by the Article.

In support of this position, Kokott found that the objective of the Directive was also to protect the health of workers who are pregnant, have recently given birth or who are breastfeeding. She compared the health and occupational risks associated with pregnancy and breastfeeding to intended and surrogate mothers, and found that while the health risks of pregnancy are incomparable, the risks for breastfeeding are entirely analogous. Kokott therefore found that breastfeeding mothers, regardless of whether they are the surrogate or intended mothers, fall within the scope of the Article.

Kokott then examined whether Article 2 includes intended mothers who breastfeed but excludes intended mothers who do not. Kokott found that the objective of maternity leave was not solely to protect workers, but also to 'protect the special relationship between a woman and her child' following childbirth. Kokott found this relationship must be protected regardless of whether the intended mother breastfeeds, and from the moment the intended mother takes the place of the surrogate mother, she must have the same rights as would otherwise have been conferred.

Kokott further reasoned that an intended mother's method of feeding was of 'lesser significance', that breastfeeding 'depends on circumstances which the mother can influence only in part', and should not be a decisive factor in whether maternity leave is granted or not. Kokott ultimately concluded that Article 2 'must be understood in functional rather than monistic surrogate terms', and therefore must apply to an intended mother regardless of whether she breastfeeds.

In answer to the final question regarding this Directive, Kokott determined whether and if so to how the 14-week maternity leave provisions outlined in Article 8 could be divided between the surrogate and intended mother. Although Article 8 assumes a single person is entitled to continuous leave of 14 weeks, Kokott found this leave could be divided between the two mothers, reflecting the need to protect the surrogate mother prior to and after giving birth, as well as the best interests of the child.

However Kokott was firm that surrogacy could not 'result in a doubling of the overall leave entitlement' such that before the birth only the surrogate mother has a right to maternity leave, while after the birth, both women are entitled to a minimum of two weeks leave. The overall leave entitlement of 14 weeks must then be shared between the two women so that no more than 14 weeks is taken between them.

B. The Recast Equal Treatment Directive, 2006/54/EC:

Advocate General Kokott found that there was no discrimination on the grounds of sex for failing to grant maternity leave. Kokott quickly dismissed the claimant's submissions that she had suffered detriment by initially being refused maternity leave. Kokott ruled it was impossible to discern any 'less favourable treatment' under the Directive as CD was not pregnant and could not rely on the surrogate mother's pregnancy to claim discrimination. Additionally in ruling out direct and indirect discrimination, Kokott compared CD with a male colleague and found she was not subject to detriment because of her sex, but because of her desire to have a child.

There was no breach of Article 14.

Commentary:

Although such a ruling appears to be a positive development for both surrogate and intended mothers in the United Kingdom, the CJEU handed down a diverging opinion in a surrogacy matter on the very same day, leaving little clarity about any such right under EU law. In Z v A Government Department and the Board of Management of a Community Schoool (C-363/12), the intended mother in Ireland was refused paid leave. The CLEU found her employer had not breached EU anti-discrimination rules by refusing her paid leave.

A fundamental difference between the two matters is that surrogacy is permitted in the UK while in Ireland it is not. Advocate General Wahl nonetheless construed the objective of the Pregnant Workers Directive in far narrower terms than Kokott, concluding it could 'only be understood in context; as a logical corollary of childbirth (and breastfeeding).' Wahl reminded Member States that the Pregnant Workers Directive was only an 'accepted minimum', and the States themselves could provide 'considerable leeway' and 'extensive protection' for surrogate, intended and adoptive mothers and fathers.

Regardless of whether the Advocate Generals' recommendations are followed or not, the UK is expected to pass legislation in 2015 extending surrogate parents the same rights to paid maternity leave as biological and adoptive parents.

In Australia, surrogacy laws falls somewhere between those in Ireland and the UK, where generally 'altruistic surrogacy' is permitted. In New South Wales, paid maternity leave for surrogacy arrangements is specifically excluded for Crown employees under the Crown Employees (Public Service Conditions of Employment) Award 2009.

Human right to freedom of expression: Freedom of the genitalia v Freedom of the general public

January 2014
By Marija Yelavich

"You cannot find peace by avoiding life."
—Virginia Woolf

The English and Wales High Court consider the human right to freedom of expression.

On the 31 October, 2013, the High Court of English and Wales handed down its decision in ***Gough v Director of Public Prosecutions ('Gough')***,[1] finding that public nudity is a genuine form of expression. However, this form of freedom, like any other human right, also creates a corresponding responsibility. The Court, constituted by Leveson P and Openshaw LJ, reaffirmed that this right to freedom of expression is limited when the public interest is threatened.[2]

When delivering the decision, Leveson P heavily considered the context of the Appellant's actions, namely that he has been walking nude in public throughout the United Kingdom for ten years.[3] Whilst industry professionals were called to testify in support the Appellant's case, the High Court rejected the evidence saying,

> Mr Gough's behaviour in walking naked was insulting and was also threatening in that it caused [one of the witnesses] to feel at risk. This behaviour could also be described as abusive and disorderly as it contributed to a breakdown of peaceful and law-abiding behaviour as evidenced by the reactions of the public to Mr Gough's public display of nudity.[4]

Utilising a strong base of common law decisions,[5] the freedom to expression guaranteed under Article 10 of the European Convention on Human Rights[6] was balanced with the s5 of the Public Order Act 1986.[7] It was found that the word and associated words of 'insulting' were not be considered narrowly and did mean 'abusive.'[8] The court found that an individual's right to expression through nudity must be restricted in order to balance the corresponding responsibility to the public.

Although this is an English case, the decision in Gough arguably reflects a facet of the court system- a place to consider, revise and renew the human right to freedom of expression in accordance with the right to dwell in public without distress.[9]

For our NSW readers, it is worth noting that the act of exposing genitals is an illegal act under section 5 of the Summary Offences Act 1988 (NSW). It is a separate offence to using threatening or abusive language or behaviour.

15 Minutes with Jed Horner

January 2014
By Arun Krishnan

"Reality is wrong. Dreams are for real."
—Tupac Shakur

Jed Horner is the Policy & Project Officer at the NSW Gay & Lesbian Rights Lobby and is also a PhD candidate at the University of New South Wales. Amidst working for the Australian Human Rights Centre, engaging with the LGBTI community we found time for a quick coffee with this legend!

Hi Jed thanks for joining me, to start off with what is your background in?
Hi Arun, thanks for having me! I have a background in Political Science and it has seen my studies and research stretch from Cape Town in South Africa to New Zealand to Sydney, Australia now!

Being a PhD candidate is no mean feat, what drives and excites you?
Being around my family and growing up in apartheid South Africa enabled me to be surrounded by inspirational everyday people with rich histories who showed me that equality is something worth fighting for.

And what's the worst part about doing your PhD?
All the writing and researching doesn't exactly give you an adrenalin rush!

What's the best part of being the Policy and Project Officer for the NSW Gay and Lesbian Rights Lobby?
The core of it lies in being able to make a difference. Being able to walk away and knowing that things are better than when you walked in.

And what's the most challenging aspect of your role?
A large part of the challenge is the stress of trying to deliver. Whilst working on the Sex Discrimination Act (amended in 2013) we had to work with a hung parliament. We pulled through at the end.

Do you have any advice to undergraduate law students on how to not lose your idealism in law school?
Be passionate and down to earth. Get involved and don't be afraid to stand for what you believe in.

