## Program

### Friday 1 March

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<td>8.30am</td>
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<td>9–10.30am</td>
<td><strong>Welcome and Plenary</strong> – Dean, Professor Bryan Horrigan Keynote: Peter Steidel, Partner, Public Interest Law, Arnold Bloch Leibler Fighting the Good Fight: Public Interest Law Litigation in a Commercial Law Firm</td>
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<td>10.30–10.45am</td>
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<td>10.45–12.30pm</td>
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<td><strong>Dodgy Directors</strong></td>
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<td>1. <strong>Joseph Valente</strong> – Calling Mark Zuckerberg: Should we own our Personal Data?</td>
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<td>3. <strong>Kathryn Smith</strong> – Taking Back Control in an Age of Online Data Controllers: Does the Privacy Act 1988 (Cth) or the EU Draft Data Protection Regulation provide better Mechanisms for Individuals to Take Control of the Information that is shared about them on Social Networks?</td>
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<td>2.45–4.15pm</td>
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<td>3. <strong>Ellis Rigby</strong> – Protecting the Corner Store: How Effective is $46 in Protecting Small Competitors?</td>
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<td>4.15–4.45pm</td>
<td><strong>Concluding Plenary</strong> – Organising Committee</td>
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<td>4.45–6pm</td>
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Jenna Amos
Supervisor: Professor Marilyn Pittard
A Compromise too far? Flexibility Provisions under the Fair Work Act 2009 (Cth)

The phrase ‘workplace flexibility’ has become commonplace in Australian workplace relations parlance. It is often used politically to advocate for individualisation and promote greater ‘work-life balance.’ In light of this, this article poses the question: can flexibility ever be adequately accommodated in a system espousing collective agreement making? In answering this question, the notion of flexibility and the principles of individualism and collectivism are considered. Two key flexibility provisions in the Fair Work Act 2009 (Cth) are examined with reference to the practical experiences of employers, unions and community groups.

The first flexibility provision considered is the right to request flexible work arrangements. This provision has been promoted as encouraging work-life balance but industry experience suggests it should be improved in order to meet its aims. A number of criticisms are canvassed including access limitations and the lack of effective enforcement. It concludes that these limitations significantly undermine the utility and purpose of the right. It also considers industry experience of individual flexibility arrangements and mandated flexibility terms. It notes that neither unions nor employers are satisfied with these mechanisms and canvasses criticisms from both the perspective of the employer and employee. These criticisms include the lack of overarching regulation, the ability to unilaterally terminate arrangements with relative ease and their legal uncertainty. It suggests that as an individualistic compromise within a collective system, these arrangements fail to provide meaningful flexibility in practice.

Overall this analysis is tied together with a consideration of the principles of collectivism and individualism. It suggests that individualised access to flexibility mechanisms is largely inconsistent with a system which prefers a collective approach and notes that there are alternative avenues for promoting flexibility which may be more consistent with underlying theoretical aims of the legislation.

Biography
Jenna is a final year Arts (Politics)/Law student. In 2011, she was elected Treasurer of the Monash Student Association and made a decision on whether or not a woman can veil when called as a witness in a criminal proceeding. It looks at the West Australian case of R v Anwar Sayer, where an Islamic witness was not permitted to veil in court, as well as the approaches taken by courts in foreign jurisdictions on this issue. It also examines the use of demeanour assessment as a fact finding tool, and challenges the unquestioning acceptance by the common law of decisions made by fact finders based on the demeanour and appearance of a witness. While this decision will always involve a delicate rights balance, it will be argued that a Victorian judge should prioritise the rights of the woman when deciding whether or not she can wear her veil.

