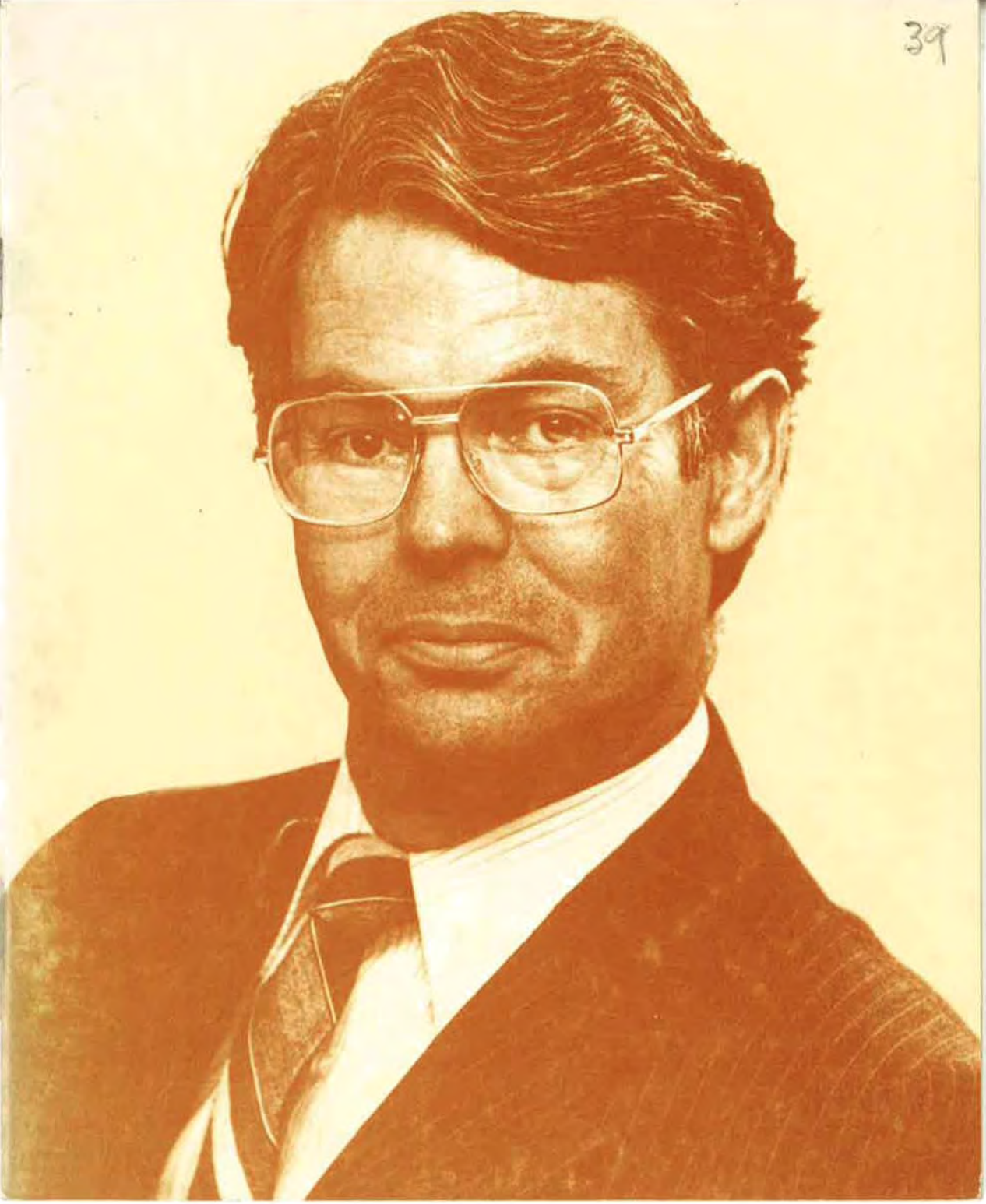

Cover:
Chief Judge Waldron
Photo courtesy "The Sun"

VICTORIAN BAR NEWS

AUTUMN 1982

Autumn 1982

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BAR COUNCIL REPORT

CLERKING:

New rules on clerking have been adopted, effective from 1 March 1982. The text of the rules is set out in this edition at Page 10.

FEES:

An Arbitral Commitee on Fees is to be set up jointly with the Law Institute. The purpose of this Committee is not to determine scales of fees, but rather to arbitrate disputes regarding fees should any such disputes arise between Counsel and Solicitor.

DELAYS IN WORKERS COMPENSATION CASES:

After a lack of response to a detailed submission to him from the Minister for Labour and Industry, the Chairman wrote a letter to the "Age" setting out the nearly-critical state of cases in this jurisdiction. This produced no satisfactory response, and so what the Council considers to be an appalling neglect in this jurisdiction is continuing.

ABC SITE QUESTIONNAIRE:

323 Questionnaires were returned, of which:
89.8% (290) wanted the site developed immediately;
9.3% (30) wanted no development, and
0.1% (3) were informal.
Of those who favoured development:
52.4% (152) wanted the site built upon and owned by the Bar;
47.6% (138) favoured sale and lease back.
Of those who wanted the site built upon and owned by the Bar:
57.9% (88) favoured a $10,000 debenture;
42.1% (64) favoured strata titles.

BAR COCKTAIL PARTY:

A successful Christmas cocktail party was held on Friday 18 December, 1981.

ESSOIGN CLUB:

It is expected that the present extensions will be completed by late March.

DEVILLING:

The Council has adopted a proposal to revise the devilling of work. Details are set out in this edition at Page 12

READER'S COURSE:

The 2nd Floor of Four Courts will be leased, and used for the first Reader's Practice Course this year.

COLDSBOROUGH? MORT!:

5 Floors of the 200 Queen Street will be leased for use as chambers. They will be available for occupation from about June/July/August 1982.

• • •

FAREWELL: JUDGE MARTIN

Judge Martin retired in February 1982. He was admitted to practice in 1948 and signed the Bar Roll as No. 413 on 8th October 1948. He read in the Chambers of R.R. Smithers.

In the twenty years in which he practised at the Bar he built up a formidable reputation, particularly in the Courts of Petty Sessions. At this time he served as the Bar's representative on the Attorney-General's Committee on the Justices' Act.

He was appointed a judge of the County Court on 27th February 1968. His premature retirement at the age of 60 years will enable him to devote more of his energies to the turf — a life-long love.

OBITUARY:

SIR EDMUND HERRING
1892 – 1982

With the passing of former Chief Justice Sir Edmund Herring on 5th January 1982, the Victorian Bar lost not only one of its most famous and talented members but also one of the few remaining links with an era now long gone.

"Ned" Herring was born on the 2nd September 1892, the second son of Edmund Selwyn Herring, a Maryborough solicitor, and his wife Gertrude. The Herrings were an old Cornish family with a strong tradition of service in the Church, the Army and the Law. Ned's grandfather, Archdeacon John Herring, migrated to New Zealand in 1862, whence he later moved to parishes at Clunes and Kyneton.

The Herrings were all sound scholars and outstanding sportsmen, and the three brothers Jack, Ned and Bob distinguished themselves at Melbourne Grammar School. Ned was Dux of the School, School Captain, and an outstanding tennis player and cricketer, averaging 113 with the bat in his final season. In 1911 as a first year student at Melbourne University, Ned enjoyed a succession of further triumphs. He played in the State tennis team, obtained First Class Honours in Arts with Exhibitions in Latin and Greek, and in December was awarded the Rhodes Scholarship. During the summer holidays he was selected to play cricket for Ballarat against the touring English Test Team. Although only 19, Ned contributed 55 in a valuable third wicket stand of 140 with his uncle Maurice Herring. His batting was the subject of favourable commendation by Jack Hobbs, thereby assisting his early entry into the Oxford XI.