What do you think is the biggest challenge facing the legal industry?
Community based legal centres are facing massive funding cuts which means that there will be significant issues for those who can't afford legal representation. There is an element of having to decide if we're a society that advances the strong or protects the weak.

Jed, thank you so much for spending your valuable time with me. It was a pleasure to spend time with someone who is not only contributing to the betterment of the legal industry but also society on a wider level.

Same-Sex Marriage in Australia

January 2014
By Jessica Fenech
B Law/ B Arts (Psychology Major)

"Nothing is impossible, the word itself says 'I'm Possible'."
—Audrey Hepburn

The battle to achieve marriage equality for same sex couples is a current legal issue impacting civil rights. Previously, the struggle was to gain recognition of same sex couples and this has been achieved through various pieces of legislation such as the Same Sex Relationships (Equal Treatment in Commonwealth Laws-General Reform) Act 2008 (CTH).

In 2008, the federal government passed multiple reforms with the main aim of removing discrimination and recognising same-sex couples on a commonwealth level. These reforms equalised many of the rights of same-sex couples and heterosexual couples by placing the relationship in the de facto category. One of the changes to come from this was that children of those in same-sex marriages received the same entitlements as those from married couples. Another key area of recognition following the reforms was for taxation. Same-sex couples could now identify as being in a relationship rather than being taxed as a single person. The 2008 reforms were a step forward for same-sex couples.

However, the current issue is marriage equality.

Marriage remains the barrier to equality and acts as a constant reminder that same-sex couples still face discrimination. There are multiple issues surrounding same-sex marriage, particularly the denied human rights of dignity and equality. Whilst same-sex couples receive many similar entitlements to married couples, an important difference remains.

"Marriage remains the barrier to equality and acts as a constant reminder that same sex couples still face descrimination."

The failure to recognise same-sex marriage discriminates against the couple and their children.

Same sex couples have been denied the right to marriage multiple times and have been handed an alternative in the form of a civil union ceremony. This is a legally recognised partnership, which allows those in a civil union similar rights and responsibilities to married couples. To accept a civil union as the alternative for marriage is seen as counter-productive, as it only reinforces discrimination and inequality.[1] It highlights that same-sex couples are forced to have a different ceremony to demonstrate their love. It further acts as a constant reminder of discrimination. as both heterosexuals and homosexuals can enter into a civil union but marriage remains exclusively for heterosexual couples.[2]

In 2013, the Federal Government challenged the Australian Capital Territory (ACT) government in the High Court on the issue of Same-sex marriage.

Photo sourced from: https://radioadelaidebreakfast.wordpress.com/tag/gay-rights/

The ACT introduced the Marriage Equality (Same-Sex) Act 2013, which entitled same-sex couples to marry. As per the act, these marriages were only recognised in the ACT and this was the first law in Australia allowing same-sex couples to marry. In the space of a week, 31 couples married under the above mentioned law. However, all of these marriages were annulled as a result of the High Courts decision. In this case, the Federal Government argued that the Marriage Equality (Same-Sex) Act is inconsistent with Commonwealth laws. Section 109 of the Australian Constitution states that federal law prevails where state law is inconsistent, thus allowing the federal government to challenge the ACT.

Marriage in Australia is governed by the Marriage Act 1961 (CTH) ('The Marriage Act'), which defines the limits of marriage. The Marriage Act 1961 (Cth) and subsequent amendments made to it, demonstrates that this Commonwealth legislation is intended to 'cover the field' with respect to all forms of marriage within Australia. In 2004, the Federal Government made amendments to the Marriage Act to specifically define marriage as between a man and a woman. These amendments also prohibited the recognition in Australia, of same-sex marriages conducted overseas.[3] Therefore, the ACT legislation is inconsistent with the Marriage Act 1961 (Cth). Over the past ten years both the Gillard and Abbott governments have continued to support this amendment, thus disallowing same-sex marriage.

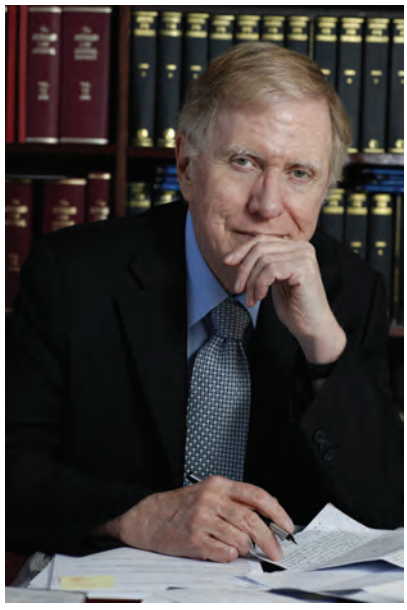
Ultimately, the High Court reached a unanimous decision in favour of the federal government, as a result the same-sex marriages performed in the ACT had to be annulled. However, the court interpreted the Constitution as stating that marriage is to be between two "natural" people. This can be taken as a step forward for marriage equality because it no longer allows for the argument that marriage equality is unconstitutional.

For many, there remains the hope that marriage equality will be a reality in the future. Increasingly, the loudest voices in support of the cause of marriage equality are those of young people. A research poll showed that in 2009-2011 80% of young Australians (under the age of 24) supported marriage equality. This suggest that in the future, as these young people become leaders, these laws will change.[4]

Victoria leads the way removing criminal records of men convicted for gay sex:

Marriage is not the only legal issue for same sex couples. Up until 30 years ago gay sex was a crime. As such thousands of men were charged and convicted for partaking in consensual gay sex. Whilst the act is no longer a criminal act, many people still live with a criminal record and carry this burden. Victoria is the first state in Australia to introduce legislation that will erase the criminal record for those convicted of gay sex. This process will allow people to apply to have their records expunged and their records will be examined accordingly. Not everyone will be expunged, particularly if the crime they were convicted of is still a crime under current legislation. This 'shows a step forward for the relationship between same sex couples and the justice system, as society becomes increasingly accepting of homosexuality.

Subversive Thoughts for Law Students



THE HON MICHAEL KIRBY AC CMG
Justice of The High Court of Australia (1996-2009)

Over the years, during my time on the Bench as well as before and after, I have been honoured with a number of achievements. Reflection on those achievements naturally turned my mind to the critical turning points in my career. Are there any lessons to be learned from such occasions and for the choices we make in life? Everybody's life is different. But maybe some lessons can be drawn from reflecting upon the choices I have made in my life at critical junctures:

I. TO STUDY LAW

At school I was good at the type of things lawyers tend to succeed in. Subjects like English and History came naturally to me. In the 1955 NSW leaving certificate, I came first in the State in Modern History. I was also part of a State championship team in debating. My school, Fort Street High School in Sydney, had a long legal and judicial tradition. Distinguished alumni came to talk to us about choosing law, over, say, medicine, engineering or teaching. Amongst the 50 High Court judges, five came from that school: Barton, Evatt, Taylor, Barwick and me.

The choice of law was therefore pretty inevitable in my case. I have never regretted it. *Law was then, and still is, a discipline that opens up to fascinating career opportunities.* In fact, there are more prospects today than then: working overseas, acting as in-house counsel and undertaking a life in business or in the public sector. Law also sometimes offers its recruits a chance to advance social justice and to help the disadvantaged. The cause of justice in the world is a worthy aspiration. Lawyers can help to make it real. So when I left school, I had a clear idea that I would study law. It is a decision I am glad I made.