Biography
Alainnah Calabrò
Supervisor: Senior Lecturer Melissa Castan


The right to birth registration is well established in the International Covenant on Civil and Political Rights (Art 24(2) and the Convention on the Rights of the Child (Art 7). However, the regulatory framework surrounding birth registration and certification in New South Wales creates barriers that indirectly discriminate against Indigenous Australians. The right to recognition before the law relies on evidence of birth registration; namely possession of a birth certificate. It is also required to participate in the workforce, commence education, access government services, enrol to vote, open a bank account and for personal mobility. As a gateway to the enjoyment of these rights, the process of registering a birth and obtaining a birth certificate is the core focus of this thesis. Following an analysis of the NSW legislation, two distinct but related issues will be focused on; the barriers in registering a birth and where a birth has been registered, and the process of obtaining a certificate. Poorly designed regulation can place an undue burden on the community. In light of this observation, the regulatory regime around birth registration and certification will be analysed to see whether the benefits of these regulatory tools are outweighed by unduly high compliance costs in the form of fees and inflexible proof of identity requirements. It is anticipated that in its current form, the NSW regime operates to impede the realisation of basic citizenship and human rights.

In demonstrating that a principles-based approach to regulation can give effect to international human rights norms, the author seeks to identify reforms that the Registry of Births, Deaths and Marriages may take to ease this problem. A key recommendation of these reforms includes the automatic provision of a birth certificate to realise the benefits of registration.

Biography
Alainnah will complete her BA (Australian Indigenous Studies)/LLB in mid 2013. In 2011 she attended the Garma Festival in Arnhem Land with the Castan Centre for Human Rights Law. Whilst completing internships at the Neighbourhood Justice Centre and Aboriginal Family Violence Prevention & Legal Service she was involved in policy and law reform work which she hopes to pursue when she graduates.

Tessa Daws
Supervisor: Professor Bernadette McSherry

A Critical Analysis of the Severe Substance Dependence Treatment Act 2010 (Vic)

The Severe Substance Dependence Treatment Act 2010 (Vic) (SSDTA) came into effect on March 1, 2011. Under the Act, persons deemed to have a substance dependency disorder may be detained and treated without consent. Yet despite the serious nature of these powers, the SSDTA has attracted very little academic criticism or community discussion. This thesis aims to shed light on the Act and its operation. Part One provides an overview of substance dependence and current approaches to treatment. The long-standing concept of involuntary treatment of substance dependence is introduced, and the means by which persons are detained and involuntarily treated under the SSDTA is explained. In Part Two, the utility and justifiability of the Act is questioned and a number of criticisms of the legislation are analysed and evaluated. Part Three looks to the future of the SSDTA and the legal framework surrounding treatment of substance dependence. The thesis concludes that concerns regarding the SSDTA are well founded, and advocates a retreat from the long-standing legal tradition of involuntary treatment of substance dependence.

Biography
Tessa is currently completing her final year of a double degree in Medicine and Law (MBBS/LLB). She has a strong interest in public health and human rights, and hopes to pursue a career involving health policy.
The Executive Power of the Commonwealth Government and the School Chaplains Case

This thesis seeks to examine recent developments pertaining to the scope of the executive power of the Commonwealth Government under s.61 of the Constitution. It will engage in an exegesis on the interpretation of executive power in light of the recent High Court decision of Williams v Commonwealth of Australia (School Chaplains Case).

Previously, a ‘common assumption’ existed regarding the Commonwealth Executive’s ability to spend moneywithout parliamentary authorisation. The assumption was that the executive may spend under a legislative head of power of the Constitution, without actual legislative authorisation. However, this assumption was rejected in Williams, with the majority holding legislative authorisation is required for such expenditure where the exercise of power cannot be grounded in a pre-existing category of recognised executive power.

This requires academic analysis because the scope of power held by the executive to spend money is highly relevant to the governance of Australia. In fact, many specific Commonwealth Government programs were impacted by the Williams decision. This thesis will also consider the Commonwealth Government’s response to the Williams decision, and evaluate the law passed to ensure a range of government programs could continue to receive funding.