At Oxford Ned Herring made many friends, won blues for tennis and cricket, competed at Wimbledon, played cricket against Kent and Scotland, and had a personal top score of 201 N.O. against Cirencester. His academic career, which was also distinguished, was, however, interrupted by the First World War. In 1913 Ned had joined King Edward's Horse as a Trooper, but later he transferred to the artillery, serving in the Balkans and Greece throughout most of the War. He proved an outstanding artillery officer, was promoted to Major, won the Military Cross at the second battle of Doiran, and finished his service with a D.S.O.

Photo Courtesy "The Age"

Resuming at Oxford, Herring captained the tennis team, passed his Bar Final exams, and graduated M.A., B.C.L. Finally returning to Australia late in 1920, he was admitted to practice in Victoria on the 21st March 1921 and immediately commenced to read with Gerald Piggott, a well established equity barrister. In 1922, Ned married Dr. Mary Lyle, daughter of Professor Sir Thomas Lyle.

As a barrister Herring soon gained wide recognition as a logical thinker, whose opinions were a model of clarity. He became much in demand, and was often junior to Latham and Dixon. In Court Ned was always courteous, unruffled but tenacious, expressing his arguments skilfully but with remarkable simplicity. In 1927 he became independent lecturer in Equity at Melbourne University and, in 1936, took silk.

Amongst a host of other public activities Herring became active on the Army Reserve, at first as a Legal Staff Officer, but soon after as a commanding officer in the field artillery. So far as was feasible in Australia at that time he kept himself abreast of military theory and technical developments, and was deeply concerned at Australia's lack of preparedness which he asserted "invited" invasion. He made numerous written representations on defence matters to the Commonwealth Government which, in the light of subsequent history, demonstrated considerable foresight.

When war came in 1939, Herring was immediately chosen by Blamey to command the artillery for the second A.I.F. He served in the Western Desert and in Greece with the 6th Division, and then commanded the Division in Palestine and Syria before being recalled to Australia in 1942. He then took command in the Northern Territory when a Japanese invasion was expected, and later succeeded Sir Sydney

Rowell in command in New Guinea for the Owen Stanley and Papuan Campaigns. Not only was Herring a very distinguished General, but he also showed a rare ability to get along with his English and American counterparts. The knighthood he received whilst serving in New Guinea "for gallantry and distinguished service in the field" was widely recognised as being richly deserved.

In January 1944 Herring was appointed Chief Justice taking with him from the Army his loyal aide and good friend Captain "Hasie" Ball, who, whilst completing his law course, served as Ned's first Associate. Sir Edmund's twenty years as Chief Justice were interrupted from time to time by public service in other fields, and by his duties as Lieutenant-Governor whenever the Governor was absent from Victoria. In 1950 when the Korean War broke out, he was appointed Director-General of Recruiting, a post similar to that which Blamey had occupied immediately before World War II. Early in 1951 he delivered his famous "Call to the People of Australia", and in 1953 led the Australian Coronation Contingent. He also served as Chancellor of the Diocese of Melbourne.

His term as Chief Justice was for the most part happy and successful. Sir Edmund got along well with his brother judges, and, although invariably courteous and pleasant, was nevertheless firm and decisive and very much in control of his Court. He was a part of that great Anglican tradition which played an important role in the early development of our Supreme Court, and he believed there should always be a correlation between Christian principles and the law. His judgments were sound and practical, some of his best work lying in the equity field. When in 1964 he retired from the bench, Sir Edmund stressed the importance of the Supreme Court as a great common law court and warned that "as a community we will pay heavily if we allow our Supreme Court to be relegated to a position of inferiority."

Herring continued in his post as Lieutenant-Governor until his 80th birthday in 1972. Until very late in life he continued to play tennis and golf (a further sport at which he excelled). In January 1951 he led a legal XI against Sir Dallas Brookes' cricket team, which boasted a former English County "seamer". Ned (although now 58) still batted with memorable skill and elegance. His 44 N.O. in a team which included such stars of the Bar as Coldham and Southwell, was only exceeded by "Sam" Gray's rollicking 62.

Ned Herring was a fine lawyer, a gifted scholar and first class sportsman, but above all a very great soldier. He was a man of clear vision, undistracted by life's complexities, who always retained his humility, living life simply yet uncommonly well, and reaching the highest pinnacles in almost everything he did. His wife Dame Mary predeceased him by a few months only. He was survived by the three daughters to whom he was such a devoted father.

FRANCIS Q.C.

OBITUARY: CHIEF JUDGE WHELAN

On 10th February 1982 the Judges of the County Court, presided over by Chief Judge Waldron, gathered to pay tribute to the late Chief Judge Whelan.

Desmond Whelan signed the Bar Roll on 6th October 1950 and read with Fazio. He took silk in 1964. Until his appointment as the first Chief Judge of the County Court in 1975, he developed a flourishing practice as a trial barrister. The Chief Judge described him in these terms:

> *He was truly a fearless advocate. Few witnesses withstood the force and penetration of his cross examination. Almost no jury, indeed almost no tribunal of fact, failed to prove captive to the eloquence and persuasion of his arguments. He selflessly and totally applied himself in all the many briefs which he held and yet, in a quite remarkable manner, he was able to give encouragement and, at least after the event, assistance to those to whom he had been opposed.*

During his six years as Chief Judge he brought to the execution of his task the same qualities that made him a formidable protagonist in private practice. He identified issues to be faced and pursued them with single-minded dedication that carried the respect of friend and foe alike.

From February 1981 until 19th December he suffered the dreadful effects of cancer and its treatment. He bore them with a courage and resignation. The Chief Judge on behalf of his brethren extended to his wife and family their deepest condolences. His colleagues at the Bar join in these sentiments.

WELCOME: CHIEF JUDGE WALDRON

On the 3rd day of February 1982 the appointment of Glenn Royce Donal Waldron as Chief Justice of the County Court was announced to the general delight of the Victorian Bar.

His Honour was born on the 25th November 1930 and was educated at Wesley College in Melbourne. At Wesley he achieved what in those days was a relatively rare distinction of a General Exhibition and Senior Government Scholarship with the Exhibition in English Expression. He also played football and cricket in the Wesley under age "A" teams and in the seconds in both sports at open level.

In 1953 he graduated at Melbourne University with LLB (Hons.) including an Exhibition in Private International Law. Articled with E. Edgar Davies & Co., a firm which then included J. Darryl Davies, now Davies J. of the Federal Court, he was admitted to practise in 1954.

He signed the Bar Roll on the 4th March 1955. He read with the late E.O. Moodie-Heddle himself to be appointed to the County Court. His experiences with Moodie-Heddle who had a very general common law practice which included running down, divorce and commercial work were memorable and His Honour describes his late Master as a very great advocate in those days where the Victorian Bar was described as being vigorous.

At first he obtained rooms in Saxon House where he shared chambers with Somerville (later Judge Somerville of the County Court), E.D. Lloyd and O'Bryan. He moved to Owen Dixon Chambers when it was established and there conducted a very large common law practice for both Plaintiffs and Defendants. For many years he was regular in attendance on the Geelong circuit in County Court and then in Supreme Court work. He also attended briefly at Ballarat County Court and Wangaratta Supreme Court.