II. TO ATTEND LAW SCHOOL

Back in the 1950s, pursuing a vocation in law usually meant attending the closest law school. For me, that did not involve a hard choice. Each Australian State then had only one law school. In New South Wales it was found at the University of Sydney; in Victoria the MLS. The SU faculty then occupied a 19th Century building in Phillip Street, in the Sydney CBD. On the ground floor were a number of barristers' chambers. The upper floors contained two large lecture halls where law students were jammed into huge classes to listen passively to teachers reading the law school notes. Most of the teachers were then senior barristers. Early in the morning and late at night they would describe and explain the law, usually by reference to judicial decisions. This was an era of compulsory subjects; a heavy work load; attendance rolls to check on absentees; virtually no optional courses; closed book examinations; and a premium on rote learning.

I have described those far off days elsewhere.[1] I made friends who were to last my whole life. Many became judges: Murray Gleeson, David Hodgson, Brian Tamberlin, Graham Hill, Jane Mathews and Marcus Einfeld. Two of

the class became law professors: John Peden (Macquarie) and Geoffrey de Q. Walker (UQ). In 1959, Murray Gleeson and I agreed to share the writing up of notes on alternative subjects. We divided the topics of law according to our respective interests. These were fated to endure. He undertook such subjects as Company Law, Property Law and Taxation. I chose Federal Constitutional Law, International Law, Jurisprudence and Legal Ethics. Our lives were later to see us sharing writing obligations in a similar way, first in the NSW Court of Appeal and then in the High Court of Australia. *It is the nature of the relatively small community of the law that the acquaintances at law school tend to become professional companions throughout life.* Some even become friends.

III. TO BECOME A LITIGATOR

In the second year of my law degree in 1959, I had to find articles of clerkship. There were no practice courses or colleges of law in those days. I had done well in my academic transcript. So not unnaturally I thought I would be a sure thing to secure articles. Big mistake. My Aunt Lillian typed up a dozen applications to all the big legal firms in Sydney. However, because my daddy had not been a lawyer, the rejection slips came back, one after another. All the big end of town firms said no thank you. Most of them have recently changed their names. But it does not fool me. I know them still. In the High Court, I used to look at the names of the legal firms on the appeal book covers. I remembered those rejection slips. I have forgiven them (I think). But I have not forgotten.

Eventually a law tutor told me: 'Go to the small firms of litigators'. This I did. Eventually, I secured articles in a tiny firm with only two partners and three clerks. The clerks worked together in a small, windowless room. Two of us went on later to become judges. We shared fifty percent of the time of Priscilla Sawtell, a legal secretary. She treated us both with disdain.

On my very first day at the firm, I was sent to court on a workers' compensation case. We lost. But I found it so challenging and exciting. This was the age of orality, of jury trials and of quick case turnover. I felt sure that I would be good in this world. As stressful and pressured as it was, this was the work I wanted to do. So I had found my vocation.

When I graduated in law in 1962, I found my first job as a solicitor through the positions vacant pages of the newspaper. The senior partner of a largish Sydney firm wanted me to be a kind of in-house counsel. He had failed at the bar and disliked barristers. He wanted me to be better and cheaper than the barristers. I tried to do this. It was great experience. Standing up in court and attempting to persuade an able and uncorrupted judge, gave me a buzz every day of my professional life. Eventually, the stress subsided. I got better at it. I was made a partner in the firm. However, I decided to take the plunge and join the Bar. In doing this I was four years behind Murray Gleeson, my Law School companion. In later years I sometimes wondered whether, if I had joined the Bar earlier, I might have become Chief Justice instead of him. But that was not be. I just had to make do with the professional appointments that came my way.

IV. TO DO PRO BONO

Back in the days when I was a young solicitor and barrister, I undertook many pro bono cases. We did not dignify them with that Latin title in those days. Generally, we called the work "freebies" or "spec" briefs. No win: no fee. Lawyers in the big legal firms (you remember, they're the ones who had sent me those rejection slips) looked down their noses at this practice. But I knew that *this was often the only way that the poor and vulnerable with an arguable legal case could secure justice.* So I did it.

My pro bono cases came at first from the SU Students' Council. They included many brushes with the law by students who later became pillars of society: some even judges. They involved representing conscientious objectors against the war in Vietnam; cases to defend Aboriginal 'freedom rides'; fare evasion and cases to promote the causes of social justice around at that time. I joined the Committee of the NSW Council for Civil Liberties. It had a never ending stream of interesting matters. Somehow they had to be squeezed into the busy practice of my Firm. Some I won; some I lost. Undertaking these cases proved to me that the law and justice were sometimes strangers to each other. I was resolved to do what I could to make them get acquainted.

Undertaking pro bono cases is not, of course, a proper substitute for an adequately publicly funded system of legal aid. Yet from the point of view of the individual lawyer, especially when young, work of this kind is often exciting and satisfying. **My advice to every fledgling lawyer is to be a joiner.** Get involved with civil society organisations. They often help the poor, vulnerable and needy. Prisoners' Aid. Councils for Civil Liberty. The International Commission of Jurists. Amnesty International. HIV/AIDS Legal Network. Refugee centres etc. Apart from everything else, this work may get you noticed, as I was. Causing trouble (naturally in the most polite and professional way) may help your reputation. It may open doors for your future advancement. This is what happened to me.

V. TO BECOME A JUDGE

By November 1995, I was practising at the Bar, involved in cases in all the main courts. My desk groaned with fat briefs. I was working 7 days a week. Everyone told me I was 'successful'. Then along came a big case before the Full Bench of the Australian Conciliation and Arbitration Commission. I was appearing alone for all the trade unions in a matter about a power strike that threatened to plunge Victoria into prolonged darkness. It was at this vulnerable moment that Sir John Moore, President of the Commission, called me into his chambers. He asked if I would 'entertain' an approach to accept appointment as a deputy president of the Commission. I was but 35 years of age. He told me the government wanted younger appointments. I promised to let him know.

My friend at the Bar, Michael McHugh QC, counselled me against accepting. "You'll sink like a stone", he warned. But I knew that the highly talented Mary Gaudron had just accepted appointment to the same office. The Commission was a great and powerful national tribunal. So I resolved to take the plunge. I knew that I would enjoy, and be good at, judging. I had watched the best judges and I had seen some of the worst. I accepted. I 'entertained'. And I never regretted it.

People later told me that I should have gone into politics. That was not really an option in those days, because of my sexuality. Anyway, I am not sure I could have endured a life of barbeques and backroom deals. People also said that I only accepted the judicial post to secure the title, useful to my appointment soon afterwards, as the inaugural chairman of the Australian Law Reform Commission. That was not how things happened. So I began my career in the national industrial relations tribunal. After 40 days and 40 nights, I was asked to accept secondment to the ALRC. Initially, I did not want to leave the bench. I knew very little about law reform. So luck and chance play a big part in everyone's life and career. I was born under a lucky star. And when luck comes along I have always seized it with both hands and made the most of my chances. Carpe diem!