The thesis submits, with respect, that the High Court in Williams erred in rejecting the ‘common assumption’. It endorses the minority view of Heydon J that insufficient debate and consideration was given to the previous jurisprudence and scholarly analysis in reaching this decision. It is therefore submitted that the High Court ought to reconsider this at its next available opportunity. The Court should also set out a clear test as to when the Commonwealth Executive can spend money without parliamentary authorisation. This paper will raise options for such a resolution, with government efficiency and a sound legal basis being key considerations.

Biography
Riley started his Bachelor of Laws at Monash in 2008, and is due for completion in early 2013, when he will commence as a Graduate with Norton Rose Australia. Riley is a keen tennis player, and enjoys spending time at home on the Mornington Peninsula.

Luci Georgeson
Supervisor: Associate Professor Paula Gerber
Expert Determination in the Construction Industry: Preserving Uniqueness

Expert Determination is a dispute resolution mechanism that continues to gain popularity in the construction industry in Australia. This can be attributed to its low costs and minimal delays in comparison to other dispute resolution mechanisms traditionally used by the industry, such as litigation and arbitration. The process is well suited to resolving a single technical issue in dispute rather than a complex mix of both factual and legal issues.

This thesis asserts that while expert determination has an important place in the dispute resolution ‘menu’, it is not suitable for all construction disputes, and therefore its use must be managed so that it is not employed in inappropriate circumstances.

Biography
Luci is passionate about construction law, and therefore its use in dispute rather than a complex mix of both factual and legal issues. This thesis asserts that while expert determination has an important place in the dispute resolution ‘menu’, it is not suitable for all construction disputes, and therefore its use must be managed so that it is not employed in inappropriate circumstances.

Dana Harel
Supervisor: Associate Professor John Duns
Section 588V: A Doomed Provision?

The insolvent trading provisions making directors personally liable for debts incurred by insolvent companies, of which they are a director, are both notorious and controversial within the commercial world. The Corporate Law Reform Act 1992 (Cth) introduced an almost identical provision, which makes holding companies (and their directors) liable for debts incurred by their insolvent subsidiaries. Despite the similarities between the two provisions (section 588G of the Corporations Act 2001 (Cth) contains the directors’ provision, and section 588V the holding and subsidiary company provision), section 588V has never been argued successfully. This prompts the following questions: Does section 588V serve its function? If not, why does it not? What reforms can be implemented to ensure that it does?

In answering these questions, this paper considers the terms of the provisions, the policy reasons behind the introduction of section 588V, the unsuccessful arguments in previous cases and commercial reasons for the section 588V’s lack of success. Most importantly, the thesis focuses on the different legal principles that govern the underlying relationships of sections 588G and 588V, and assesses the consequences of using essentially the same terms for two different relationships.

This thesis concludes that by duplicating the terms contained in section 588G, the terms of section 588V are inappropriate and unsuitable, allowing the provision to be easily evaded. This is particularly so, given the different nature of the director and the subsidiary company, of which they are a director or her company to that of a holding company to its subsidiary. Consequently, section 588V has been doomed since its drafting. In order to prevent holding companies from taking advantage of the corporate group structure, this thesis recommends that at the very least, section 588V and its accompanying provisions must be re-drafted in their entirety.

Biography
Dana is commencing the sixth and final year of her Bachelor of Commerce/Finance/Law. She is excited to be studying this year in Prato, Italy and is looking forward to travelling before commencing a graduate job in 2014.

Vivienne Jones
Supervisor: Professor Jonathan Clough
The Threat of Concoction: The Peril of Coincidence Evidence

In light of the significant injustice recently corrected by the Victorian Court of Appeal in Greensill v The Queen [2012] VSCA 306, this thesis examines how the laws of evidence should manage the threat of concoction posed by multiple complainants in sexual offence cases.

