Rethinking Mental Health Laws
Professor Bernadette McSherry

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Amanda McKenzie
(LLB (Hons) 2008)

Dean’s message

It was a great disappointment when the funding arrangements for the new law school building fell through due to the lack of support from the federal government and the global financial crisis.

Although these events have delayed the development of a new home for the Faculty on the Caulfield campus, the university still remains committed to providing a new building in the not too distant future, but with different funding arrangements.

However, we have now found a new home for our graduate program, which is currently located in the Equity Chambers in Bourke Street. As our story on page 1 details, proposed changes to that building by the owner required us to re-consider our accommodation needs in the light of our very successful JD and Masters programs and the increasing demand for a high quality venue for public lectures, seminars, events and conferences. With over 400 students now enrolled in the JD program, many of them full-time, the faculty needed to provide a facility that better provided for their learning and study needs. Although we are still not able to provide full-service library facilities in the city, the University’s superb electronic resources, especially of legal journals, means that students are able to access most sources remotely and quickly.

We are planning an official opening of the premises in mid-2011 and will welcome alumni’s attendance at this function.

The faculty has recently completed a review of its courses leading to professional admission (LLB and JD). The Committee was chaired by Professor Bernardette McSherry and contained distinguished members and alumni: Professors Ron McCallum of Sydney University, Chris Arup, Department of Business Law and Taxation, Monash, and Warren Broekbarks, University of Auckland; Mr John Corcoran, Immediate Past President of the Law Council, Dr Ian Hardingham QC and two recent graduates, Ms Alexandra Phelan (LLB) and Matthew Vitale (JD).

Overall, the Committee found that the Faculty has effective processes, procedures and mechanisms in place to support its aim of providing the highest quality legal education for its students in both the LLB and LLM(JD) courses. However, it also identified a number of areas requiring improvement relating to continuous assessment feedback, staff/student ratios and skills training, many of which will be attended to in the coming year and some of which will require increased resources.

One of the valuable pieces of information that we need to inform our deliberations relates to the career destinations of our graduates. We know who we are educating but not necessarily for what. While we have much anecdotal evidence of where our alumni end up (see for example p.9 of this issue), we do not have sufficient empirical evidence of what our alumni do over the years.

With this issue you will find a brief survey which requests information, which will be kept confidential, regarding your professional career one and five years out and currently. We would like to have a sufficiently large number of responses to make the survey statistically useful. This information will be invaluable in enabling us to craft a new curriculum appropriate for the coming decades.

Finally, in this issue you will find articles on three of our important initiatives that are in various stages of evolution. Our highly successful Castan Centre for Human Rights Law recently celebrated its tenth anniversary with over 300 guests attending a gala dinner. Professor Bernardette McSherry’s Federation Fellowship project on Rethinking Mental Health Laws has gathered a large group of researchers and published a number of important monographs and articles. Ross Hyams, our Convener of the Legal Practice Programs, reports on the development of a multi-disciplinary clinic that represents a new phase in the provision of legal and other services to the community and provides a new perspective on legal education.

Professor Arie Freiberg, AM
Dean, Monash Law School

DIARY DATES:

2010

Monday 22 November
Book Launch – Law Review Book Launch “Climate Change”

Tuesday 23 November
Monash JD & PG combined Information Session
6 – 7.30 pm Monash Law Chambers
472 Bourke St, Melbourne
Register on-line at
www.law.monash.edu.au/postgraduate
or marketing@law.monash.edu.au
or contact (03) 9903 8500

24 November
Costello Lecture
Fair trade and honesty – the watermark of the Trade Practices Act
marketing@law.monash.edu.au

Tuesday 30 November
Book Launch – Australian Labour Law

6 December
Evidence-Based Regulatory Reform: Beyond 2010
www.law.monash.edu.au/registudies/

2011

23 February 2010
Commercial Court CPD Seminar
(Free seminar)
Who to blame: Proportionate Liability under Victorian Legislation
marketing@law.monash.edu.au
Monash JD Award


After discussions with the Dean of Law, it was agreed that the JD program warranted a prestigious student award similar to the Supreme Court Prize currently awarded to the top undergraduate student each year. Monash Law School will be awarding the first ‘Chief Justice Marilyn Warren’ prize in early 2011 at the Prize Ceremony.

New City Campus

Monash Law School is very pleased to announce that Monash Law Chambers will be moving from the former Equity Trustees building in Bourke Street to a new location at 555 Lonsdale Street in May 2011. The outstanding success of the Monash JD and LLM programs has led to an increase in student numbers that can no longer be accommodated at 472 Bourke Street, which has been home to the graduate program for some ten years.

Located in the heart of the legal precinct, next door to Owen Dixon Chambers West and in sight of the County Court, our dedicated graduate studies centre will provide substantially more space for students and staff and the opportunity to have more modern facilities for all.

Plans are progressing well to provide high quality teaching facilities and advanced student learning spaces on three levels of 555 Lonsdale Street. Level Two of the building will comprise of seven teaching rooms, small break out rooms, formal learning and informal learning spaces with a mix of computer provision and multiple data points for lap top use including wireless technology, a student lounge and a kitchen/dining space. Level One will consist of academic staff offices, Student and Academic Services, a Board Room, staff kitchen/dining and three teaching rooms. On the ground floor, there will be a state of the art function centre with the ability to accommodate up to 200 people, which will not only operate as a teaching facility but will also allow events, conferences and lectures to be held at the Chambers.

A new entrance is being constructed on the ground floor of the building by the building owner and the University has retained the services of architects and signage consultants to design a look and feel to the interior that creates an environment befitting a leading graduate program.

By remaining in such a convenient location that is central to the Law Courts and with public transport close by, Monash Law School is confident that it will continue to provide an ideal environment for professional studies in Law and enhance our close ties with the legal fraternity.
Rethinking Mental Health Laws

Professor Bernadette McSherry reports on her Australian Research Council Federation Fellowship project.

Since 1993, when the Human Rights and Equal Opportunity Commission conducted its National Inquiry into the Human Rights of People with Mental Illness, there have been a number of inquiries pointing to deficiencies in Australia’s mental health system.

The Mental Health Council of Australia, the Brain and Mind Research Institute and the Human Rights and Equal Opportunity Commission (Not for Service Report, 2005) and the Senate Select Committee on Mental Health (Final Report, 28 April, 2006), have made numerous recommendations for mental health reform. The role the law plays in providing access to services for individuals with mental illnesses is an important one. Clive Unsworth wrote in 1987 that “[l]aw actually constitutes the mental health system, in the sense that it authoritatively constructs, empowers, and regulates the relationship between the agents who perform mental health functions”.

In December 2007, the Australian Research Council commenced funding a five-year Federation Fellowship project, which aims to explore the role the law has and should have in improving access to optimal mental health care and promoting and maintaining good mental health. The project focuses on both civil and criminal laws dealing with individuals with mental illnesses in the common law countries of Australia, New Zealand, Canada, Ireland, Scotland, England and Wales. The aim is to develop frameworks for such laws which can be used by policy makers and governments in their law reform endeavours.

At the end of almost three years, the project team now includes myself, Professor Ian Freckelton SC, postdoctoral research fellow Dr Penny Weller, Executive Officer Kathleen Patterson, eight doctoral students, two Masters of Philosophy students, and three sessional research assistants.

One of the aims of the project is to integrate the expertise of international and Australian mental health experts from a range of disciplines together with consumer representatives and part of the methodology includes conducting interviews with those involved in the mental health field as to what they see are the challenges for mental health law reform.

The United Nations Convention

The two edited books and numerous articles produced to date have been influenced by trends that are occurring at the international level, particularly as a result of the coming into force of the United Nations Convention on the Rights of Persons with Disabilities which Australia has ratified. This Convention clarifies the obligations on governments to promote and ensure the rights of person with disabilities and sets out the steps that should be taken to ensure equality of treatment. Neither ‘disability’ or ‘persons with disabilities’ is defined in the Convention, but Article 1 states that the latter term includes “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

Supported Decision-Making

Some of the members of the project team have been examining what the UN Convention means for laws governing the involuntary detention and treatment of those with severe mental illnesses such as schizophrenia. For example, Article 12 starts with the presumption that people with disabilities, including mental illnesses, are capable of making their own decisions and any other form of decision-making must be seen as a measure of last resort. This implies that, wherever possible, individuals with mental illnesses should be supported in making their own decisions rather than assuming that decisions must automatically be made on their behalf through substitute decision-making schemes.

