Arnold Bloch Leibler Honours Conference

Thursday 17 and Friday 18 October 2013
Book of Abstracts
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<th>Time</th>
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<td>8.30–9am</td>
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| 9–10.30am    | **Plenary** – Dean, Professor Bryan Horrigan  
  Keynote: Mark Leibler AC, Senior Partner, Arnold Bloch Leibler – Constitutional Recognition of Indigenous Australians |
| 10.30–11am   | **Morning tea**                                                         |
| 11am – 12.30pm | **Session 1**  
  **Session 1A: Governance, Consumers and Control**  
  Chair: David Robbins, Senior Associate, Arnold Bloch Leibler  
  1. David McIndoe – Victorian public private partnerships: Regulating for transparency (Supervisor: Graeme Hodge)  
  2. Adam Katz – Modifying Australia’s simple per se approach under the Competition and Consumer Act: Is a change needed? (Supervisor: John Duns)  
  3. Laura Ravanello – The ‘Say on Pay’ debate: Do shareholders have too much say over director remuneration? (Supervisor: Karen Wheelwright)  
  **Session 1B: Designing IP**  
  Chair: Professor Ann Monotti  
  2. Georgina Hoy – Orphan works: The Digital dilemma (Supervisor: David Lindsay)  
  3. Michael Tolo – Reformulating our perception of incentive in copyright: The changing role of rights allocation within the networked information economy (Supervisor: Rebecca Giblin) |
| 12.30–1.30pm | **Lunch**                                                              |
| 1.30–3pm     | **Session 2**  
  **Session 2A: The Corps Trifecta**  
  Chair: Justin Malbon  
  1. Sam Morrissey – Corporations with benefits: The new structure uniting profit-making and the public good (Supervisor: Justin Malbon)  
  2. Sarah Roughhead – A Proposal for International Tribunals Dealing with the Badly Behaved (Supervisor: Justin Malbon)  
  3. Jennifer Wong – Giving Credit Where Credit Is Due (Supervisor: Justin Malbon)  
  **Session 2B: Public Interest Law**  
  Chair: Professor Christine Parker  
  1. Josephine de Costa – The animal in your food: Australian welfare and labelling regulations (Supervisor: Christine Parker)  
  2. Michael Goddard – Legal protection of Indigenous Australian traditional knowledge (Supervisor: Richard Joyce)  
  3. Dilsha Jayasekara – The Partial Defence of Provocation and Ethnicity (Supervisor: Dale Smith) |
| 3–3.15pm     | **Afternoon tea**                                                      |
| 3.15–4.45pm  | **Session 3**  
  **Session 3A: Courts and their Actors**  
  Chair: Professor The Honourable George Hampel AM QC  
  1. Annie Santamaria – A step in the right direction: Reforming jury directions in Victoria (Supervisor: Jonathan Clough)  
  3. Felicity Fox – #Guilt? Social media and the right to a fair trial (Supervisor: Jonathan Clough)  
  **Session 3B: Status Rights**  
  Chair: Associate Professor Kathy Laster  
  1. Hannah Aroni – Determining the essential character of ‘de facto relationships’ under the Family Law Act (Supervisor: Adira Sifris)  
  2. Claerwen O’Hara – Difficulties encountered by sexual minority asylum seekers within the ‘Membership of a Particular Social Group Ground’: A comparative analysis of Australia and Canada (Supervisor: Susan Kneebone)  
  3. David Burke – Re-re-visiting Al-Kateb: Using the principle of legality to prevent indefinite detention (Supervisor: Tania Penovic) |
| 5.30–6.30pm  | **Cocktail function, Arnold Bloch Leibler, Level 21, 333 Collins Street, Melbourne** |
| 9.30–10.30am | **Session 4**  
  **Session 4A: Private Cyberlaw**  
  Chair: Rob Stilling, Lawyer, Maddocks  
  1. Kelly Grant – DDoS as legitimate political expression; a legal and moral inquiry (Supervisor: David Lindsay)  
  2. Mandy Milner – You’ve been tagged! Privacy, freedom of expression and copyright: getting the balance right in the age of Facebook (Supervisor: Moira Paterson)  
  **Session 4B: Taxing**  
  Chair: Kaitilin Lowdon, Lawyer, Arnold Bloch Leibler  
  1. Hilary Taylor – The charitable income tax exemption: is there a place for commercial activity? (Supervisor: Kathryn James)  
  2. Edward Moore – Will the amendments to Part IVA overcome ROC? (Supervisor: Stephen Barkoczy) |
| 10.30–11am   | **Morning tea**                                                         |
| 11am – 12pm  | **Session 5**  
  **Session 5A: Improving Courts**  
  Chair: Associate Professor Anne-Maree Farrell  
  2. Jessica O’Leary – ‘You’re not the boss of me’: The doctrine of primus inter pares and court management (Supervisor: Kathy Laster)  
  **Session 5B: Cause and Blame**  
  Chair: Dr Colin Campbell  
  1. Alexandra Lanyon – Factual causation in toxic torts (Supervisor: Colin Campbell)  
  2. Andrew Black – Assignment of causes of action in Australia (Supervisor: Ann Monotti) |
| 12–12.30pm   | **Concluding Plenary**                                                 |
| 12.30pm      | **Lunch, Metropolitan Hotel, 263 William Street, Melbourne**           |
**Mitchell Adams**  
**Supervisor:** Professor Ann Monotti  
**The 'Third Industrial Revolution': 3D Printing Technology and Australian Designs Law**  
Three-dimensional (3D) printing and scanning is claimed to be the next disruptive technology. It has the potential to usher in the third industrial revolution. Merging the physical and digital, 3D printing and scanning could have profound effects on how we design, share, copy and manufacture goods. Consequently, there are considerable intellectual property implications for design right holders. This thesis examines the technological background to 3D printing and scanning before evaluating the viability of these technologies as a mass consumer product. It then assesses the effectiveness of the Australian design right to combat infringement before looking to the UK and how the unregistered design right is used to prevent copying. It argues that the Designs Act 2003 is presently unable to deal with this nascent technology. This thesis then moves to initiate a discussion on the future of the design right in the event of a 3D printing revolution.

