

jurist • diction

A MAGAZINE OF THE SYDNEY LAW SCHOOL FOR ALUMNI AND THE LEGAL COMMUNITY
SUMMER 2010



'A SPIRITUAL THING': THE SYDNEY LEGAL PROFESSION IN THE FIRST WORLD WAR



THE UNIVERSITY OF
SYDNEY



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A magazine of the Sydney
Law School for alumni and
the legal community.

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Cover Image The Hon Vernon Treatt MM, a law student at The University of Sydney at the outbreak of World War I

Left Second Lieutenant Desmond Gavan Duffy, a barrister of Sydney prior to enlistment



A community of legal professionals — then and now

Professor Gillian Triggs, Dean

Nearly a century ago, students of Sydney Law School gave distinguished military service in the Great War. A number gave their lives in service to their nation. Others dedicated their energies to charitable efforts domestically.



In this issue of *JuristDiction*, we are fortunate to introduce to Sydney Law School alumni and faculty the work of Tony Cunneen (BA 1975). Tony has researched the role of the legal profession in the war effort, with special reference to those students from Sydney Law School who served.

The patriotism of students from that time appears exceptional today, as direct experience of military service is less common than it once was. Nonetheless, our students and alumni community continue to engage with, and offer solutions to, the significant issues of our time. This spirit of service is evident among our students, academics and alumni – whether through advocacy, volunteering or scholarship.

This year, our students involved in the law student society (SULS) have participated in a number of events to raise awareness about the incidence of psychological distress in the profession and the wider community. The social justice clinical course (profiled in our last issue) is being run for its second semester,

and is now supported by the David Burnett Memorial Scholarship.

Indeed, our faculty's research informs all aspects of contemporary life, including pandemics, climate change, violence against Indigenous women, internationalisation of commerce, global protection of reputation, terrorism, Islamic business law, international tax law and international commercial arbitration.

In this issue of *JuristDiction*, we highlight the interventions that legal scholarship has made to cancer prevention and treatment, the regulation of energy resources and the voting process during the most recent Convention on the Rights of Persons with Disabilities, based in New York. Our regular column profiling recent publications by faculty academics is also included, as is a piece by Dr Jacqueline Mowbray, about her experience of teaching human rights and democracy in South-East Europe.

It's a diverse issue, reflecting a diverse faculty. I hope you enjoy reading our news.

AWARDS

Congratulations to Dr Tim Stephens on winning the International Union for the Conservation of Nature Academy of Environmental Law 2010 Junior Scholarship Prize.

The award recognises an outstanding contribution to environmental law scholarship by an academic of less than 10 years standing. The

Award was made at the Eighth Colloquium of the Academy, held at Ghent University, Belgium.

Emeritus Professor Ben Boer awarded Fernand Braudel Senior Fellowship

Emeritus Professor Ben Boer was awarded a Fernand Braudel Senior Fellowship for 3 months at the European University Institute in Florence, from September to November 2010.

His research project focuses on biodiversity, protected areas and climate change law and policy.

APPLICATIONS OPEN FOR 2011 MAHONEY PRIZE

The Julius Stone Institute of Jurisprudence at Sydney Law School invites entries for the Dennis Leslie Mahoney Prize in Jurisprudence 2011. The prize is funded by a generous gift from the Honourable Dennis Mahoney QC AO, former President of the New South Wales Court of Appeal.

Throughout his life and especially in his seminal work of 1946, *The Province and Function of Law*, Stone sought to understand law according to the operation of particular societies. The winner of the prize may also be invited to participate in the activities of the Julius Stone Institute for up to one semester and to deliver the prestigious Julius Stone Address.

\$50,000 will be awarded to the author or authors of the entry that, since 1 January 2006, has best advanced the sociological approach to jurisprudence pioneered by the late Julius Stone.

Entries close on **30 June 2011**. The winner will be announced in December 2011.

Further information is available from the current Director of the Julius Stone Institute, Kevin Walton, by emailing him at: kevin.walton@sydney.edu.au

2011 PETER CAMERON SYDNEY OXFORD SCHOLARSHIP

Applications for the 2011 Peter Cameron Sydney Oxford Scholarship are now open to graduands and Graduates of Law of not more than 3 years. Please visit the Law School website for more information sydney.edu.au/law/cstudent/undergrad/scholarships.shtml.

Applications close on 21 January 2011.

Faculty News



SINGLE UNIT ENROLMENT PROGRAM — 2011

Sydney Law School is at the forefront of legal education both in Australia and overseas. Through high quality teaching and research, the faculty has achieved a national and international reputation for critical and independent scholarship. As a Single Unit Enrolment (SUE) participant you can 'audit' any of the 130 postgraduate units of study offered each year over 15 areas of specialisation taught by our own experts as well as overseas visitors.

The SUE program allows you to attend lectures, receive relevant reading materials, and gain access to the unit's online e-learning website. You are not required to undertake assignments or examinations.

Courses are offered by one of two methods, either attendance one night per week for 13 weeks from 6 to 8pm, or as intensive units, normally conducted over 4 or 5 days between 9am–5pm.

Under the MCLE/CPD Rules and Guidelines you may claim one 'unit' for each hour of attendance, refreshment breaks not included. Postgraduate units of study cover 26 hours of lectures.

The SUE fee for 2011 is \$3,060.00.

The range of subjects for 2011 and online application forms can be found on the Single Unit Enrolment webpage: sydney.edu.au/law/LPD/sue.shtml

Please feel free to contact Christopher Pile if you have any questions concerning the SUE program:

E: law.singleunit@sydney.edu.au

T: +61 2 9351 0271

THE ROSS PARSONS CENTRE — CORPORATE LAW SEMINAR SERIES DOWNTOWN

On 9 August 2010, Andrew Tuch, Sydney Law School and Harvard Law School addressed the topic Recent Developments in Investment Banking.

Chris van Homrigh (ASIC) and Professor Ron Masulis (Vanderbilt University and UNSW School of Banking and Finance) provided commentary on the seminar which considered recently adopted financial regulatory reforms and other significant developments in investment banking in the US. The seminar also considered possible implications for Australia as a result of the changes.

Teaching in Bosnia

Dr Jacqueline Mowbray (Sydney Centre for International Law) investigates.



A few days after my first visit to Sarajevo, my colleagues told me that the car park I had walked through each day on the way to work had been roped off with 'mine danger' signs and was undergoing demining. This often happens in spring time — as the snow melts, the earth shifts, and land mines which have been at a safe depth come up closer to the surface, where every year they injure and maim the unsuspecting. It is a constant reminder of the war and ethnic conflict which has shaped this city and this region.

It was against this background of conflict, and the slow rebuilding of social and political institutions across the Balkans, that the European Regional Masters Degree in Democracy and Human Rights in South-East Europe (ERMA) was established in 2000. It is the result of the joint efforts of 11 participating universities and research centres, coordinated by the Center for Interdisciplinary Postgraduate Studies of the University of Sarajevo, in cooperation with the University of Bologna through its Istituto per l'Europa Centro-Orientale e Balcanica, and funded by the European Union. It seeks to educate the next generation of civil society leaders in the region, and so contribute to the promotion of human rights, democracy and the region's integration into Europe.

I was first invited to teach on the Sarajevo program in 2006, and since then have made the annual trip each April to lecture for 2 weeks on economic, social and cultural rights. It is always a challenging, but ultimately rewarding and enriching experience.

Students come from all over the region and the world. In addition to students from Balkan countries such as Bosnia-Herzegovina, Serbia, Croatia, Macedonia, Albania and Kosovo, I have taught students from Kyrgyzstan, Israel, Canada and a range of Western European countries.

For me, the most striking aspect of teaching on this program is the enthusiasm of the students and their desire to learn about human rights and democracy. These issues take on a particular currency and urgency in South-East Europe, and the students, many of whom have experienced first-hand the horrors of war and ethnic conflict, are genuinely interested in how human rights can be used to build better societies. Against this background, I initially wondered whether the students would not think my subject was pointless. After all, for those who have experienced war and genocide, international law on the right to participate in cultural life, the right to education and labour rights might seem largely inconsequential. But here, I learnt from my students. They were almost uniformly passionate about the right to education, with a firm belief in the power of education to transform prejudices, overcome injustices, enhance opportunities and achieve social change. This was an important lesson for me. And every year, their enthusiasm reminds me again of the value of teaching, the value of education, and the value of what we do at Sydney Law School and the Sydney Centre for International Law.