VI. TO FIND LOVE AND TRUTH

In a life in the law, fortune favours the brave. Success is chancy. But the risks are reduced by good training, hard work, getting noticed, going the extra mile and pushing the career envelope. These, then, are the professional lessons I learned in my early life as a lawyer. But there were deeper, more mysterious, lessons running like a counterpoint to my professional journey. This counterpoint has a beautiful, indeed unforgettable, theme. It takes resonances from the lyrical harmony of Justice, for which most lawyers search in their daily work. I would call the haunting melody: Variations on a theme of Love.

A lucky lawyer will enjoy love at home: with parents, siblings and a few close friends. But he or she will generally search for (and sometimes find) a life's companion and maybe children. A companion can provide fulfilment for the broader dynamics of human life. So, with me, at the ripe old age of 29, I met my partner, Johan van Vloten.

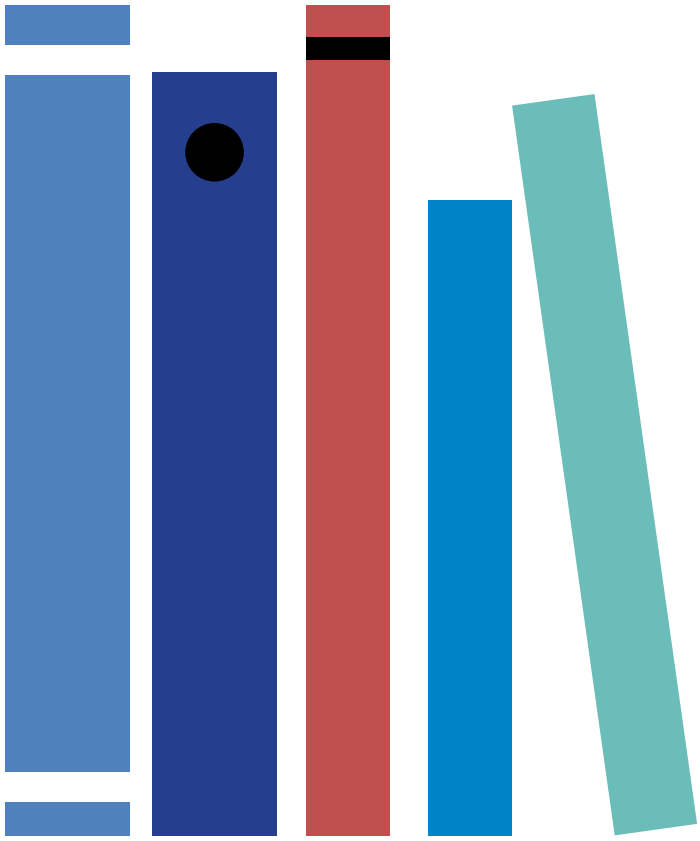
Professional support without love will often seem empty. Lawyers have to learn to be kind to themselves. To love themselves; and I am not referring to conceit. To find enjoyment and peace in their lives. Not be overly critical after a less than glorious day in the office or in court. Law schools and legal venues are often stressful places. **Somehow, a lawyer must learn to cope.** And to accept occasional failures and imperfections which are a mark of human existence. Getting the right work/ life balance is important for every lawyer. Coping with stress and disappointment, even sometimes depression, is necessary. There is always help at hand. And the best help, if you can find it, is often a companion who laughs at the pretentions of the law; at all the gossip and the infighting. Making these personal life choices correctly is a big key to success and happiness in our profession.

If the choices are well made, a life in the law can be fulfilling, often exhilarating. At its best, the law has noble aspirations. I never lost my sense of wonder and optimism and idealism about our profession. Nor have I ever lost my commitment to try to make the world a slightly better place by my having been a lawyer. Lawyers must usually be steady people who favour and take conventional approaches. But there is always a place for mavericks in the law: questioners and stirrers. Were it not for a few mavericks, we would never have questioned our racist laws in Australian on Aboriginals and Asians; our sexist laws on women's inequality; our homophobic laws against gays; and our complacent formalism. Only mavericks would interest themselves in the law on animal welfare. And the law on poverty or climate change. So push the boundaries. And stay lucky.

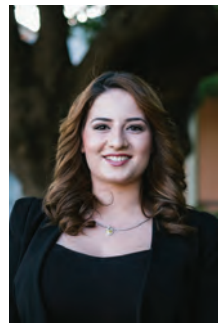
In a graduation address I once made, I reminded those present of the noted American maverick, Steve Jobs. His life and creativity teach lessons, even for us in the law. When he was similarly honoured, the advice he gave was somewhat similar to my own. But to the injunctions I have made, he added: "Stay hungry!".

FEATURING:

THE LIGHTER SIDE OF **LAW**



January 2014
By: Lara Joseph



"Strive not to be a success but rather to be of value."
—Albert Einstein

To all the familiar faces welcome back to uni and to the first years, *welcome*, you made it, and now you've got a long but fulfilling road ahead of you. Most of us recall our first year as being one of confusion, fear of the unknown and an introduction to new experiences and expectations. By the time we got to our 2nd and 3rd year we thought to ourselves well this isn't too bad, if only I knew all these things in first year. That's why we've compiled a list of the Do's and Don'ts of Law school, that will hopefully make your transition into Uni a smooth one.

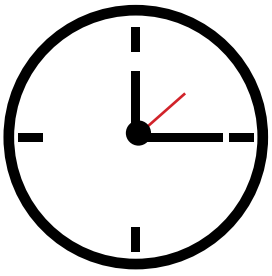
Law school do's & don'ts

Do Drink Coffee
Whilst this may sound trivial now, you'll soon find out that Law school involves many long, late and restless nights, which will require a caffeine boost. Not only this, but studies have shown that caffeine may even improve memory retention. So get drinking!

Make heaps of friends
Expanding your social circle will not only ensure you've got someone to have lunch with in-between classes, but will also allow for a support system to get through the tougher times. Law school is no walk in the park and having friends in classes will enable you to set up a study group, share notes and remind each other of impending due dates.

Get involved
Getting involved in Uni life is one of the best things you can do to get the most out of your uni experience. This can be through competitions, clubs or even attending events organised by the uni or Law Students' Association (LSA). This will allow you to relax, have fun and is a great opportunity for networking.

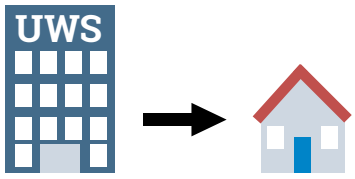
Read your textbook and make notes!
One of the worst things I did I first year was not appreciating my textbooks. Whilst they may look like a brick and feel like you could do weights with them, they're an asset and an essential part of your learning experience. If you don't take time out in week one to sit down, read the relevant sections and make notes you'll fall behind very quickly and by mid semester you'll find yourself overwhelmed with information you should've known week one.



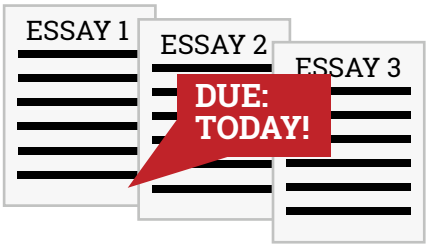
Take time out and have fun
It's ok to relax and let your hair down once in a while. That assignment will get done, that chapter will be read, as long as you manage your time effectively you should be able to find time for yourself.

Arrive early to find parking
I wish someone had told me day one that it would take me half an hour to find parking. It's a sad reality, but during peak time the parking lot can be a warzone. Ensure you come to Uni earlier so that you can find a parking spot and get to class on time. Missing the beginning of class can leave you feeling lost and behind.