**Biography**  
Mitchell is finishing the sixth and final year of his Bachelor of Science (Chemistry, Microbiology)/Law degrees. He has a keen interest in intellectual property law and currently works part-time in the Intellectual Property and Licensing group at CSIRO.

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**Hannah Aroni**  
**Supervisor:** Dr Adiva Sifris  
**Determining the essential character of ‘de facto relationships’ under the Family Law Act**  
When the Family Law Act 1975 (Cth) was recently altered to provide de facto couples with many of the same rights as married couples under Commonwealth law, speculation and concern abounded about what kinds of relationships might be deemed de facto in light of the Act’s seemingly broad and vague definition. This thesis examines the courts’ interpretation of s 4AA of the Act, which contains the definition of “de facto relationship” for the purposes of matters such as access to post-separation property orders. It considers how the courts have interpreted and should interpret the definition, in line with ‘coupleshoot’ as the essence of the de facto state. It examines the merits and disadvantages of several possible interpretations of ‘coupleshoot’, including an interpretation based primarily on the parties’ degree of mutual commitment to a shared life and an interpretation based on the parties’ performance of acts conventionally associated with ‘serious’ relationships; ultimately, these options are rejected. Drawing on the rationale for including de facto couples in the Family Law Act, and the rationale for the provision of property orders for married couples, an alternative model based on the idea of a ‘sense and expectation of a shared life’ is proposed.

**Biography**  
Hannah Aroni has a keen interest in family law – her last major written piece was a play performed at Monash’s student theatre about the difficulties of effective communication in relationships, and she’s clearly not yet sick of writing about couples in crisis. Currently completing her final year of an Arts/Law degree, she’s been an Education Officer, a President of the Monash Shakespeare Company, and is now eager to enter the legal profession.

