Thursday 16 October

8.30am Registration – Collect Name Tags and Book of Abstracts

9 – 10.30am Welcome and Plenary – Professor The Hon. Peter Gray, The Distinguished Jurist in Residence, Monash University
Keynote, Guest Speaker – Alex King, Partner, Litigation, Arnold Bloch Leibler

10.30 – 11am Morning tea

11am – 12.30pm Session 1

Session 1A: Rule of Law, Human Rights and Legal Theory
Chair: Associate Professor Matthew Groves
1. Jack Lonnborn – Intentional Content in the Law: And how this helps us decide if remote-controlled robot cats from mars are really cats, and other questions
(Supervisor: Dr Patrick Emerton)
2. Duncan Wallace – Legal Foundations, Historical Fact and the Declaratory Theory of the Common Law
(Supervisor: Dr Patrick Emerton)
3. James Blaker – The High Court’s Statements of Interpretive Theory, and the Practice that they Vindicate
(Supervisor: Associate Professor Matthew Groves)

Session 1B: Health
Chair: Dr Karinne Ludlow
1. Victoria Vilagosh – Let the Sunshine In: The Value of Disclosure
(Supervisor: Associate Professor Anne-Maree Farrell)
2. Daniiele Panaccio – Regulation of antibiotic prescribing in Australia: Are we doing enough in light of increasing antibiotic resistance?
(Supervisor: Dr Karinne Ludlow)
3. David Ireland – Complementary Medicine Regulation in Australia: In Need of Supplementation
(Supervisor: Dr Karinne Ludlow)

12.30 – 1.30pm Lunch

1.30 – 3pm Session 2

Session 2A: International Concerns
Chair: Professor Sarah Joseph
1. Gabriella Bornstein – Drone Warfare and Transnational Terrorism
(Supervisor: Dr Patrick Emerton)
2. Kate Taylor – Securing the United Nations’ Accountability for the Haitian Cholera Outbreak
(Supervisor: Professor Sarah Joseph)
(Supervisor: Professor Sarah Joseph)

Session 2B: Corporate Regulation
Chair: Jason van Grieken, Senior Associate, Commercial, Arnold Bloch Leibler
1. Pei Rong Lim – Implementing International Corporate Criminal Liability: A Case Study on Natural Resource Pilfering in the Democratic Republic of the Congo
(Supervisor: Dr Joanna Kyniakis)
2. Brooke Smith – Agents in Dual Distribution: Competition Concerns Post-Flight Centre
(Supervisor: Associate Professor John Duns and Professor Christine Parker)
(Supervisor: Dr Susan Barkehall-Thomas)

3 – 3.30pm Afternoon tea

3.30 – 5pm Session 3

Session 3A: Online World
Chair: Ella Biggs, Lawyer, Media Group, Minter Ellison
1. Joshua Teng – Hashtags, Hyperlinks and Hate Speech: Regulating Hate on the Internet
(Supervisor: Associate Professor David Lindsay)
2. Anna Kilevics – Should Google be a publisher of defamatory search returns?
(Supervisor: Associate Professor David Lindsay)
(Supervisor: Associate Professor David Lindsay)

Session 3B: Constitution
Chair: Professor Jeff Goldsworthy
(Supervisor: Professor Jeff Goldsworthy)
2. Christopher O’Yang – Forcing Early Elections: Constitutional Concerns Post-Flight Centre
(Supervisor: Associate Professor Greg Taylor)
(Supervisor: Professor Jeff Goldsworthy)

Friday 17 October

9 – 10.30am Session 4

Session 4A: Protecting Rights in Victoria
Chair: Associate Professor Kathy Laster
1. Shea Wilding – Compensation for acquitted pre-trial detainees
(Supervisor: Associate Professor Kathy Laster)
(Supervisor: Associate Professor Anne-Maree Farrell)
(Supervisor: Professor Graeme Hodge and Dr Ronli Sifris)

Session 4B: Freedom of Speech and Human Rights
Chair: Ms Sharon Rodrick
1. Elizabeth Hicks – Articulating the Harm of Hate Speech: A Comparative Assessment of Section 18C
(Supervisor: Associate Professor Greg Taylor)
2. Sarah Ashby – Court in the web of social media: Challenges faced by sub judice contempt and suppression orders in the age of social media and the Internet
(Supervisor: Ms Sharon Rodrick)
(Supervisor: Dr Paula Gerber)

Session 4C: Arbitration
Chair: Dr Paula Gerber
(Supervisors: Dr Sirko Harder and Dr Lisa Spagnolo)
2. Kathryn Wardell – Towards an Asia-Pacific Court of Human Rights?
(Supervisor: Dr Paula Gerber)
3. Matthew Schnoock – Enforcing Facilitative Dispute Resolution Clauses: When is it Appropriate?
(Supervisor: Dr Lisa Spagnolo)
Cynthia Ang
Supervisor: Dr Emmanuel Laryea
Effective Resolution Regime and Its Implications on Shareholders’ Rights

Even though the recent global financial crisis was felt much less acutely across Asia, the Hong Kong Government considers it prudent to learn from recent experiences of other jurisdictions and to improve the resilience of the financial system by establishing a resolution regime. An effective resolution regime ensures that the costs of failure of a financial institution are primarily born by shareholders, instead of taxpayers and the wider economy. The proposed menu of resolution options in the public consultation paper published in January 2014 grants the resolution authority a significant degree of intervention in a troubled bank while it still has positive net worth and shareholder claims still have economic value. Shareholders voluntarily undertake an investment risk and consequently should be the first to absorb bank losses in order to protect public finances. Financial stability is a public good and should take priority over the private interests of shareholders. However, interference with shareholder rights can have significant and wide-reaching consequences as well. This thesis examines the balancing of prudential regulation and shareholder rights, and considers whether a compensation mechanism is a necessary safeguard to ensure that shareholders are no worse off under resolution than they would have been in liquidation.

Biography
Cynthia is in her final year of Bachelor of Laws. Fascinated by the cosmopolitan metropolis that is Hong Kong, she interned at international law firms there. At university, she serves as the President of Monash International Affairs Society. With an international outlook, she hopes to start her legal career in Hong Kong.

Sarah Ashby
Supervisor: Ms Sharon Rodrick
Court in the web of social media: Challenges faced by sub judice contempt and suppression orders in the age of social media and the Internet

The impact of social media and the Internet has proven to be detrimental to the effectiveness of sub judice contempt and suppression orders in preserving the administration of justice in criminal trials. This thesis explores the futility of suppression orders in eliminating online prejudicial information, the vagueness of what constitutes ‘publications’ on social media for the purpose of establishing contempt and the uncertainty of the law relating to online intermediary liability. It also considers the problem of continuous liability for archived material and of enforcing contempt against individuals outside the jurisdiction and the consequent lack of deterrence produced by the rules of contempt.