Mental health laws can help support decision-making through measures such as allowing for advance directives concerning treatment, enabling support persons to have a role in tribunal hearings and providing a right of access to advocacy services. The project is also examining how the law can support carers’ rights, particularly in relation to providing and accessing information about treatment needs.

Access to Services

The medical treatment of many individuals with mental illnesses generally corresponds with the medical treatment of other patients in the sense that they can (at least in theory) refuse treatment and if hospitalised, leave hospital at any time and use the same complaints procedures as any other patient. A major problem for such individuals is getting access to treatment.

Article 25 of the Convention requires governments to recognise “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. It places an onus on states to “[p]rovide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimise and prevent further disabilities, including among children and older persons”.

Feature

Professor Bernadette McSherry
Australian Research Council
Federation Fellow
BA (Hons), LLB (Hons), LLM, PhD,
Grad Dip Psych
Already some progress has been made in this area with reforms to the Medicare Benefits Schedule to improve access to psychiatrists, clinical psychologists, general practitioners and other allied health professionals. General practitioners and private psychiatrists can now also refer patients to psychologists and allied health professionals. There has been Federal government funding assigned to increase the numbers of those participating in the mental health workforce.

However, since the majority of individuals with mental illnesses seek treatment on a voluntary basis, there is a need to further explore the law’s role in relation to access to medical treatment in this regard. The project is therefore examining overseas laws that govern voluntary treatment as well as legislative provisions that enable a right to appeal a refusal to provide treatment.

**Alternatives to Imprisonment for Offenders with Mental Illnesses**

As well as examining civil mental health laws, the project is also concerned with exploring the role of the law in providing alternatives to imprisonment. Individuals with mental illnesses comprise a disproportionate number of those who are arrested, appear before the courts and who are imprisoned. There may be a combination of factors as to why this is the case including a lack of access to treatment, increased drug and alcohol use and the limited capacity of community based mental health services to cope with the needs of offenders with mental illnesses.

A range of diversionary measures operate in Australian jurisdictions such as the South Australian, Tasmanian and Victorian magistrates courts’ mental health diversion programmes as well as mental health court liaison services and specialised court lists which indirectly target those with mental illnesses. Two members of the project team are exploring these types of diversionary schemes as well as sentencing options for offenders with mental illnesses.

Other areas that are being explored include the appropriate scope of the defence of mental impairment and the disposition of those found not criminally responsible for their crimes.

**Conclusion**

The project’s work to date has highlighted a number of further areas worthy of study. The plan is to develop a Centre for the Advancement of Law and Mental Health which will draw on the work of this project and which will also explore the intersections between the civil and criminal justice systems and the role of the law in supporting those with multiple and complex needs.

While legal provisions alone do not lead to the development of new services, any endeavour to provide services and support for individuals with mental illnesses will only work if there are appropriate laws in existence shaping the way in which individuals with mental illnesses can gain access to the highest attainable standard of mental health care. Nevertheless, it remains the case that optimal health will only be achieved for those with mental illnesses not only through rethinking mental health laws but also through raising awareness of discrimination and curbing indifference and neglect.

For more information about the Rethinking Mental Health Laws project or the planned Centre for the Advancement of Law and Mental Health, visit www.law.monash.edu.au/mhl or contact the Executive Officer, Kathleen Patterson on 03 9905 3303. Professor McSherry can be contacted via Bernadette.McSherry@law.monash.edu.au.

**Professor Bernadette McSherry**

BA (Hons), LLB (Hons), LLM, PhD, Grad Dip Psych

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Sarah Lenthall

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**The Life of a Monash Law School Research Assistant**

There is a place inside the David Derham Law School, besides the traditional medium of the lecture theatre or tutorial room, where Monash Law staff and students can co-exist in harmony. It’s the second-floor Monash Law School Research Assistant or “RA” room. It is in this room that Monash law students like me are able to replace their ‘student’ hat with their ‘staff’ hat to work closely with Monash Law Faculty members on their various research projects and get a taste of the other side of Monash University life.

For me, working for Professor Bernadette McSherry as part of her Australian Research Council Federation Fellowship, “Rethinking Mental Health Laws”, has exposed me to areas of law that I otherwise might never have discovered. Mental health law encompasses human rights law, criminal law, sentencing practices, medical law and family law, just to name a few. In the course of my work for Bernadette, I have investigated the involuntary mental health treatment regimes across Australia and Canada, helped to prepare a report for the Tasmanian Department of Health and Human Services on Tasmania’s Mental Health Bill 2009 and am now in the process of looking into the preventive detention of persons with intellectual disabilities.

One particularly interesting area that I have researched has been the emerging concept of supported decision-making in incapacity and consent legislation. Supported decision-making, in contrast to substitute decision-making, is a ‘person-centred’ model of decision-making that seeks to recognise the personal choice and control of all individuals over their own lives. It is increasingly being recognised as the preferable model for legislation dealing with the rights of persons with disabilities, particularly in light of the international legal obligations imposed under the Convention on the Rights of Persons with Disabilities. Various other jurisdictions, most notably Canada, have started to implement supported decision-making in their various mental health statutory regimes. The research that I completed for Bernadette fed into her work on the Advisory Committee for the Victorian Law Reform Commission enquiry into guardianship laws. It is therefore an exciting time to be involved in this sort of research as part of the ‘Rethinking Mental Health Laws’ team.

Nevertheless, Bernadette’s work, and therefore my work, is broader than the mental health laws project. I have also worked with Bernadette in the area of criminal law, with a particular emphasis on the use of preventive detention schemes for both sex offenders and terror suspects. Comparing the anti-terrorism laws of the United Kingdom, as well as the various formulations of anti-terrorism detention available under each of the Australian jurisdictions, was a fairly demanding but extremely interesting task. I am very fortunate to work for someone who has excellent taste when it comes to selecting topics for legal research.

Of course, I still find time to put on my ‘student’ hat. One of the great things about working as an RA at the Monash Law School is that it is a wonderful learning experience in itself and therefore provides a valuable complement to my undergraduate studies. This has proved particularly useful over the last few months as I have grappled with my own undergraduate honours thesis. Seeing how Monash faculty members think about and structure their research, how they generate ideas and finally how they transform those ideas into articles, books, conference papers and, importantly, law units, has been both impressive and beneficial.

Working as an RA is an opportunity to put into practice the legal and analytical skills that the Monash LLB seeks to develop and refine. A penchant for grammatical correctness and keen understanding of the Australian Guide to Legal Citation are also much-needed and much called upon attributes of any RA. I have enjoyed playing a role, albeit a small one, in the academic world of Monash Law School, and am sure that the experience I have gained will serve me well in the years ahead.
The Castan Centre celebrates its 10th anniversary in style

Recently more than 330 supporters of the Castan Centre for Human Rights Law gathered to celebrate 10 years of achievement at Carousel in Melbourne.

For the Centre’s broad constituency, the night was both a chance to celebrate the Centre’s achievements and to catch up with friends and colleagues. Members of the legal profession, academia, the corporate world and the community sector were all well-represented in the audience to listen to guest speakers, the Centre’s Director Professor Sarah Joseph, the Honourable Michael Kirby AC CMG and Professor Patrick McGorry AO.