**SYDNEY INSTITUTE OF CRIMINOLOGY
PRESENTS: CRIME PREVENTION
MASTERCLASS 2010**

24 November 2010

This training will provide experienced Crime Prevention Officers / Community Safety Officers with opportunities to learn about the latest developments in crime prevention practice and theory. Drawing on contemporary international developments, this training will be a must for experienced crime prevention practitioners.

The training will cover:

- international developments for evidence-based crime prevention;
- advanced methods of program evaluation;
- contemporary developments in crime prevention techniques;
- sharing of local examples of effective crime prevention.

Contact: Sydney Institute of Criminology
T: 02 9351 0450

E: law.criminology@sydney.edu.au

**COULD HE FORGIVE HER?
GENDER, AGENCY AND WOMEN'S
CRIMINALITY IN 19TH CENTURY
ENGLISH LAW AND LITERATURE**

1 December 2010

In this Julius Stone address, Nicola Lacey will contend that there is a great deal to be learnt from realist novels about how women's agency and criminality was understood in the latter part of the 19th century.

Focusing on the work of Anthony Trollope in particular, she will try to show that, notwithstanding his lifelong literary preoccupation with independent-minded women, from poisonous Mrs Proudie in the early Barchester novels to the more palatable, but equally alarming, Lady Glencora of the Palliser series, his novels are marked by two attitudes to female self-assertion — whether criminal or otherwise — which are key to late Victorian understandings of female deviance.

The first is a deep ambivalence about women who assert their (increasingly acknowledged) intellectual and practical capabilities through acts of independence from men. The second is a tendency to associate female criminal and moral transgressions with a deep-rooted capacity for deception associated with either women as such or, at least, the female social role.

In making this argument, Nicola Lacey will draw out links between the literary images of appropriate and inappropriate femininity under consideration, and both the social and political world which produced them, and the evolving position of women in both the criminal and the civil courts. As a coda to this last dimension of her lecture, she will also sketch the specific attitudes to law and lawyers which we find in Trollope's work.

Time: 6 to 7.30pm

Location: Sydney Law School, New Law Building,
Eastern Avenue, University of Sydney

Contact: Event Coordinator
T: 9351 0238

E: law.events@sydney.edu.au

**SAFEGROWTH
AND CITY CRIME —
CO-DESIGN, ECO-PARKS, FUNKY
LANEWAYS AND FIXING DEADZONES**

24 January 2011

Hosted by the Sydney Institute of Criminology, this one-day interactive workshop will challenge participants to develop realistic and practical strategies from ideas of speakers and from each other, and will seek to highlight some inclusive strategies to prevent crime in cities.

Interspersed throughout the day will be short, engaging presentations from experts covering various disciplines and focused on various issues relevant to the exploration of crime in cities. Speakers will cover topics such as: the night-time economy; graffiti; public art; homelessness; and integrated planning and policy development.

Registration fee

Full fee:

\$220 (inc GST)

F/T student:

\$150 (inc GST)

University of Sydney staff:

\$176 (inc GST)

Sydney Law School alumni:

\$176 (inc GST)

Time: 9.30am to 5.30pm

Location: Sydney Law School

Contact: Events Coordinator

T: 02 9351 0248

E: law.events@sydney.edu.au



Upcoming Events

**GEORGE WINTERTON
MEMORIAL LECTURE 2011:
PATHWAY TO A REPUBLIC**

17 February 2011

It is with great sadness that the Sydney Law School and the community mourn the death of Professor George Winterton, who died in November 2008. This event is to celebrate the achievements of this man — one of Australia's foremost experts on the Constitution and constitutional law.

The address will be delivered by The Hon Sir Gerard Brennan AC KBE, former justice and chief justice of the High Court.

Registration is not yet open. To be placed on a wait list or for further information, please contact: law.events@sydney.edu.au.

Time: 6 to 7.30pm

Location: Banco Court, Supreme Court of NSW,
184 Phillip Street, Sydney

Contact: Events Coordinator

T: 02 9351 0248

E: law.events@sydney.edu.au

The staff of the 1st Australian Infantry Brigade during training at Kensington. From the left they are: Major Irving (Brigade Major), Colonel Onslow Thompson (4th Battalion), Colonel MacLaurin (GOC) and Captain MacNaughton (4th Battalion).

‘A spiritual thing’:

The Sydney legal profession in the First World War

Tony Cunneen investigates the Great War’s defining influence on the legal profession.



The Sydney legal profession of today is a much different community from that of 100 years ago. At the outbreak of the First World War lawyers were exclusively male and the majority of judges and many barristers were English educated. One of the key events in the development of the local identity of the profession was its total commitment to promulgating Australia’s involvement in the war. To the various lawyers of the time, the war was an opportunity for Australia to show itself a worthy member of the British Empire: an equal partner, not just a colonial emanation of England. The urge to promote the improvement of the national community extended from the newly formed federal sphere, through the state level and down to local governments, schools and organisations, including the Sydney Law School. According to one of the more thoughtful legal commentators and soldiers of the time, Adrian Consett Stephen, this urge was ‘a spiritual thing’. Lawyers’ participation in the war exhibited the same quixotic sense of chivalry and adventure that characterised the Crusades. Families, churches, the press and the legal profession itself inculcated the values of service and patriotism.

The then newly developing Sydney Law School under the guidance of the influential Professor John Peden was one of those groups that passionately supported the war as a patriotic exercise. The Hon Vernon Treatt MM, a law student at the University of Sydney at the outbreak of the war, recalled ‘the excitement which prevailed in both class and common rooms and the efforts of even the youngest students to enlist’. The Law School removed what he called an ‘embarrassing obstacle’ by moving exams forward in 1914 to facilitate enlistment because the students were ‘ready and eager to take up arms’. A steady stream of aspiring and existing members of the legal profession volunteered for service overseas.

In addition to providing recruits, the law school fostered a supportive community of contacts where soldier lawyers were keen to meet any fellow graduates in the services. Professor Peden maintained a steady correspondence with both graduates and students as they served overseas in the war and assisted them in their return to their legal careers after the conflict. The community of the law school was particularly proud of its ex-student Percy Valentine Storkey (later a District Court Judge), who was awarded the Victoria Cross for his valour during the action at Hangard Wood in France in 1918. Various members of the Law School considered that his success reflected on all of their efforts and raised the status of the school in the public eye — this was important as the law school was trying to establish itself as a viable alternative to the English trained lawyers who dominated the profession at the turn of the century.

Lawyers enlisted in any capacity they could. Some, such as the highly successful barrister and University of Sydney graduate, Lieutenant Colonel Henry Normand Maclaurin, were already active in the militia forces and continued their involvement through their work in setting up the first contingents to go to help the British. Others, such as the solicitor Ernest 'Nulla' Roberts, enlisted as private soldiers to be examples for others. These decisions cost them their lives; shot down in the first few days on Gallipoli, much to the grief and shock of the Sydney legal fraternity. Another talented law school graduate to lose his life in the early days of Gallipoli was 29-year-old barrister, Captain Samuel Edward Townshend, serving with a West Australian unit. He had been the Sydney Law School medalist and was Registrar at the University of Western Australia until his enlistment in 1915. On Gallipoli in early May 1915, with officers being shot all around, Townshend led the men over the parapet into the dark, shouting at his men 'Fix your bayonets ... When I call "Australia for ever", charge boys!' He suffered multiple gunshot wounds almost immediately. Not far away a fellow graduate, Laurence Whistler Street, lost his life in similar circumstances. The Vice Chancellor of the University of Western Australia wrote that Townshend's death was 'a glorious and fitting close to a brilliant career'. Such sentiments were a mark of the time. It was a holy war for the legal profession.

The earliest enlistments in August 1914 went with the Australian Naval & Military Expeditionary Force (AN&MEF) to fight in New Guinea. The force was organised by Colonel James Gordon Legge: a 51-year-old British-born barrister and associate of the law school. Among the officers of that contingent were a number of 'adventurous' law school graduates including the barristers Lieutenant Cecil Rodwell Lucas, Major Alexander Windeyer Ralston and Captain Charles Edye Manning (who became the Assistant Judge-Advocate General for the newly-controlled New Guinea). Manning, like all lawyers, did not want to be in the legal branch of the military and was keen to get into the fighting overseas. He was killed by artillery fire at Pozieres in 1916. The AN&MEF set the pattern for a succession of spectacular departures from Sydney where units marched along

Macquarie Street past the law precinct with barristers waving at friends and colleagues in the departing forces. Eventually 45 Sydney barristers enlisted. Nine were killed in action. The Sydney Law School had 24 of its community killed out of 180 enlistments. It was a tragic toll of some of the best students of that generation.