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**Andrew Black**  
**Supervisor:** Professor Ann Monotti  
**Assignment of causes of action in Australia**  
It is a fundamental principal under Australian law that a bare cause of action cannot be assigned, as such an assignment would potentiate maintenance and champertor. Yet in the UK an exception exists where the assignee has a genuine commercial interest in taking the assignment. This exception has served to protect the legitimate interests of parties such as creditors and insurers. However in Australia the exception has faced resistance. Decisions as to whether it applies have differed, depending on the type of action assigned and in which court the matter is heard. Also, in a number of instances conflicting decisions have been given within the same court. The issue finally came before the High Court last year in *Equuscorg v Haxton*, yet it wasn’t the decisive determination hoped for. Subsequent decisions have shown that uncertainty remains. This thesis critically examines if and when causes of action are assignable in Australia, and argues that assignments should be allowed where a genuine commercial interest can be shown.

**Biography**  
Andrew is in his final year of a double degree in Electrical and Computer Systems Engineering and Law.

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**David Burke**  
**Supervisor:** Ms Tania Penovin  
**Re-re-visiting Al-Kateb: Using the principle of legality to prevent indefinite detention**  
In 2004 the High Court of Australia handed down the decision of *Al-Kateb v Godwin*, holding by a slim majority that the Migration Act permitted the government to detain asylum seekers indefinitely. On the 4th September 2013, the High Court heard the second challenge to this case in two years – *Plaintiff M76/2013 v Minister of Immigration and Citizenship* – with a decision expected in the coming months. This thesis examines one of the two grounds for the challenge to Al-Kateb – that the court, in interpreting the Migration Act, did not correctly apply the presumption that Parliament does not intend to infringe fundamental rights unless it uses clear language to do so. This thesis contends that the majority in Al-Kateb did not apply this presumption – known as the principle of legality. When properly applied, the principle of legality requires the Migration Act to be read down to exclude situations where detention becomes indefinite. By adopting a broader interpretation, the court in Al-Kateb failed to perform its constitutional and common law responsibilities in interpreting legislation. In doing so, it neglected the individuals most in need of the court’s protection. Plaintiff M76/2013 provides an important opportunity to correct this failure.

**Biography**  
David is in his final year of an Arts/Law double degree. He currently works as a paralegal at the Refugee and Immigration Legal Centre, where his interest in refugee law began. In 2014 he will start a graduate traineeship with Lander & Rogers.

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**Josephine de Costa**  
**Supervisor:** Professor Christine Parker  
**The animal in your food: Australian welfare and labelling regulations**  
Australian consumers are becoming increasingly aware of the welfare issues inherent in factory farming. However, true awareness is hindered by the nature of the animal welfare and labelling regulatory schemes, which serve to both passively and actively distance consumers from factory farmed animals. This thesis looks at the animal welfare regulatory scheme for meat chickens, layer hens (eggs) and pig meat production – which are the most intensively produced stock animals in Australia – and the regulations for the labelling of products sourced from these animals. Both schemes encourage a lack of consumer awareness about the reality of animal welfare standards in intensive production systems, as well as a viewpoint that the consequences of such purchases are not ‘morally wrong’. The result of these two factors is that consumers are distanced from factory farmed animals to such an extent that their treatment often ceases to be a concern.

**Biography**  
Josephine is currently in her final year of Arts/Law and a Diploma in Geography. Her interest in food ethics and factory farming stems from a lifetime of vegetarianism – and discussions with family members who want to know why she won’t eat what’s on the table. When not reading the Poultry Code, she works for the Progressive Law Network and as a research assistant.
The advent and increase of ‘mega’ litigation has compounded existing challenges posed by traditional discovery methods. In any civil dispute, but particularly those involving multiple, often transnational parties and complex issues, there is a clear need for a procedural response that is fair and efficient. Through a comparative approach, this thesis examines whether the use of oral depositions, which is already commonplace in the United States, should form part of civil procedure in Victoria. It explores the extent to which oral depositions may be compatible with, and advantageous to, the Victorian system in light of its guiding principles, existing rules and legal culture. Drawing on lessons learned from the US experience, options for reform are considered. It is argued that oral depositions should be made available as a tool in the discovery process in Victoria. However, such reform must be approached with caution. Its implementation should be incremental, confined and in line with the current approach to managerial judging in the civil jurisdiction.