Professor Joseph opened the evening with a brief review of the Centre’s beginnings and the current state of human rights in Australia. She noted that, although the advent of human rights acts in Victoria and the ACT were encouraging, many sections of Australian society still felt the sting of discrimination and deprivation. Professor Joseph then introduced Mr Kirby, who retired from the High Court in February 2009, to speak about the life of Ron Castan AO QC, after whom the Centre is named. Ron is best known for his leading role in human rights cases, revitalised Liberty Victoria and played a role in founding the Victorian Aboriginal Legal Service. Mr Kirby referred to many of these achievements while painting a picture of the warm, passionate man that Ron was. He also spoke glowingly about the positive effect that the Castan Centre has had in creating a culture of human rights in Australia. Professor McGorry, the 2010 Australian of the year, captured the room’s imagination with his vision of a world class mental health system where those with mental health issues are not treated like second class citizens. He related the moving story of a woman diagnosed with cancer who received world-class care before being turned away from the emergency department when she returned soon afterwards with severe depression. Professor McGorry repeated his call for governments to take the issue more seriously.

The other formal part of the evening was the presentation of Future Leaders’ 2010 Future Justice awards by Justice Susan Kenny of the Federal Court. The major award was won by The Copenhagen Diagnosis, led by Professor Matthew England at the University of New South Wales.

The night wasn’t all serious presentations on human rights. Young comedian Hannah Gadsby was master of ceremonies (‘MC Hannah’), and she kept the audience chuckling between the formalities with anecdotes about growing up gay in Tasmania and her love of artificial lakes, which explained her time in Canberra and fondness for that night’s venue, on Albert Park Lake. All of that was before Rob Lehrer and Steven Castan threw the switch to vaudeville for a very successful and amusing charity auction to wind up the evening.

With the 10th anniversary celebrations completed, the Centre’s staff were happy that they could resume working on their ambitious plan to build a stronger culture of human rights in Australia. For more information on the centre’s work, you can visit the website at www.law.monash.edu.au/castancentre.

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Over the morning the students met current Indigenous tertiary students in small groups to hear about their pathways into study and the courses they were taking. The group watched a presentation of an animated traditional story from Borrooloola by Assoc Prof John Bradley, and took part in a mini-tutorial exercise. Ms Lisa Spagnolo from the Law Faculty and Dr Elizabeth Coleman from Arts presented a dramatic story of the use and misuse of an animation of a traditional Indigenous story. The problem involved an agreement as to how the Indigenous story and images could be used, and their well-intentioned but inappropriate use to promote an Indigenous event. Lisa and Elizabeth encouraged small-group discussion of the legal issues raised, around ideas of different types of ownership, and around the ethical issues, such as whether a good intention can justify a bad act, and how reparation can be provided in such situations. Faculty staff and students led the small groups in energetic discussion, and there was a final feedback session on the problems.
In the News

Strengthening clinical learning – the multidisciplinary clinic

The clinical teaching team has recently commenced a pilot multidisciplinary clinic project which is currently taking place at Monash Oakleigh Legal Service.

The project has been created in conjunction with other faculties and schools within the University (Medicine, Business and Economics, Arts, Social Work) who are also part of the pilot. The clinic has both a client service orientation and a research objective. The research aim is to ascertain whether students receive a better quality education when involved in a multidisciplinary clinic.

As far as we understand, in Australia there have not yet been studies (from a law faculty perspective) as to how a multidisciplinary clinic can enhance law student learning. From a service perspective, it is expected that the clinic will be able to provide its client with more effective legal and social services.

Students exposed to the clinical legal education environment quickly acknowledge that clients’ presentation of their legal problems is much more complicated and multifaceted than they could ever have believed was possible. There is no doubt that the need for multidisciplinary clinical legal education is a timely one. In Australia, initiatives such as Drug Courts have necessitated lawyers working in a new non-adversarial environment, together with prosecutors, psychologists, therapists, support workers and other court officials to profile a therapeutic outcome for the defendant. Indigenous sentencing courts around Australia require lawyers to work, often in a team environment, with a magistrate, an Aboriginal Elder, the defendant’s support people and indigenous court support workers. These modes of hearing are becoming an integral part of the Australian legal system, as are many other types of problem-solving courts such as mental health courts, family violence courts, alcohol courts and neighbourhood justice centres. All these courts have processes that require teamwork. At the Legal Services, students have always attempted to solve client problems without the option of litigation, not just on ideological grounds but because of the reality that most clients of a legal clinic cannot afford the time or expense of court proceedings.

In the multidisciplinary pilot project law students are already working together with social work, finance and interpreting/translation students in interviewing and advising clients. In this way, clients can receive an expanded and holistic service. The supervisor of the multidisciplinary clinic session, Associate Professor Adrian Evans has said:

‘The multidisciplinary clinic means that clients go into a court or tribunal not just with a student lawyer, but also a student social worker and financial planner, as needed. Client outcomes already seem to be much more comprehensive than is the case when law students and their supervisors manage on their own.’

Students working at the Legal Services are thus encouraged to view legal problems holistically, to take into account therapeutic and non-therapeutic consequences for clients and to consider all possible options. For law students, there is much more to be gained from multidisciplinary practice than the acquisition of just legal skills. Working in a multidisciplinary team also exposes them to a social justice agenda which is enriched by their participation and interaction with students and professionals of other disciplines. Legal clinics provide law students with the opportunity to place law in its social milieu and a multidisciplinary clinic expands the opportunities for students to understand law in a broader social context. The myriad of factors (social, financial, psychological and the like) which lead clinic clients to experience legal problems are often implicit in the way a client presents to the legal clinic. Multidisciplinary practice makes these factors explicit. As Associate Professor Adrian Evans states: ‘We are already sensing that students from three different faculties all working together are learning a huge amount from each other, as well as from their cross-disciplinary client experiences.’

Supervisors from all disciplines involved in the clinic are also realising that they have much to learn and benefit from the clinic. All the disciplines involved are professions that strive to help their clients, at times in similar ways – advocating, advising and facilitating resolution. Shared values are apparent, yet there are distinctions between the ways client service delivery is approached. For the legal supervisors, all very experienced practitioners, this is a steep learning curve. It is also a wonderful opportunity to enlarge the repertoire of lawyering tools. Associate Professor Adrian Evans notes: ‘As supervising lawyers, our sense of what is possible in client management is expanding daily.’

We maintain a robust belief that law students will derive educational advantage from participating in a multidisciplinary setting. We believe that the supervisors from all the disciplines involved will add to their skills and understandings of client centred practice and case management. However, direct empirical evidence is needed to put that belief to the test. Our expectation is that the research aspect of the Faculty of Law multidisciplinary clinic pilot project will provide the empirical data to demonstrate the pedagogical value of students incorporating multidisciplinary ideologies and practices in their clinical work.

If results are positive, we would hope to make multidisciplinary practice in clinical legal education the rule, rather than the exception. These changes are timely, given the transformations in ideology and practice being experienced over recent years in the Australian legal system. These changes are also necessary in order for law graduates to be better equipped to practise effectively in a changing legal environment.

Ross Hyams
Convenor Legal Practice Programs
August 2010
Principles of Cybercrime
Jonathan Clough

We live in a digital age. The proliferation of digital technology, and the convergence of computing and communication devices, has transformed the way in which we socialise and do business. While overwhelmingly positive, there has also been a dark side to these developments. Proving the maxim that crime follows opportunity, virtually every advance has been accompanied by a corresponding niche to be exploited for criminal purposes; so-called ‘cybercrimes’. Whether it be fraud, child pornography, stalking, criminal copyright infringement or attacks on computers themselves, criminals will find ways to exploit new technology. The challenge for all countries is to ensure their criminal laws keep pace. The challenge is a global one, and much can be learned from the experience of other jurisdictions. Focusing on Australia, Canada, the UK and the US, this book provides a comprehensive analysis of the legal principles that apply to the prosecution of cybercrimes.

Rethinking Rights-Based Mental Health Laws
Bernadette McSherry and Penny Weller

Mental health laws exist in many countries to regulate the involuntary detention and treatment of individuals with severe mental illnesses. ‘Rights-based legalism’ is a term used to describe mental health laws that refer to the rights of individuals with mental illnesses somewhere in their provisions. This edited collection addresses some of the current issues and problems arising from rights-based mental health laws. Its aim is to encourage the enactment of legal provisions governing treatment, detention and care that are workable and conform to international human rights documents.