Some very well-known barristers maintained the tradition of enlisting as an example to others. One, the British-educated Dr Edwin Mayhew Brissenden, abandoned a successful career to enlist in 1916 as a private soldier at the age of 55 years. Not everyone approved. Some people said he was a 'damn fool' at the time, but he wanted to set a good example. There is an admirable panache in his willingness to forego a successful career at the bar to enlist as a private soldier at a fraction of what he was earning at the time. He reveled in his role as an ordinary soldier — proud that he could endure the rain, cold, mud, heavy pack and long marches, but, much to his chagrin, he was taken out of the line and made Divisional Claims Officer. Brissenden described his military life in a typically light-hearted letter to Justice Ferguson:

'I still look after Courts martial and Courts of Inquiry ... You would smile if you could see me rushing round the country on a stolen motor-cycle, butting into the premises of the local farmer or shopkeeper, and discussing the value of damaged sheds or broken windows in a language [which] bears no resemblance whatever to any human speech ... The chief rule is to talk very loud, and pay no attention whatever to anything the other man is saying.'

Despite leaving the bar he kept his seniority and was appointed KC soon after the war. Varying the rules of precedence was one of the changes brought in by the New South Wales Bar Association during the war. Articled clerks could have their war service counted in articles of clerkship on application to the Supreme Court, or have the period of articles extended for the duration of service overseas.

Judges at the time were some of the most committed supporters of the war. Six out of the eight Judges of the Supreme Court had sons who enlisted. Twelve out of the 16 eligible sons joined up. Nearly all the Judges' sons saw action. Most were wounded. Three were killed. Justice Ferguson was one who endured the terrible worry of his sons at the war front. On 27 June 1916 he was presiding in court when he was interrupted to be told that his son, Arthur Gardere Ferguson, a graduate of the law school, had been killed in action in France. In a particularly unpleasant twist of fate, a ship had delivered a batch of Arthur Ferguson's letters to his family only that morning. No one was spared the worry of it all. Justice Higgins of the Federal Arbitration Court was on holidays on Victoria's Mornington Peninsula on New Year's Eve 1916 when he heard news of his only son, Mervyn, having been killed in action in the Middle East. Sir William Cullen, the first Australian Chief Justice of New South Wales, was also one with close connections to the law school. Both his sons enlisted and saw

action. Sir William and Lady Cullen were active supporters of the war and gave their superb house, *Tregoyd*, and splendid grounds overlooking Balmoral to fetes, fundraisers and as a recuperative destination for wounded soldiers. Such actions were not uncommon during this period.

Many barristers were prolific letter writers, and their handwritten accounts provide vivid images of the type of devotion to public service and sacrifice that was a mark of the profession at that time. Adrian Consett Stephen was one of the many talented young law graduates who wrote evocatively of his experiences. He saw the Australians streaming into the vast battle of the Somme: *'an endless stream of tattered bloody figures — night and day ... The guns call to me from a distance; they fascinate and repel, but there is a fascination, though it might be unpleasant, like the fascination of a snake.'* His death in action in 1918 took one of the most talented of men. After she heard the news of his death his mother was reported to have never smiled again.

Lawyers were not only active on the battlefield. They and their families appeared in all manner of war-related causes. The most prominent of all the charities was the Red Cross. The names of the barristers Hanbury Davies, Adrian Knox KC and Langer Owen KC, as well as female members of legal families such as Lady Cullen, Ethel Curlewis, Mrs Langer Owen and her daughter, Gladys, Lady Hughes, Miss Consett Stephen appear on a variety of war-related committees and causes. It was brutally hard work. Mrs Langer Owen's effort was so debilitating on her health that according to the official historian, Ernest Scott, the work contributed to her death in 1917.

Adrian Knox KC, later Chief Justice of the High Court, served with the Red Cross as a commissioner in Egypt. Knox landed on Gallipoli late in the campaign to facilitate the delivery of various donated materials for the wounded. He worked to make sure that the stores donated by the Red Cross actually got through to the soldiers. Knox did a fine job.

The Red Cross Missing and Wounded Enquiry Bureau became a vitally important service during the war. The family of Langer Owen KC was well aware of the tragic tension caused by the lack of any reliable information concerning the fate of loved ones on the battlefield. The bureau was thereby established by Langer Owen KC in July 1915. It provided both reliable information as well as an informal counselling service free of charge to anyone but especially the 'poor old mothers and fathers uncertain of the fate of their sons' who came in to ask for assistance. Barristers and solicitors funded the office and offered their time free of charge to trawl through reports, write letters and interview wounded soldiers in hospitals and convalescent homes. They then assembled the evidence to put forward the case for the likely fate of an individual. The resulting reports were authoritative and have proven to be an invaluable historical record for the period. Lawyers operated branches of the bureau throughout Australia.



University Company on oval, 1904



Adrian Consett Stephen



The Hon Vernon Treatt MM



Lieutenant Cecil Rodwell Lucas



Lieutenant Colonel Henry Normand Maclaurin

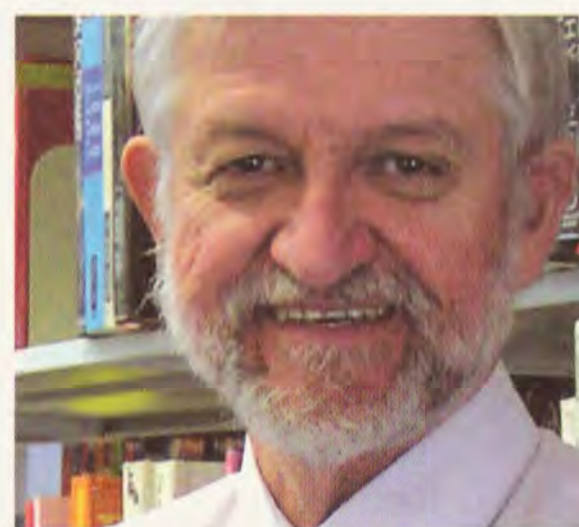
During the First World War there were two specific pieces of legislation that drastically affected the nature of the legal profession. First the *Judges Retirement Act 1918 (NSW)* made it mandatory for judges to retire at the age of 70 years. The reasons for this legislation are not definite but it appears to have arisen from a desire to make space on the bench for political appointees, as well as to remove some highly controversial judges, some of whom had powerful opponents in politics, exacerbated by war-related tensions. This Act hastened the appointment of Australian born and trained judges. At the same time, the *Women's Legal Status Act 1918 (NSW)* finally set in place legislation that allowed women to become lawyers. Previously they were excluded on the bizarre notion that only a properly qualified person could become a lawyer, and, according to English precedent, a person was defined as a man. Women who lobbied for years to have this legal anomaly overturned endured all manner of mocking jibes from men in power. It was the role of women in the First World War which made their case for contributing to public life irrefutable.

Lawyers were the dominant profession in New South Wales during the war. Premier William Holman's Nationalist Ministry which took office in New South Wales Parliament on 17 April 1917 was understandably labeled a 'government of lawyers'. Premier Holman and his Attorney General David Robert Hall were both barristers in Sydney, having trained in the early days of harmonious concordance within their labor careers with that other great character and barrister, the Prime Minister William Morris Hughes. In all, six out of a ministry of 12 in 1917 were listed as Sydney barristers. The appointment of Professor Peden to the Legislative Council brought into politics a close associate of Sydney Law School. Professor Peden was close friends with the barrister, Thomas Bavin, who gained a seat in the Legislative Assembly. The two of them formed a formidable political association which advanced the cause of the Sydney Law School for a quarter of a century. Like so many lawyers at the time, they had a great sense of patriotism that was reinforced by their willingness to be energetic contributors to charitable causes. They invested great personal energy in supporting the war and were guided by a great sense of duty in trying to shape the new country.

Occasionally the profession's passion for public spirit led judges in particular into opposition to left wing political groups such as during the Great Strike of 1917, but it was also a time for genuine commitment to social cause by lawyers and their families. While they were certainly members of what the historian Manning Clark called 'the comfortable classes' they were also willing to forgo the security and safety of that class and give their all to support the cause of national identity and honour on the battlefields on the other side of the world. The silent Honour Roll in the entrance to the main quadrangle of the University of Sydney lists the names of those who fell in support of a cause now remote from the everyday operations of the law, but it was those people who laid the spiritual foundations of today's profession. *jd*



University Company students, 1904



The author is the Senior Studies Coordinator at St Pius X College Chatswood. The article is an overview of research conducted by the author into the legal community in the early 20th century, focusing particularly on the role of lawyers and their families in the First World War. The legal community were central to promoting the cause of the war and the related war activities such as the Red Cross and other charities. Furthermore, legislation regarding the retirement age for judges and the right of women to become lawyers came in during the war and, along with the expanding Sydney Law School, set the shape of the profession for the coming century. Anyone with an interest in the topic is invited to contact the author on acunneen@bigpond.net.au

Can law help to prevent cancer and to improve cancer treatment?