Biography
Christine will complete her Bachelor of Arts (Journalism) /Law studies in June 2014. She undertook a semester abroad in Prato in 2012 and looks forward to further travel throughout Europe and South America at the conclusion of her degree. Christine hopes to pursue her interest in litigation and dispute resolution through a career in commercial law.

Felicity Fox
Supervisor: Professor Jonathan Clough

#Guilty? Social media and the right to a fair trial

The social media response to the arrest of Adrian Bayley in 2012, was unlike anything Victoria had ever seen before, with the public taking to social media to spread potentially prejudicial information about him to the world. The Chief Commissioner of Police, Ken Lay, urged the public however to be wary of their involvement in such websites, saying ‘no matter how horrible this crime is, this gentlemen has got to be afforded a fair trial.’

But is a ‘fair trial’ achievable in this age of social media? This thesis explores what is meant by the ‘right to a fair trial’, by reference to the requirement of an impartial and independent jury, and examines how social media may prejudice this right. While social media is a new medium which poses a threat to the courts, the issues of pre-trial publicity are long standing. Noting the major differences between traditional and social media, this thesis then explores whether the current mechanisms employed by the courts in aiming to minimise the risk posed by the media, are sufficient to cope with the longevity and accessibility of information shared via social media platforms. Ultimately it can be seen that preventative methods such as suppression orders are often futile in the face of social media, thus the court needs to look to better guided directions and remedial measures in minimising the threat that social media poses to the fair trial process.

Biography
Felicity is in her sixth and final year of Arts/Law. Having already been on two exchanges during her degree, and having been to Europe for a ‘month long thesis break’ in the middle of the year, it is no wonder that she is heading overseas (again) to India at the end of the year before commencing her role as a graduate in 2014.

Michael Goddard
Supervisor: Dr Richard Joyce

Legal protection of Indigenous Australian traditional knowledge

Over millennia, indigenous Australians have developed a sophisticated knowledge of the Australian land, its plants and its animals. This traditional knowledge is a valuable source of information about human interaction with the natural world. Increasingly, industries (such as the pharmaceutical industry) are exploiting indigenous Australian traditional knowledge for commercial gain and Australia’s legal system offers indigenous Australians very little protection against this. This presentation assesses the strengths and weaknesses of a variety of legal regimes for the protection of traditional knowledge in Australia. Four potential legal regimes are examined: intellectual property law; contract law; Brazil’s world-first sui generis system; and Australia’s native title regime. There is clearly a need for a legal response to exploitation of traditional knowledge without financial recompense. Adopting a legal regime similar to the Brazilian system or adapting native title would be the most pragmatic and effective means of both protecting and promoting the use of traditional knowledge in Australia.

Biography
Michael commenced a BSc/LLB in 2008 and completed his Science Degree with Honours in 2011. He is in the penultimate semester of his Law Degree and plans to finish with a semester on exchange in Paris next year before commencing a DPhil in Zoology at Oxford University.

Kelly Grant
Supervisor: Professor David Lindsay

DDoS as legitimate political expression; a legal and moral inquiry

Distributed denial of service (DDoS) attacks pose a threat to the reliability and efficiency of newly networked critical infrastructure, government services and corporate websites. While regulation recognises the threats posed to the connected world, policy-makers have failed to examine the extent to which the regulation of new technologies undermines civil rights. This thesis outlines the use of DDoS as a form of political protest in Australia, before examining its legal and moral legitimacy through the implied freedom of political communication and the doctrine of civil disobedience. While acknowledging the threat posed by DDoS, this thesis aims to take seriously the claims of online activists that their use of DDoS constitutes legitimate protest. In doing so, it hopes to challenge the casual dismissal of what could be a new form of political expression for the Australian people.

Biography
Kelly is in her final year of Bachelor of Arts (Politics)/Bachelor of Laws. She plans to work in the public interest law sector upon graduation. Kelly is interested in cyberlaw, legal social theory, indigenous rights, and feminist literature.