He took Silk on the 18th October 1973. Thereafter he maintained a wide and varied practice specialising in "heavy cases – such as **Galli Bros. v. C.R.B.**, an arbitration which lasted some 9 months and became memorable by reasons of the special and unique wheelbarrow used by his junior, Porter, to transport transcript and exhibits around the twelfth floor. He also acted for the Hobart Marine Board in the Tasman Bridge Enquiry, a brief he inherited from Whelan upon his appointment as Victoria's first Chief Judge of the County Court. More recently, His Honour undertook the heavy task of acting for the Housing Commission in the recent Lands Enquiry – a task which occupied his time continuously for 2 years.

A member of the Bar Council since October 1976, he served on many committees including Young Barristers' Committee 1976-77, the Special Committee on Supreme Court Delays 1977-78, the Joint Committee with the Law Institute on Fees and Costs 1976-78, the Joint Committee with the Law Institute on Legal Aid 1978-79, the Ethics Committee since 1976 and Chairman of that Committee since 1978, as Chairman of the Bar Fees Committee 1977-78, the Bar Staff Committee since 1979 and as a member of the Bar Council Executive Committee since 1979. His Honour has served the Victorian Bar well.

His Honour educated six readers: Brian Barter (who left the Bar in 1968), Fookes, Chester Keon-Cohen, Levine (who has left the Bar), Ian Robertson and Noel Ross. It is fair to say that His Honour has always been extraordinarily generous with his time, experience and advice to all who cared to enquire, but especially to his pupils.

His Honour has always been a devoted family man with three children who it seems have shied away from the rigours of the Bar and have opted for the relative security of the medical and para-medical fields.

It was with very great pleasure that the Victorian Bar and members of the legal profession generally received His Honour's appointment to the very difficult and onerous position of Chief Judge of the County Court. The qualities of hard work, fairness and good common sense which he has in abundance together with the loyalty and affection that His Honour has for members of the Victorian Bar will equip him admirably for the tasks ahead.

The Victorian Bar congratulates His Honour and wishes him well in his new and fascinating position.

Victorian Bar News

WELCOME: JUDGE WALSH

Francis Walsh has been appointed a Judge of the County Court.

His Honour's early education was with the Marist Brothers at Kyneton 1942-47 and St. Patrick's Christian Brothers College Ballarat 1948 After honours in ten subjects at the University of Melbourne he graduated LL.B. in 1954. He was articled to Kevin Murphy of Luke Murphy & Co.

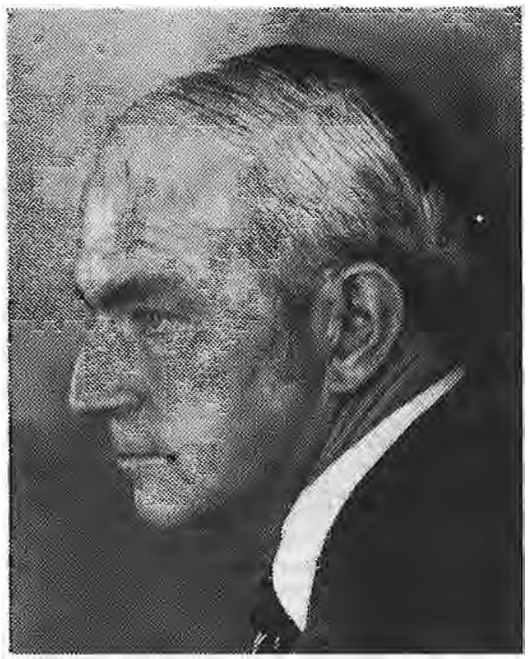
He was admitted to practice in 1955 and continued in practice as a solicitor at the firm of his principal until 1958 when he came to the Bar. He read with John Lewis who shortly after left the Bar to become a Partner at Corr & Corr. In turn he had three readers Cahil (Crown Counsel in Hong Kong), Lieder and Forster.

As a junior he built up a considerable practice in licencing and personal injury work. Those two areas do not seem compatible but Frank Walsh could and did turn his hand with success to many things. He appeared before boards of inquiry. He did local government matters. And he could argue the law.

He served the Bar on its Council for fourteen years, and for seven years was Honorary Treasurer. He was on an immense number of committees.

It is hard to imagine Frank Walsh without thinking of his family. He and his wife Mary were at least as excited at the birth of their ninth child as at their first. When he was on circuit he used to run a domestic practice court each evening by telephone. Children with applications to make (for football boots or a late night at the pictures) would have an opportunity to present a case over the airwaves and Dad would make a ruling. But don't let anyone tell you that Frank Walsh was all work. He still plays an alto saxophone and loves nothing better than reliving his earlier days as a front liner in a dance band when Freddie Gardiner was the hero of the reed players.

He took silk in 1977. Those who had the pleasure of being his junior pay tribute to his industry, his patience and above all his tenacity.



Walsh Q.C.'s practice broadened further. He began to act in criminal matters. His first criminal case as a silk was in a difficult Full Court Appeal. Later he acted in the protracted Caravan Conspiracy trials.

Frank Walsh is a pleasure to be with. He laughs. It is a rare humour which does not have to take advantage of anothers discomfort, and he has it. He is a Christian Gentleman. We look forward to appearing before him.

FOR THE NOTER UP

County Court

Delete: Chief Judge Whelan, Judge Martin

Add:

Waldron, Chief Judge	1982	51	25.11.30	2002
Walsh,	1982	51	1.2.31	2003

CLERKING RULES

1. In these Rules, unless the contrary intention appears –
   "Applicant" means an applicant to sign the Roll of Counsel pursuant to Rule 23 of Counsel Rules;
   "Clerk" means any person for the time being approved by the Bar Council to act as a barrister' clerk;
   "List" means the group of persons engaging a clerk.
2. All previous Clerking Rules made by the Bar Council are hereby revoked.
3. The Bar Council may in its absolute discretion in any case waive or suspend the operation of these Rules or any of them, and may waive compliance with such Rules.
4. Except by permission of the Bar Council granted for special reason and for such period or periods of time as may be specified by the Bar Council, every counsel on the Roll shall while his name is on the Practising List have acting for him as a clerk one of the clerks.
5. The Bar Council may for special reason grant an applicant permission not to engage any clerk as his clerk, but unless that permission is granted the consent of the Bar Council to an applicant's signing the Roll shall be conditional on his engaging as his clerk the clerk whom he is permitted by these Rules to engage.
6. No applicant shall be permitted either to sign the Roll or to commence reading unless he has, pursuant to these Rules, either engaged a clerk or received the permission of the Bar Council not to engage any clerk.
7. Subject to these Rules, an applicant shall be permitted to engage the clerk of his choice.
8. No applicant shall be permitted to engage a clerk if such engagement would cause the number of counsel on the list of that clerk to exceed the number (if any) to which such list is from time to time limited by the Bar Council or by the relevant List Committee.
9. An application received within the first three months of the period referred to in Rule 2 (e) of the Application Rules (which period is hereafter in these Clerking Rules referred to as "the initial period") may, subject to the proviso appearing hereafter, specify in order of preference any clerk as the clerk whom the applicant wishes to engage; provided that no application shall specify more than one of Messrs. Dever, Foley, Hyland or Spurr.
10. No application received after the expiry of the initial period shall nominate any of Messrs. Dever, Foley, Hyland or Spurr as the clerk whom the applicant wishes to engage.
11. On receipt of each application, the name of the applicant shall be placed provisionally on the list of the clerk highest in order of the applicant's preference in whose list there is a place available.
12. Notwithstanding the provisions of Rule 11, the name of each applicant whose application is received within the initial period and who nominates one of Messrs. Dever, Foley, Hyland or Spurr as the clerk of first preference shall be placed alongside the name of such clerk pending the holding of such ballot as may be necessary pursuant to Rule 14.