How exactly?

By Professor Roger Magnusson

Preventing cancer, promoting global health and development



Roger Magnusson is a Professor in the Faculty of Law, University of Sydney. He has Arts/Law degrees from the Australian National University (1988), and a PhD in law (1994) and a Graduate Diploma in Managing Development (2007) from the University of Melbourne. His research interests are in health law, policy and bioethics, and in public health law and governance, and health development.

Roger is currently working on an Australian Research Council-funded project entitled 'Lifestyle wars: law's role in responding to the challenge of non-communicable diseases'. This project focuses on the opportunities for law in responding to chronic and non-communicable diseases, including those caused by tobacco use and obesity.

These were the major themes explored in a unique, inter-disciplinary conference convened by Sydney Law School, the International Union Against Cancer (UICC), and Sydney Medical School, exploring the role of law and regulation in cancer prevention and treatment, both nationally and globally.

The keynote oration for the conference on 10 June was presented by Professor Robert Beaglehole, former Director of the Department of Chronic Disease and Health Promotion at the World Health Organization (WHO). Chaired by the Dean of Medicine, Professor Bruce Robinson, the oration also featured Mr Mark Dreyfus QC, MP, Chair of the House of Representatives Standing Committee on Legal and Constitutional Affairs.

Mr Dreyfus opened the conference by reviewing Australia's experience with tobacco regulation, including the recent initiative by the Rudd Government to increase the tobacco excise by 25 per cent from April, and to move to plain packaging by 2012. Mr Dreyfus' opening words were recalled the next day by Patricia Lambert, Director of the Legal Consortium at the Campaign for Tobacco-Free Kids, Washington DC: 'government has a moral obligation to use its powers to protect its citizens'. Personal liberty is important, and a responsible approach involves a careful and sometimes controversial balancing exercise.

Non-communicable diseases, including cancer, are a heavy global and economic burden. Regulation and legislation is thus important to the protection and improvement of population health, Professor Beaglehole argued. It is not well recognised that deaths from cardiovascular disease, cancer, chronic respiratory diseases and diabetes vastly

outweigh the number of annual deaths caused by HIV/AIDS, tuberculosis and malaria. Between 2005 and 2030, cancer deaths are expected to increase from 7.5 million to 11.4 million. This increase is due to the significant spread of risk factors for cancer. Tobacco, alone responsible for 1.8 million deaths each year, is one of a number of factors that have a global impact on cancer deaths. The carcinogenic effects of poor diet, alcohol misuse and obesity, illustrate the need for effective regulation of both the food and alcohol industries, Professor Beaglehole said.

Professor Beaglehole observed that at the global level, cancer has been seriously neglected, including cancer prevention. The World Economic Forum's Global Risk Landscape 2010 identifies chronic disease as one of the most severe risks in terms of economic consequences (exceeded only by oil price spikes, asset price collapse and major retrenchments in developed economies), and also as one of the risks considered most likely to materialise. Professor Beaglehole pointed out, however, that the high-level meeting of the United Nations General Assembly on non-communicable diseases, scheduled for September 2011, represents a golden opportunity to recognise and integrate cancer and other non-communicable diseases into the architecture for global health beyond 2015. By regulating cancer risk factors, governments can help to protect future generations from preventable cancers, while also making impressive inroads into deaths and disability from heart disease and stroke, diabetes and chronic obstructive pulmonary disease.

Legislate, regulate, litigate? Legal perspectives on cancer prevention and treatment

On 11 June, nine speakers at the conference explored a wide range of topics relating to law's capacity to prevent cancer and to improve cancer treatment. These papers are to be published as a symposium in a future issue of *Public Health*, the Journal of the Royal Society for Public Health in the United Kingdom.

Patricia Lambert, Director of the Legal Consortium at the Campaign for Tobacco-Free Kids, Washington DC, reviewed experience with the *Framework Convention on Tobacco Control* (FCTC), and considered whether it provides a model for dealing with other cancer risk factors. In her view, the tobacco, alcohol and food industries — despite their differences — tend to respond in a similar way to the prospect of tighter regulation: they emphasise that their products are legal, they emphasise the primacy of adult choice, and the certainty that regulation will cause job losses. They offer partnerships, both nationally and regionally, although this tends to weaken governments' commitment to regulation. Ms Lambert praised the Australian government's decision to require plain packaging of tobacco, calling it a 'signal to the world that this government is not going to be intimidated by the tobacco industry'.

Sarah Mackay, Legal Policy Adviser to the Obesity Policy Coalition based at the Cancer Council Victoria, spoke more specifically of the role that improved food labeling could have in helping to encourage healthier eating patterns, and the need to regulate the advertising of food products of poor nutritional content. She called attention to the independent review of food labeling commissioned by the Council of Australian Governments (COAG). While food labeling alone is unlikely to have a major impact on obesity rates, it is an important starting point: it helps to prevent misleading marketing, it informs consumers, encourages healthier food choices and the re-formulation of healthier food products by industry.

Alcohol is responsible for around 500,000 cancer deaths each year, but the 'very powerful, entrenched alcohol industry' has been largely successful in resisting the kinds of legislative controls on advertising and promotion that are needed. Professor Robert Beaglehole floated the need for a framework convention on alcohol control, building on the recent WHO Global Strategy to Reduce the Harmful Use of Alcohol (endorsed by the World Health Assembly, 21 May 2010). Recognising the difficulty, in political terms, of strengthening the regulation of alcohol, Professor Beaglehole pointed out that alcohol is not only a major cause of cancer and chronic disease, but of road traffic accidents and injuries, domestic violence, and intoxication-related crimes.

He pointed to a range of interventions transferable from tobacco to alcohol, including price (an excise tax graded by volume of ethanol), the regulation of advertising moving towards a sponsorship ban, and packaging and labeling that warns of the health impacts of excessive consumption.

As co-convenor of the conference, I presented a conceptual model for understanding and locating the opportunities for law in the prevention of cancer and other chronic diseases. Public health lawyers and regulators need a workable model that not only identifies the main determinants of disease and the key settings for interventions, but a map of the legal strategies that law can adopt, and an appreciation of the contribution that different tiers of government can make within a federal system.

An understanding of World Trade Organization (WTO) rules is critical to effective national policies. Associate Professor Tania Voon from Melbourne Law School, delivered a paper written jointly with Associate Professor Andrew Mitchell, reviewing the key WTO agreements and the extent to which they potentially constrain — or may sometimes support — national efforts to address products and policies that contribute to cancer and cancer risks.

Associate Professor Bebe Loff, Director of the Michael Kirby Centre for Public Health & Human Rights at Monash University, opened with a powerful quote from Alicia Aly Yamin:

'A rights perspective forces us to see the suffering that is not the result of "natural" biological causes but rather stems from human choices about policies, priorities, and cultural norms, about how we treat each other and what we owe each other.'

Professor Loff questioned the extent to which the World Cancer Declaration of the International Union Against Cancer aligns with the priority causes of death and disability in the poorest countries in the world. She pointed to the Alma-Ata Declaration, emphasising the importance of non-discriminatory access to health services, minimum essential food, basic shelter, sanitation and a potable water supply, access to essential drugs, and a national public health strategy that gives due attention to the needs of marginalised and vulnerable groups.

Professor Ian Olver, CEO of the Cancer Council Australia, pointed to a diverse range of legal and regulatory barriers to optimal treatment for Australian cancer patients. These include the potential for privacy law to undermine the collection of data by cancer registries; discrepancies between the timing of the regulatory process for approval of new drugs targeting gene-specific cancers and tests for the gene target; the privatisation of the human genome through the patenting of genes and of tests for genes; the governance of clinical trials; and the need for the future cancer workforce to include physicians assistants and nurse practitioners. Professor Olver called for the Australian *Patents Act 1990* (Cth) to be amended, arguing that 'We believe the process of isolating or



L to R: Professor Bruce Robinson, Professor Ruth Bonita, Professor Gillian Triggs, Professor Robert Beaglehole.



One of the conference sessions.



Professor Magnusson delivers his presentation.

purifying genetic materials is an act of discovery, not invention’.