Georgina Hoy
Supervisor: Professor David Lindsay

Orphan works: The digital dilemma

‘Orphan works’: creative works, whose copyright owner cannot be identified or contacted, are well documented as causing complex issues for content providers and content creators. Following the onset of the information age, cultural institutions have been under increasing pressure to supply digital copies of historically significant works. However, the well meaning desire of content providers to abide by copyright rules means that works in which permission cannot be obtained from the owner, are generally excluded from use. Scholars have long recognised that this impasse cannot continue and a number of models for reform have been debated internationally. Photographers, in response to these proposals have subsequently voiced concerns that legislative changes allowing the use of orphan works will impact on them unfairly. They argue they are particularly vulnerable because not only is there limited information available on physical photographs from which to identify or contact them, but attribution is often dropped from their digital images as they are uploaded online.

This thesis discusses the complexities of the orphan works problem in the context of the online environment. It then examines the current treatment of orphan works under the Australian Copyright Act and reviews the suggestions made by the Australian Law Reform Commission (‘ALRC’) in light of concerns from the photography industry. Subsequently, a multi-tiered model is recommended based on the specific characteristics of the user and the proposed use. Such an approach would give appropriate balance to the public interest aim of increased access to creative content while respecting copyright owners’ exclusive rights, both economic and moral.

Biography
Georgina is in her final semester of a Science/Law degree. She will turf the lab coat in favour of a suit, taking up a position as a graduate lawyer in 2014. Before that she is taking a long break to Latin America to shake off the ‘writer’s thumb’.
Melissa Kennedy
Supervisor: Professor Ian Freckleton
Concurrent expert evidence: The preferred method?
The role of the judge in civil litigation has increased due to the emphasis on achieving 'just, efficient, timely and cost-effective resolution' of disputes. Reforms have focused on reducing parties' reliance on improving the communication of expert evidence to assist the court. This has resulted in the development and increased use of a number of novel procedural mechanisms to manage the admission and evaluation of expert opinion evidence. One such mechanism is the concurrent expert evidence procedure. In the courtroom, the expert witnesses are together sworn into the witness box and are examined and re-examined at the same time. This thesis evaluates claims made by judges that it is the 'preferred process for taking evidence in civil cases'. In particular, it critically examines the claimed benefits made in the numerous judicial speeches advocating for the increased adoption of the procedure. It is likely that the procedure does improve the communication of expert opinion, but the extent to which it in fact reduces adversarial bias is questionable. This thesis recommends that the Australian Institute of Judicial Administration or another body undertake a large-scale empirical study to test the effectiveness of the procedural reforms, utilising perspectives on the reforms by experts, judges, barristers, solicitors and other stakeholders.

Biography
Melissa is a final year Arts/Law student. As part of her Classical Studies major, Melissa travelled to Italy, Greece and Turkey to visit the sites of ancient Graeco-Roman cities. In 2014, she will start as a graduate at Arnold Bloch Leibler.

Alexandra Lanyon
Supervisor: Dr Colin Campbell
Factual causation in toxic torts
'Toxic torts' arise where plaintiffs develop a cancerous disease through negligent exposure to carcinogenic substances. A common disease before the courts is mesothelioma, which is caused by exposure to asbestos. Scientific uncertainty surrounds proving whether a defendant is causally responsible for the plaintiff developing the disease. While it is commonly accepted that all exposures to asbestos contribute to the development of mesothelioma, it is unclear whether this would be true of a novel disease. The ability to link the defendant's breach of duty to a plaintiff's harm is crucial to establishing factual causation and therefore liability. This thesis analyses the recent High Court case in Amaca v Booth to determine what the test is for establishing factual causation and whether the test meets the aims of tort law. Finally, it explores whether the High Court is justified in satisfying factual causation based on what is regarded as unreliable epidemiological evidence.

Biography
Alexandra commenced her BA/LLB in 2008, double majoring in history and politics. Alexandra is now in her final year and is looking forward to commencing as a graduate at Allens >c Linklaters in 2014.