Is the possibility of concoction, collusion or contamination a matter of fact and circumstance, or an assessment of the reliability and credibility of the complainant or complainants? Should the veracity of such a threat be a determination for the judge or the jury?

This thesis critically examines the current approach of the Victorian Court of Appeal in BSJ v R [2012] VSCA 93. This thesis contends such an approach represents a resurrection of the ‘no other rational view’ test, espoused by the High Court of Australia in Hocho v R (1988) 81 ALR 225, affirmed in Phennig v R (1995) 127 ALR 99 and subsequently overturned with the introduction of the Crimes Act 1957 (Vic) s592A. This thesis finds that the introduction of the Uniform Evidence Law and a number of high profile cases, like Greensill, have permitted the revival of a once discredited approach.

This thesis examines the utility of ‘no other rational view’ test – as a barrier to the admissibility of coincidence evidence – in managing the threat of concoction.

This thesis contends the adoption of such an approach in the particular scenario is both unsound and unjust, and suggests an alternative model.

Biography
Vivienne finishes her Arts/Law degree in mid 2013. She’s interested in evidence and criminal law and hopes to pursue a career at the bar someday. Vivienne is employed part-time as a policy officer at the Department of Premier and Cabinet.

Jasmine Kahan
Supervisor: Associate Professor John Duns
Managed Investments Schemes – Can s601MB Save a Loan-Laden Investor?

Section 601MB of the Corporations Act 2001 (Cth) allows investors to void agreements where certain contraventions of the Corporations Act have occurred. This thesis will examine whether s601MB can be utilised in circumstances where investors in a managed investment scheme (MIS) have taken out a loan from an entity related to the Responsible Entity of the MIS. This raises questions as to the nature of corporate groups and how responsibility should be apportioned, the critical importance of loans to such schemes and the consequences of declaring a loan agreement void on creditors and future lending patterns.

Alternative actions and/ or remedies to s601MB will be canvassed, both to indicate the scope for voidance of the loan agreement or damages where there has been some
look at trees in the same way again.

Jasmine is in her final year of an Arts/Law degree. Post writing this thesis she will never look at trees in the same way again.

Raphael Leibler
Supervisor: Professor Justin Malbon
Taking a Chance: Company Directors Exploiting Corporate Opportunities in Australia

in equity, company directors are by bound by the restrictions imposed by the ‘business opportunity rule’, which mandates that directors are accountable to companies for the diversion of corporate opportunities.

The central theme of this thesis is the interrelationship between commercial realities and the rigid application of equity’s fiduciary principles. In particular, it examines the tension between a director’s duty of loyalty and the adverse impact of excessive regulation as a suppressant of entrepreneurial spirit and commercial activity.

This paper explores the extent to which a meaningful ‘business opportunity rule’ exists in Australia. The Australian approach is critically evaluated through a comparative analysis that draws on the experience of international jurisdictions in the USA and Commonwealth.

This thesis contends that the Australian ‘business opportunity rule’ should not be absolute or prophylactic in nature. Rather, extreme adherence to traditional fiduciary principles should be reconsidered in the case of company directors.

Raphael commenced his combined Arts/Law degree in 2008. A keen traveller, Raphael particularly enjoyed his experiences interning in Washington DC and studying abroad in Israel and Italy. He looks forward to one more spell of globetrotting before commencing a career in commercial litigation in 2014.

Grant Lubofsky
Supervisor: Dr Rebecca Giblin
Moral Rights in Australia – An Unsung Hero

In 1495, Leonardo da Vinci was commissioned by the Duke of Milan, to create ‘The Last Supper’. At some stage after the work was created, a builder cut into the bottom of the painting (which depicted Jesus’ feet) to make room for a doorway. There is still a grey area below Jesus that remains unpainted.

If this were to happen in Australia, 2013, Da Vinci would have sold the painting to the Duke under contract and for a fee. Even if after sale Da Vinci could see the builder with a saw in hand, without moral rights Da Vinci would be powerless to restrain him as his copyright does not prevent the Duke, or his licensees, from altering the painting that they purchased.