Mr Jonathan Liberman, Senior Legal Policy Adviser, International Union Against Cancer, pointed to the fact that 5 billion people in the world have low or no access to opioid analgesics, and no or insufficient access to treatment for moderate to severe pain. Eighty-four per cent of the world’s morphine is consumed by high income countries representing less than 10 per cent of the world’s population. There are a number of causes of low global opioid availability. An important one is regulation that focuses excessively on preventing diversion and misuse at the expense of ensuring adequate availability. This imbalance is seen within many countries and in the activities of the main agencies of the international drug regulatory system. Mr Liberman also discussed the relationship between international intellectual property law and access to cancer treatment. As the cancer burden continues to shift to low- and middle-income countries, increasing global attention will be focused on the tensions between patents and access to affordable cancer drugs.

Associate Professor Cameron Stewart, Director of Sydney Law School’s Centre for Health Governance, pointed to the institutionalised context in which the majority of Australians will die, and to the role of law in providing an environment that encourages the best death possible. He was strongly critical of the different ways in which advance health care directives are treated in different states, arguing ‘should your capacity to be involved in your treatment be dictated by where you live, or where you get sick?’ Although Australian law recognises substitute decision-makers when a person becomes incompetent due to illness, there are nevertheless nine different systems, a problem Associate Professor Stewart summarised as ‘too many laws, too much uncertainty’. He called for uniform, Australia-wide legislation, initiated through the Australian Health Ministers Advisory Committee (AHMAC) as one response to what he termed *logo iatrogenesis*, or ‘lawyer-made sickness’. **jd**

If I were king or queen for a day, what would I do for cancer prevention and treatment?

The final session of the conference was a panel discussion moderated by Professor Simon Chapman, Professor of Public Health at the University of Sydney, entitled: ‘If I were king or queen for a day, what would I do for cancer prevention and treatment’. Well-known for his advocacy in tobacco control, Professor Chapman reviewed the progress that has been made since 1973, through pack warnings, advertising bans, smoke-free restrictions, retail pack display bans, tax increases, and most recently plain packaging. Professor Chapman then acknowledged the reality of inertia and resistance to change in public health regulation, quoting FW Cornford:

‘Every public action which is not customary either is wrong, or if it is right it is a dangerous precedent. It follows that nothing should ever be done for the first time.’

If, however, public and political will exists to drive smoking rates below 15 per cent, what are some of the innovative ideas and concepts that public health advocates should begin to debate? At the present time, any adult in Australia can lawfully smoke, and yet knowledge of the harms and risks of smoking varies widely. Should smokers be licensed, Professor Chapman wondered? Should intending smokers be required to complete a program of education before making the ‘informed choice’ to smoke?

Professor Chapman then challenged panel members to nominate their top priorities for cancer prevention. Professor Margaret Hamilton pointed to the importance of uncoupling alcohol from national competition policies, using a modified volumetric approach to alcohol taxation (with graded incentives for low-alcohol products), and regulating alcohol advertising and sponsorship. She called for more community involvement in liquor licensing decisions, and for evidence-supported measures to respond to intoxication and other forms of alcohol-related harm. Professor Hamilton pointed out that Australian corporations are major exporters of alcohol to Pacific island countries and suggested that regulators should explore ways of ensuring that they operate within guidelines that would be acceptable in our own communities.

Professor Bonita ONZM spoke about calls by Maori leaders for a smoke-free New Zealand, and emphasised the need to continue working towards eliminating demand for tobacco, not just tobacco ‘control’. She then issued a challenge to the University of Sydney: ‘go smoke free’. If the University of Auckland can do it, why not the University of Sydney? Pointing to the depth of expertise in public health policy and advocacy at the University, Professor Beaglehole also challenged the University to make ‘concrete commitments’ to ‘lead at the global level’ in the prevention of cancer and other non-communicable diseases’.

Studying health law and public health law at the University of Sydney

For those with an interest in health law, Sydney Law School offers a popular Master of Health Law (MHL), and two Graduate Diplomas in Health Law, and in Public Health Law, respectively. Entry to these programs is open to law graduates, health and allied health professionals and other approved applicants who meet academic entry requirements.

For more information about the health law teaching program, contact its Director, Dr Kristin Savell (kristin.savell@sydney.edu.au) or the Director of the Centre for Health Governance, Associate Professor Cameron Stewart (cameron.stewart@sydney.edu.au), or Professor Roger Magnusson (roger.magnusson@sydney.edu.au).

For application forms and other information about enrolment, contact Sue Ng, head of the postgraduate team (sue.ng@sydney.edu.au).

Regulating the development of energy resources:

The difficult relationship between domestic regulation and international relations

Associate Professor Vivienne Bath
(Director, Centre for Asian and Pacific Law)

A number of difficult questions relate to the development of energy resources; in particular, the relationship between domestic regulation and international regulation and relations. It commences by looking at the *Energy Charter Treaty* and then examining some of issues related to energy security in China and Australia.

The *Energy Charter Treaty* is the successor to the Energy Charter of 1991, and provides a multilateral framework for energy cooperation and the promotion energy security through the operation of open and competitive energy markets.

The membership of the *Energy Charter Treaty* is primarily European, with the exception of Japan. As of late 2009, there were 46 members plus the European Community. There are also 24 country or territory observers, including organisations such as ASEAN. Australia has signed the *Energy Charter Treaty*, but has not ratified it. Although many of China's neighbours, such as Kazakhstan, Kyrgyzstan and Japan, have become members, China is an observer and not a member.

The range of observers as well as members shows that the treaty has influence that goes beyond the number of ratifications. The issues identified in the treaty are highly relevant in terms of summarising international energy issues and suggesting possible solutions. These include protection and promotion of foreign energy investments (art 10), trade in goods and services (part two), sovereignty over the energy resources, states and state-owned companies, environmental aspects and dispute resolution. In particular, the *Energy Charter Treaty* deals with the encouragement and protection of investment, specifically in energy resources. It requires the state to provide stable, equitable, favourable and transparent conditions for investments; most-favoured nation treatment and national treatment for investors; compensation in case of expropriation; protection of fund transfers and provisions relating to investor/state dispute resolution. It does not, however, require that a state grant to foreign investors proposing to make an investment the same terms and conditions as it would grant to domestic investors.

Article 18 of the treaty recognises the concept of state sovereignty and sovereign rights of energy resources. This principle is, however, subject to rules of international law; there is an overall objective of providing access to natural resources and exploration and development on a commercial basis and the allocation of licenses and so on must be on a non-discriminatory manner on the basis of published criteria.

These restrictions are balanced by a number of provisions which make clear that states retain the power to regulate their

own jurisdictions. In particular, the treaty does not prejudice the rights of the state to make and implement its rules relating to property ownership. Similarly, a state has the right to determine which areas may be exploited; and the timing, rate of exploitation and the tax, environmental and safety regimes which will apply.

Of particular relevance are provisions which make clear that a state has the right to participate in exploitation of natural resources either directly or through state enterprises. At the same time the state is responsible for ensuring that a state enterprise conducts its activities in a manner consistent with the state's obligations in its treaty area and to cause state enterprises and regional subdivisions to act in accordance with the treaty. These provisions are of continuing significance in view of the growth in participation and international level of national oil and resources companies owned and operated by states. This is particularly noticeable in the Chinese context, where the major oil companies, such as China National Offshore Oil Corp, CNPC and Petro-China, are state-owned and have been very active internationally in making investments in natural resources.

The last 15 years have seen substantial changes in the nature of international investment, including in natural resources and energy. Investment in these resources is no longer the preserve of developed countries. According to the most recent United Nations Conference on Trade and Development (UNCTAD) World Investment Report, 'UNCTAD expects global inflows to reach more than \$1.2trillion in 2010, rise further to \$1.3 to 1.5trillion in 2011, and head towards \$1.6 to \$2trillion in 2012 ... Developing and transition economies attracted half of global caps FDI inflows, and invested one quarter of global FDI outflows.'

An important feature of the *Energy Charter Treaty* (reflected in many bilateral investment treaties and free trade agreements) is the availability of investor/state arbitration. According to UNCTAD, in 2009 there were a total of 357 investment arbitration cases, of which 202 were commenced in the previous 5-year period. A majority of these were instituted by investors from developed countries, against both developing and developed countries. This position is changing, however. For example, China's bilateral investment treaties traditionally provided for very limited access to dispute resolution by investors directly against the Chinese states. Newer treaties signed by China, however, provide for investor/state arbitration on a similar basis to that set out in the *Energy Charter Treaty*.