Despite these challenges, sub judice contempt and suppression orders should continue to be utilized because they serve an important function in reducing the impact of prejudicial material, maintaining the balance between free speech and fair trials and preserving confidence in the judiciary. The criminal justice system should seek to improve sub judice contempt and suppression orders by requiring certain factors to be considered by the courts when making suppression orders, clarifying the law surrounding the liability of online intermediaries and enhancing deterrence and education. It is further recommended that these measures should be utilized alongside juror-focused methods. Accordingly, while some of the problems associated with contempt in the face of social media and the Internet cannot be wholly overcome, these reforms would improve the effectiveness of sub judice contempt and suppression orders in preserving the administration of justice.

Biography
Sarah is studying a Bachelor of Laws and Arts degree, which she is due to complete in 2014. In addition to becoming a world-class lawyer by day, Sarah hopes to travel the globe, invest in many cravats and become a famous food critic by night.

Jamie Blaker
Supervisor: Associate Professor Matthew Groves
The High Court’s Statements of Interpretive Theory, and the Practice that they Vindicate

In recent decades, the High Court has commenced the task of theorising its practices of statutory interpretation. In doing so, it has adopted the core empirical thesis of textualism and has rejected theories of intentionalism. While this has been the cause of much academic controversy, this article contends that the High Court’s commitment to either textualism or intentionalism is not normatively relevant to the practice of statutory interpretation in Australia, and that the Court’s statements of theory have an altogether separate normative significance; that is, one extraneous to questions of what is meant by the term ‘legislative intention’. These contentions are developed across two sections. The first section seeks to explain the Court’s modern statements of theory and their general significance. It begins by considering the suggestion of Goldsworthy and Ekins, which is that the Courts’ statements represent a departure from a strong and continuous Australian intentionalist tradition. The article rejects that characterisation on the basis that Australian courts have never carried any firm intentionalist tradition from which the courts could now be departing. It is then submitted that the true and sole normative shift to be found in the High Court’s statements of theory involves the legitimation of long-established interpretive principles that see courts acting other than as parliament’s faithful agent and instead as the protector of legal values asserted to be fundamental within the context of our liberal democracy.
The second section then considers how the legislative ‘acceptance’ of interpretive principles might contribute to the justification of two principles in particular: namely, the implied condition of natural justice and the principle of legality. Each of these are fundamental interpretive principles that, to date, have strained to support themselves as presumptions of legislative intention. The court’s theory, it is submitted, can explain and begin to justify their departure from the conventional rules of interpretation.

Biography

Jamié is currently completing the final year of his Arts and Law degrees. His interests are in constitutional and administrative law. His favourite author is David Foster Wallace, and his favourite artist is Misery Higgins.

Gabriella Bornstein
Supervisor: Dr Patrick Emerton
Drone Warfare and Transnational Terrorism
In response to a changing international landscape, the United States has rapidly escalated its drone program, lethally targeting purported members of Al Qaeda and affiliated organisations in hundreds of strikes across Afghanistan, Pakistan, Iraq, Yemen and Somalia. Successive United States’ governments have invoked the rhetoric and rules of war to provide a legal basis for their actions. This thesis assesses the legality of these drone strikes through the framework of international humanitarian law.

The status, and hence liability to be lawfully targeted, of the CIA drone operators and the purported Al Qaeda adherents will be investigated. During an armed conflict, members of the armed forces, members of organised armed groups and civilians who are directly participating in hostilities can all be lawfully killed by the other party to the conflict. This thesis finds that the critical problem is identifying and clarifying the status of both the CIA operator and Al Qaeda adherent. For the CIA operator, the key problem is whether their participation classifies them as a combatant – privileged to kill but liable to be killed. For the Al Qaeda adherent, the key problem is whether they can be classed as a member of a disparate transnational terrorist network. This thesis finds that where these classifications fail, the protection of the civilian population is seriously undermined.

Biography

Gabriella is a final year Science/Law student. She became fascinated with drone warfare while studying international law as part of a yearlong exchange to King’s College in London. Other highlights of her degree have included mooting in the Federal Court and an atmospheric science field trip where the weather was too perfect to conduct experiments. She is looking forward to starting at Corrs Chambers Westgarth in 2015.

Katharine Brown
Supervisor: Professor Jeffrey Goldsworthy
Since the early 1990s, Chapter III and its rule of law implications have dominated constitutional discourse in Australia. A number of seminal cases have expounded the meaning of Chapter III and established the limits it imposes in both the federal and state systems. In a political climate where individual liberty and collective security are conceived as competing values, the practical significance of these limitations is momentous. This thesis explores the constitutional limits of political interference with the judicial process, narrowing in on implications drawn from the constitutional separation of powers. In particular, it explores how the limits of political interference have carved out a constitutionally protected ‘fair trial principle.’ The analysis proceeds in three parts. Part I examines the High Court’s treatment of the issue, ascertaining the source and content of the principle. Here, a distinction is drawn between laws that are impugned because they misallocate power (subject matter application), and those that are impugned because they interfere with the judicial process (process-centric application). It is shown that while the High Court has been willing to invalidate legislation on subject matter grounds, it has been reluctant to do so based on process-centric reasoning. To overcome this deficiency, Part II advances an alternative source of protection, based on an understanding of the fair trial principle as a necessary implication of the separation of powers. Part III considers the practical applications of this approach, and addresses the concern that an entrenched guarantee of a fair trial would stagnate progress in the judicial system.

Biography

Katharine is a penultimate year Arts/Law student. She is passionate about human rights law and is particularly interested in how it intersects with criminal law, public law and legal theory. This summer Katharine will be working at the Center for Constitutional Rights in New York, where she will be working in international human rights law.

Corey Byrne
Supervisors: Associate Professor Pamela O’Connor and Ms Sharon Rodrick
To the Register and beyond? Restrictive covenants after Westfield
In Westfield Management Ltd v Perpetual Trustees Co Ltd the High Court unanimously held that the orthodox approach to contractual interpretation as enunciated in Codella Construction Pty Ltd v State Rail Authority (NSW), which allows the admission of extrinsic evidence of the circumstances surrounding the original transaction, did not apply when interpreting the provisions of a registered easement. Despite this significant shift in interpretive approach, the judgment of the High Court in Westfield was brief and ambiguous and has resulted in inconsistent interpretations of the decision from the lower courts regarding its scope and underlying rationale. Nevertheless, the Westfield doctrine has been highly influential and has been extended beyond its immediate context of registered easements to include other property interests, including, most problematically, restrictive covenants.