Assessing Lawyers’ Ethics: A practitioners guide
Adrian Evans

Many legal practitioners operate in an environment of seemingly endless ethical challenges, and against a backdrop of diminishing public opinion about their morality. Based on extensive research, Assessing Lawyers’ Ethics argues that lawyers’ individual ethics can be assessed and measured in realistic frameworks. When this assessment takes place, legal practitioners are more likely to demonstrate better ethical behaviour as a result of their increased awareness of their own choices.

Assessing Lawyers’ Ethics advocates a variety of peer-administered testing mechanisms that have the potential to reverse damaging behaviours within the legal profession. It provides prototype techniques, questions and assessments that can be modified to suit different legal cultures. These will help the profession regain the initiative in ethical business practice, halt the decline in firms’ reputations and reduce the risk of state-sponsored regulatory intervention.

Measuring Damages in the Law of Obligations
Sirko Harder

This book challenges certain differences between contract, tort and equity in relation to the measure (in a broad sense) of damages. Damages are defined as the monetary award made by a court in consequence of a breach of contract, a tort or an equitable wrong. Contract, tort and equity differ in relation to a number of aspects of the measure of damages, in particular remoteness of damage, non-pecuniary loss, contributory negligence, gain-based relief and exemplary (or punitive) damages. The book examines those five topics with a focus on the law of England and Wales.

For each of the five topics, the book establishes the present position in contract, tort and equity and the differences between the three areas. It goes on to scrutinise the arguments in defence of existing differences. The conclusion on each topic is that the present differences between contract, tort and equity cannot be justified on merits and should be removed through a harmonisation of the relevant principles.

Victorian Criminal Procedure: State and Federal Law 2010
Richard Fox

This is the latest edition of this comprehensive and reasonably priced outline of the law governing the procedures for prosecuting offenders against Commonwealth and State law in Victoria. Chapters deal with sources and classifications of law, jurisdiction, machinery of federal and state prosecutions, prosecutorial discretion, representation and legal aid, courts exercising state and federal criminal jurisdiction, contempt, arrest, search and seizure, charges, indictment, procedure in summary prosecutions, committal proceedings, jury trials, sentencing options under state and federal law, and appeals in criminal matters.

The work is an important reference for Victorian libraries, a helpful guide for legal studies and law students and, because of its extensive case law and statutory references and indexes, a practical aid for police, legal practitioners, magistrates, judges, corrections officers and others involved in the administration of criminal justice.
Law students from around the world are gaining knowledge in comparative law and foreign legal systems through a newly-introduced program at Monash University Sunway campus.

Modelled after the award-winning Prato Law Program taught at Monash University’s Prato Centre in Tuscany, Italy, the intensive eight-week program saw Monash students participate with students from various universities around the world such as University of Windsor (Canada), City University Hong Kong and University of Malay.

“This is the first time we are holding the program in Malaysia, but we are very pleased by our students’ responses and will now offer the program each year,” program Convener Dr Normann Witzleb said.

Forty law students from the four participating universities opted to pursue the experience at the Sunway campus while learning Malaysian culture and studying a range of comparative and international law subjects.

The program aims to internationalise the law curriculum and prepare law students for the global practice of law, allowing the understanding and comparison of different legal systems, explained Dr Witzleb.

“Law has traditionally been understood and taught as a discipline that differs from one country to another. Yet in the 21st century, law graduates are increasingly required to be able to function in a legal world that transcends national boundaries,” he said.

“It is therefore essential that law students be given the opportunity to learn about different legal traditions, systems and procedures which they will encounter in their future employment.

The program does this by bringing together students and academics from around the world and by immersing them in an international environment,” Dr Witzleb added.

For Monash Law student Gabby Palmieri, the highlight of the program was the limited number of students in the class, which gave students opportunities for discussion and interaction.

Fellow Australian Penelope Swales said the program gave her valuable insight into the experience of foreign students in her own country of Australia.

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“The visit gave students first-hand insights into Malaysia’s judicial process, which shares its heritage with other jurisdictions based on the English common law but has also developed distinctive features such as the Syariah courts,” Dr Witzleb said.

For further information www.law.monash.edu.au/internships/overseas-study-programs/overseas-study-programs-prato-malaysia.html
Q. When did you study at Monash Law School?
1997–2003 (I took the scenic route through my degree!)

Q. What course where you enrolled in and why did you choose that course?
BCom/LLB – I felt that I was likely to end up in the law or in business, and this addressed both those potential career paths.

Q. How did you find your studies?
The first few times I had to use the Melway, but after that I got the hang of it. Discovering the Forster Rd exit saved me a bunch of time… Seriously, though, I enjoyed my life on campus enormously, though as much for the cultural elements as the academic ones.

Q. Can you tell us about your career history?
I started in a sales role with Unilever – a large Fast Moving Consumer Goods business. I then took on a role establishing a boutique investment business, before stepping out on my own with hospitality and property businesses. I now combine those business interests with my work for a funds manager, ColCap FM. I also sit on the boards of the Melbourne Cricket Club, Hannah’s Chance Foundation and the Melbourne Opera School.

Q. What do you do for a living – describe a typical day for you at work?
In my funds management role, I am responsible for building relationships with industry super funds. Like all relationship roles, this means lots of phone calls and presentations, with a view to attracting investors to the fund.

Q. Why did you decide to pursue a career in this field?
I have had a continuing interest in finance as an industry – it is typically cutting-edge and you get to work with highly intelligent people.

Q. What do you most enjoy about your job?
The people.

Q. What has been your career highlight so far?
Probably opening a hotel in Rockhampton – the Heritage Hotel – after a 9 month renovation and to huge acclaim.

Q. How important has networking been in developing your career? Do you network with your Monash classmates or with other Monash alumni?
Networking is critical to my career, particularly in my current role. I leverage my Monash network in some way every day.

Q. How did your Monash Law School experience help you succeed in your chosen field?
Through the people I met, the perspectives I gained and the analytical skills I acquired.

Q. Are you still involved with Monash Law School? If yes, how and why?
I currently sit on the board of the Monash Law School Foundation, and chair its fundraising subcommittee.

Q. What are your favourite memories of your time at Monash?
Where do I begin… my time with the Monash Student Association (MSA) was particularly rewarding, and the Law Students’ Society barbeques were sensational!

Q. What did you wish you had known while you were a student?
That it is often the most dry subjects (Trusts Law, Accounting) that you end up drawing on most in professional life.

Q. What personal interests do you have?
My kids, footy (watching), real tennis.

Q. What is the best piece of advise you have received?
Never buy anything unless you know how you’re going to sell it.
If you would like to share your career, have an interesting story to tell or know of a Monash law alumni who has a story, contact Alumni Relations Coordinator kate.daley@monash.edu

Also in this issue we are doing the Monash Law School Destination Survey found on the enclosed blue address sheet. The law school is about to embark on a major curriculum review and your participation is greatly appreciated.

Heather Douglas
(BA 1989, LLB 1990)

After leaving Monash I practiced in criminal law in Melbourne before moving to Alice Springs where I spent three years at the Central Australian Aboriginal Legal Service. I moved to Brisbane in the mid 90s and took up a job at Griffith University establishing a pre-law program for Indigenous students and teaching and researching in criminal law. Along the way I completed an LLM at QUT in 1998 and a PhD at the University of Melbourne in 2006. Since 2006 I have been working as an academic in the law school at the University of Queensland. My research and teaching focus continues to be centred on criminal law. I am now an Associate Professor and Director of the school’s Postgraduate Research Program. I hold Monash responsible for my continued interest in law’s role in promoting social justice issues and I have fond memories of the law student’s Legal Action Group and our frenzied work on the Oracle magazine, probably undertaken at the expense of study!

Anne Shanahan
(LLB 1990)

Being well established as a cardio-thoracic surgeon and a senior lecturer in surgery, I decided in 1986 that the time was right ‘to read the law’. Monash then provided a late stream for law students, commencing at 5 pm, enabling me to both practise surgery and attend lectures and tutorials.