The argument for the investment provisions of the *Energy Charter Treaty* and similar provisions in investment protection treaties is that they encourage investment by offering investors



This paper is based on a presentation given at the Commonwealth Roundtable on energy security at the Australian pavilion on 11 August, 2010.

additional security. It is not, however, clear to what extent investors know or are influenced by investment protection provisions when making their investments. Although some surveys indicate that most investors are aware of investment treaties and influenced by their availability, other studies are much less definitive and some, indeed, have concluded that there is no real evidence of any positive link. For example, although Chinese investors have been eager to buy assets in Australia, a country with which China has a bilateral investment treaty and which is considered to be politically stable, a number of studies of Chinese investment indicate that Chinese state-owned enterprises investing in natural resources do not generally seem to be particularly sensitive to political risk or the existence of bilateral investment treaties.

In addition, the balance struck in these treaties has also come under challenge. There is a tension between the requirement for states to maintain (or compensate investors for changes in) investment policies and regulations which were in effect at the time the investment was made and which may have assisted to attract investment in the first place and the ability of government to regulate its own territory and its own industries. Given the time frame involved in many natural resources projects, and the rapid changes in the international marketplace as demand for energy sources increases, there is a risk that some countries may feel that the balance struck in the *Energy Charter Treaty* and investment treaties does not fairly accommodate their interests. Ecuador and Bolivia, for example, have withdrawn from the *International Convention for the Settlement of Investment Disputes*; Russia has withdrawn from the *Energy Charter Treaty*.

What, then, are the issues for China and Australia? Both China and Australia have complex policies on foreign investment. China's policies relating to foreign investment in such sectors as oil and gas are quite clear and require majority ownership by a Chinese party. Australia's policies are not directed specifically at investment in the energy sector. However, the implementation of more detailed rules relating to the national interest test which require close analysis of proposed investments by foreign governments and state enterprises appear to be a response to public disquiet expressed at the efforts of Chinese state-owned companies, to acquire interests in Australia national resources. Neither of these forms of restriction is limited by the Australia-China investment treaty.

An additional issue for both China and Australia is the role of other stakeholders in the investment process. In the case of both China and Australia, sub-national entities may have different approaches to energy and investment policy. In Australia, for example, the federal government has encouraged the development of an export industry for natural gas. The governments of Western Australia and Queensland, however, have concerns in relation to the soaring price of gas domestically as the international price increases and the availability of gas to the domestic market. Both have enacted legislation to provide for the reservation of gas for domestic use.

Other issues which cause difficulties for the governments of China and Australia arise from strains in the relationship between public policy and commercial entities, both private- and publicly-owned. For example, major resources companies are often international and their interests do not necessarily coincide with those of the state or states in which they are incorporated, listed or operate. The decision by the then Australian Treasurer, Peter Costello, to block Shell's acquisition of Woodside in 2001, was based on a national interest assessment that Shell would develop its gas reserves based on its own interests rather than Australia's. Rio's shareholders seem to have been responsible for the collapse of the Rio Tinto /Chinalco transaction, notwithstanding the support of the Rio Tinto Board of Directors and the Chinese government. Chinese state-owned enterprises are commercial enterprises in their own right, not merely obedient arms of government. In 2005, the independent shareholders of CNOOC Ltd, which was listed in Hong Kong, refused to allow the parent of CNOOC Ltd, China National Offshore Oil Corporation, to expand its ability to invest in overseas projects at the possible expense of CNOOC Ltd.

These cases demonstrate the difficulty of balancing the sovereign right of states to manage their non-renewable natural resources with the need of states and private actors to have access to sources of energy internationally. The *Energy Charter Treaty* represents an effort to provide a degree of international standardisation relating to these issues. Notwithstanding the limited membership of the *Energy Charter Treaty*, and the challenges presented by the changing nature of international investment, the attempt in the treaty to define this balance continues to be relevant to members and to other states and investors.^{jd}

Enabling the disabled world

By Professor Mary Crock

While Australia wrestled with the uncertainty of the closest federal election in 70 years, another (much more modest) election campaign was being waged at the United Nations in New York.



The election was for 12 positions on the Monitoring committee established under the newest of the United Nations' Human Rights conventions — the *Convention on the Rights of Persons with Disabilities* (CRPD). This convention which came into force on 3 May 2008, is designed to ensure that all persons with disabilities are guaranteed full rights as individuals and also to mandate that they be treated with inherent dignity.

It was a truly momentous day — not the least because of the success of Australia's candidate. Current chair of the committee, Professor Ron McCallum AO, was re-elected in the first round of a contest that went through the whole day and into early evening.

The most extraordinary thing was seeing just how far the UN has come in the two years since the CRPD came into force. The convention now has 149 signatories and 90 countries which have signed and ratified (to become full parties). The election room in the UN's new building in New York was full of people with disabilities from all over the world, all of them looking proud, determined and totally engaged in the process. There were deaf signers in the five UN languages; simultaneous text/subtitling; documents in Braille; and totally accessible premises. Ambassadors shifted their chairs to make way for people in wheelchairs; the corridors resounded with the tap of white canes. Candidates mixed freely with representatives from civil society and government officials who themselves had a disability of some kind. It was fantastic. And the election was so tightly contested, with country missions running campaigns for their candidates right up until the moment the first votes were taken. It is a measure of the energy and enthusiasm of the states parties that after a full day of ballots, one ambassador tried desperately to have the chair throw open the run-off contest for the last two places on the committee to the whole field of (13) disappointed candidates. The process was a far cry from the sedate and predictable contests for other UN committees where the results are often determined well in advance by diplomatic officials.

In an age when many have become deeply cynical about the role played by the United Nations as a vehicle for promoting either world peace or human rights, the CRPD has come like a breath of fresh air. As a legal instrument that acknowledges persons with disabilities as rights bearers, rather than as objects of pity or as medical problems, it is long overdue. It is also revolutionary. Because no country can lay claim to laws and practices that truly measure up to the standards and principles now enshrined in international law, it seems to be having a strangely unifying effect.

The goodwill in the election room was palpable — and it continued during the two days of round tables that followed. With panels chaired by disabled persons — including a deaf member of the EU parliament who communicated by sign language — the assembled nations listened with equal respect to legal experts and to persons who spoke of their personal struggles to gain autonomy and respect in societies where institutionalisation of the disabled remains the norm.

The role of the Monitoring Committee of the CRPD is similar to that of like committees which oversee other UN conventions like the *International Covenant on Civil and Political Rights* and the *Convention on the Rights of the Child*. It receives reports from states parties on how each nation is implementing the CRPD. At its meeting next October in Geneva, the Monitoring Committee will most likely examine the report from Tunisia which will be the first State Party to dialogue with the Monitoring Committee. Another function of the Monitoring Committee is to hear and determine complaints from individuals who claim that one of their convention rights has been violated.

The challenge for all the countries of the world is to implement the convention so as to make real differences in the lives of the 650 million people who live each day with a disability. This will involve carrying the message of the law out into every corner of society, from Parliament House to schools and workplaces.



Professor Ron McCallum AO and Professor Mary Crock (centre) at the election



Re-elected President: Professor McCallum AO

PHILIP C JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

From 2 to 6 February 2010, five students from the University of Sydney competed in the National Rounds of the Philip C Jessup International Law Moot Court Competition in Canberra.

The Jessup Moot is widely recognised as the most prestigious international mooting competition. Competitors work closely in a team to represent fictional states in a hypothetical (but always topical) case before the International Court of Justice on cutting-edge areas of international law. Teams must prepare detailed and lengthy written submissions (9000 word memorials) and then moot against other teams from around Australia at the National Rounds in Canberra in February. The two finalists from the National Rounds then travel to Washington to compete in the International Rounds against teams from around the world.

In 2010, the University of Sydney team — Christine Ernst, Callista Harris, Naomi Hart, Matthew Kalyk and David Robertson, coached by Houda Younan, barrister — competed against 15 other universities in the National Rounds.

The case involved issues of self-determination, title to territory and international investment law, with the facts raising some interesting parallels to real-life scenarios, such as the controversy over the Falkland Islands.

The team's performance was outstanding. They were placed first coming out of the preliminary rounds in Canberra, and were highly congratulated by judges and spectators on their excellent performances, both individually and as a team. Unfortunately, they were narrowly defeated by ANU (the team which ultimately went on to win the entire competition in the International Rounds in Washington) in an extremely close semi-final. However, the exceptional abilities of the team were recognised by the fact that the team received two best oralist awards (Matthew Kalyk and Christine Ernst) and the award for Best Respondent Memorial. These awards were presented at an Awards Dinner, held at the High Court in Canberra on 6 February.

The moot team were welcomed back to the Law School, and formally congratulated by the Dean, at a function on 22 April.