David McIndoe
Supervisor: Professor Graeme Hodge
Victorian public private partnerships: Regulating for transparency
Public Private Partnerships (PPPs) promise to provide value for money, enhance financial flexibility and improve the quality of large-scale infrastructure projects. However, PPSPs have been accused of reducing the transparency and accountability of government. This paper explores how the transparency of PPPs is regulated by law in Victoria, Australia. The Cabinet and commercial document exemptions, and Auditor-General’s powers, are considered with regard to the recent Desalination Plant PPP.

This paper concludes that Victoria’s present PPP transparency regime has significant shortcomings. Victoria’s approach to PPP transparency is contrasted with other jurisdictions in Australia and overseas.

Several changes are suggested to improve transparency, including amending the Freedom of Information Act 1982 (Vic), Audit Act 1994 (Vic) and Partnership Victoria Requirements. The suggested improvements would strengthen PPP transparency whilst allowing for secrecy where there is legitimate need.

Biography
David is a penultimate year BA (International Studies & Criminology)/LLB student. He hopes to travel to South America before returning to Melbourne to commence his legal career in 2015.

Mandy Milner
Supervisor: Associate Professor Moira Paterson
You’ve been tagged! Privacy, freedom of expression and copyright: Getting the balance right in the age of Facebook
The pervasive use of social networking websites has created a myriad of legal and social issues, both novel and those requiring reappraisal. In addition, the ubiquitous nature of smart phones and cheap digital cameras has converted ordinary people into amateur photographers. This enables individuals to photographically record the everyday and publicly disseminate photographs at rapid speeds, facilitating free expression. Yet the ability to post photographs of others without permission gives rise to a tension between, on the one hand, this freedom of expression and exercise of the photographer’s intellectual property rights and, on the other, the subject’s right to privacy. This issue is further complicated by the development of technologies, such as facial recognition and ‘tagging’. Australian law does not provide an appropriate solution to this issue. This paper examines the approaches adopted in the United States and the European Union, which offer some guidance for Australia. However, this paper proposes that what is required is a law which provides an integrated solution specifically tailored for the social networking context.
Biography
Mandy will complete her Bachelor of Arts (Criminology)/Law in mid-2014. She has a strong interest in intellectual property and employment law and hopes to pursue a career in one of these areas. During her thesis year, she enjoyed being able to use Facebook as ‘research’.

Edward Moore
Supervisor: Professor Stephen Barkocz
Will the amendments to Part IVA overcome RCI?
The general anti-avoidance provisions contained in Part IVA of the Income Tax Assessment Act 1936 are fundamental to the integrity of Australia’s taxation system. Part IVA is also a favoured weapon of the Commissioner and gives rise to a significant proportion of all tax litigation in Australia. In 2013, these provisions underwent reform in response to several cases including RCI v Federal Commissioner of Taxation [2011] FCAFC 104. This thesis sets out to discover how the new provisions are likely to operate, using the facts of RCI as a case study. In particular: do the new reforms overcome the finding in that case that no tax benefit existed?

This thesis concludes that the new ‘reconstruction limb’ will overturn RCI because it renders taxation consequences irrelevant. However, this result could have been achieved in a simpler way. The reforms go beyond what was required to fix the perceived problem.

Biography
Edward Moore is a final year BA/LLB student, with a Diploma in Languages (German). Since first encountering tax law in practice, he has developed a keen interest in the area and will be joining the Australian Taxation Office in 2014, where he hopes to work in policy development or litigation.

Sam Morrissy
Supervisor: Professor Justin Malbon
Corporations with benefits: The new structure uniting profit-making and the public good
The benefit corporation is a new type of statutory for-profit company, progressively introduced in many jurisdictions in the United States in the past three years. Borne out of a re-evaluation of the corporation’s role in society following the Global Financial Crisis, this new entity has profit making at its core. However it expands the scope of directors’ duties to place shareholder interests on equal footing with the interests of employees, customers, suppliers, the community and the environment. The benefit corporation is required to create general and specific public benefits, must report annually on these benefits, and is subject to enforcement proceedings. Australia does not currently have any dual-purpose company structure. This thesis examines the success of the benefit corporation in the US, and how this model could operate in Australia. Introducing benefit corporation legislation has potential long-term benefits including a reduction in negative externalities and greater provision of public goods by the private sector.