This thesis contends that the lower courts’ extension of the Westfield doctrine to restrictive covenants has overlooked the dissimilar effect that a restriction on extrinsic evidence would have for these interests, as compared to other property interests. This is because unlike the registered easement in Westfield, restrictive covenants are equitable property interests that are merely ‘recorded’ on the Torrens Register in most jurisdictions and are not protected by indefeasibility. As a result of this peculiarity, restrictive covenants continue to rely on archaic equitable rules for their enforceability, which often require the court to consider the intentions of the original parties to the transaction and admit extrinsic evidence. Thus, it will be shown that application of the Westfield doctrine will mark a significant change to the law of restrictive covenants and put the enforceability of many recorded covenants under threat.

Biography

Corey is in his final year at Monash University, completing a double degree of Bachelor of Law and Bachelor of Arts, where he majored in Politics and minored in Criminology. In 2015, Corey will begin his supervised workplace training at Meerkin & Apel, a commercial law firm in Prahran.

Lachlan Fahey
Supervisor: Dr Gerald Nagtzaam and Associate Professor Pamela O’Connor
Lock the gate: Accessing private land for energy and resources
This thesis seeks to answer whether, and to what extent, private landowners should be able to control the development of publicly owned natural resources on their property? There has been vocal opposition to coal seam gas (‘CSG’) production in Australia and some stakeholders have called for landowners to have a right to say ‘no’ to CSG companies accessing their land. Such a right would obviously give landowners greater protection but it could also hinder the State’s control over the development of minerals and petroleum. In balancing these divergent interests, consideration must also be given to the way governments manage land use more generally, whether for the purposes of non-renewable energy, renewable energy, agriculture or conservation. This paper will look at how a right of veto fits with the common understanding of land ownership, explore the merits of Australia’s mineral and energy resources ownership framework, and consider whether imposing veto rights would be in society’s overall interest. Finally, this paper will suggest options for land access reform in Victoria including better integration of competing interests through a thorough and strategic land-use policy.

Biography

Lachlan is in his final year of an Arts (International Relations)/Law degree. He is looking forward to completing his degree in
November and relaxing in Byron Bay, Hong Kong and Japan before taking up a position as a graduate lawyer in Brisbane in 2015. In the future, Lachlan hopes to practice in energy and resources or intellectual property law in Australia and overseas.

Stephanie Gale
Supervisor: Professor Jonathan Clough
The father of the bribe: a parent-focused framework combating corruption

Australia has recently been criticised on both a local and global front for its poor record in taking action against bribery. Despite recent charges laid against Securicor and Note Printing Australia, the current legislative regime, although in line with the nation’s international obligations, is both difficult to trigger and satisfy use. This thesis will therefore examine exactly how Australia’s criminal-focused statutory framework could be reformed to better achieve a practical reduction in bribery and its associated harm. It considers of the scope of Australia’s international obligations, as well as civil enforcement methods utilised and praised in the United States and United Kingdom as a basis for introducing civil liability locally. It is argued that the introduction of an omission-based form of civil liability as part of a responsive regulatory framework, targeted squarely at parent companies which fail to prevent corruption committed by a subsidiary, would achieve real and practical reduction of harm and foster competition across the market, better fulfilling Australia’s commitment to tackling corruption.

Biography
Stephanie is a final year BCom (Economics)/LLB student, with a keen interest in the intersection between law and the operation of global markets. After a planned sojourn across frosty Europe at the end of the year, she will commence with Minter Ellison as a graduate in 2015.

Christian H laba
Supervisors: Dr Roni Silfis and Dr Graeme Hodge
Suicide prevention: the role of bullying law reform

Suicide was the leading cause of death for people under forty-five in Australia in 2012. Despite the extent of this problem, effective means of suicide prevention remain elusive. This thesis considers the role that bullying law reform plays in suicide prevention. Reforms undertaken in response to the suicide of Brodie Panlock in 2006, including the criminalisation of serious bullying and changes to workplace anti-bullying laws, show that bullying law reform is seen as a means of suicide prevention. This thesis explores that assumption by assessing the effectiveness of these two recent reforms and finds that the effectiveness of bullying law reform in suicide prevention is limited. This recognition highlights the complexity of the problem and the need for the continuing development of suicide prevention mechanisms both through law reform and other means.

Biography
Christian is an Arts/Law student. He majored in politics in his Arts degree and on finishing his studies will venture into Melbourne’s legal world.

Claire Harris
Supervisor: Dr Rebecca Giblin
Do androids dream of copyright thieves?
An Australian perspective on Oracle v Google

In the United States case of Oracle v Google, Oracle claimed that Google’s Android operating system infringed copyright subsisting in its Java Application Programming Interface (‘API’). In May 2014, the Court of Appeals for the Federal Circuit held that copyright subsists in the Java API. As the issue of infringement was decided by jury verdict, the effect of this decision was that Google’s reproduction of the Oracle API within the Android operating system constituted an infringement. Although the US Courts have not yet considered whether Google can rely on a statutory exception to infringement, the Oracle v Google ruling has been heavily criticised by the technology community as inhibiting innovation and strangling competition in the software industry. This thesis predicts the outcome of Oracle v Google under Australian copyright law; concluding that the reproduction of the Java API in Google’s Android operating system would also be an infringement under Australian law. Finally, the thesis considers the practical ramifications of this outcome and proposes the introduction of an exception to allow API reproduction.

Biography
Claire is in her final year of a Law and Electrical Engineering double degree. She is looking forward to beginning legal practice next year after spending the summer travelling.

Elizabeth Hicks
Supervisor: Associate Professor Gregory Taylor
Articulating the Harm of Hate Speech: A Comparative Assessment of Section 18C

Successful action against Andrew Bolt in 2011 renewed advocacy for freedom of speech in Australia, and calls for reform of the Racial Discrimination Act 1975. Controversially, section 18C defines racial vilification as ‘offensive behaviour’ which “is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate”. Section 18C has therefore been described as protecting ‘hurt feelings’. As ‘hurt feelings’ are not recognised as a justification to restrict speech by other legal paradigms, section 18C appears to give undue weight to the experience hate speech causes in its target. Through comparing Australian legislation with its counterparts in Germany and the United States, this thesis will identify a common trend of assessing the legitimacy of hate speech legislation through analogy to other restrictions on speech, and particularly to restrictions to prevent violence and promote social cohesion. Ultimately, however, this analogy fails, as hate speech involves a unique form of harm and — particularly in the way it affects its direct targets — is coloured by its social and historical significance. Whether speech that ‘offends’ or ‘insults’ merely causes ‘hurt feelings’ — or whether it causes an experience of persecution and intimidation — will depend upon the historical and social significance of the speech. This principle has been recognised in practice in both Germany and Australia; however, Australia’s ‘victim focus’ lends itself to a better application. On this basis, it is suggested that the current form of section 18C be retained, but incorporate a requirement that the historical and social significance of speech be considered when assessing whether it is offensive ‘in all the circumstances’.