Moral rights provide redress in these circumstances by granting creators non-economic, personal interests in the work they create that cannot be sold. These rights secure the bond between an artist and his work and grant a level of control over the work to ensure that the work is not subject to harmful action, even once all other rights have been relinquished.

Unfortunately, it is becoming common practice today for large companies in the music, film and publishing industries to require artists to waive these rights as a condition of signing contracts. This essentially allows companies to all-but destroy the work, without any respect for the investment that went into creating it. Generally, artists are forced to sign these waivers or else miss out on the opportunity of a lifetime.

This paper explores the current attitude of the Australian arts and entertainment industry towards moral rights, and seeks to highlight these unfortunate practices. Ultimately, this is aimed at dispelling many prejudices held towards these rights, and show the important place that these rights should hold in our society.

Grant has almost finished his law degree and is about to leave to study in Prato, Italy. Life is good for Grant.

James Oczk
Supervisor: Associate Professor Greg Taylor and Dr Lisa Spagnolo
Crossing the Post-Contractual Conduct Rubicon: An Argument for the Adoption of the CISG Position Regarding Post-Contractual Conduct

The Australian High Court has recently confirmed that evidence of post-contractual conduct is inadmissible to assist in contractual interpretation. This thesis argues that Australia ought to admit such evidence and to this end adopt a position that aligns with the United Nations Convention on the International Sale of Goods. A survey of the uses of such evidence under CISG jurisprudence will demonstrate that it is a small step to adopt such a position. Adoption of the CISG position is supported by the benefits of aligning Australian law with international best practice, as emphasised by the current Attorney-General’s review of Australian contractual law. It is shown that there are no doctrinal or precedent impediments to adopting the CISG position. CISG jurisprudence will be used to enhance the policy reasons for the adoption of this position and its practical implications will be considered against recent developments in New Zealand.

James has been at his BA/LLB for far too long. He is currently working as a graduate lawyer with Norton Rose. When not thinking about contract law, he is enjoying the outdoors or a good book.

Anne Sophie Pichler
Supervisor: Professor Jonathan Clough
The Admission of Uncharged Acts Evidence in CSA Cases

Evidence of prior offences or lesser misconduct of an accused is generally impermissible in a criminal trial. However, such “uncharged acts” are frequently admitted in child sexual assault (“CSA”) proceedings, either to establish that the accused had a “guilty passion” for the complainant, or to show the “context” or “relationship” between the parties. Admission for the purpose of establishing a “guilty passion” is tendency evidence, and must comply with the Uniform Evidence Act’s (UEA) requirements regarding tendency evidence. However, when uncharged acts evidence is tendered merely for relationship purposes or to place the charged acts into a “true and realistic context”, the tendency requirements of the act do not apply. On this basis, prejudicial uncharged acts evidence is being admitted with increasing frequency in CSA proceedings, without being subjected to the safeguards applied to tendency evidence. In this presentation it will be argued that uncharged acts evidence is being admitted too frequently as “contextual” and “relationship” evidence. In many cases, such evidence is truly tendency evidence, and is simply being termed as “context” to escape the UEA’s restrictions. At other times, “contextual” evidence is being admitted where the evidence is not clearly relevant to any issues at trial. Section 137 of the UEA, which should reject unduly prejudicial uncharged acts evidence, is frequently still being treated as a discretionary section, and jury directions intended to confine the use of uncharged acts evidence to context only are confusing and ineffectual. Thus, it is time for a re-classification of uncharged acts evidence in CSA cases, where tendency evidence is recognised for what it is, and where the focus of contextual evidence is the complainant. Alternatives, such as expert evidence on child sexual abuse, should also be considered.

Ellis Rigby
Supervisor: Associate Professor John Duns
Protecting the Corner Store: How Effective is s 46 in Protecting Small Competitors?