In 1990 I completed the Leo Cussen Practical Training Course and was admitted to practice following which I undertook the Bar Reader’s Course. I remained at the Bar until I was appointed a part-time member of the Commonwealth Administrative Appeals Tribunal (AAT) in August 1991, making myself available one to two days per week while continuing to practise surgery. In 2002 I retired from the public hospital system continuing in private practice until 2004 when I increased my work in the AAT along with part-time membership of the Superannuation Complaints Tribunal (from 2002 and V.C.A.T. from 2007).

It has been an interesting ‘mix’ of two disciplines and one I would not have had the opportunity to explore but for Monash Law Schools provision of a ‘late stream’. Nor would I have had the privilege of being taught administrative law by the late Professor Enid Campbell.

Lorna Gelbert
(LLB 1990)

After 15 years as a conveyancing law clerk in the suburbs and 10 years of part-time study as a mature age student I graduated in early 1990. I did articles at Stedman Cameron in Melbourne where I was articled to a property and commercial partner. I then moved to Madgwicks at the end of 1996 and became a partner in July 1999. I am still with Madgwicks as one of three property partners performing property and commercial work in a property team of around 20 people.

I became a Law Institute of Victoria Property Specialist in 1995 and have been on the Specialisation Board’s Property Advisory Committee for the past ten years (as Chair for five years). I have also been a member of the board of Women’s Legal Service Victoria for ten years, about eight years as Chair and are the current Chair of the Family Law Legal Service. At 63 I still love the practice of law and don’t plan to retire any time soon.

Roz Germov
(BA(Hons) 1982, LLB 1990)

I did my articles of clerkship at Mallesons Stephen Jaques in Melbourne in 1990. I was then admitted to practice in May 1991. From 1991–1993, I worked as a commercial litigation lawyer at Mallesons, until I took up a three year appointment as a full-time Member of the Refugee Review Tribunal in Sydney. In October 1996, I joined the Employee Relations Group at Freehills in Melbourne for one year before going to the Bar in September 1997 where I have practised in administrative law ever since, specialising in immigration and refugee law. I co-authored Refugee Law in Australia (Oxford University Press 2003), the first comprehensive Australian textbook on this subject.

I have been a guest lecturer at the Leo Cussen Institute in Administrative Law Basics, Freedom of Information and Federal Court Practice. I am a Registered Migration Agent and a director of Migration Practice Essentials, a company that provides CPD courses for migration agents and lawyers. I am a contributor for the Refugee and Humanitarian Law Chapter in Lexis Nexis’ Immigration Law Service.

Glenn McGowan

Solicitor, Judge’s associate and now barrister at the Victorian Bar since 1987, senior counsel (S.C.) since 2004, specialising in intellectual property.

Favourite memories of Monash – listening to Ron McCallum reciting his own poetry in Evidence lectures; and late nights working on the Jessup Moot.

Jim Cooper
(BEc 1988, LLB(Hons) 1990)

I graduated from Monash Law School in early 1990 with a BEc LLB (Hons). I started my legal career with Arthur Robinson & Hedderwicks, obtained my admission to practice in Victoria and stayed in private practice for three years. Although private practice was fast-moving and exciting, the call of a corporate career beckoned and I started work as Legal Counsel for ICI Australia and travelled the world in a role which focussed on joint ventures and acquisitions.

Over the next thirteen years I worked for a number of large Australian public companies as an in-house lawyer, rising to the role of General Counsel. In all of my roles I learned towards commercial operations and I always planned to move into general management. In 2006 I moved to a commercial role at the Port of Portland in western Victoria, developing its plantation hardwood chip export business to Japan.

I was recently appointed the Chief Executive Officer of the Port of Portland as well as a council member of the Victorian Freight and Logistics Council. My role as CEO of the Port will involve an interesting blend of commercial operations and government policy issues involving the movement of freight within Victoria and exports to overseas customers.

I have very fond memories of studying law at Monash University. With the perspective of 20 years distance, it was the people I met, the friends I made and the contacts gained that were amongst the most valuable things for me. Not only did I meet my future wife (Jacqueline Stone BeC LLB (Hons)) in my first class of Legal Process in 1985 but I still talk weekly with my many friends I made at Monash University.
Monash Law School held the annual Prize Ceremony earlier in the year. The ceremony acknowledges the achievements, hard work and dedication of the faculty’s students in 2009. Once again the event was held at the ANZ Pavilion at the Victorian Arts Centre. Distinguished Monash Law alumna, The Honourable Justice Jennifer Davies of the Supreme Court of Victoria discussed her journey to becoming a judge in the Supreme Court then presented the Supreme Court Prize to Matthew Eglezos.

The financial reward students receive with prizes are made possible through the generous support of the many organisations, within and outside the legal profession who join us in recognising the efforts of our high achievers and we would like to thank all our sponsors for this support.

Prize Ceremony

Companion of the Order of Australia
Mr Graeme Samuel AC (LLM 1977)
For eminent service to public administration through contributions in the area of economic reform and competition law, and to the community through leadership roles with sporting and cultural organisations.

Officer of the Order of Australia
His Honour Judge Michael Rozeness
AO QC (BJuris 1968, LLB 1970)
For distinguished service to the judiciary, particularly as Chief Judge of the County Court of Victoria and the Commonwealth Director of Public Prosecutions, and through contributions to law reform and legal education.

Medal of the Order of Australia
Ms Patricia Toop OAM (BEC 1978, LLB 1980)
For service to the community of Williamstown through heritage, maritime and social welfare organisations.

Distinguished Monash Law alumni, The Honourable Justice Jennifer Davies of the Supreme Court of Victoria discussed her journey to becoming a judge in the Supreme Court then presented the Supreme Court Prize to Matthew Eglezos.

The financial reward students receive with prizes are made possible through the generous support of the many organisations, within and outside the legal profession who join us in recognising the efforts of our high achievers and we would like to thank all our sponsors for this support.

Judicial Appointments

Pamela Tate SC
(LLB 1988)
– Appointed to the Court of Appeal of the Supreme Court of Victoria.

Cameron Macaulay SC
(LLB 1981)
– Appointed to the Supreme Court of Victoria Trial Division

Gail Hubble
BA(Hons), MA, LLB(Hons), BCL(Oxon)
– Appointed to a 5 year term as Acting Magistrate

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Department of Justice - Victoria
DLA Philips Fox
Freehills
Hall & Wilcox
Herbert Geer
Holding Redlich
Hunt & Hunt
International Commission of Jurists (Victoria)
Kumar Amarasekara Bequest
Law Institute of Victoria
Levitch
Malleisons Stephen Jaques
Maritime Law Association of Australia and New Zealand (MLAANZ)
Maurice Blackburn Lawyers
MolineCahill Lawyers
Monahan + Rawill
Monash Law School HDR Support Fund
National Australia Bank
Office of Public Prosecutions
Piper Alderman
Russell Kennedy
Sir Charles Lowe Trust
Supreme Court of Victoria
Taxpayers Australia Inc.
The Dr Brian Donovan Memorial Trust
The Family of Ms Louise Crockett
Thomson Reuters Legal and Tax Australia
Transport Accident Commission (TAC)
Trawalla Foundation
Victorian Government Solicitor’s Office
Victorian Institute of Forensic Medicine
World Vision Australia

The Hon. Justice Jennifer Davies – Supreme Court of Victoria

Matthew Eglezos, awarded the Supreme Court Prize

Queens Birthday Honours

Alumni and Student Highlights
Department of Justice Scholarship for tertiary students from refugee backgrounds

Current third year Arts/Law student Kristina Jovanic, was awarded the Department of Justice Scholarship for tertiary students from refugee backgrounds.

Kristina came to Australia with her mother in 2000 (when she was 10) and has always had a passion for the law. This stems from the fact that both of her parents were Judges in the former Yugoslavia so she grew up surrounded by the law. This led her to undertake work experience at the Magistrates’ Court which reinforced her belief that she also wanted to follow that pathway.

Kristina came to Australia with no knowledge of the English language and having left all her friends and family behind. She grew up in Dandenong and studied at an underrepresented high school, which did not have the resources that some of the better schools had. Nonetheless, through hard work and perseverance she succeeded in getting a place at Monash University.