Biography
Elizabeth is in her sixth and penultimate year of Arts/Law, having taken the scenic route through her degree. She recently completed another Honours year in Berlin.

David Ireland
Supervisor: Dr Karinne Ludlow
Complementary Medicine Regulation in Australia: In Need of Supplementation

This thesis investigates the regulation of complementary medicines in Australia, and recent efforts by the Therapeutic Goods Administration (‘TGA’) to reform it. Complementary medicines — that is, medicines that have a herb, vitamin or other designated substance as their active ingredient — have long been used by consumers alongside conventional medicines. In recent years a number of distinct flaws have been recognised in their regulation, most notably the high rate of regulatory non-compliance by complementary medicine manufacturers, and the concern that the public are being misled by the health claims these manufacturers make about their products. In 2011 the TGA responded to these concerns with the publication of A Blueprint for TGA’s Future, which displayed an intent to reform the complementary medicine regulatory system over the following years. This thesis investigates the proposed and implemented reform efforts. It identifies the regulatory system’s gaps, and concludes that the TGA’s reforms fail to properly address them. The thesis instead advocates for fundamental change. More specifically, the thesis argues for the introduction of a pre-market assessment of each complementary medicine for safety, quality and efficacy, a clear distinction between medicines that have been clinically trialled and those which have not, and stronger enforcement.

Biography
David is a sixth and final year student studying Biomedical Science/Law. His thesis combines his interests in both the science and legal disciplines. In 2015, David will begin work as a graduate lawyer. Outside of work and study, David is a keen athlete and traveller.

Martin John
Supervisor: Associate Professor David Lindsay
Identifying ‘Personal Information’: The Scope of the Definition in the Privacy Act 1988 (Cth)

This thesis critically evaluates the scope of the definition of ‘personal information’ in the Privacy Act 1988 (Cth) (‘Privacy Act’). It is necessary...
to determine what constitutes ‘personal information’ in order to ascertain whether the Privacy Act regulates the processing of any given piece of information. This task has been made more difficult by rapid advances in technology in recent times. This thesis uses the example of IP addresses to demonstrate some of the issues arising from how ‘personal information’ is defined in the Privacy Act. These definitional issues include determining in whose hands information is to be measured or assessed as ‘personal information’, whether ‘personal information’ must identify only individuals, and whether there is a distinction between information about an individual, and information that ‘relates’ to an individual. Some definitional issues are easier to resolve than others, but the contextual nature of the definition will continue to be a source of uncertainty for some organisations. Despite this, this thesis concludes that a degree of uncertainty over what constitutes ‘personal information’ is appropriate in order to strike a balance between protecting individual privacy in the ‘Information Age’ and the interests of organisations in carrying on their activities.

**Biography**

Martin is set to graduate in 2014 with a Bachelor of Arts (Philosophy) and Bachelor of Laws, and looks forward to going into legal practice.

**Ryan Kabat**

Supervisor: Dr Eric Windholz

Third Party Securities and the PPSA: Are Lenders Better Protected?

Given the prevalence of corporate groups in Australia, lenders have been compelled to find ways to access the assets of the group in order to secure their lending. These assets are likely spread over several different companies. One obvious way to achieve access to these assets is to have companies within the group provide security for the debts of other member companies. These so-called third party securities have, however, proven particularly problematic for lenders because of the courts reluctance to allow transactions to be enforced that seem to have no benefit for the company involved. This thesis will examine whether the wide spread and radical reforms introduced by the Personal Property Securities Act 2009 (Cth) provide any assistance to a lender who finds themselves with a third party security that seems to have no benefit for the company.

This thesis will investigate the doctrines of security and the extent of liability for the financing of international transactions. These are: the extent of liability for the financing of international crimes and how to determine a corporate mens rea. The proposed solutions to these issues and the elements of the crime of pillaging are then applied to companies dealing with Congolese minerals that were sourced through illegal or fraudulent means.

**Biography**

Ryan is in his penultimate year of a Bachelor of Science (Physics)/Bachelor of Laws. Upon graduation he looks forward to forgetting all about General Relativity and pursuing a career in commercial law.

**Anna Kilevics**

Supervisor: Associate Professor David Lindsay

Should Google be a publisher of defamatory search returns?

Prompted by the groundbreaking decision in Trikulja v Google Inc LLC (No 5), this thesis considers whether Google should be liable as a publisher of defamatory material (‘snippets’) produced via its search engine. The Victorian Supreme Court held in Trikulja that Google is a publisher of such snippets and clearly dismissed the English decision of Metropolitan Schools v DesignTechnica. Metropolitan held that Google could not be considered a publisher because of the automatic nature of its search engine. The recent NSW Supreme Court decision of Bleyer v Google Inc expressed preference for the Metropolitan approach, demonstrating this issue is currently unclear in Australia.

To clarify Google’s liability, this thesis reviews the traditional definition of a publisher and its unorthodox developments in England that led to the decision in Metropolitan. It argues that the Trikulja decision is more consistent with existing principles and strictly speaking, Google should be regarded as a publisher of defamatory material in Australia. Nevertheless, this thesis will suggest that a plaintiff’s ability to sue Google should be limited via law reform. This should protect Google from unnecessary liability, whilst retaining a plaintiff’s capacity to sue Google as a last resort to protect their reputation online.

**Biography**

Anna is in her final year of a Commerce/Law degree. She plans to celebrate the end of her degree with a trip to Europe, before commencing her accounting career at PwC in 2015.

**Joel Lazar**

Supervisor: Associate Professor Bronwyn Naylor

Crowded Rights: Redressing prison overcrowding from a human rights perspective

Amid a pandemic of prison overcrowding, the space and fundamental services necessary to care for prisoner well-being is being eroded, along with the prisoner’s residual rights. This thesis highlights the concern of Victorian prison overcrowding, and examines the shortfalls and inaccessibility of Victorian law in protecting prisoners from harm. It also explores the minor significance of overcrowding as a mitigating factor at sentencing.