Biography
Sam is a final year Arts/Law student with an insatiable urge to write about new developments in corporate law. Sam regularly tweets about life and politics (@smmorissy),avails himself of the latest culinary pleasures in Melbourne and watches his beloved St Kilda football club do everything except win a premiership. Sam will commence as a graduate with Clayton Utz in 2014.

Claerwen O’Hara
Supervisor: Professor Susan Kneebone
Difficulties encountered by sexual minority asylum seekers within the ‘Membership of a Particular Social Group Ground’: A comparative analysis of Australia and Canada
Despite the persecution of sexual minorities being a widely-recognised ground for claiming asylum, this category of asylum seekers still tend to experience a plethora of problems. This is especially so for applicants who fall outside of the homosexual/heterosexual binary and those who express their sexuality in a way that lacks in visibility. This paper examines difficulties experienced by sexual minority applicants that pertain to the relationship between their sexual identity and the legal tests used to establish the ‘membership of a particular social group’ ground. This is done through a comparative analysis of Canadian and Australian refugee law. It will be demonstrated that, in different ways, both jurisdictions’ ‘membership of a particular social group’ tests are problematically narrow in their construction of sexual identity. As such, this paper ultimately recommends a broadening of the relevant legal tests in order to bring this area of refugee law into line with its human rights purpose.

Biography
Claerwen is currently in her penultimate year of a double degree in Law/Arts. She has completed a variety of work in the area of LGBTI rights, such as completing a report on same-sex marriage for the Victorian Parliament in 2012. Claerwen has also worked in the area of refugee law as part of an internship with the Castan Centre in 2013 and in her role as a research assistant.

Jessica O’Leary
Supervisor: Associate Professor Kathy Laster
‘You’re not the boss of me’: The doctrine of primus inter pares and court management
Judicial independence, both internal and external, is a cornerstone of our common law system. It guarantees freedom from interference in the exercise of judicial responsibilities and shapes the appointment and behaviour of judicial officer. However, increasing pressures on the courts to function efficiently and effectively requires much tighter administrative control by Chief Justices over the work of the court and their judicial colleagues. Such control has been resisted by judges on the grounds that it is inconsistent with the doctrine of primus inter pares which holds that a Chief Justice is merely ‘first among equals’ and thus cannot direct the work of their colleagues. Through a review of the history of this doctrine as well as international judicial standards, I argue that the doctrine is and needs to be more flexible and that judges are validly subject to direction by the Chief Justice where it concerns administrative rather than adjudicative or procedural duties.

Biography
Jessica O’Leary majored in History and will complete her Bachelor of Arts (Hons) and Bachelor of Laws double degree in 2013.

Laura Ravanello
Supervisor: Dr Karen Wheelwright
The ‘Say on Pay’ debate: Do shareholders have too much say over director remuneration?
In recent years, there has been considerable public dissatisfaction regarding the high levels of pay of company directors and executives, particularly in cases of poor company performance. In light of this dissatisfaction, various governments have introduced mechanisms to curb excessive director and executive remuneration, specifically giving shareholders a right to vote (a ‘say on pay’). A study of ‘say on pay’ lends itself to a comparative analysis of the Australian and UK approaches to shareholder involvement in approving director remuneration. This paper first considers and assesses Australia’s current approach to shareholder voting on director remuneration: an advisory shareholder vote and the two strikes rule. This paper then explores the UK approach until October 2013 which gave shareholders an advisory vote on director remuneration. Particular emphasis will be placed on the UK’s recent reforms which will give shareholders a binding vote on director remuneration.

This paper concludes that Australia’s approach to shareholder voting on director remuneration is less favourable than the recent UK reforms involving a binding vote. Ultimately, Australia should consider adopting similar reforms in order to give shareholders a meaningful ‘say on pay’.