13. An applicant who, within the initial period, nominates in conformity with these Rules, one of Messrs. Dever, Foley, Hyland or Spurr as the clerk whom the applicant wishes to engage, will not be permitted to engage such clerk until after such ballot (if any) as may become necessary pursuant to Rule 14.

14. If the number of applicants who, within the initial period –
    (a) nominate one of Messrs. Dever, Foley, Hyland or Spurr as the clerk of their first choice;
    (b) having nominated one of Messrs. Dever, Foley, Hyland or Spurr as the clerk of their second or subsequent choice are by reason of the operation of these Rules unable to engage the clerk of an earlier choice –
    exceeds the number of places available on the list of the clerk which the applicants, as at the end of the initial period, seek to engage, then the applicants who will be permitted to engage that clerk shall be chosen by ballot, such ballot to be conducted by the Honorary Secretary as soon as may be after the end of the initial period.

15. Applicants who, having participated in the ballot referred to in Rule 14, have not received permission to engage the clerk who as at the end of the initial period, they wished to engage, shall be permitted to engage such clerk of their subsequent choice on whose list there is a place available.

16. Where the number of those applicants who, pursuant to Rule 15, seek permission to engage a clerk of their subsequent choice then exceeds the number of places available on the list of that clerk, permission to engage that clerk shall be given to the applicant whose application was first received.

17. The Bar Council may in its absolute discretion allocate a clerk to an applicant who is otherwise unable to engage a clerk.

NOTE: It is proposed that Rules 16 – 20 of the present Clerking Rules become, with certain minor drafting amendments, Rules 17 – 21 of the new Clerking Rules.

MOUTHPIECE

"Do you know anything about the new Sex Act?" asked Flossie ingenuously.
There was a silence in answer to her question which went over time.
"Hrrmph" volunteered the waistcoat after a while.
"Do you mean the Crimes (Sexual Offences) Act?" said Whitewig with a rare flash of intuitive thinking.
The Waistcoat's mind seemed to change up a cog or two.
"There's too much law about these days", he grumbled.
"Far too much to keep up with, thousands of damn Acts. Most of them badly thought out. Parliament seems to want to pass a code on the whole of human nature. How do they expect anyone to cope with all that bumf. You need a mind like a computer to take it in".
"You could have the Sex Act on microfilm" said Flossie trying to humour him. Waistcoat's mind moved to full speed.
"No doubt you could m'dear. Unless the Parliament has passed some code to prevent it" He gave what was intended to be a good natured grin but which deteriorated rather badly into the leer of a rogue.
"Anyway" said Whitewig "The whole lot's going on computer. Acts, cases, all the Refs. The lot. No libraries anymore, only VDU's." The Waistcoat tried to ignore the last phrase.
"No libraries! No books! D'ye mean to say we'll have to hand all our half calf volumes to the Boy Scouts for their paper drives? And all we have in chambers is some massive T.V. screen which can give us everything except what we want."
"Like the Sex Act" volunteered Flossie.
"Sex Act my foot" Waistcoat fumed, vaguely worrying that he might have used the wrong expletive.
"If its all on computer what if there's a power failure? Eh?"
"I'd say down to the Boy Scouts at double the going rate" said Whitewig.

Byrne & Ross D.D.

THE DEVIL IN DESUETUDE

In what jaundiced public opinion would perhaps see as a natural state of affairs, the devil has long held an esteemed, or at least an important, position at the Bar. That position has recently, however, fallen into disuse.

In a profession where the Lord's name is regularly and often vainly invoked, and the old adversary means no more than the barrister who has refused to settle with you three times in a row, the devil is of course the name given to the junior barrister to whom one entrusts one's paperwork. Like Dorian Gray, a busy barrister exchanges his fee with the devil for the advantage of continuing to appear to the world as a man who does his paperwork promptly.

Devilling is defined in Osborne's Concise Law Dictionary as follows:

> "Where one counsel hands over his brief to another counsel to represent him in court and conduct the case as if the latter counsel had himself been briefed. Also where pleadings, opinions etc., are drafted by one counsel by way of assistance to the counsel who has been instructed, who subsequently approves and signs them. Barristers should not be expected to devil without some return, not necessarily financial."

The importance of the devil in legal history is shown by the name adopted by the Inns of Court Regiment of the British Territorial Army in 1803, namely "The Devil's Own".

It seems to be apocryphal that when the order "Charge" was given to that Regiment on the Somme in 1916 the majority took out their notebooks and wrote 10/6d.

By Bar tradition, devilling is divided into what may be called "devilling proper", the devilling of appearances, and "taking a note", the devilling of paperwork. Devilling proper has provided some of the finest moments in legal fiction and humour, such as the young Roger Thursby sent by his master to hold the fort in Henry Cecil's "Brothers in Law". It is, however, forbidden in Victoria, see Gowans' "Conduct and Etiquette at the Victorian Bar" page 68:

> "**Transferring Briefs**
> It is improper for one counsel to suggest to the instructing solicitor the name of another counsel to appear in his place. As a general rule, counsel, if unable to attend, should not request other counsel to appear with or instead of him, but should return the brief or ask for another counsel to be briefed with him. Counsel should never hand his brief to another counsel to hold for or with him unless in an emergency when it is impossible to consult with the solicitor instructing him."

Like many customs from medieval England, devilling has undergone some change in its transplantation to colonial soil. The devil in Victoria is expected to be prompt, and his return is expected to be financial. Although the methods of payment have varied from time to time, the generally accepted fee to the devil is two-thirds of the scale fee for paperwork, or two-thirds of the appropriate hourly fee for research. The devil's fee is payable immediately on return of the devilled work, **not** upon receipt of payment from the solicitor.

Traditionally a code of silence covers devilled work, except as between the barrister and his devil, who may of course discuss their work freely. It would seem to be a breach of confidence between Counsel for a devil to disclose to a solicitor that he devils for a particular barrister. Devilled work is returned as soon as possible, either typed or in legible longhand by the devil, who is then and there paid for his labour (cf. Luke 10:7).

The barrister receiving the devilled work checks it and signs it, thus taking full responsibility for its accuracy and sufficiency for the purpose.

The prosepcts for devilling have varied over time in Victoria. For example, early in the century Charles Lowe regularly maintained 5 or 6 readers in his chambers who assiduously devilled his paperwork for him. The late John Mornane maintained in more recent times a substantial number of devils, particularly from amongst his former readers, who carried out a substantial proportion of his large

"CROWDS OF YOUNGSTERS COMING TO THE BAR . . . "

paperwork practice. In the 1960's some devilling work was generally available also. In those days there were only five Clerks and the method of approach was that some member of Counsel wanting work devilled would mention that fact to his Clerk who would in turn speak to some junior on the list to see if he was interested. This was a satisfactory arrangement at the time when the Bar was much smaller and there was much more personal contact.

Since the late 1970's the systematic devilling of paperwork appears to have fallen into disuse, probably because of the growth of the Bar and the consequent loss of personal contact between busy "seniors" juniors, and other juniors. This seems a pity, because in the 1980's there appears to be a great need for such a system.