A human rights framework that provides a free-standing legal right, empowering the court to order any remedy it thinks fit, has greater potential to redress overcrowding, as it focuses on the human dignity and suffering of the prisoner, not the causal factors that underpin the harm. The framework is fortuitous by the philosophy of human rights and extensive international jurisprudence catered to respond to overcrowding.

The Charter of Human Rights and Responsibilities Act 2006 (Vic) recognises prisoner rights but lacks the capacity to effectively enforce them. Building on the Charter, the framework proposed presents an encouraging alternative to current avenues. With appropriate public human rights education, and prisoner empowerment, a human rights framework presents a viable new option for Victorian prisoners to redress the harms and indignities of overcrowded prison environments.

**Biography**

Joel completes his BA (Creative Writing)/LLB degree at the end of 2015. Next year he will be a Castan Centre Global Intern with the International Service for Human Rights in Geneva. Joel is an unaccomplished poetry writer, an unfulfilled amateur table tennis player and prefers to answers questions with questions?

**Pei Rong Lim**

Supervisor: Dr Joanna Kyriakakis

Implementing International Corporate Criminal Liability: A Case Study on Natural Resource Pillaging in the Democratic Republic of the Congo

Under the current rules of the Rome Statute, the International Criminal Court (ICC) only has jurisdiction over natural persons. The exclusion of legal persons, such as corporations, from the ICC’s jurisdiction is inconsistent with the stated purposes of the Court to end impunity for the perpetration of grievous atrocities and guarantee the enforcement of international justice. This thesis argues that international corporate criminal responsibility (ICCR) should be implemented by the ICC, using the war crime of pillaging of natural resources in the Democratic Republic of the Congo (DRC) as a case study. The facts of the case study present an opportunity for discussion of two key issues that have been raised as obstacles to the implementation of ICCR. These are: the extent of liability for the financing of international crimes and how to determine a corporate mens rea. The proposed solutions to these issues and the elements of the crime of pillaging are then applied to companies dealing with Congolese minerals that were sourced through illegal or fraudulent means.

**Biography**

Pei is a final year Arts/Law student who has had a very enjoyable 4.5 years in Melbourne and will be returning to Singapore in 2015 to sit for the Singapore bar exam.

**Tienyi Long**

Supervisor: Professor Sarah Joseph

“Doing Something About Child Labour”: Can the GATT Help?

Child labour is a breach of international children’s rights and labour standards. While child labour is most prevalent in developing countries, child labour goods are imported and used in developed countries. It has been suggested that developed countries should adopt trade measures to encourage policy changes and reduce child labour in developing countries.
Using Australia as an example, this thesis explores the extent to which trade measures against child labour goods are consistent with obligations under the General Agreement on Tariffs and Trade (GATT). The GATT requires that states grant equal treatment to all foreign trade partners that are members of the World Trade Organisation (WTO).

It is submitted that negative trade sanctions against child labour goods may be justified under Article XX of the GATT, on the basis that they are necessary to protect public health or public morals. Alternatively, “positive” trade measures which provide an incentive for developing countries to eliminate child labour may be allowed under the Special and Differential Treatment (SDT) exception.

However, it is submitted that trade measures are ineffective: they only affect a minority of child labourers, and do not address the underlying causes of child labour. As such, they should not be adopted as a means of reducing child labour in developing countries.

**Biography**

Tienyi is a final year Arts/Law student with a strong interest in children’s rights and social justice. In her spare time, she enjoys languages, children’s fiction, and soy mochas.

**Jack Lönnborn**  
Supervisor: Dr Patrick Emerton

Intentional content in the law: And how this helps us decide if remote-controlled robot cats from mars are really cats, and other questions.

As John Searle points out, ‘if someone tells me to cut the grass and I rush out and stab it with a knife, or if I am ordered to cut the cake and I run it over with a lawnmower, in each case I will have failed to obey the order.’ But why? How is it that our utterances discriminate between these different kinds of cutting? More generally, in what ways does language depend on our beliefs, attitudes and the contextual features of communicative exchanges?

This thesis draws on the philosophy of language in order to better understand statutory interpretation. What is clear is that “literal meaning,” if indeed this is an intelligible notion, is too austere and opaque to reliably give sensible answers to legal questions. One issue, then, is to describe how the extra content necessary for successful communication is supplied. Another is to work out which bits of this content form part of Australian law. I examine these questions in light of judicial remarks on statutory interpretation, and argue that the literal approach affirmed by the High Court in Project Blue Sky cannot be taken at face value.

**Biography**

Jack is studying law and arts and majoring in German. His future lies in the penumbra of uncertainty, but will almost certainly include more philosophy.

**Barnaby Matthews**  
Supervisor: Dr Paula Gerber

The Julian Knight amendment: a breach of human rights law?

On a Sunday evening in August 1987, a 19-year-old ex-army cadet strolled into a busy Melbourne suburb armed with several firearms and opened fire on passersby, killing seven and injuring a further 19. Julian Knight was sentenced to life imprisonment for the massacre and was to serve a minimum term of 27 years before he could be considered for parole.

In February 2014 the Victorian legislature amended the Corrections Act 1986 (Vic) to alter Knight’s eligibility for parole. The amendment names Julian Knight and prohibits his release until he is ‘in imminent danger of dying, or is seriously incapacitated, and as a result he no longer has the physical ability to do harm to any person’. While the constitutionality of the amendment has been questioned, its severity and specificity also raise issues of fundamental human rights.

This thesis analyses the Knight amendment through the lens of international human rights law, focusing on specific rights contained in the International Covenant on Civil and Political Rights. These rights include freedom from inhuman or degrading treatment, freedom from retrospective harshening of punishment and the general right of equality. This thesis concludes that the amendment is incompatible with these rights and is therefore in breach of international human rights law.

**Biography**

Barnaby will complete his Bachelor of Laws in 2014. He is looking forward to joining Herbert Smith Freehills as a graduate in 2015.

**Kelly McConnell**  
Supervisor: Dr Emmanuel Laryea

**Best Practice for Bitcoins**

Decentralised virtual currencies may operate outside regulatory, legal and financial systems. Despite the risks that these currencies pose to stakeholders, including consumers, merchants, and investors and to the broader economy, their popularity continues to grow rapidly. Concerns regarding volatility, security and criminality can be addressed through the incorporation of virtual currencies into broader legal landscapes on a domestic and global scale. While most countries are hesitant to take the lead on virtual currency regulation, global action is needed to prevent criminal behaviour and ensure consumer and investor protection in this new era of virtual currencies.