Right: David Burnett with former Prime Minister Kevin Rudd

Student News



DAVID BURNETT MEMORIAL SCHOLARSHIP IN SOCIAL JUSTICE

In the Autumn issue of *JuristDiction* we profiled Sydney Law School's new social justice clinical program. Students who complete the program are given the opportunity to work one day per week for a social justice organisation. The Public Interest Law Clearing House and Refugee Advice and Casework Service are founding partners of the program.

The parents of David Burnett (BA 2007) 1985–2008, has contributed to the program's success through the establishment of a scholarship in honour of their late son, who died in a tragic accident in Petra, Jordan.

JuristDiction had the privilege of speaking with David's father, Leslie Burnett, who gave insight into David's energetic character and the family's desire to see his inquiring mind and 'big, loud, noisy, connected' spirit honoured.

From a family of retiring people, David 'was a cuckoo, larger than life', his father reflected. 'Every night we talked about changing the world at the dinner table.' Family discussion of the Whitlam dismissal inspired David to interview Malcolm Fraser. This story is characteristic of both David's confidence and his eagerness to relive the history of the dismissal. David's family hopes that recipients of the scholarship will approach the social justice clinical course with similar enthusiasm.

The memorial scholarship is awarded semi-annually to a student enrolled in the social justice clinical program.

For more information on supporting the Social Justice Program, please contact the Development Officer, Demelza Birtchnell on 02 9351 0467, or at demelza.birtchnell@sydney.edu.au.



NOTICE OF ANNUAL GENERAL MEETING OF SYDNEY UNIVERSITY LAW GRADUATES ASSOCIATION TO ALTER THE SULGA CONSTITUTION

Current members of the Sydney University Law Graduates Association are invited to attend a general meeting on Friday 4 March 2011, at 11.30am at the University of Sydney Law School level 4 common room, on Camperdown campus.

Members present at the meeting will vote on a proposal to alter s xxvi, art (a), which states: 'The Association may be dissolved at any time upon a resolution of a Special General Meeting convened for that purpose, at which meeting at least one-fifth of the members of the Association eligible to vote thereon shall be present and vote in person.' The proposal is to alter this rule to state: 'The Association may be dissolved at any time upon a resolution of a General Meeting, at which meeting at least 20 members of the Association eligible to vote thereon shall be present and vote in person.'

If s xxvi, art (a), is successfully altered, all members present will then vote on a proposed resolution to dissolve SULGA.

All inquiries in relation to the general meeting should be directed to Jami Schievelbein, Alumni Officer: jami.schievelbein@sydney.edu.au.

SENIOR COUNSEL APPOINTMENTS:

Sydney Law School congratulates the 11 alumni appointed Senior Council by the NSW Bar Association in 2009.

Mr Peter Mark MORRIS —
BA 1980, LLB 1975

Mr Stephen Scott HANLEY —
LLB 1977, LLM 2004

Mr Eric William Heales WILSON —
BA 1974, LLB 1977

Alumni News



Ms Patricia Emily MCDONALD —
BEC 1983, LLB 1985

Mr Adam Andrew HATCHER —
BA 1985, LLB 1987

Mr Hament Kumar DHANJI —
BA 1986, LLB 1989

RECENT JUDICIAL APPOINTMENTS

Sydney Law School congratulates the following alumni on their recent appointments.

- **The Hon Justice Michael Pembroke (LLB 1978)** Appointed Judge of the Supreme Court of New South Wales
- **The Hon Justice Peter Garling (LLB 1977)** Appointed Judge of the Supreme Court of New South Wales
- **The Hon Associate Justice Philip Hallen (LLB 1976)** Appointed Judge of the Supreme Court of New South Wales
- **The Hon Justice Malcolm Craig (LLB 1967)** Appointed Judge of the Land & Environment Court of NSW
- **Her Honour Judge Laura Wells SC (LLM 2002)** Appointed Judge of the District Court of NSW
- **Magistrate Estelle Hawdon (LLM 1991, LLB 1982)** Appointed Magistrate of the Local Court of NSW
- **The Hon Justice Margaret Cleary (LLB 1981)** Appointed Judge of the Family Court
- **The Hon Justice Ian Loughnan (DipCrim 1984)** Appointed Judge of the Family Court
- **Magistrate Joe Harman (LLB 1986)** Appointed Magistrate of the Federal Magistrates Court





Shining a light on mental health

SULS News by Hannah Quadrio, President

Research from the NSW Brain and Mind Institute has found that 31 per cent of solicitors, 19 per cent of barristers and 41 per cent of law students suffer psychological distress severe enough to justify clinical assessment. These are confronting statistics for anyone connected to the legal profession — student law societies included. That's why the Sydney University Law Society (SULS) has made mental health a focal point for 2010.

The focus of our work has been on raising awareness of mental health issues among the student population. With the assistance of people like Professor Ian Hickie, Lisa Pryor, Geoff Gallop, Nicholas Cowdery, Marie Jepson and Paul Menzies QC, we have strived to open up conversation and help students realise when and how to seek professional assistance. Our aim has been to change the culture where law students suffer in silence and stay away from help, afraid to acknowledge problems for fear that they will no longer be seen as someone who is 'good at life'. Our guest speakers have reminded students that depression is not a sign of weakness, nor is seeking help; depression is an illness where healing is possible.

As Lisa Pryor put it, lawyers and law students suffer from depression because they are human. Still, the statistics suggest that there may be something different about the legal culture and those who are attracted to it that puts us at particular risk vis à vis other groups in society. Questions have been raised about whether the psychology of high-achievers mixed with the nature of their work provides some explanation for why the level of suffering within the legal profession is so high. Could there be something in the fact that people pay lawyers to worry for them? Resisting the temptation to mark ourselves out as 'special', some things are clear: lack of perspective owing to a narrow cohort, competitiveness, isolation, over-work, high levels of stress, lack of exercise and heavy drinking are not likely to promote sound mental health.

In recognition of this, the Sydney University Law Society has been working hard to create a culture and a social calendar where mental health is prioritised. Raising awareness of the issues through public forums has been the first step. We are very grateful to alumni and other members of the community who have been willing to speak out, for the benefit of students. Fostering strong community has been the second step. We have seen social and casual sporting events as a critical means through which competitiveness is broken down and strong, supportive relationships formed. The peer-assisted learning program that is being developed will also support this goal. Promoting healthy practices has been the third step. We entered 114 law faculty staff and students in the City2Surf and have sought to steer some of the focus away from alcohol by holding a more diverse range of daytime social events. Lobbying and fundraising in support of further mental health work has been the fourth step. Through the City2Surf and our annual Law Ball, thousands of dollars have been raised for beyondblue, the national depression initiative. Together with other student law societies, we have also played a role in lobbying the federal government for greater investment in mental health services for young adults.

A person's mental health says nothing about their worth or ability as an individual, but it does affect their capacity to maximise potential. Mental health is too important to be treated as a secondary health issue. It goes to the core of the productive capacity of the legal profession, and more broadly, the health of our society and economy. We welcome initiatives being taken within the legal profession to promote mental health, such as the 'Resilience in Law' and 'Bar Care' programs, and we add our voice to the conversation.

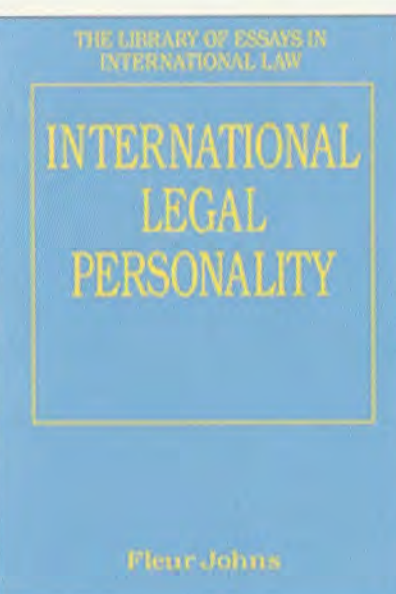
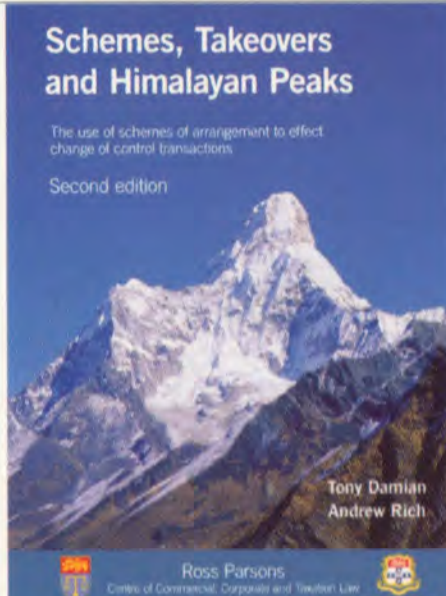
Hannah Quadrio is the elected President of SULS. She can be contacted via email, president@suls.org.au. jd