Don't overload on coffee
Students are human too! We need sleep and it isn't healthy to be running on nothing but caffeine, save yourself the agony and do not try this… trust me.



Don't go to class and go home
Uni shouldn't be a place where you come to learn and then go home. Stick around, go have lunch, attend an event or chill in the hub. You never know, you might make a lifelong friend.



Don't leave assignments to the last minute
Whilst this may have worked for you in high school, Uni is a different ball game. You might have 3 or 4 essays all due at once and leaving them to the last day will leave you stressed and vulnerable. Begin assignments way ahead of time to avoid mental breakdowns… yes they do happen.

Don't stress, everything can be fixed
If you receive a mark that's lower than expected or you just don't think you'll get that assignment done on time, don't stress everything has a resolution. Lecturers are there for a reason so book an appointment and they'll talk you through what you can do.

Don't be afraid to leave something incomplete for a while
You don't have to finish something as soon as you start it, it's not a race. Begin something and take a break, let yourself ponder on it you never know you might get inspired and come up with a better way of completing your assignment.

January 2014
By: Lauren Sanderson

"The opposite of life is not death, it's indifference."
—Elie Wiesel

SOCIAL MEDIA + LAW STUDENTS

FRIENDS OR FOES?

For many Law students, engaging in online social media is second nature. Platforms such as Facebook, Twitter, Tumblr, WordPress and Instagram can easily become an extension of ourselves. While it is easy to think of these sites as just a means to connect with friends and show off the highlights of our social lives, the way students represents themselves online can havereal-world repercussions on their legal career.

Sydney Friends Post

Increasingly, employers and clients are paying attention to the online profiles of job candidates. Gone are the days where an applicant's chance of achieving the dream position where determined solely by their resume or performance in the interview room. The way students represent themselves through social media can determine they impression they give to future employers.

Students who are savvy in the way they navigate their online presence can easily avoid embarrassment, and use social media to their professional advantage. Smart social media use is not about removing the interesting aspects of your online presence but more about staying in control of how you are represented.

Pitfalls to watch for:

Privacy policies of social media sites such as Facebook are continually shifting. Given that for many of us, Facebook is a primary mode of updating others about our personal lives, it is wise to take five minutes out of your time to comb through your privacy settings. Placing an appropriate limit on who can see your content provides peace of mind. Another wise tip is to turn on functions that allow you to moderate what is posted on your wall or feed before it appears to others.

Google Yourself. While it may seem self involved, taking the time to Google yourself allows you to see how recruiters may see you online.

Remember: Tweets from Twitter and submissions on sites like Tumblr can show up in search engines

Check your voice. Social media sites such as Twitter, Tumblr and Facebook can provide excellent means for students to develop their voice on issues that are occurring in the world. However, this should be done with caution. The views and forms of expression you use online can easily follow you into your career. While posting about your favorite team winning a game is fine, long rants about people or work places, antisocial comments and reposting derogatory content can quickly turn your online profile into a professional downfall.

Photos. Looking back through old Facebook photos may be a cringe worthy step back in time, but could be beneficial in the long run. Online pictures often play a significant role in how a person can be perceived from their online profile.

There is nothing wrong with showing you have a social life outside of your Law studies, however, evidence of excessive anti-social behaviour, drug use or content of an overtly sexual nature should be reviewed.

How to use social media to your advantage

Network, Network, Network

It's never too early to begin interacting with the professional field of your interest. Social media sites provide an excellent means of forming valuable connections and carving an identity for yourself in the legal profession.

- Set up a profile on LinkedIn. LinkedIn can be likened to Facebook for the career minded. It allows you to set up a profile that includes your qualifications and career goals. For students, LinkedIn is also a great way to connect with professionals in your field of interest and to look up the paths they took to get where you want to be.
- Following relevant Law associations is another way of putting your foot in the door of the professional world. The Australian Law Students Association @ALSAonline, NSW Young Lawyers @NSWyounglawyers are great examples.

Be in the know

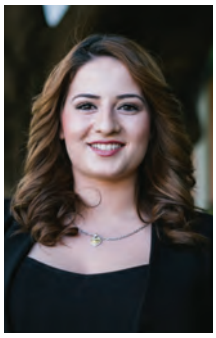
- Twitter and Facebook can be an efficient way of keeping up to date with court decisions, and other developments in the legal fields.
- The internet also provides an enormous database of publications targeted at both law students and professionals. *"**SurviveLaw.com**"* and *"**Lawyers Weekly**"* are two useful examples.
- Many Australian and international news publishers are frequent users of social media. Following a few of your preferred news distributers allows you to keep informed about current affairs.

Show off your skills

- Posts showcasing community involvement, hobbies and sporting interests can raise you in the eyes of professional contacts that you may have on social media.
- Effective use of social media is an increasingly valued skill for job candidates to possess. If you are already a member of a club at UWS, ask to help out on their social media strategy. If they don't already have an online presence, starting one can be a great example of your media prowess that you can talk about in interviews.

The Laws of Attraction—

Picking up at Law school



January 2014
By Lara Joseph

"Strive not to be a success but rather to be of value."
—Albert Einstein

It's the first day of class you creep in the door and surreptitiously scan the room for a potential class buddy. Hmm too much gel, urghh looks too creepy, textbook tabs already… really, umm is she wearing her PJ's? Ahh wait there we go… they're pretty cute. You've spotted that girl/guy who you think will be your obsession for the rest of the semester (admit it; Facebook stalking is what we do with our spare time). So you've sat down next to them, now what? Here are our helpful tips on picking up at law school.
(User discretion is advised).

1. *Pick up lines*

We've all heard them before but any one of these is bound to send your crush swooning.

"Your body is ultra vires, it's beyond my power to control myselfl around you"

"A reasonable person would say yes to dinner with me next week"

"I'm just saying that your lips really look like an invitation to treat"

"Stare decisis shouldn't matter because our love overrules"

2. *Facts*

For whatever reason us law students are consumed with knowing what the other doesn't. So why not astound your crush and share some of that knowledge by sharing a random fact. Try this one; did you know that in 1770, the British Parliament passed a law condemning lipstick, and that "women found guilty of seducing men into matrimony by a cosmetic means could be tried for witchcraft."

3. *Crazy Memory*

If you're the Mike Ross of your class you've got this one sorted. This is bound to impress that special someone, use it as your party trick, and recite the constitution if you have to. (If you have no idea who Mike Ross is please refer to point 7).

4. *Coffee*

Eat, sleep, Law, repeat… the only thing is we don't sleep. Ask her/him to come get coffee with you. The only way that they'd say no is if they were some sort of alien/ zombie/superhuman life form that never gets tired… and my exhaustion is getting to me again.

5. *Baked goods*

Bake in the morning, bake in the afternoon, bake in the evening. If there is one thing that will keep you sane it's baking. The benefits will astound you; stress relief, a plethora of baked goods and of course something sweet for your sweetie.

6. *Food*

Other than coffee the one thing we can't resist is food. Preferably the greasy kind that releases a law student of the guilt we feel for not studying and instead leaves us feeling guilty about overindulging. In other words its cheap therapy. Indulge him/her in a sinful meal and they'll be yours forever.