Bitcoin, the most widely adopted virtual currency, is used as a case study in this thesis for reviewing regulation strategies in relation to virtual currencies and their associated risks. A ‘best practice’ regulatory approach is recommended for domestic and global authorities regarding virtual currencies. This approach recommends virtual currencies be incorporated into existing legal and financial frameworks in a way that balances the benefits that virtual currencies provide with the need to preserve a stable currency and economy.

**Biography**

Kelly is completing her final year of a double degree in Law/Arts. After graduation she will take up a position in Risk Management at the Macquarie Group in Sydney. She is pursuing a career in business and banking.

**Katherine Nugent-Johnstone**  
Supervisor: Dr Susan Barkehall Thomas

**Kakavas v Crown Melbourne Ltd: The changing requirements of unconscionable conduct**

The High Court of Australia in Kakavas v Crown Melbourne Ltd unanimously held that Crown Casino had not engaged in unconscionable conduct in relation to Mr Kakavas. The Court held that Kakavas had not suffered a special disadvantage in relation to Crown, who had given the ‘high roller’ added incentives to encourage him to gamble with the casino. Of particular interest, Their Honours stated that a stronger party must act with a ‘predatory state of mind’ in order for the weaker party to establish unconscionable conduct has taken place.

This thesis shall undertake an examination of the changes that have occurred to the knowledge and exploitation requirements of unconscionable conduct. It will be shown that Kakavas v Crown Melbourne Ltd is a restoration of the more conservative approach established by the High Court in Commercial Bank of Australia v Amadio. This can be seen as a move away from the more liberal approach that was followed in the controversial decision of Bridgewater v Leahy. The Kakavas decision suggests a higher knowledge threshold in establishing unconscionable conduct. However, what level of ‘exploitation’ is required to satisfy the doctrine remains unsettled.

**Biography**

Katherine is in her final year of a combined Arts/Law degree. She has completed her Bachelor of Arts, majoring in History and Politics and studied at Monash’s Prato campus first semester of this year.

**Liam O’Brien**  
Supervisor: Professor Jeffrey Goldsworthy

**The Williams Cases: A Resurrection of Fiscal Federalism in Australia?**

The Williams cases have reigned debate about the federal division of powers in Australia. In Williams (No. 1), the High Court abruptly rejected the century-old ‘common assumption’ by requiring statutory authorisation for most Commonwealth spending. The Commonwealth immediately enacted remedial legislation providing itself with general authority, which was promptly read down by the Court in Williams (No. 2). This outcome effectively restored the ‘common assumption’, but by implication calls upon the Court to undertake an unusual task: deciding whether Commonwealth expenditure is “peculiarly adapted to the government of a nation”.

In determining the validity of Commonwealth spending, the High Court should adopt the principle of subsidiarity. In accordance with orthodox theories of fiscal federalism, this
principle would block the Commonwealth from direct expenditure unless the States were legally or practically incapable of achieving its ultimate objective, as in macroeconomic policy or social welfare programs. Even so, the grants power as historically interpreted will allow the Commonwealth to funnel resources through the States to fund programs on whatever conditions it sees fit. Thus the Williams judgments will not resurrect fiscal federalism unless their federalist constitutional interpretation extends to reinterpretation of the grants power or motivates political decentralisation of taxation and expenditure.

Biography
Liam is currently completing a BA/LLB double degree. Like the late Justice Lionel Murphy, he keeps a copy of the Constitution beside his bed as a cure for insomnia. Liam works for Access Monash as a tutor and mentor at local secondary schools underrepresented in tertiary enrolments. He will commence as a graduate-at-law at Baker & McKenzie in 2015.

Chris O’Yang
Supervisor: Associate Professor Greg Taylor
Forcing Early Elections: Constitutional Convention and the Rule of Law in Victoria
The recent political controversy surrounding Geoff Shaw highlights significant problems within Victoria’s dissolution procedures. The dissolution of Parliament is currently restricted to two scenarios: where a motion of no confidence in the government is passed; and where the deadlock procedures have been satisfied. However, it is possible a determined Premier could mistakenly or deliberately advise an illegal or improper dissolution to force an early election. This thesis considers how a Premier could achieve such an outcome and how the Governor should respond given the conflict between constitutional convention and the rationale of a fixed term parliament. Existing discourse on the constitutional conventions that constrain the Governor is limited because it does not recognise Victoria’s statutorily based power of dissolution. If the Governor is perceived as an institutional mechanism for securing the rule of law, a sound justification can be supplied for refusing an illegal or improper dissolution. However a conceptual understanding of the Governor as promoter of the rule of law is meaningless without the possibility of enforcement. This thesis will conclude that not only is an illegal dissolution justifiable, but the Court can and should exercise its discretion to grant an injunction or declaration.

Biography
Chris is a sixth year Arts(Politics, Philosophy)/Law student. He looks forward to commencing a law graduate position in 2015. At the same time, he laments that he will miss out on the upcoming St Ali @ Monash cafe.

Danielle Panaccio
Supervisor: Dr Karine Ludlow
Regulation of antibiotic prescribing in Australia: Are we doing enough in light of increasing antibiotic resistance?
Antibiotics are one of the most important classes of drugs in modern medicine. Antibiotic use allows previously fatal bacterial infections to be easily treated and underpins many advances of modern medicine, including complex surgeries and chemotherapy. However, this precious resource is under threat from the development of antibiotic resistance in bacteria. This development is driven by complex factors but the key driver is the inappropriate use of antibiotics. In Australia the number of antibiotics prescribed is well above the OECD average and it is thought that up to 50% of such use is inappropriate. This thesis examines Australian regulations controlling how medical practitioners prescribe antibiotics, focusing on the utility of antimicrobial stewardship programs in hospitals and prescribing restrictions under the Pharmaceutical Benefits Scheme and Therapeutic Goods Association. It identifies that there are a number of gaps and limitations in the current regulatory approach that limit its effectiveness in ensuring appropriate prescribing. This thesis concludes by providing recommendations aimed at optimising the effectiveness of the current regulatory approach. These include extending the current authority prescription system under the Pharmaceutical Benefits Scheme as well as changes to the mandatory requirements for antimicrobial stewardship programs in hospitals.

Biography
Currently in her final year of law, Danielle is studying medicine and law and has a keen interest in health regulation, particularly the law’s response to the challenge of infectious diseases. Next year Danielle will complete her medical studies and in the future she hopes to combine clinical work with work in health policy and administration.