In a competitive capitalist economy there is often debate as to whether small businesses should be protected against their powerful competitors. This is aptly demonstrated in the contemporary debate over the conduct of the supermarket chains and its impact on local milk-bars and farmers.

Small businesses often look to s 46 of the Competition and Consumer Act 2010 (Cth) to protect themselves against powerful competitors. But does s 46 provide the protection they desire? Much of the discussion on s 46 so far has concerned itself with whether
s 46 has the policy objective of protecting small competitors. This thesis will assume that s 46 is intended to protect small competitors, and it will ask a question rarely considered: if s 46 is intended to protect small competitors from harm, how effective is it in doing so.

This thesis contends that when it is said s 46 ‘protects small competitors’ there are two potential meanings. It could mean s 46 protects small competitors from any harm, or it could mean s 46 protects small competitors from harm only where their protection furthers the competitive process. If the wording of s 46 is given a literal interpretation, s 46 appears to be effective in protecting small competitors from any harm. However, despite this, this thesis argues that s 46 has limited effectiveness in protecting small competitors. This is because the High Court has interpreted s 46 in a way so that it is only effective in protecting small competitors from harm if such protection is necessary to promote competition. There are also substantial barriers for plaintiffs to establish a successful s 46 prosecution. Therefore, this thesis argues that small competitors should be careful when relying on s 46 for protection from harm caused by powerful competitors.

### Biography

**Ellis** is in his final year of an Arts/Law degree. He enjoys competition law, and purchases his milk from both his local milk bar and the supermarket chains.

**Divyansh Sharma**

**Supervisor:** Associate Professor John Duns

**New Phoenixinng Reforms: The Long-Awaited Solution or a Director’s Nightmare?**

The corporate veil, originally introduced to promote entrepreneurial activity and protect honest directors, has been abused by rogue directors seeking to avoid personal liability. A commonly used scheme involves the transfer of assets of an insolvent company to a new ‘phoenix company’, consequently denying creditors and employees access to assets of the failed company. Although the Corporations Act 2001 includes provisions to challenge these phoenix operators, it falls short of strict measures required to abate this problem, commonly known as ‘phoenix activity’.

Recently, the government introduced new regulations to restrain ‘phoenixing’. These reforms include the Corporations Amendment (Phoenixinng and Other Measures) Act 2012, Corporations Amendment (Similar Names) Bill 2012 and the Tax Laws Amendment (2012 Measures No.2) Act 2012. Whilst the first Act focuses on providing additional administrative powers to the national regulatory body, ASIC, the latter two regulations are aimed at curtailing rogue directors. However there are real concerns that in their current form, the proposed amendments in the latter two Bills will not only place an inordinate burden on ‘honest’ company directors but also be inadequate in curbing phoenix activity.

This thesis will therefore examine the legislative approaches taken in the exposure draft version (dated 20/11/2011) of the Corporations Amendment (Similar Names) Bill 2012 and Schedule 1 of the Tax Laws Amendment (2012 Measures No.2) Act 2012. The work will critically analyse one of the major consequences emerging from these regulations, i.e. the potential imposition of unwanted liability on law-abiding directors, and suggest reforms for redressing the deficiencies.

**Biography**

Divyansh is a 5th year Bachelor of Laws/Commerce student. He recently completed the Vacationer Program at KPMG during which he worked in their International Executive Services (Tax) division. He hopes to pursue a career in corporate or taxation law.

**Kathryn Smith**

**Supervisor:** Associate Professor David Lindsay

**Taking Back Control in an Age of Online Data Controllers: Does the Privacy Act 1988 (Cth) or the EU Draft Data Protection Regulation provide better Mechanisms for Individuals to Take Control of the Information that is shared about them on Social Networks?**

Facebook has over 1 billion users. The social network is more than a useful tool for sharing information with family and friends, with the average user spending over 15 hours per month on the social network. Facebook is a part of our everyday life. However, the benefits of increased connectivity and the sharing of personal information bring with them risks to privacy.