7. *Suits*

We all want Harvey's tenaciousness, Jessica's authority, Mike's memory, Donna's humour, and Rachel's good looks. Try incorporating these in your life or better yet pick up the box set, lay back, relax and join the obsession that is Suits. Next time around you'll definitely have something to talk about.

8. *Coffee*

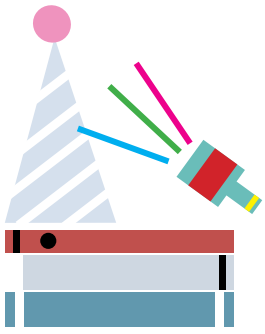
Did I mention coffee?

9. *Wine*

From Merlot to Moscato, if there's one thing a lawyer needs in their life to take the edge off, its wine. Casually bring this up in conversation; it's a sure winner.

10. *Wit*

Whether you've realised it or not, wit is your best asset as a law student. Sometimes we find ourselves in situations where thinking on our feet and being charming at the same time saves us. Use this to your advantage, talk up a storm, have confidence and charm your way through, this will be an essential part of both your social and law life.



Yes, Law Students have **lives**

January 2014

By: Abdul Karim Tlais

"It does not matter how slowly you go as long as you do not stop."
—Confucious

Law is not only about the long night study sessions, the energy drinks during the exam period and sorting obiters from ratios. Believe it or not there is a fun side to studying law!

This summer, I decided to do an exchange at Maastricht University in the Netherlands and have found it to be one of the best experiences of my life. My time in the Netherlands provided a welcome change after spending the last two years in Sydney, allowing me to experience cultural differences and new styles of teaching. At Maastricht University, the tutor only facilitates class discussion, rather than teaching content. Tutorials operate on student discussions, with the teacher only interrupting when they have an interesting view or need to explain an idea. I quickly found the risk of this method of teaching; if you arrive to class without completing you're reading, there is no escape!! As participation in these discussions are mandatory, the chances of being caught are 100% and not having something to contribute will leave you red-faced and bring the tutorial to a stop.

Now to the more interesting side of studying overseas, not only do you find yourself infused in a new culture you quickly learn to adapt and enjoy it. Firstly the food; the Dutch are not exactly famous for their cuisine, but not to worry, a quick fifteen minute bus ride from Maastricht and you will be enjoying Belgian Waffles. Studying in Europe means if you have a day off you can easily make the trek to France for a shopping trip and be back home before dinner. The second most important aspect of exchange are the valuable social skills you will learn while adapting to the new culture you find yourself in. As young lawyers in training, being socially aware and having the required social skills to interact with a client or judge can mean the difference between success and failure. While studying overseas, you have no choice to interact with new people and initiate conversations with those who can barely speak English. Additionally, everyone here in the Netherlands are extremely friendly and are usually the first to approach and start a conversation (they all love Australians!).

Finally, what was my favourite part about studying international Law at a University overseas? You learn of the perspectives of overseas lawmakers on our domestic laws in Australia. There is no partisan bias, rather many of the comments I encountered cut right to the issues facing Australia. As an example, it is well known in Europe that many in the European Union are disappointed with Australia's proposed abolition of the Mining Tax. This new perspective allowed me to appreciate both the positive and negative outcomes of Australia's law without the voice of national bias often encountered in Australian political media.

Keeping this short…

Studying in a country where you have never been may sound scary at the beginning and truthfully it frightened me for weeks before I departed. However, this exchange has allowed me to learn more about myself in three weeks then I have in the past 18 years. While you are in a different country, without your family and friends, you learn your weakness and your strengths. I recommend to everyone who has the capacity to study overseas on an exchange, to take this opportunity as will not doubt provide a life changing experience!



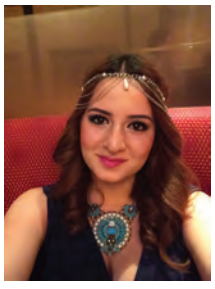

Winnie Jobanputra

"I think, therefore I am." (Cogito ergo sum) in latin
—Rene Descartes

1. The Worlds University Debating Championships. This year held in Chennai, India in which I represented the University as the an adjudicator accompanied with Thomas Morgan and Robert James who made up the UWS team.

2. Mishpatim - Israeli and International Law Summer Course, studied at the Hebrew University of Jerusalem under the Rothberg International School. This unit abroad was absolutely fantastic, involving learning a whole legal system from scratch one which is based upon a rich historical, cultural and religious basis. I was able to learn and witness firsthand the issues of conflict which are present within Israel. With visits to the Westbank and other areas of occupied territory, the Supreme Court, Knesset and other historical and cultural sites in Israel, this program was amazing.

Lara Joseph



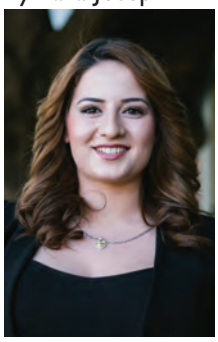
"Strive not to be a success but rather to be of value."
—Albert Einstein

Surf, sun and sand, the three things I expected from my trip to the Caribbean, but what I got, exceeded all my expectations. Once I got over the jet lag of my 20 hour flight to Florida I was able to enjoy all the facilities on the Allure of the Seas Cruise ship. The options were endless; night clubs, rock climbing, ice skating, zip line, wave rider, numerous shows including Chicago, Blue planet, and Ocean Aria. Not to mention the limitless amount of food, in short it was amazing!

But what really took me by surprise was the immensity of culture and history that St Maarten, St Thomas and the Bahamas carried. The islands, whilst being breath taking also had a depth to them, as well as this the good nature of the locals was unparalleled. Definitely one of my favourite trips to date; the Caribbean will always have a special place in my heart.


Procrastibaking

January 2014
By Lara Joseph



"Strive not to be a success but rather to be of value."
—Albert Einstein

The beginning of semester is great, you've gone to typo, new stationary is laid out, you've sworn you'll put more effort into your appearance this year and of course you'll complete all your readings and do notes. But what happens half way through semester is all too familiar, you lose your determination and slowly drift off to Facebook to procrastinate. We've got news for you, procrastinating is a thing of the past, welcome to Procrastibaking! Procrastinate by baking all your sorrows away it'll revitalise, rejuvenate and nourish your soul… and you get a bunch of baked treats.

Peanut Butter Cookies

Electric mixer

Cupcake tin

Cupcake wrappers

Unwrapped Reese's miniature peanut butter cups

½ cup peanut butter

½ cup butter

½ cup sugar

½ cup brown sugar

1 large egg beaten

½ teaspoon vanilla

1 ¼ cups flour

¾ teaspoon baking soda

½ teaspoon salt

1. Preheat oven at 190˚C
2. Combine peanut butter, butter, sugar and brown sugar, with a mixer, until fluffy.
3. Add egg, vanilla, flour, baking soda and salt, mix well.
4. Place Cupcake wrappers into cupcake tin.
5. Roll dough into small balls and place into a Cupcake tin.
6. Bake for 8-10 minutes.
7. When the tin is removed from the oven immediately press 1 peanut butter cup into the centre of the cookie dough.
8. Decorate as desired.
9. Allow to cool completely before removing cookies from the tin.