Elizabeth Park
Supervisor: Dr Eric Windholz
Reconceptualising Phoenix Activity
Current political rhetoric is in general agreement that there is a need to reform laws in order to better prevent phoenix activity. Yet whilst endless solutions have been proposed over the past 20 years to better protect business creditors and competitors, the Australian Parliament continues to reject these proposals. By examining what phoenix activity entails and distinguishing between its different forms (tainted and genuine), we can gain a better understanding of the reasons for this lack of legislative reform. We are able to see that tainted phoenix activity has been legislated against already, and that the problem with proposals for further reform is that they risk putting a stop to genuine phoenix activity, which is a result of entrepreneurial activity and can be beneficial to society and creditors. It should be questioned whether or not losses caused by phoenix activity are simply something we are willing to accept as the cost of a flourishing entrepreneurial society. If our true priority is encouraging risk taking and entrepreneurship, then perhaps we have already found the right balance and should do nothing further to limit phoenix activity.

Biography
Elizabeth is in the final year of her Bachelor of Arts and Laws. For her Arts degree, she completed a double major in history and literature. Her Law degree focused on commercial law, and in 2013 she enjoyed an exchange to the University of Warwick. In 2015 she will be commencing as a graduate with King & Wood Mallesons.

Jessica Richard
Supervisor: Associate Professor Anne-Maree Farrell
Post-Mortem Pregnancy and Autonomy in Victorian Law
Does death extinguish an individual’s autonomy? If so, what is to prevent a post-mortem pregnant woman’s body from being used to incubate her live fetus against her wishes?
The right to refuse medical treatment by way of an advance directive is largely settled in Australia. Yet the recent case of Marlise Muñoz in Texas — in which a brain-dead woman was maintained on “life support” for the sake of her fetus — challenges the relevance of the principle that advance directives seek to protect: that of autonomy. Despite a growing international body of literature on post-mortem pregnancy, there is little guidance as to whether an Australian court would uphold a deceased woman’s refusal to maintain her fetus.
This thesis examines Victorian statute and common law concerning advance directives, and argues that there is no real barrier to upholding a deceased pregnant woman’s refusal of medical treatment to maintain her fetus. Efforts to evade the dilemma, posed by commentators who deny that the dead possess interests which deserve respect, fail to address the institutional and social context of post-mortem pregnancy. However, an ethically-principled approach is needed to support the law as it applies to post-mortem pregnancy. Courts must embrace a richer understanding of autonomy to give coherence to statutory and common law advance directives and their application to the dead.

Biography
Jessica is a final year BA(English Literature)/LLB student. She has an avid interest in bioethics, and aspires to complete further study abroad in medical ethics and law.

Matthew Shnookal
Supervisor: Dr Lisa Spagnolo
Enforcing Facilitative Dispute Resolution Clauses: When is it Appropriate?
Where parties include dispute resolution clauses in their contracts, these provisions invariably include one or more facilitative stages to encourage early settlement. These stages are often expressed as a mandatory prerequisite to binding determination. When these stages
Mao Lin Tan  
Supervisors: Dr Lisa Spagnolo and Dr Sirko Harder  

An examination of the Choice-of-law process in International Commercial Arbitration  

With the rapid growth of globalisation, transactions between parties from different countries are now the norm. International commercial arbitration has emerged as a popular alternative to litigation in national courts for the resolution of disputes arising from such cross-border transactions, and its growing importance is demonstrated by the exponential increase in both the volume and the value of cases handled by arbitral institutions. Given the transnational nature of international commercial arbitration cases, different laws or rules may potentially be applicable, which requires the arbitration tribunal or national court to make a choice-of-law determination. Uncertainty and instability in the choice-of-law process would affect the effectiveness of arbitration and its position as a viable dispute resolution method in the long-term. Yet, no clear authoritative treatise on the choice-of-law process in international arbitration exists. It is necessary to establish clear guidelines on how a tribunal or national court approaches a choice-of-law determination, which would grant parties and practitioners in international arbitration a degree of certainty in their approach towards proceedings.  

To that end, this thesis examines the applicable laws as well as the choice-of-processes with regards to three aspects of arbitration, namely the law governing the arbitration agreement, the law governing the substantive issues in dispute, otherwise commonly known as the ‘proper’ or ‘substantive’ law and lastly the law governing the recognition and enforcement of arbitral awards.  

Biography  
Mao Lin is finishing his final semester at Monash University and will return to Singapore after three and a half good years spent in Melbourne. He enjoys playing basketball, watching NBA games, reading and drinking unhealthy amounts of coffee.

Kate Nancy Taylor  
Supervisor: Professor Sarah Joseph  

Securing the United Nations’ Accountability for the Haitian Cholera Outbreak  

In 2010, a Nepalese contingency of UN peacekeepers brought cholera to Haiti, a country recently devastated by an earthquake. The UN’s haphazard disposal of human waste at its peacekeeping base allowed raw sewage to flow directly into one of Haiti’s main sources of drinking water. The sanitation conditions at the UN base were contrary to well-established standards on the treatment of wastewater in humanitarian missions. The introduction of the cholera bacteria into Haiti’s water supply triggered an epidemic, causing the death of more than 8,000 people, and the illness of 700,000 more.  

The prima facie negligent circumstances surrounding the cholera outbreak have given rise to thousands of claims in tort for compensation against the UN. The UN has intimated it will not address these claims, and as such, the victims of the cholera outbreak have not been afforded a remedy for their personal injury and death arising from acts attributable to the UN. The legal accountability of the UN is governed by a unique regime that treats private claims against the organisation differently from private claims against other legal entities. Namely, the UN has absolute jurisdictional immunity before domestic courts, coupled with a simultaneous obligation to settle private law disputes amicably. The UN’s blanket refusal to address the cholera claims raises serious questions about the legal accountability of the UN and other international organisations vested with similar immunity standards.  

The human right of access to court entails that in the determination of his or her civil rights and obligations, everyone is entitled to a fair and public hearing by a competent and impartial tribunal established by law. The present effect of jurisdictional immunity is to deprive the cholera claimants of that right, without alternative means of redress for their harm. Although the UN’s peacekeeping mandate in Haiti explicitly includes the establishment of a state based on the rule of law and respect for human rights, the UN has itself failed to abide by those ideals in its handling of this case.  

Biography  
Kate is in the fifth and final year of her Arts/Law degree. In 2015, she plans to undertake a Masters of Law overseas.

Matthew is in his fifth year of study at Monash University undertaking the double bachelor of Commerce and Laws. He has greatly enjoyed the opportunity to research and develop legal ideas over the past year and looks forward to his final year of study in 2015.  