Although Facebook is constantly improving mechanisms for users to control the personal information they post to the social network, we users and non-users alike are at the mercy of others when it comes to the personal information others choose to share about us. Should we have to consent to photographs of us being posted to Facebook? Should we be notified when our image is loaded onto the social network, and then be able to access it? Finally, should we have the right to demand the erasure of our personal information, which is known as the right to be forgotten?

These questions are considered by this thesis, in the context of a comparison of the Privacy Act 1988 (Cth), and the EU Draft Data Protection Regulation. This thesis recommends that Australia adopt a more robust data protection regime, in line with the EU Draft Data Protection Regulation, and implement: EU concepts of privacy by default and design, strong consent requirements, a clearly defined right to be forgotten, and meaningful enforcement measures. In this inter-connected digital age, such a regime is necessary to allow Australians to take back control over their personal information.

**Biography**

Kathryn is in her final year of a double degree in Arts/Law. A highlight of her time at Monash was her semester overseas last year, where she studied law at Monash Prato, and then undertook conflict resolution studies in Israel/Palestine.

**Clayton Taber**

**Supervisor:** Professor Stephen Barkoczy

**The ESVCLP’s Place in Australian Venture Capital**

Venture capital is regarded by Australian policy-makers as an industry worthy of incentive-based promotion. In fact, over the past decade, a series of programs have been implemented with the dual aim of encouraging venture capital investment in Australia and developing local industry expertise through the means of tax expenditure incentives (i.e. tax exemptions) and co-investment.

In particular, the early stage venture capital limited partnership (or, ESVCLP) program, introduced in 2007, specifically promotes investment activity in enterprises at the seed and start-up level. An ESVCLP is a form of the incorporated limited partnership investment structure introduced by the broader venture capital limited partnership (VCLP) program in 2002. Limited partners (investors) enjoy generous tax incentives including ‘flow-through’ tax treatment and general exemptions from CGT and income tax on their share of returns from eligible investments. Further, managing partners (managers) are entitled to treat their carried interest payments (performance bonuses) on capital account, enabling discount CGT treatment.

Despite these concessions, the ESVCLP program has generated limited commentary or participation, with just 9 partnerships (five of which are conditionally registered) registered Australia-wide. This paper explores the ESVCLP’s place in Australia’s broader venture capital incentive regime by examining the program’s operation, aims and performance in light of the extraordinary macroeconomic timeline since its inception.

**Biography**

Clay is a final year B.Com(Finance)/LLB student at Monash University with an interest in practicing both commercial law and his backhand on the tennis court. Before this thesis is due he commences a traineeship in Melbourne at a commercial law firm.

**Cheryl Tsai**

**Supervisor:** Dr Renata Alexander

**Violent Partner, Good Parent? The Relevance of Domestic Violence in Post-separation Parenting Orders**

The Family Law Act 1975 (Cth) (‘FLA’) has been slow in its recognition of domestic violence, a controversial issue that has sparked substantial interest and debate in recent years. Following the introduction of the shared parenting provisions by the Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth), there were growing community concerns that the issue of violence was being marginalised. As a result, the Federal Government commissioned several inquiries to better understand how the family law system deals with issues of domestic violence and to evaluate the 2006 reforms which indicated that although positive impacts were achieved, the FLA was still inadequate in protecting children
and their family members from harm. The FLA was consequently amended by the Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 (Cth) (‘Family Violence Act’), which came into operation on 7 June 2012, to include inter alia, a broader definition of ‘family violence’ and ‘abuse’ and the prioritisation of protection from harm as the foremost consideration in determining a child’s best interest.