Sticky Chocolate Drop Cake

THE CAKE

250g Unsalted Butter

300g Caster Sugar

1 tsp Vanilla Extract

3 Large Eggs

200g Self-raising Flour

50g Cocoa Powder

100g Milk Chocolate Drops

1. Heat oven to 180C (fan-forced).
2. Butter and line a small baking tray (I use a 20cm x 30cm tin).
3. Melt the butter in a large saucepan, allow it to cool for a few minutes and then add sugar, vanilla extract and eggs.
4. Beat this mixture until smooth with a wooden spoon.
5. Stir through the flour and cocoa.
6. Add the chocolate milk drops and stir. Pour mixture in to the tin and bake for 35 minutes or until cooked.

THE ICING

85g Butter

85g Caster Sugar

200g Light Condensed Milk

50g Milk Chocolate Drops, and any more you want to scatter on top or eat while baking

1. Heat 85g butter and 85g caster sugar together until all is melted.
2. Stir in 200g light condensed milk and bring to a boil.
3. Once it is cool add in the milk chocolate drops and spread it over the cake.
4. Scatter the chocolate drops over the cake (You can change this, I used sprinkles).

This is a BBC Recipe

The University of Western Sydney
Law Students' Association

Dear Students,

From the UWS Law Students' Association I'd like to say a very big welcome to Law at UWS! The UWSLSA has been working vigorously over the last couple of months to ensure that in 2014 we are ready to bring you some of the biggest and best events we have ever hosted. Perhaps the biggest piece of advice I can share is to get involved! Whilst University is primarily a learning experience, it is also where you will meet your future colleagues and some of the friends you will have for life. After spending four years at UWS, I can definitely say that I would not have had such a rich experience if I had not put myself out there to explore all the opportunities that are offered. The LSA is all about making your transition from High School to University as seamless as possible and helping you create and maintain connections with your fellow peers. From advice about subjects, to mooting workshops to some of the biggest parties, the LSA is committed to ensuring that your Law school experience is one you will never forget.

From the 2014 LSA Committee again I'd like to say welcome, best wishes for the year ahead and we look forward to seeing you soon!

Maria Badawi
President

What is the LSA?

The University of Western Sydney Law Students' Association (UWSLSA) is a not for profit association run by students, for students at law of the University of Western Sydney. It is an independent organisation run by elected members of the UWS law student body.

The LSA exists to enhance the lives of UWS law students by providing opportunities to take part in practical legal skills workshops, national mooting competitions, careers events, industry competitions, and social networking. We host various events throughout the year from careers nights, competitions and socials (yes, we party too) to provide and enhance that sought-after "University experience" valued by incoming and outgoing students alike. The LSA has a significant presence within the legal community both within and outside of UWS, and our events are always highly anticipated and wildly successful.

The primary objectives of the UWSLSA are:
To create opportunities and encourage students to make the most of these opportunities whilst at university so that they may become highly desirable candidates for employment post-graduation.

To promote and raise the profile of the UWS School of Law and the University of Western Sydney generally, with the aim of increasing opportunities for graduates and maximising graduate outcomes.

Sponsors

Allens Linklaters
College of Law

Getting involved

The simplest and most obvious step to getting involved with the LSA is to show up! Throughout the year we host various events, and we encourage you to come along and get involved, whether it's a social, a careers session or a competition. It's one of the best ways to meet new people in Law school, many of whom will become your life-long friends and colleagues. Being part of such an extended collegiate network is an important part of the university experience, and goes hand-in-hand with your future experience of the legal profession.

To become a member and to find out more about membership perks, visit our website at, www.uwslsa.com.au.

Careers Guide

This information was brought to you by…

Kaushala Rajapakse, your LSA Careers Officer.
For any questions or enquiries please contact Kaushala at: **careers-uwslsa@student.uws.edu.au**

Up and coming LSA events

For more events to come, visit our website.
www.uwslsa.com.au

Week 1:
O-week stall activities
(Mon, Tues, Wed, Thurs)
O-week free BBQ (Mon)

Week 2:
5th of March
Graduates Career Expo

Week 3:
13th of March
SOS Drinks

Week 5:
26th of March
Law Career Fair

Week 11:
10th of May
ALSA Qualifying Competition Finals

UWS EdFest 2014- Australia's largest teaching careers expo!

When: 19th February, 10am -3:30pm

Where: Parramatta building, EE.

Registrations are required to attend this huge event. It provides you with the opportunity to hear from the Department of Education and plan your career.

For more information, visit: http://www.uws.edu.au/community/engagement/careers_and_cooperative_education/employers/edfest_education_careers_expo

UWS HiTech Fest- Engineering, IT and Industrial Design Expo 2014!

When: 19th March, 12- 2:30pm

Where: Kingswood building, Z.

Welcoming penultimate students from a range of disciplines, this event provides you the opportunity to meet with future employers and industry professionals. The UWS Career Consultants will also be on deck to assist you with your resumes and cover letters.

For more information, visit: http://www.uws.edu.au/community/engagement/careers_and_cooperative_education/employers/engineering_it_careers_expo

Week 15:
2nd of June
STUVAC

Week 16:
10th of June
Autumn Exams Commence
End of Autumn Session

24th of July
Law Cruise

Criminal Law Litigation One Day CLE to be held on 8 March 2014 at the Sheraton on the Park.

The lineup this year is:
Significant Developments in Criminal Law
The Hon Justice Robert Hulme, Supreme Court of NSW
Chair: Alex Edwards
Jury Advocacy - What Jury Studies Tell Us
The Hon Judge Peter Zahra SC, District Court of NSW
Chair: Rae-Ann Khazma
Local Court Advocacy (or, 10 Things Not to Do in the Local Court)
His Honour Magistrate G J Grogin
Chair: Andrew Tiedt
Admissions
Dina Yehia SC
Chair: Rob Hoyles
Corporate Crime (Criminal Breaches of Directors Duties)
Gabrielle Bashir, Forbes Chambers
Chair: Hannah Bruce
The Right to Silence in NSW
Robert Sutherland SC, Garfield Barwick Chambers
Chair: Andrew Tiedt

For more information, please visit: http://eshop.lawsociety.com.au/index.php/events/new-lawyers/annual-one-day-cle-seminar-criminal-law-8-march-2014.html

UWS Graduate Careers Expo

When: 5th March, 1:30 – 3:30pm

Where: Parramatta building, EEa.

Welcoming students from a range of disciplines, this event provides you the opportunity to meet with future employers and industry professionals. The UWS Career Consultants will also be on deck to assist you with your resumes and cover letters.