Recent Publications

SCHEMES, TAKEOVERS AND HIMALAYAN PEAKS (2ND ED)

Edited by Tony Damian and Andrew Rich
Ross Parsons Centre of Commercial, Corporate and Taxation Law
Paperback, 427 pages
ISBN 978 0 9803346 5 4
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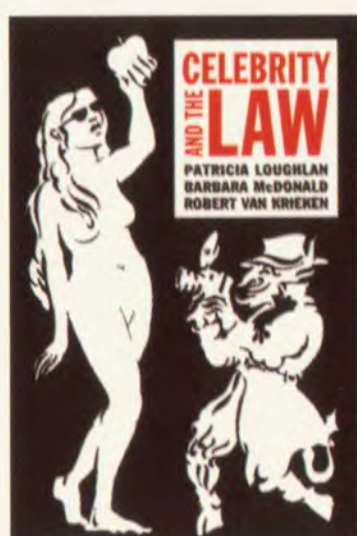
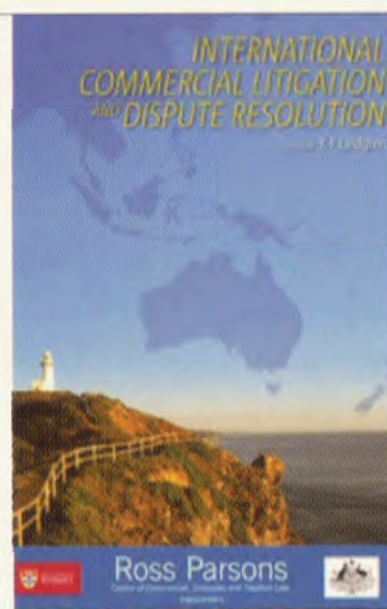


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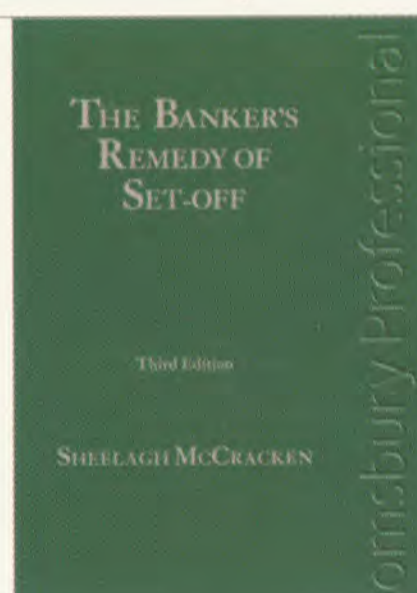


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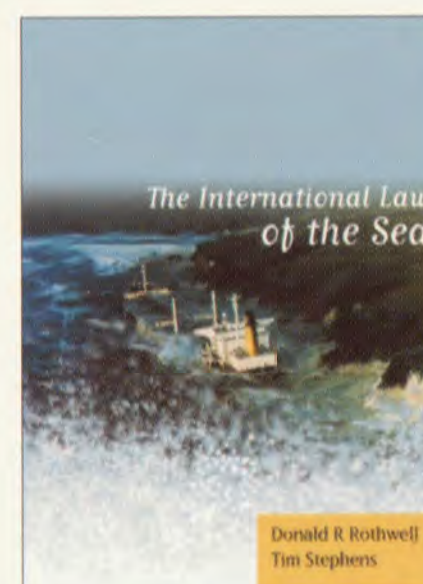
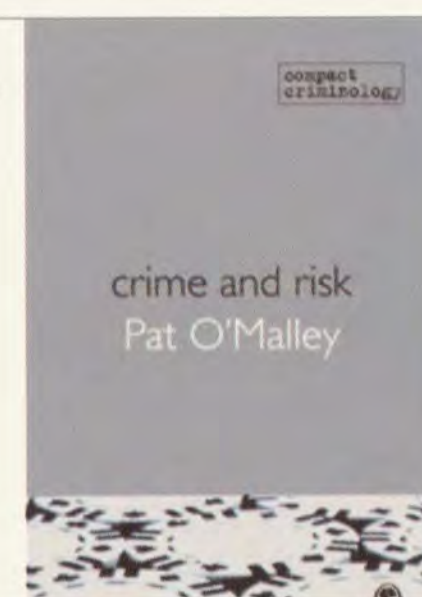


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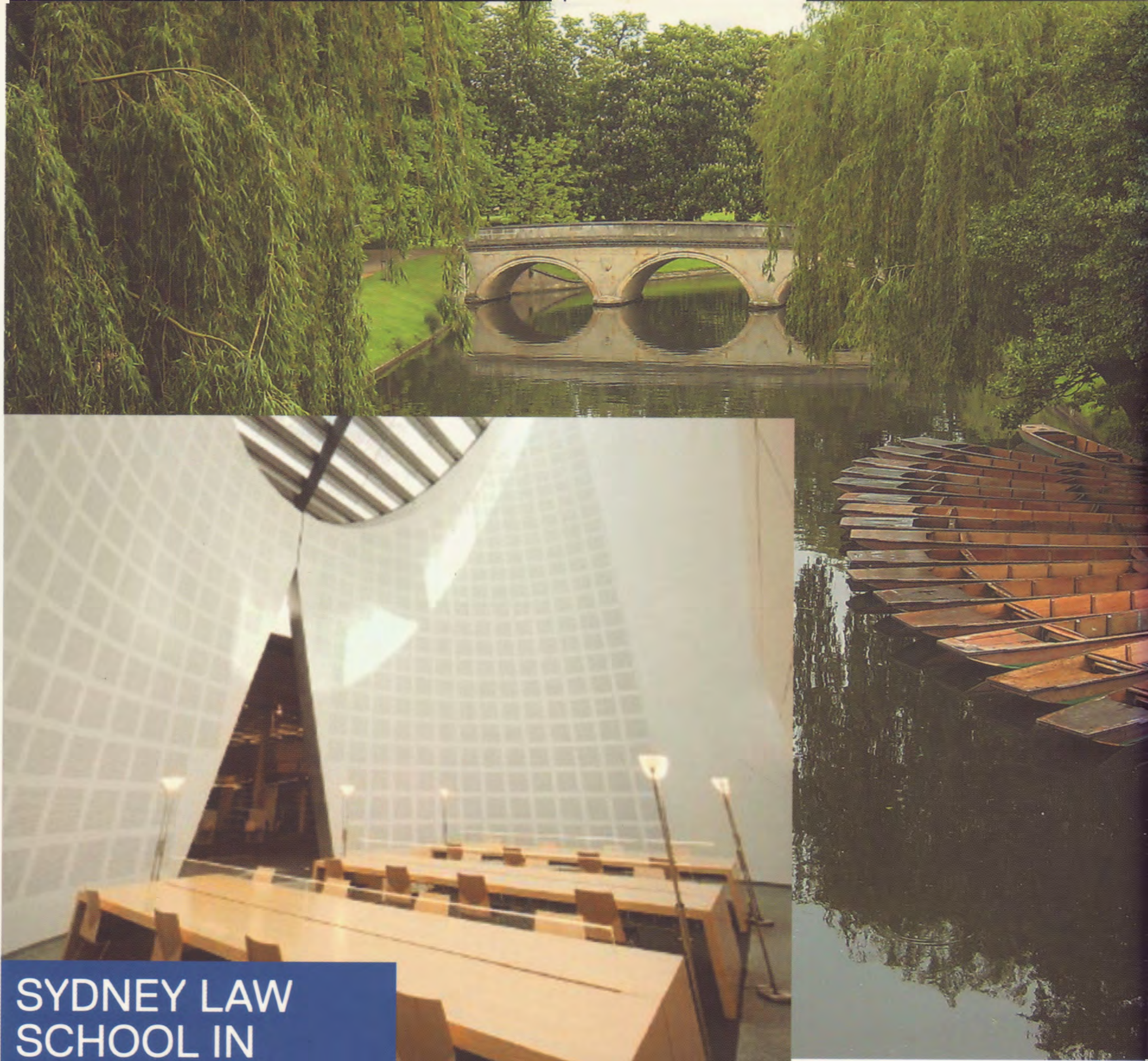
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