This paper explores the FLA’s journey in its recognition of domestic violence and examines the relevance of intimate partner violence in post-separation parenting orders following the recent amendments. A critical analysis of case law over the past couple of decades reveals that there has been a progressive approach in the treatment of violence between intimate partners in the determination of post-separation parenting orders. It is argued that although the Family Violence Act will undoubtedly bring benefits, the extent of its efficacy still remains to be seen and thus options for further reforms will be considered.

Biography
Cheryl is in the final year of her Bachelor of Laws degree and plans to pursue a legal career in Singapore upon graduation. She developed an interest in family law after undertaking an internship in a matrimonial law practice group.

Joseph Valente
Supervisor: Associate Professor David Lindsay
Calling Mark Zuckerberg: Should we own our Personal Data?
The rapid growth in technologies for the collection of personal data has led to the emergence of personal data as a new and rapidly growing asset class for businesses around the world. The new status of personal data as a valuable commodity creates a conflict between the interests of individuals, who seek to maximize their own privacy interests, against the interests of corporations who seek to maximize their control around this valuable resource. While concerns about privacy are widespread, the locus of control around personal data continues to rest firmly in the hands of data collectors and away from the ordinary citizens who provide their data online. Meanwhile, the dominant means of privacy regulation is by statute, with enforcement by government bodies like the FTC in the United States, and national data protection authorities in the European Union.

This paper seeks to answer the question of whether users should have a property right in their personal data. This question is answered by exploring the relationship between property, privacy and personal data. Firstly, the paper adopts a definition of privacy by analysing the development of privacy law and the emergence of information privacy theories. Secondly, the paper explores the nexus between personal data and personality in an era of big data, creating a framework to use in determining precisely what kinds of personal data should be regulated, in light of the aims of privacy theory. Finally, by exploring theories of what the institution of property is, and how it is used to regulate the online and offline worlds, it questions whether a property right is an appropriate way of preserving the aims of privacy theory.

Biography
Joseph Valente will finish his Commerce/Law degree in 2014. He intends to spend the rest of his life sitting in front of a computer.

Jenna Valkenburg
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Perpetual Trustee Company Limited v Smith (2010) 186 FCR 566: A Significant Change for Unregistered Interests in Australia

Under s 42(2) of the Transfer of Land Act 1958 (Vic), the indefeasibility otherwise afforded to registered proprietors under s 42(1) is made ‘subject to’ various other proprietary, although unregistered, interests. Such unregistered interests include easements and the interests of a tenant in possession. While similar versions of this exception to paramountcy are found in the Torrens statutes of the other Australian jurisdictions, the Victorian provision is generally the widest in scope and offers the most protection for these unregistered interests.

A plain meaning interpretation of s 42(2) and its equivalents has long meant that these unregistered interests take automatic priority over any future registered proprietors of the land merely by virtue of their existence. Following the full court of the Federal Court of Australia decision in Perpetual Trustee Company Limited v Smith (2010) 186 FCR 566 (‘Perpetual’), however, the automatic protection once thought to be offered by s 42(2) has been left considerably uncertain.

In Perpetual, the court unanimously decided against the plain meaning interpretation of s 42(2) and held that the section would instead operate to deprive the registered proprietor of automatic priority, leaving the priority dispute to be decided on general law principles as if between two unregistered interests. This decision was heavily based on the High Court of Australia decision in Burke v Dawes (1938) 59 CLR 17. As this presentation will show, however, a close reading of Burke v Dawes suggests a better view may be that the majority in fact supported a plain meaning approach.

This presentation will demonstrate that in deviating from the plain meaning approach to s 42(2), the Perpetual decision has brought about a significant change in the protection of unregistered interests and has undesirably extended the operation of general law priority rules, including the doctrine of notice, within the Torrens system.

Biography
Jenna commenced her Bachelor of Aerospace Engineering/Bachelor of Laws double degree in 2007 and will graduate mid-year in 2013. After spending the rest of 2013 travelling in Europe, she will commence a graduate clerkship with K&L Gates in 2014.
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