For more information, visit: http://www.uws.edu.au/community/engagement/careers_and_cooperative_education/employers/business_careers_expo

UWS Law Careers Fair

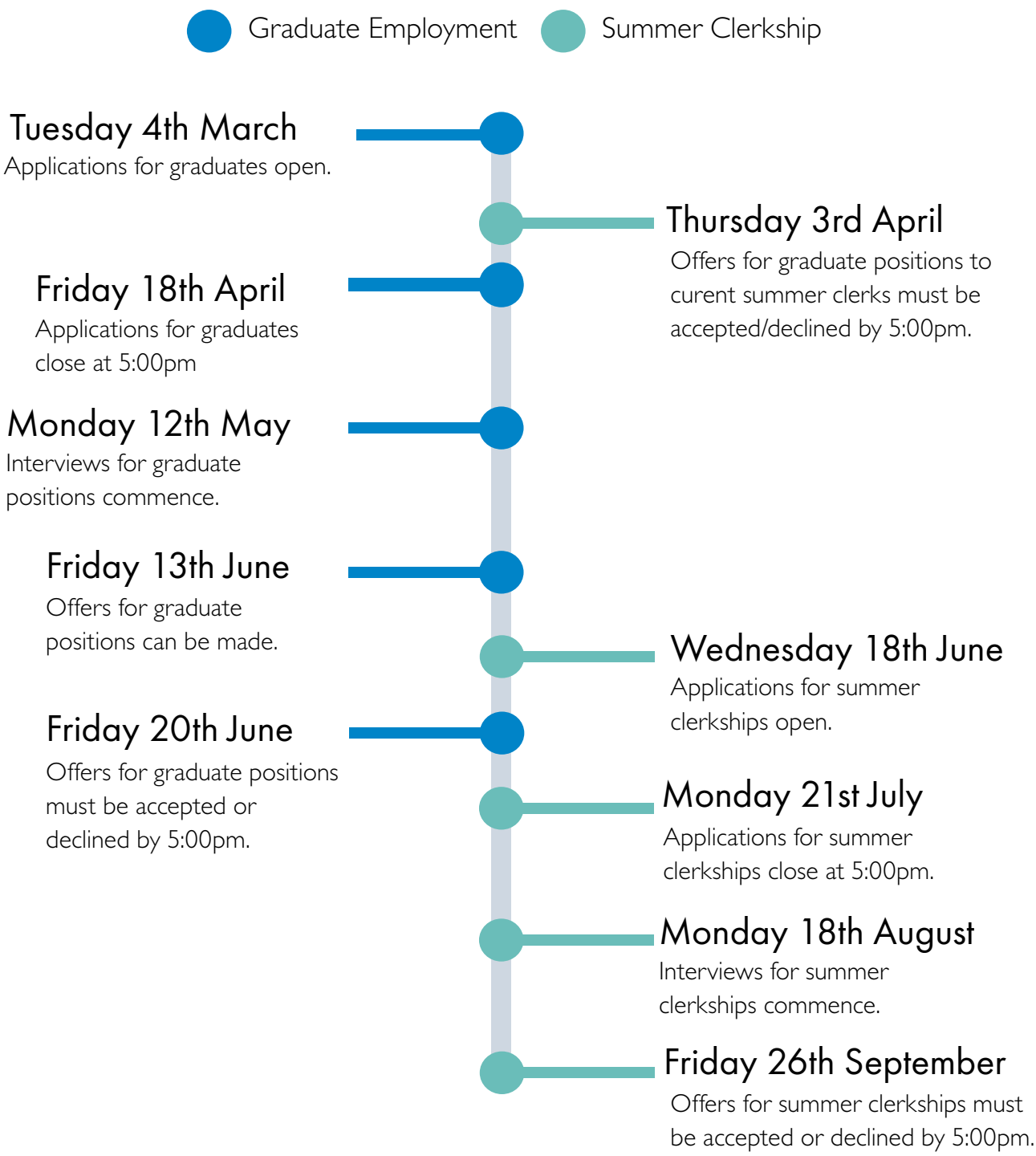
When: 26th March, 6-8pm

Where: Parramatta building, EEa.

Committed to social justice and excellence in professional practice, the UWS School of Law invites organisations to meet me with the 150 most promising law students. The 2014 Law Careers Fair is designed to help organisations to promote clerkships, graduate programs and employment opportunities to UWS students, allowing your organisation to gain with the Greater Western Sydney community.

For more information, visit: http://www.uws.edu.au/community/engagement/careers_and_cooperative_education/employers/uws_law_careers_connect

2014 Key Program Dates



UWS Student Services for when you need it most...

Student Welfare Service

Contact welfareservice@uws.edu.au

Web www.uws.edu.au/welfareservice

Visit or call
Bankstown- Building 1- 09776338
Campbelltown- Building 5- 02 4620 3013
Hawkesbury- Building H3- 02 4570 1965
Parramatta- Building EF- 02 9685 9366
Penrith- Building P- 02 4736 0674

What they provide:

Academic advocacy, advice and support

Understanding UWS policies, processes and forms

Special Consideration applications,

Review of Grade applications and withdrawal without academic penalty

Support at academic and non-academic

misconduct hearings

Appeals against exclusions and conditional enrolment

Financial support and advice

Textbook vouchers

Emergency financial assistance

Emergency food cards

Tax help

Financial information and resources

Other issues

Centrelink

Accommodation

Sexual health matters

Mates@ UWS provides first years students with the opportunity to be connected with older students.
For more information, visit: www.uws.edu.au/mates
provides students with a means of

UWS Living local searching for accommodation local to UWS campuses.
For more information, visit: www.uws.edu.au/livinglocal

Invitation
AHRC invites you to...
Sri Lanka and Australia after the war:
A forum on post-war justice and the indefinite detention of refugees.
4th March at 5pm

Special thanks to...

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Michael Gettings

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Hon. Michael Kirby
Kenneth Yates
Jed Horner
Kate Gauld

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weprintit.com.au

STUDENT CLUBS

"A person who never made a mistake never tried anything new."
—Albert Einstein

As the newest student publications to arrive to UWS, we want you to get involved. Do you have any comments? Interested in publishing? Want to join our team? Register your interest at: ullj@outlook.com

Be sure to 'Like' us on Facebook: https://www.facebook.com/uwslsastudentlawjournal

Footnotes

Firas Hammoudi pp. 6-7

1 Graduand, School of Business (Accounting) and final year student in Bachelor of Laws at the University of Western Sydney.
Kai Riemer et al, Australian Digital Commerce: A commentary on the Retail Sector (University of Sydney Business School and Capgemini, 2013); Kai Riemer, Too little, too late: Is Australia losing the online retail game? (19 November 2013) Business Spectator <http://www.businessspectator.com.au/article/2013/11/19/ technology/too-little-too-late-australia-losing-online-retail-game>.
2 Adam Reynolds, 'E-Auctions: Who will protect the consumer?' (2002) 18 Journal of Contract Law 75, 76.
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4 Competition and Consumer Act 2010 (Cth) sch 2 'Australian Consumer Law' ('ACL').
5 Ibid ss 54-59.
6 Sale of Goods Act 1923 (NSW) s 6.
7 Rod Sims, above n 3.
8 Ibid.
9 Ibid.
10 Ibid.
11 Ibid.
12 Allan Fels, 'Competition in the New Economy: The Internet the New Driving Force' (Speech delivered at the Bundeskartellamt 10th International Conference, Berlin, 20 – 22 May 2001) <http://www.accc.gov.au/system/ files/The%20Internet%20-Speech.pdf>.
13 Australian Competition and Consumer Commission, 'The Global Enforcement Challenge: Enforcement of consumer protection laws in a global marketplace' Discussion Paper 1997.
14 G Anders, 'Business Fights Back: eBay Learns to Trust Again' (2001) 53 Fast Company 102 <http://www.fastcompany.com/online/53/ebay.html>.
15 ACL s 2.
16 Ibid.
17 Jo Daniels and Chris Bitmead, 'Implications of the new Australian Consumer law for on-line "auction" websites' (2010) 13(6) Internet Law Bulletin 121.
18 Ibid.
19 ACL s 2.
20 Reynolds, above n 2, 78.
21 ACL ss 51-53. Purchases made through traditional online auctions are only afforded protections of title, undisturbed possession and undisclosed securities, ss 51, 52, 53 respectively.
22 Ibid s 3.
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