My own view is that the devilling system is an excellent one. A good devil can substantially relieve pressures on busy junior counsel and the system has many benefits for the devil. Here are some of them:

(a) the devil gets some money;

(b) the devil gets to know more senior counsel and, if his work is good, he will more quickly develop a reputation;

(c) the devil has the valuable experience of having his work criticised by a more experienced person.

A very desirable aspect of the system is that, if worked generally, it would effect a significant transfer of work from the busy portions of the Bar to the less busy portions. This is most desirable in itself. The solicitor is also pleased, because his work is returned promptly.

Although it may seem by some as hiding one's light under a bushel (cf. Matthew 5:15) devilling is a means of survival when times are quiet, and a means of establishing a reputation, for inexperienced or impecunious barristers. It is thus a system satisfactory to all.

It has been proposed to prepare a List of Devils, to be maintained by the barrister in charge of the Readers's Practice Course, who can be approached by busy juniors and allocated or suggest appropriate devils.

Black, the proposed Devil Master has been asked to prepare guidelines to implement this resolution.

M.E.J. BLACK
(who devilled this article to Gunst.)

" YES . . . POOR DEVILS!! "

IN THE LICENSING COURT OF SOUTH AUSTRALIA ADELAIDE

BEFORE HIS HONOUR JUDGE GRUBB

IN THE MATTER of an Application for Approval to CHANGE THE NAME of Licensed Premises situate at 358 Port Road, Hindmarsh, holders of the Restaurant License, from Europa Restaurant to "GET STUFFED RESTAURANT"

EXTEMPORE REASONS FOR DECISION DELIVERED BY HIS HONOUR JUDGE GRUBB 8TH MAY 1981

I have long had a concern, indeed a love, for the English Language. This has persisted for as long as I can remember. I have heard the King James (as it is called) translation of the Bible referred to as a 'well of English, pure and undefiled.' I am sure all will agree. I have thrilled to the use of the English language by Shakespeare – the magic, the poetry, the tragedy, the comedy; all of it, in its beauty and in its sometimes essential bawdiness. But bawdry is not to be confused with obscenity. Undoubtedly, the English language is the most expressive, beautiful, flexible and fluid language in the world today. Indeed, today (because of an accident of history, perhaps) it is a universal or "world" language, as anyone who has travelled will testify. It is unique because it is a living, growing, pulsating language, which changes almost from day to day.

I have long argued against the corruption of the English language by the inveterate use of invective, jargon and gobbledygook, as it has been called. While I agree we should always call a spade, a spade, I insist it is not always necessary to call it a 'bloody shovel'. But that coarse directness is, in my opinion, preferable to the dirty, the sly innuendo. Personally, I detest the lip-licking, the sly, the dirty, the nudge-nudge, wink-wink abuse of our wonderful language – always dirty, of course, otherwise it would not be "funny"; it would not be a "fun" thing, it would not be "hilarious" (see Exhibit 2). Too often the sniggering innuendo becomes the downright obscene. Honest bawdiness as exemplified in Chaucer, becomes the slyly salacious. I have no patience with those who seek to justify what they say or seek to do by saying (always with the snigger, wink-wink, nudge-nudge) "But there's nothing wrong with this or with those words. It is all in your own dirty mind. What we mean is..... etc. etc."

In the evidence today which came from Mrs. Ugrica we had that kind of attempted justification. In all seriousness, she avers, that the title she and her partner seek for their Restaurant "Get Stuffed" and particularly the use of the verb 'to stuff', is applied only to cooking and the honest work in the kitchen. It is in that sense and that sense only, that the term is used in relation to the name for this Restaurant.

However, I ask again, as I asked Mrs. Ugrica when she was in the witness box, 'What is "amusing" or "hilarious", or where is the "brilliant fun thing" (to adopt the expression in the letter Exhibit 2) if the term is applied (as she said it must be applied and as they intend it to be applied) to what goes on in the preparation and cooking of food in a kitchen?' Of that attempted explanation I say, "What rot!"

In my opinion the offence of the language is compounded when the dirty snigger is sought to be used for blatantly commercial purposes. It seems to me plain that the two ladies presently partners in the (as far as this Court is concerned) inoffensively-named 'Europa Restaurant' (putting aside, of course, all thoughts of that nasty classic bull) are determined to dredge up (and to date have succeeded) every scrap of publicity out of their so-well-publicised determination to have their Restaurant re-titled "Get Stuffed Restaurant". As exhibit 7 demonstrates, their battle with Telecom and the resultant publicity, so enthusiastically orchestrated, made headlines as far away as Brisbane. When these two ladies say, with wide-eyed innocence, to the world at large

and when Mrs. Urgrica says in this Court, "But we do not intend, nor do we infer, anything rude or naughty or suggestive in seeking to use that name for our restaurant. There is not a scintilla of the obscene in our intentions. We refer only to the legitimate and innocent culinary concept of stuffing food. We mean it only as an invitation to the public to come into our premises and there to stuff themselves with our delicious viands.". Again I say, "What rot!"

If that is their intention, why the term 'Get Stuffed'? Those words are not a name; they are an imperative. They are in fact and intention, just as when they are commonly used, an imprecation, an obscenity. If culinary innocence is the intention of these good ladies, if such is the invitation they seek to hold out to the public, ("Come in and stuff yourselves with our food."), surely it would be more appropriate to title their restaurant, "The Come in and Stuff Yourself Restaurant". At least, that is an invitation in the active sense. The potential diner has it made clear to him that he is invited to enter and do the stuffing of himself with the good food he will find inside; he is the activator; he does it himself. Any obscene connotation is banished. On the other hand, I wonder if such an invitation, so very much at large, would not place these restaurateurs in danger of being obliged to provide those who accepted that open invitation with not only 'seconds', but with all the food they could eat — and go hang the mortal sin of gluttony?

As I have said, 'Get Stuffed' is an imperative. It signifies, in ordinary English usage when directed to a person, (as it so obviously is) an active happening to be suffered by the passive customer. Now, I wonder, is that what the ladies intend? Where are the culinary connotations in that event? I realise semantics are a dangerous and very slippery path to follow. "Beware of the antics of Semantics" is a warning always to be heeded by judges as well as by the student of the English language.

As the Applicant may know, and, indeed, the evidence I heard today from Mrs. Ugrica makes it quite clear, the name they seek is not an original title. I understand that there is a well-known providore shop in Dublin rejoicing in that title. This is a food shop, I hasten to emphasise, not a restaurant. In any event, it is not a precedent I am obliged to follow. The evidence now before me establishes that there is a restaurant in Edinburgh bearing the name, 'The Get Stuffed Restaurant.' Again, that is not a precedent I am obliged to follow. On the other hand, again as Mrs. Ugrica's evidence makes clear and as Mr. Sampson has submitted, this is apparently not the first time, although it is certainly the best publicised occasion, that this Court has been asked to approve the term "Get Stuffed" as a name for a Restaurant. In 1972, or thereabouts, it appears that a man well-known in this State for his frequent appearances on what is called 'the electronic media' sought approval of the term for premises licensed as a Restaurant. It appears that the application, whatever it was, was not approved. This was before my advent to this Court on a full-time basis, and I agree, very strongly, with Mr. Berman's submissions that, in the state of the evidence as to this previous accasion, I should not regard this as a binding or any precedent. I have no evidence before me to indicate what it was that was before the Court on that occasion and what prompted the refusal of the application. I am informed, by way of compromise, that applicant settled for the name "Gobbles" when "Get Stuffed" was refused. The business did not suceed under that title and has borne many since.