Brooke Smith  
Supervisors: Professor Christine Parker and Associate Professor John Duns  

Agents in Dual Distribution: Competition Concerns Post-Flight Centre  

The cartel prohibitions in the Competition and Consumer Act 2010 (Cth) only apply to agreements between competitors. In ACCC v Flight Centre, Logan J found that a supplier who sold its product both directly to consumers and through an agent was a ‘competitor’ of the agent. This decision was inconsistent with the decision in ACCC v ANZ delivered several weeks earlier, and out of step with the view prevailing at the time that principals do not compete with their agents. This thesis considers two issues: first, whether Logan J in Flight Centre was correct to find that the cartel prohibitions apply to agreements between suppliers and their agents when the supplier also sells directly to consumers; and second, whether the cartel prohibitions should apply to such agreements. It is argued that Flight Centre was correctly decided, but that the decision has highlighted the potential for the cartel prohibitions to capture agency agreements that are not anti-competitive, contrary to the policy objectives of the cartel regime. This thesis examines three possible solutions to this problem, and recommends the introduction of an exception to the cartel prohibitions for agency agreements.  

Biography  
Brooke is a final year Bachelor of Arts (Chinese)/Law student. After completing her degree she is looking forward to travelling through South America, before commencing as a graduate at King & Wood Mallesons.
to harmonisation efforts and technological recourse explored in Part II, I argue that there is no universally effective solution, legislative or otherwise, to solve the problem of Internet hate. This thesis concludes that while legislative instruments are part of the solution, they can only ever be part of the solution.

Biography

Josh is a fifth year law and economics student. He enjoys green tea ice-cream, tacky souvenirs, and the Tumblr page ‘Things Organised Neatly’. He is looking forward to recuperating from the last five years of law school by spending a summer in West Papua and Hawaii.

Duncan Wallace

Supervisor: Dr Patrick Emerton

Legal Foundations, Historical Fact and the Declaratory Theory of the Common Law

Contemporary legal theorists undervalue the declaratory theory of the common law. The declaratory theory, which says that judges merely discover and apply existing law, is conventionally viewed as an account of judicial decisions which use well-established legal standards. This view is too narrow. The theory can also accommodate some decisions which make novel pronouncements about the content of the law. I locate the legal reasoning on which this claim relies in two decisions of the High Court of Australia. In PGA v The Queen, the Court found that a common law rule had collapsed by reason of the statutory abolition of another legal rule. Its ‘discovery’ of the law followed from the particular relationship of dependence between these two rules — a relationship which I call the foundation relation. I clarify the circumstances in which this relation obtains and defend the Court’s reasoning against accusations of judicial dishonesty. In a different case, Mabo [No 2] v Queensland, the Court revealed the continuous existence of a common law rule. The endurance of this rule followed from its reliance on a question of historical fact. I characterise the relationship between some legal rules and historical fact as a variant of the foundation relation, which I call the history–foundation relation. Relying on the theory of semantic externalism, I propose that judges conventionally viewed as an account of judicial decisions which use well-established legal standards, this thesis examines both the wording and the context of the ASEAN Declaration in order to explore the barriers to further development of an Asia Pacific Court of Human Rights. In order to accomplish this, this thesis begins with an examination of the need for a regional Human Rights Court in the Asia-Pacific. This thesis then outlines the existing human rights protections in the region and analyses the recent progress towards a regional Court. It then considers a number of the barriers to the further emergence of a regional Court, particularly critiquing the concept of “Asian Values” and the inhibiting effect these have had on the emergence of a regional agreement. Concluding that though critics of the establishment of an Asia Pacific Court of Human Rights argue that the region is incompatible with such a framework due to the history and cultural perspective of the Asia Pacific region, Human Rights Courts are versatile enough that they can recognise diverse cultural values while providing necessary protections for individuals.

Biography

Kathryn is in the penultimate semester of her Commerce (Economics)/Law degree. She first became interested in this subject while studying Human Rights Law and the Russian Legal System at King’s College in London. Following her graduation in June 2015 she hopes to create a new list of favourite places in the world.

Shea Wilding

Supervisor: Associate Professor Kathy Laster

Compensation for acquitted pre-trial detainees

The principle that individuals should be presumed innocent until found guilty is a fundamental tenet of the common law. Recent ‘tough on crime’ policies have eroded this principle, particularly in the area of pre-trial remand. There has been a shift in the focus of bail determinations, from ensuring the accused appears at trial, to examining whether they pose a threat to the community. Against this backdrop, this thesis contends that the state should compensate individuals who are held on remand and subsequently not found guilty of an offence. This contention is based on both principled and pragmatic reasons. The award of compensation acts as a financial accountability mechanism, providing an incentive for the state to ensure that cases are adequately screened before an individual is remanded. The scheme will also ensure that the individual does not bear the financial loss that arises as a result of their incarceration. Rather, the loss will be absorbed by the community — the beneficiaries of the remand system. To understand how such a model might best operate, the thesis has regard to similar schemes in European jurisdictions. It will look at both minimalist and maximalist models to understand how the scheme would best operate in Victoria. This will involve consideration of the circumstances under which compensation will be awarded and how this amount will be calculated.

Biography

Shea is a fifth year Arts/Law student. He became interested in criminal justice issues through his role presenting legal information seminars to remandees. He is looking forward to finishing his degree in June next year and travelling around South America.

Victoria Vilagosh

Supervisor: Associate Professor Anne-Marie Farrell

Let the Sunshine In: The Value of Disclosure

Financial relationships between health professionals and the pharmaceutical industry are common, and take a variety of forms, from the provision of food and promotional items, to lucrative speaking and consultancy engagements. A growing awareness of the potential of these relationships to influence medical decision-making, increasing health costs and altering the therapeutic relationship, has prompted calls for increased regulation. In the United States, a compulsory disclosure regime has recently come into force, which requires financial relationships between pharmaceutical companies and physicians to be disclosed via an online database.

In Australia, the peak industry body representing the discovery-driven pharmaceutical industry, Medicines Australia, has recently resolved to introduce a similar regime. This thesis will analyse the value of disclosure as a regulatory tool. First, it will explain the need for greater regulation, and consider the reasons behind disclosure’s rise in popularity. Second, it will explore the aims of disclosure in the context of pharmaceutical industry regulation: maintaining trust, rectifying information asymmetries, and deterring unethical behaviour. It will conclude that disclosure regulation, particularly that which is introduced and enforced through self-regulation, has a limited ability to meet its aims.

Biography

Victoria is a final year Science/Law student, concurrently completing a Diploma in Arts (Philosophy). She spends her spare time running experiments in the Department of Pharmacology, as well as her kitchen. She hopes to set foot on three continents before commencing as a graduate at a commercial firm in 2015.
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