In order to broaden her horizons and learn as much as possible outside the law school arena, she is involved in volunteer programs such as the Mentoring Program run by the Law Students’ Society at Monash, she volunteers at a number of legal services and has the privilege of hands on experience through correspondence with clients and criminal justice agencies.

After graduating Kristina plans to work in the legal field, in particular trying to help those from underprivileged backgrounds. By completing her double degree, she believes she will be well equipped to aid the community adequately with her knowledge and with the bonus that she speaks four languages fluently.

The aim of the Department of Justice scholarship is to provide assistance to tertiary students to help them complete their degrees and improve their employment opportunities, especially within justice related areas. The Department of Justice is committed to addressing the problems of access to justice, particularly for those from culturally and linguistically diverse societies. Financially this scholarship will allow Kristina to dedicate more time to studying, volunteering and pursuing her dream of entering the legal field and helping individuals in the community.

Law Faculty wins grant for education research

Monash University Associate Professor Adrian Evans has received an Australian Learning and Teaching Council (ALTC) grant worth $211,000 over two years to continue a project that focuses on the development of academic learning and teaching standards for clinical programs in law.

Associate Professor Adrian Evans
(PhD, LLM, Assoc. in Theology, LLB, BCom)

The project seeks to develop standards for effective clinical legal education and to assist in the renewal of university law curricula in Australia.

The project will investigate current practices in clinical programs in six Australian jurisdictions with participation from six law schools closely identified with experience-based learning in law. Workshops across Australia will explore the disparate and uneven approaches to clinical learning and effective practice.

The ALTC is dedicated to improving the student learning experience by supporting quality teaching and practice. With an annual budget of approximately $27 million, the ALTC supports outstanding teaching and practice through a suite of award, fellowship and grant schemes.

From a total of 31 grant proposals received, only 10 projects were approved for funding by the ALTC in this round.

“The ALTC grant will assist Monash to continue a valuable project that will improve learning outcomes and teaching standards in law faculties by comparing and contrasting various Australian states,” Pro-Vice Chancellor (Learning and Teaching), Professor Marnie Hughes-Warrington said.

“The clinical program is important to Monash to enable students to enjoy a richer learning experience.

“Monash University has a long-standing reputation as a leader in clinical curriculum innovation and this grant is due recognition of this national standing.

“I congratulate Adrian and the research team on receiving this grant as it is testament to his dedication to providing the best education outcomes for law students.”
2010 Great Law Week Debate

As part of the annual Law Week celebrations, Monash Law School alumni and current law students took part in the annual Great Law Week Debate held at the State Library Theatre in Melbourne.

The alumni team was up against the next generation of Law School graduates to battle out the controversial topic: Criminals don’t deserve the same human rights as everyone else.

Law/Arts student Amit Golder, grand finalist in the Commonwealth AAT Moot, led the student team to argue for the affirmative, with team members Natalie Devitsakis, a Law/Arts student who ranked in the top 10 in the Australasian British Parliamentary Women’s Debating Championships and Law student Sashi Balaraman, a grand finalist at the Australasian Intervarsity Debating Championships.

Natalie opened for the affirmative team with “What do you get in prison? Foxtel and three meals a day. You should have your rights and liberties restricted when you do a crime.”

The alumni team who argued the negative comprised of one of Melbourne’s most respected QC’s, David Galbally together with author and three-time mayor of the City of Port Phillip Dick Gross and Kate Metcalf, a high-profile lawyer with three decades of experience.

Kate Metcalf lead the negative team argument with “We are all criminals who here hasn’t had a parking fine, speeding fine or j-walked? But does that mean we don’t deserve the same rights?”

Amit Golder then argued “to give criminals more education we think not! Us law students have a hecs debt of $50,000 and we give them education for free!”

David Galbally debated that “we don’t appreciate what crime does, it keeps police, judges, prison offices and many more industries in work because of criminals.

The closing argument for the affirmative team was provided by Sashi Balaraman who said “Jessica Watson the solo sailor was a criminal because she stole our hearts.”

The brightly dressed Dick Gross gave the closing statement “the affirmative team talked about prison not crime. At no stage did they go into crime prevention.”

The judging panel which comprised of the Dean of the Law Faculty, Professor Arie Freiberg AM, Kiran lyer, Steven Stevens, Joh Kirby and Melissa Castan agreed the student team (affirmative team) provided the strongest arguments and were declared the winners for 2010.

Disclaimer: The Great Law Week Debate identifies a topical issue and then allocates the debaters to either the affirmative or negative team. The debaters arguments were based on the topic and team they were in rather than their own beliefs.

Vale Kevin Pose

Kevin Pose, who won the Supreme Court Prize Monash LLB student in 1969, passed away on 20 June 2010, aged 63.

He was in the second cohort of students, and quickly impressed all his teachers by both his intellectual acuity and his attractive personal qualities. Kevin won a postgraduate award to Oxford, graduating with the BCL and joined the Law School as a Lecturer in October 1973.

He went to the Melbourne Law School in 1977, combining his academic work with successful practice at the Bar. In November 1987, he became senior tax partner at Allens Arthur Robinson. In the next 19 years, Kevin developed an acclaimed, highly successful tax group in the firm, and won outstanding recognition in the profession and in business and government, serving on several important consultative taxation bodies. He returned to the Bar in 2007.

Kevin published well-received academic books and articles. He was a fluent, thoughtful and generous law teacher. He advised and guided many younger members of the legal profession, and continued to support the Monash Law School, always acknowledging its stimulus in launching his brilliant career.

He was wise, witty and always willing to engage in good conversation, aware that it consists of two arts: listening and talking. Kevin made many friends in the law, and beyond. A large number farewell him at his funeral.

Kevin was very fortunate in his family, and they in him. To his wife Evelyn, his daughters Michelle, Elana and Melanie and his sister Lea, the Monash Law School expresses its deep admiration for Kevin and its deep sympathy for their bitter loss.

Donatas Family Travelling Scholarship Winner

In early August, Piers Gooding, a Master of Philosophy student in the Faculty of Law was awarded the Donatas Family Travelling Fellowship for 2011 to deliver a paper at the 13th Greek/Australian International Legal & Medical Conference. Piers’ presentation will be on ‘Supported Decision-Making: A New Era for Mental Health Law, Involuntary Psychiatric Treatment, and Disability Rights?’ His paper will address the varied perspectives on supported decision-making for those with serious mental illnesses and will sketch the global activity surrounding this contentious development in mental health law. The presentation will look at the theoretical basis for supported decision-making in order to unravel the specific ethical dilemmas that it sets before legal and medical thinkers. Piers is the third successive postgraduate student from the Monash Faculty of Law to have received this prestigious Fellowship. He is supervised by Professor Bernadette McSherry and Dr Penny Weller.
Amanda McKenzie (LLB (Hons) 2008) provides a coordinated youth representation on climate change. Ms McKenzie has worked as co-director of the Australian Youth Climate Coalition (AYCC) – the largest youth-run organisation in Australia – for the last three years.

As part of this role she has presented at major events and forums, coordinated major projects, supervised volunteers, applied for grants, and provided the public face of the AYCC through the mass media.

She contributed to the establishment of the International Youth Climate Network, a network of youth organisations across the world, which provides a coordinated youth representation on climate change.

An ongoing initiative of Ms McKenzie is the establishment of the International Youth Climate Coalition (AYCC) – the largest youth-run organisation in Australia – for the last three years.

As part of this role she has presented at major events and forums, coordinated major projects, supervised volunteers, applied for grants, and provided the public face of the AYCC through the mass media.

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2010 Distinguished Young Alumni Award

Monash Law School graduate Amanda McKenzie was awarded the 2010 Distinguished Young Alumni Award. Ms McKenzie has established herself as a leader and expert in climate change awareness and youth community participation.

Ms McKenzie has worked as co-director of the Australian Youth Climate Coalition (AYCC) – the largest youth-run organisation in Australia – for the last three years.

As part of this role she has presented at major events and forums, coordinated major projects, supervised volunteers, applied for grants, and provided the public face of the AYCC through the mass media.