I have no doubt at all, as I am aware of the expertise and the previous experience of these licensees, particularly Mrs. Ugrica, that they are well qualified restaurateurs and will be successful in this joint venture. They would be the first, I am sure, to agree that a restaurant will fail or suceed not because of its name, however much a "fun thing" or a "gimmick" or how "hilarious" it may be; it will succeed because of the nature and quality and the price of the food and the service and the atmosphere offered to the public by the restaurateur. I have no doubt at all that Mrs. Ugrica and Mrs. Bayliss will succeed in their enterprise, whatever it is called, because thay will offer what the public seek in the way of good food, good wine and good service, reasonably priced.

I say again, as I said during the course of the evidence, a number of acquaintances of mine have spoken to me of the times they have eaten of late at this Restaurant. I have heard nothing but praise for the food and the service and the intimate atmosphere and the decor of the restaurant. I am puzzled, therefore, by the determination to have their excellent restaurant called "Get Stuffed". This is not one of those many licensed premises which seek to succeed by pandering to the salacious – and that can not be emphasised too strongly. It does not provide, nor will it provide, and here I have no doubt about Mrs. Ugrica's very strong insistence in the witness box, that it would never provide so-called "topless" or "see-through" waitresses. It does not, and it will not, I have no doubt, provide male strippers for the ladies during the day and those of both sexes for patrons at night.

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But let me not skirt about this subject. Let us be quite specific and open. Let us have no more snigger-snigger, nudge-nudge, wink-wink, what a "hilarious fun-thing" this name is. The imperative "Get Stuffed" is an obscene imprecation with the bluntest double-entendre. It has nothing at all to do with the culinary process of stuffing food. It is an imperative. It is an imprecation. It is an obscenity. It is regularly used in the vulgar, offensive and obscene parlance of the gutter. It is synonymous with the imperative "get rooted". Both of those terms are used as euphemisms for the sturdy old Anglo-Saxon term for the act of human coition or sexual intercourse.

I am, in this Court, essentially and pre-eminently to be concerned for the public interest. If any authority is needed for that, I refer to the very detailed judgments given by their Honours the Justices of the High Court in **Dalgety Wine Estates v. Rizzon** 26 A.L.R. 355 where the High Court, in specific reference to this Licensing Court, made that abundantly clear. I take judicial note of the fact, self-evident to me from the accumulated knowledge and experience of some 64 years, that even in these days of libertarianism and outspokenness and licence, the four letter word "fuck", used as a noun or a verb, is grossly offensive to very many people. I am aware it is a word used almost as frequently these days as the ancient exclamation "By Our Lady" which has, by usage and time, become corrupted to the ubiquitous "bloody". Shaw first placed that word in the mouth of Eliza Doolittle on the stage in the City of London in 1912. It created a sensation. Today, as is being demonstrated nightly at the "Playhouse" this very week, it still gets the best laugh in the play. However, the humour in the use by Miss Doolittle of the word "bloody" (in fact, the words are, "Not bloody likely! Me for a taxi.") lies not in the use of the word itself but in the manner it pops out so beautifully, so carefully, so deliberately articulated, in Mrs. Higgins' drawing room, by the yet only partly transformed Miss Doolittle.

I am aware, too, as I am a regular theatre-goer, that modern playwrights use the word "fuck" in their plays with deliberate and persistent intent. As always, constant usage dulls whatever shock there may have been; the word no longer shocks in the theatre. On occasions its use is demanded by the context and the content of the play. It is then not wholly offensive. Most times it merely bores; it may engender a giggle or a snigger from the juveniles in the audience, but it no longer has any real effect; it no longer jolts; it no longer shocks or affronts; its effect is emetic, not aphrodisiac. But what is acceptable to patrons in a theatre; people who have by choice paid to enter that theatre and to see and hear the play, may well be wholly unacceptable in public usage. This is a public restaurant in a public place – the very busy Port Road, Hindmarsh.

I am not here looking at the term "get stuffed" in the context of a theatrical experience. I am in no doubt it would not be in the public interest to have the word "fuck" publicly displayed on these premises. I am equally convinced that a euphemism meaning the same thing is just as offensive to a great majority of the public.

Pursuant to s. 31 of the Licensing Act this Court may impose any condition which it deems fit upon a Restaurant Licence. Apart from that, it has been the practice of this Court as long as it has existed, in whatever form, or at least as far back as my researches could take me (they have gone back, I might add, to 1910) specifically to approve the name of all licensed premises, the licensees of which see to trade under a name other than their own. While, as a matter of prudence, licensees seek to register as a business name, as indeed thay are obliged to do by law, the name under which they seek to trade, if it other than their own, this Court has never held itself to be bound to approve a name, even though it has been registered pursuant to the provisions of the Business Names Act. I could give many examples. It is quite clear from the terms of Exhibit 5, that the Honourable the Attorney-General believed the name sought, "Get Stuffed Restaurant", should not have been registered – but it has, and not by inadvertance. Therefore, his hands were tied. Those of this Court are not.

By this Application the licensees seek the approval of this Court for the name of these licensed premises to be changed from "Europa Restaurant" to "Get Stuffed Restaurant". Again, (if I can dabble for a moment in semantics), it seems to me it might have been more appropriate if they had adopted the course followed in Edinburgh to get away from the imperative imprecation that I find so obvious in the words "Get Stuffed Restaurant", if the had sought to call it "The Get Stuffed Restaurant". But again, as I say, semantics are a dangerous path to follow. Also "Come in and Stuff Yourself Restaurant" would, as it seems to me, more clearly signify what they protest they intend, if Mrs. Ugrica is to be believed.

However, as I say, let us not waste time being coy or salacious – depending on how you look at it – let us be honest; let us not mince words. I am in no doubt at all that the use of this title sought to be approved, "Get Stuffed

Restaurant", has been decided upon, as Mrs. Ugrica said, after a lot of thought, trying it out around the family table and with customers and friends. It was found to be (to quote the words used in Exhibit 2, the letter to the Commonwealth Ombudsman) "terrific", "hilarious", "brilliant", "What fun!" etc. The only sense in which those descriptions of that title could be used is salacious and not culinary. I say and I hold that quite firmly.

When I pressed her on this, Mrs. Ugrica tried a different tack. "Well", she asked, "what about those other Restaurants in this town, like "Olga's Bare Delights", and those others I couldn't bring myself to name?" Curiously those other names Mrs. Ugrica, in all modesty , could not utter, were "Frenchies" and "Bottoms". I must say, I was astonished. To my mind, neither of those names have the same essential obscenity as "Get Stuffed". Be that as it may, this is a curious argument which goes something like, "Well, our name may be dirty and suggestive but there are plenty of others as bad, if not worse." That argument really begs the question. It also tosses the culinary argument down the kitchen sink. In passing, I point out that "Olga's Bare Delights" is not a name approved by this Court. In any event, it is not a name which has any obscene connotations.