Biography
Laura is a final year Arts/Law student who will join Herbert Smith Freehills as a graduate in 2014. A New Yorker at heart, Laura hopes to spend some time in New York, eating smoked salmon bagels and loitering around Barneys department store.
Sarah Roughhead
Supervisor: Professor Justin Malbon
A proposal for international tribunals dealing with the badly behaved

Bribery and corruption are significant issues in international trade and investment disputes. A number of commercial and investment tribunals have considered the impact of bribery and corruption and their mitigation. This thesis proposes a new approach to the adjudication of bribery and corruption allegations.

Biography
Sarah is a final year BA/LLB student. She enjoys travelling and will be globe-trotting to start her legal career at a commercial law firm. She hopes to start her legal career at Baker & McKenzie in 2015.

Hilary Taylor
Supervisor: Dr Kathryn James
The charitable income tax exemption: Is there a place for commercial activity?

In Commissioner of Taxation v Word Investments (2008) 236 CLR 204 the High Court of Australia held a not-for-profit organisation carrying on commercial activities, which distributed its income to other entities that carried out charitable activities, should be endorsed as income tax exempt under Income Tax Assessment Act 1997 (Cth). This extension of the income tax exemption for charitable institutions has the potential to encourage charities to undertake commercial activities and consequently increase the revenue forgone by government. This paper investigates the impact of the change to the exemption through a tax expenditure analysis and whether, and on what bases, the exemption can be justified.

Biography
Hilary is a final year Arts (Politics) / Law student.

Michael Tolo
Supervisor: Dr. Rebecca Giblin
Reformulating our perception of incentive in copyright: The changing role of rights allocation within the networked information economy

The networked information economy is characterised by the ubiquity of networked communication, substantial developments in personal computation capacity and the digitization of creative content. By liberated authors from the high cost of expression characteristic of industrial content production models, the networked information economy has fundamentally changed the way society interacts with, and engages in the production of, creative content. The utilitarian justification for copyright rests in the capacity for the allocation of property rights to incentivise the production of creative content and, therein, facilitate the cultural progress of society. Therefore, the ability for copyright to achieve its cultural progress aims requires that policy adapt dynamically to changes in productive behaviour. This presentation will analyse the way in which the networked information economy has changed the productive behaviour of authors, propose a reformulation of the role of property rights as production incentive, and promote the emerging significance of voluntary licensing in maintaining the efficiency of rights allocation within the networked information economy.

Biography
Michael is a final year student completing a Bachelor of Arts (Spanish)/Bachelor of Laws.

Jennifer Wong
Supervisor: Professor Justin Malbon
Giving credit where credit is due

Credit rating agencies (‘CRAs’) have traditionally enjoyed great success in avoiding liability to investors for the publication of inaccurate credit ratings. Although the current Australian law imposes basic standards of care, skill and diligence on CRAs, this thesis contends that investors' interests will be better protected under a statutory regime tailored specifically to CRAs. The proposed reform is modelled on the statutory action against manufacturers for defective products under s 138 of the Australian Consumer Law, and offers investors a simple, accessible cause of action against misbehaving CRAs. The proposed reform will also establish a clear statutory standard to be met by CRAs, shaped by Bathurst Regional Council v Local Government Financial Services (No 5) [2012] FCA 1200 (5 November 2012) and the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies. The proposed reform offers a practical solution to the present shortcomings of CRA liability, and will promote fair and efficient financial markets into the future.

Biography
Jennifer commenced at Monash in 2009. Jennifer is in her second last semester of her Commerce/Law degree. She is looking forward to travelling to London at the end of the year to undertake a clerkship at an international law firm. She hopes to start her legal career at a commercial law firm in 2015.
Acknowledgements

Honours Convenor: Kathy Laster
Honours Administrator: Pauline Smith
Conference Organising Committee: Felicity Fox, Michael Goddard, Georgina Hoy, Edward Moore
Marketing: Kate Daley
Sponsor: Arnold Bloch Leibler

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