She contributed to the establishment of the International Youth Climate Network, a network of youth organisations across the world, which provides a coordinated youth representation on climate change.

2010 Distinguished Young Alumni Award

Amanda helped organise the first International Youth Climate Conference in Bali and has supported youth from other nations to create their own climate change initiatives.


She has also represented the youth view on climate change and emissions trading at State and Federal Government meetings and played a key role in organising Youth Decide, the first national youth vote on climate change.

Her awards include the 2009 Banksia Foundation Environment Minister’s Young Environmentalist of the Year and 2009 Rotary Young Achiever of the Year.

In supporting her nomination Governor of Victoria Professor David de Kretser AC (MD 1969, Hon.LLD 2006) said: “Amanda has become an inspirational advocate for action on climate change and sustainability. Throughout her achievements, a theme emerges of a committed person who leads by example and motivates others, especially youth, to follow.”

Chevening Scholarship awarded to Law alumnus

Dev Kevat (B Med Sci (Hons), LLB (Hons), MB BS Monash 2005)

This year Monash Law graduate Dev Kevat was fortunate to receive one of three British Chevening Scholarships awarded in Australia, as part of the British Foreign and Commonwealth Office’s global postgraduate scholarship scheme.

The scheme is named after Chevening House, the official residence of the British Foreign Secretary. One of the key features of the scholarship is that it pays for all tuition fees and a living stipend tenable at any UK institution for one year. This allows people to choose precisely which institution and course they would like to study. Dev will be completing a master's degree in public health at Oxford, which will be useful in preparing for a career combining policy work with being a clinical doctor.

Since graduating from Monash five years ago Dev has been undertaking specialist physician training at the Royal Brisbane Hospital. He has combined clinical duties with working as an advisor to the hospital executive, and as a university tutor in law and medicine. Dev said his memories of Monash law school are good ones, though he must confess he was a rather ‘part-time’ law student. He did participate in a number of moots and developed an interest in human rights, completing a thesis on ‘the right to health’ focused on patent law and access to anti-viral medications for the treatment of AIDS. Dev’s supervisor was Sarah Joseph, who he remembers as an unassuming brilliantly clever person. Dev remains friends with quite a few law graduates, including those that he met through being a member of the Monash Association of Debaters.

Law alumna receives scholarship to Harvard

Harvard University has awarded Monash University alumna, Farayi Chipungu, an International Merit Fellowship to study for a Masters in Public Administration at its prestigious Kennedy School of Government.

Farayi, who is originally from Zimbabwe, attended Monash University on a full scholarship from 1998 to 2004. After graduation, she spent a short time working as an executive assistant to the Pro-Vice Chancellor of Monash in South Africa. She spent the next five years as a corporate lawyer in Melbourne and London.

While she says that she enjoyed her legal work immensely, Farayi intends to use her studies at Harvard as a springboard to change direction.

“My goal is to play a role in the rebuilding of Zimbabwe. Although I have strong negotiation, advocacy and drafting skills from my legal career, I realise that there are skills in areas such as economics, finance and management that I need to develop in order to be more effective in this endeavour. It is for this reason that I applied to the broad-based Masters in Public Administration program at the Harvard Kennedy School of Government.

After I graduate, I intend to return to Africa. There are thousands of other talented young Zimbabweans in the Diaspora whose skills, ideas and expertise are essential to the development of our nation. I hope that they too, will soon heed the call to come home.

I am very grateful for the solid educational foundation that I have received from Monash University, which has set me up for the fantastic opportunities that are now coming my way.”

Farayi commenced her studies at the beginning of this month and expects to graduate in 2012.
Law School News

Law Beyond Practice Careers Night

The Monash Law School Ambassadors recently held the inaugural Law Beyond Practice Careers Night. The aim of the night was to connect students with industry representatives, and inspire law students to explore where their degree can take them beyond traditional commercial practice.

Each representative gave a brief introduction of themselves then attendees were able to mingle and network informally. Over 35 industry representatives from a large range of career paths volunteered their time, representing community legal centres, government departments, academia, pro bono schemes, the judiciary, politics, management consulting, accounting and financial firms amongst many others.

Students found the chance to network and gain practical advice for pursuing their career objectives an incredibly invaluable experience. It is hoped ‘Law Beyond Practice’ will become a permanent event on the student calendar.

Commercial Court Seminars

Throughout 2010 the Supreme Court of Victoria, the Victorian Bar, the Law Institute of Victoria and Monash Law School have worked together to host five seminars relating to the Commercial Court.

Topics ranged from Expert witnesses and the new world of ‘hot tubs’, Aon Risk Services Australia Ltd v ANU [2009] HCA 27, ADR Developments you need to know about, Early Neutral Evaluation and Issues in Case Management.

The seminars have been supported by the Honourable Justice Jennifer Davies and Justice Tony Pagone with strong help from the Victorian Bar and the Law Institute of Victoria. They have grown immensely in popularity since the first seminar in February this year and will continue to run in 2011. The first seminar for 2011 is proposed for February and will be based on the topic ‘Proportionate Liability’, visit www.law.monash.edu.au/news/events/ for further information as details are confirmed.

Alumni Mentors

Would you consider assisting a bright, aspiring law student to gain insight, information and advice concerning your professional experience?

Would you have valued an insider’s industry knowledge during your legal training?

Would you like to meet law graduates of the future?

If you can answer ‘yes’ to these questions, then perhaps volunteering to be an Alumni Mentor is for you!

Our program offers introductions between law students and law Alumni in all walks of life and is often a mutually beneficial relationship.

For more information about the Monash Law School Alumni Mentor Program please see www.law.monash.edu and click on ‘For Alumni’, or call Lloyd England on (03) 9905 3385.
Vice-Chancellor Awards

**Vice-Chancellor Award for Programs that Enhance Learning**
Special commendation was awarded to Monash Faculty of Law Clinical Program, led by Mr Ross Hyams

**Vice-Chancellor Award for Teaching Excellence**
Special commendation was awarded to Dr Paula Gerber, Faculty of Law

Law school reunions

If you are interested in organising a reunion, the Law School would like to help make the event a success. We can suggest a campus or external venue, promote the reunion to Monash law alumni and give advice on all planning aspects.

Please contact Kate Daley Alumni Relations Coordinator – kate.daley@monash.edu to discuss your plans and requirements and how we can be of assistance.

Alternative Law Journal

Many Monash alumni will be familiar with the Alternative Law Journal, which has been publishing on issues of law reform, access to justice and civil liberties – now, of course, called human rights – since 1974.

The Journal started as the ‘Legal Service Bulletin’, a newsletter for communication between Community Legal Centres, but quickly took on a more ambitious role ‘to attempt a programme of community legal education, and thus, it is hoped, practice preventative law’. Relaunched and renamed as the Alternative Law Journal in 1992, it has been in continuous publication now for 36 years, and continues to present perspectives that do not necessarily fit comfortably within conventional law journals. Its quarterly issues are edited by state and territory committees around Australia, bringing a wide range of fresh and challenging perspectives to its readership. Recent Monash academics who have published in the Journal include Bronwyn Naylor, Gideon Boas, Paula Gerber, Adiva Sifris, Bernadette McSherry, Penny Weller, Renata Alexander and Ross Hyams.

The Journal is self funding, relying on subscriptions, modest donations, and the support of the Monash Law Faculty for over 30 years to survive. Its volunteer editors and committees sustain a high quality of scholarship for the Journal, and remarkably, the Journal has enjoyed remarkable stability in its editorial managers, first Liz Boulton, and now Deborah Candy.

The Journal’s financial independence has always meant functioning with minimal overheads, and financial pressures are a continuing battle. Ironically the Journal still maintains wide readership and its articles, columns and briefs are regularly used by the judiciary, law lecturers, legal studies teachers, students and practitioners of law alike. Melissa Castan, current National Convenor, points out that, “while the advent of online access has meant subscriptions have dropped, exposure has increased, presenting a paradox for the Journal: how to guarantee financial stability in an era when everyone wants free access?” In order to enhance access and secure the future of the Journal, the Law Faculty has committed to an invigorated relationship with the Journal. Monash alumni can access the journal through the APAIS database, available via the Monash Library, or by subscribing to the hard copy editions.