As I have indicated, included in my concern for what seems to be the obsession of these two ladies to have the "Europa" become the "Get Stuffed Restaurant", is the fact that they are determined to squeeze every last drop of publicity out of it. While I agree with Mr. Sampson that the name should not be approved, as it not suitable for the reasons I have stated, I am aware that to refuse will only incite a further frenzy of publicity directed at what would be called (at its kindest) old fashioned obduracy of this wowserish Court. For these reasons I have determined to call this spade a spade. It may well be that in the days of Chaucer one could use the word "fuck" in polite society. It is not so today. The word is now grossly offensive and obscene. More to the point, when it is used today it is meant to be so. There is no doubt in my mind that it is the implicit suggestion of that word in the term "Get Stuffed" which has so tickled the fancy of these restaurateurs. Let the ladies, therefore, have the courage, not so much of their convictions, but of what they know the name they desire really means in the ordinary common and obscene parlance of the gutter. I am not prepared to be a party to the sniggeringly salacious. Let us all be quite blunt. Let us be quite honest and direct about what these licensees really seek.

If the Applicants are prepared to be honest about the actual title they wish to have for this Restaurant, I make the following intimation: I intimate I will approve the change of name of the Europa Restaurant to "The Get Fucked Restaurant" provided –

1. that the licensees obtain the consent in writing of the Council of the Corporation of the City of Hindmarsh for the use of that name in respect of these licensed premises situate 358 Port Road, Hindmarsh, and the consent of that Corporation for the licensees to have that name conspicuously displayed and exhibited outside those premises so as to be clearly visible from both the roadway and the footpath of the relevant portion of Port Road; and

(2) that the licensees also obtain the registration of that name as a Business Name.

In the meantime, I impose the following condition on this Restaurant Licence: "that the presently approved name, 'Europa Restaurant' shall be the only name identifying these licensed premises and that no other name shall be exhibited or displayed or used in or about or upon these licensed premises."

I require the licensees to deliver their Restaurant Licence to the Clerk of the Court within seven days for the endorsement of this condition.

The application to change the name of these licensed premises is adjourned **sine die**.

(Reprinted by kind permission of His Honour who is said to be a little startled at the notoriety surrounding this ex tempore judgement.)

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WHY DON'T BARRISTERS CROSS-EXAMINE EXPERT WITNESSES

Mr Norman Birkett cross-examining: "What is the co-efficient of the expansion of brass?"

Mr Arthur Isaacs: "I am afraid I cannot answer that question off-hand."

Mr Birkett: "You are an engineer?"

Mr Isaacs: "I daresay I am. I am not a doctor, nor a crime investigator, not an amateur detective. I am an engineer."

Mr Birkett: "What is the co-efficient of the expansion of brass? You do not know?"

Mr Isaacs: "No, not put that way."

(Shortened from the Rouse murder trial 1931, in Notable British Trials as quoted in Stephen Potter, The Sense of Humour.)

Deimos and Phobos rose high over me the day I first stepped into a Supreme Court witness box. I had been brought up on the horror story of a prominent psychologist who was cross-examined on the contents of a textbook he quoted as an authority for some statement, and was demolished. And of course, I had also been brought up on television and film showing cross-examinations, to say nothing of written accounts of trials. There was no doubt about it, I was going to be grilled to the limits of my professional knowledge and beyond.

I went into the witness box quaking and came out amazed. It hadn't happened.

That was nineteen years ago. The briefcase I bought with the fee for that first testimony was worn out with many trips to many courts and had been replaced last Christmas. But my amazement hasn't worn out. In all those nineteen years of personal injury and workers compensation cases I have never been seriously cross-examined on technical points. No one has ever asked me the co-efficient of the expansion of brass, or whatever its psychological equivalent is.

Nor, after a good deal of sitting and listening to other expert witnesses, have I heard them cross-examined this way. Their knowledge is never tested. And in spite of all the difficulties which experts of every discipline face in gathering facts and forming opinions, I have never heard them cross-examined on those difficulties.

Instead they are cross-examined as if they were lay witnesses. Counsel on "the other side" try to get them to contradict themselves, to admit unsureness on some point, to derogate themselves, and so on. Counsel never deal with the difficulties in getting data and drawing conclusions which plague all expert witnesses, and lead to gross weaknesses in their evidence. Counsel do not ask for the co-efficient of the expansion of brass nor ask any other technical questions to probe these weaknesses.

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Clearly, a barrister who will ask such questions, who will attack technical evidence on technical grounds, will win many more cases than can be won by the present tactics. In the **Rouse** trial, Birkett soon had Isaacs incoherent, and the defence defeated. Yet fifty years later our barristers shun cross-examination on technical matters. Why?

Do they feel the amount of homework they would have to do to prepare themselves is simply impracticable? That sounds reasonable, though there is an easy way out of the trouble. Or don't they know of the room for such cross-examination? Whatever the cause of their not cross-examining on technical points, the result is that they fail to clear away a good deal of evidence which is, to say the least, weak.

I do not speak only of psychological evidence. All expert evidence has weaknesses in it which are untouched by the present practice of cross-examining expert witnesses as though they were lay witnesses to the fact. This is especially clear in the very complex matters which are dealt with by psychiatry, neurology, gastro-enterology and other para-psychological disciplines. But experts in other fields, engineering, chemistry and sewerage form their opinions under similar difficulties so that those opinions have similar weaknesses.

Because they have never been cross-examined on these difficulties, many expert witnesses have forgotten that they exist. Yet they do. Many of them are set out in my forthcoming book **Psychology For Barristers.**

They exist. Why are they never attacked? Is there a sort of medico-legal gentleman's agreement to keep cross-examination off the hard bits?

Each time I hear the old cross-examination and the old weaknesses slipping past, I remember that in England expert witnesses are allowed in court to hear all evidence. Of course in the hearing of such critical ears the standard of evidence is infinitely higher than it can be in our courts from which those same critical ears are barred. And correspondingly, it seems that in English courts the gentlemen at the bar know the co-efficient of the expansion of brass, or have at least swotted it up the night before.

Sometimes the agreement to avoid cross-examination on technical matters leads down some sorry byways, counsel who have exhausted the treat-'em-as-laymen approach. They are followed in family and criminal cases as well as in accident cases. Several months ago I gave evidence in a Family Court hearing. Counsel on "the other side" had used his usual tactics of discrediting, tripping up and the like, and must have felt that he was making no headway. He asked me to read out all my notes. As I had examined four or six people, the notes made a thick volume. I solemnly spent something like two sessions reading them aloud, at great cost to the Australian Legal Aid Office, without Counsel being able to make anything of them, and in due course his client lost custody.

What was Counsel hoping to hear? A contradiction? Some hot piece of evidence that I had forgotten when generalising in my conclusions? Something else? I don't know. I sympathised with the famous Rector of Stiffkey: "During the prosecution's cross-examination of Barbara, the Rector was seen to be shaking with laughter and had to be called to order by the Chancellor. The Rector said that he wasn't laughing at the witness' answers — which only left the prosecution's questions as the source of his amusement, and it was true they would have entertained a cat." (Blythe, **The Age of Illusion.**)

And this low standard of cross-examination doesn't come alone. It is accompanied by the low standard of evidence it fosters. Expert witnesses in all disciplines can and do get away with nonsense.

For a bad example, a popular "expert" in one discipline has long been in the habit of **not** making the examinations on which he says he bases his evidence. He makes part examinations, fakes bits, borrows bits from the reports of other people and writes his own report imaginatively. Yet it seems no barrister has yet found the time to learn the little bit of knowledge needed to ambush him.

Not all witnesses stray so far. Many have simply grown careless with their evidence because experience has taught them it won't be questioned. They have slipped into sloppy reasoning because their reasoning is never tested.