The Journal welcomes this new era working with Monash Law Faculty. To make a donation, or take out a yearly subscription, please visit the Journal’s website at www.altlj.org.

Rethinking Rights-Based Mental Health Laws

Current Monash Law staff Professor Bernadette McSherry and Dr Penelope Weller recently held the launch of their book ‘Rethinking Rights-Based Mental Health Laws’.

The book addresses some of the current issues and problems arising from rights-based mental health laws and aims to encourage the enactment of legal provisions governing treatment, detention and care that are workable and conform to international human rights documents.

Professor Arie Freiberg AM introduced the Honourable Justice Marcia Neave AO who launched the book at the Rendezvous Hotel in Melbourne.
Through the Looking Glass
– National Engagement with International and Foreign Law and Governance

This two-day conference and workshop brings together international and Australian audiences from government, academia, the courts, and the broader legal profession to discuss international, comparative, and national perspectives on municipal judicial engagement with international and foreign law.

Keynote speaker: The Honourable Patrick Anthony Keane Chief Justice, Federal Court of Australia

Date: 1–3 December, 2010

Venue: Novotel Manly Pacific Hotel, Sydney, Australia

Registration fees
Full registration $500
Late registration $575
Student registration $300
Late registration $375

Further info
www.monash.edu/cemo/throughthelookingglass/

Business Innovation: A Legal Balancing Act

Perspectives from IP, Labour and Employment, Competition and Corporate Laws
Prato, Tuscany, Italy 2–4 May 2011, Monash University Prato Centre

This international conference was inspired by the issues that arose in recent litigation in the Australian Federal Court in University of Western Australia v Gray regarding ownership of employee inventions. The themes for this conference are the analysis of the topical issue of protecting business research and development in the context of several areas of law – IP, Labour and Employment, Competition and Corporate Laws. The sessions will evaluate the impact of each of these areas on this issue using discipline specific perspectives. They will also explore the extent to which such perspectives are influenced by the others and whether a more harmonized approach is necessary to provide appropriate protection. Approaches of the common law and civil jurisdictions, particularly the EU, will be used to inform and provide guidance to the analysis of emerging issues in this field. The legal issues will be explored from theoretical and applied frameworks.

Speakers are drawn from academic, industry, and legal practitioner experts, as well as judges, in the fields of IP, labour, employment, corporate and competition laws and from the EU, UK, US and Australia.

Our venue, the Monash University Centre in Prato, promises to be an ideal setting for our conference, and provide a perfect environment for international and interdisciplinary discourse on this important topic.

Attend the conference and study a postgraduate unit at the same time. This conference forms the basis of the Monash Law postgraduate unit LAW7453E – Innovation: Labour, Competition and Intellectual Property Law.

For further information including cpd accreditation visit www.law.monash.edu.au/businessinnovation/index.html or for email inquiries email organising committee Prof M Pittard (marilyn.pittard@monash.edu), Prof A Monotti (ann.monotti@monash.edu) and Assoc Prof J Duns (john.duns@monash.edu)
2010 Costello Lecture

The Trade Practices Act effects every Australian every day. Whether its bunk beds, bank mergers, phone contracts or corporate collusion, the enforcement of the Act through the Australian Competition and Consumer Commission is central to our lives.

Fair trade and honesty – the watermarks of the Trade Practices Act

Graeme Samuel, Chairman of the ACCC will set out the reach of the legislation, what it means for fair and honest dealings, and how it ‘enhances the welfare of Australians’.

Event details

Professor Patrick McGorry, 2010 Australian of the Year and Michael Kirby AC CMG, Castan Centre Patron

Date: Wednesday 24 November
Time: 6 – 7.15 pm
Venue: BMW Edge Theatre
Federation Square, Melbourne
RSVP: Friday 19 November
Email: marketing@law.monash.edu.au
Phone: (03) 9905 2630
Cost: Free
Presented by: Monash Law School

Who to Blame: Proportionate Liability under Victorian Legislation

- The crucial question: have wrongdoers caused ‘the same damage’?
- Strategic considerations: framing pleadings and joining parties
- Running a trial: practical issues to bear in mind

The Victorian ‘proportionate liability’ legislation has been in operation for over five years. Yet legal principles embodied in the legislation are still being settled and practising in this area remains as challenging as ever.

This seminar presents an opportunity to join with a panel of eminent speakers to consider the complex legal and practical aspects of dealing with claims involving proportionate liability under Victorian legislation.

Chair: Justice Elizabeth Hollingworth, Court of Appeal, Supreme Court of Victoria
Presenters: Justice Geoffrey Nettle, Supreme Court of Victoria
Mr Chris Caleo SC, the Victorian Bar
Mr Peter Gordon, Director, Gordon Legal

Date: Wednesday 23 February 2011
Time: 5.15 – 6.15 pm
Venue: The Lower Banking Chamber
385 Bourke St, Melbourne
Cost: Free
RSVP: Friday 18 February 2011
marketing@law.monash.edu.au or (03) 9905 2630
Postgraduate Law Units: November 2010 – April 2011

Units are listed alphabetically. For full timetable details visit: www.law.monash.edu.au/postgraduate/timetables/

LAW7445 Issues in consumer policy
  Professor David Cousins
  31 March (2011)
  Intensive

LAW7453 Innovation: Labour, competition and intellectual property law perspectives
  Associate Professor John Duns,
  Professor Ann Monotti, Professor Marilyn Pittard
  12 April (2011)
  Intensive

LAW7083 Law of employee relations
  Mr Richard Naughton
  2 March (2011)
  Semester long

LAW7441 Law of workforce management
  Ms Joanna Betteridge
  8 April (2011)
  Intensive

LAW7285 Legal research and communication
  (International students only)
  Mr Leighton Morris
  15 Feb (2011)
  Intensive

LAW7442 Overview of comparative banking law
  Mr Rhys Bollen
  9 Dec (2010)
  Intensive

LAW7263 Overview of corporate law
  Mr Scott Woolfson
  3 March (2011)
  Semester long

LAW7223 Overview of intellectual property
  Mr Ian Horak
  28 Feb (2011)
  Intensive

LAW7026 Overview of international human rights law
  Dr Julie Debeljak
  14 March (2011)
  Intensive

LAW7433 Patenting for commercialisation
  Professor Ann Monotti
  14 March (2011)
  Intensive

LAW7332 Principles of construction law
  Mr Greg Campbell And Mr Paul Woods
  18 Nov (2010)
  Intensive

LAW7276 Principles of taxation
  Professor Stephen Barkoczy
  31 Jan (2011)
  Intensive

LAW7313 Regulatory fundamentals: concepts, constructs and context
  Professor Graeme Hodge
  14 March (2011)
  Intensive

LAW7320 Terrorism and human rights
  Professor Sarah Joseph
  14 Feb (2011)
  Intensive

LAW7435 Workplace bargaining and agreements law
  Professor Marilyn Pittard
  18 March (2011)
  Intensive

Monash Law School offers units to register as a Patent or Trade Marks Attorney

In 2011 the Faculty of Law will teach all units which are accredited by the Professional Standards Board for Patent and Trade Marks Attorneys to satisfy the knowledge requirements for registration as a Patent Attorney or a Trade Marks Attorney.

Law Matters

Law Matters is published bi-annually and is the official newsletter for the Monash University Law School.

If you have an interesting story or something you wish to say, please contact Kate Daley on + 61 3 9905 2630 or email Kate.Daley@monash.edu

Every effort will be made to include contributions however space is limited. Please understand that items may be edited or not included.

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Online: www.monash.edu.au/alumni/faq/address.html

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Disclaimer Information is correct at the time of printing - November 2010

Law Matters is printed on Mega Recycled Silk 170 and 115 gsm by Doggett & Pape. Mega recycled silk consists of 50% post consumer waste and 50% FSC certified fibre and is manufactured under the environmental management system ISO 14001.