In one of the para-psychological disciplines, a veteran witness makes more or less adequate examinations, but spices his evidence with comments on matters outside his field which he is not qualified to make and for which he has no solid ground whatever. In his reports, his misunderstanding of technical ideas outside his field shows him exemplifying Grossman's Law: "Complex problems have simple, easy-to-understand wrong answers." Yet his

mistaken ideas are accepted in Court. It appears that no member of the bar has thought to attack his lack of qualifications for forming opinions outside his field, nor the validity of the opinions as such.

Why do our barristers hobble themselves and lose cases by not going into the details of expert evidence? The barrister who wants to ask questions about the co-efficient of the expansion of brass or its equivalent in the case he is fighting need not put himself to the trouble of much swatting by candlelight. If he is not what actors call a quick study, he can employ an expert in the discipline in which evidence is being given, using him tactically to advise him during the course of the case. Used this way, discussing the evidence in adjournments, or better still, sitting behind the barrister in court, the expert will be far more valuable than he could ever be simply as a witness.

The barrister who will take technical advice in technical cases so that he can deal with the technical weaknesses in the opposition's evidence, will win those cases.

MAURICE WHITTA

Mr Whitta is a practising psychologist.

MORNANE THE PLEADER

Amongst the many qualities that made his Honour the late Judge Mornane such a personable and well-loved member of the Bar, was his constant good humour and his keenly honed wit.

The tribute in the Winter 1981 edition of the **Victorian Bar News** records that he was "a great jury advocate who developed a giant personal injuries practice – a field that he had led for many years."

Before he established his pre-eminence in this area, he had displayed a considerable interest and no little ability in the rather more arcane field of property law. Perhaps, in one who had had the great advantage of reading in the chambers of T.W. Smith, this should not be a surprise.

For at least the last fifteen of his years of practice at the Bar, John Mornane had an enormous paper-work practice.

Away from the Bar, he was a very keen golfer. No doubt this interest contributed in large measure to the touch of the master himself being given to a statement of claim delivered in an action brought by an injured golfer against his golf club.

The directions of Order 19 rule 4 can seldom have been followed so felicitiously as in the first ten paragraphs of this pleading, which are now set out.

STATEMENT OF CLAIM

1. THE Defendant is and at all times material was a Company Limited by guarantee and incorporated under the law of the State of Victoria.
2. AT all times material the Defendant was the proprietor or occupier of certain ripurian land at Heidelberg in the State of Victoria.
3. THE said land was dedicated, laid out or maintained as a course or links for the promotion of a game of skill or chance or of mixed skill and chance known as Golf.
4. THE said course or links comprised a number of golf holes for the use by members of the Club of which the Defendant was the proprietor.
5. THE 13th of the said holes being about 416 yards in length and rated as a par 5 comprised terminal areas known as a tee and green respectively.
6. THE terrain between the said tee and green was anfractuous, tortile or otherwise undulate.
7. IN the vicinity of the said tee the Defendant erected, kept and maintained a sentinel-post, stand or tower for use by members of the said Club in the course of play for the better observation of inter alia players or balls either in flight or at rest.
8. AT all times material the Plaintiff was a member of the said Club with provisional rights to play the said course or links and to use the said sentinel-post, stand or tower.
9. ON the 11th day of January 19 the Plaintiff as Such member was, with others, in the course of playing the said 13th hole.
10. AT or about the time referred to in paragraph 9 hereof at the invitation of the Defendant express or implied and lawfully the Plaintiff scaled the said sentinel-post, stand or tower for the purpose of observation when the same suddenly and without warning collapsed and fell throwing the Plaintiff violently to the ground whereby he was severely injured.
    etc. etc.

Those who desire further tutelage with regard to the more prosaic allegations concerning a duty of care, its breach and resultant damage to a plaintiff, can, no doubt, obtain this from Messrs. Bullen & Leake's work or (on payment of a modest fee) from the editors of the **Bar News.**

ASSOCIATIONS INCORPORATION ACT 1981

Orthodox legal theory holds that voluntary unincorporated associations are no more nor less than a number of legal persons (the members) who combine to pursue common goals in accordance with agreed rules. As a consequence, such bodies cannot in their own names hold or dispose of property, enter into contracts, or sue or be sued. The practical problems thus created are considerable. They may be illustrated by some of the day to day problems of a local cricket club and those with whom its members deal. Any member who happens to be a lawyer is likely to be asked questions such as:

- Can "we" insure "our" gear?
- Do "we" have to insure against public risk?
- Can "we" employ groundsmen and umpires?
- Who gets "our" equipment if we disband?
- Can the local publican take "us" to court over the small matter of the unpaid barrels bill?
- Can "we" enter into an agreement with the local Council to build a new pavilion?

The answer at common law is invariably "yes" insofar as each and every member individually is concerned but "no" in respect of the club.

Various legal devices and fictions have been adopted over the years to overcome some or all of these difficulties. The most effective has been incorporation by statutory provision such as applies to federally registered trade unions. Some associations have resorted to incorporation limited by guarantee under existing companies legislation. Most voluntary institutions however remain unincorporated. They vest property in trustees and sue or are sued by means of representative actions.

Apart from incorporation outside the framework of companies legislation none of these solutions has been entirely effective in overcoming the legal conceptual difficulties, while at the same time permitting a form of public regulation which is appropriate for voluntary organisations. For this reason the Associations Incorporation Act 1981 (Vic), a product of the work of the Chief Justice's Law Reform Committee, is a welcome addition to the statute books.

The Act facilitates the incorporation of voluntary bodies which satisfy three tests –

1. They must have at least five members.
2. They must be carried on for a lawful purpose; and
3. That purpose must not involve trading or the securing of pecuniary profit for members. (This is not a prohibition on profit-making; it simply prohibits the distribution of profits to the members).

Associations may apply for incorporation by making a straight-forward application to a Registrar. The Registrar must satisfy himself that the organisation meets the statutory tests and has attended to the necessary formalities. Once the application is approved the association has the word "Incorporated" or the abbreviation "Inc." added to its name.

A minimal level of control is exercised over the conduct of the affairs of incorporated associations. They are generally left free to operate in accordance with rules of their own devising or rules adapted from model form.

The major departure from common club administrative practice is that each incorporated association must have a public officer. Upon this public officer is cast the responsibility of lodging annual returns with the Registrar and his address is the address for service of the association.

Existing property can be transferred into the association's name and subsequent acquisitions may be purchased and held in its name. Contracts can be entered into over the public officer's signature or seal. The incorporated association may sue or be sued in its registered name.

Some further matters require passing mention. Provided that an association operates within the terms of the Act its members are protected from individual liability for corporate acts. The ultra vires doctrine applies but may only be pleaded in actions taken by a member against an incorporated association, proceedings taken by the association or member against the public officer or during winding up proceedings.

The important role played in the community by ethnic cultural and service organisations is recognised in a provision which allows documents to be lodged in a language other than English provided that a certified translation is attached.

The Act has yet to be proclaimed. It is to be hoped that this step will not be long-delayed and that this useful reform will be availed of by voluntary associations – if for no better reason than that it will free lawyer-members from the need to give so much free advice.

R. TRACEY

THE INDEPENDENCE OF THE JUDICIARY CRUCIAL TO JUSTICE

There is growing world wide concern among lawyers and concerned members of the public about the increasing threats to the independence of judges and courts at all levels. These threats are a matter of concern not only for courts and judges. They concern lawyers whose involvement in the process of administering justice is vital and who cannot play their role unless the courts before whom they practise are independent, competent and conscientious in their application of the law. But more importantly it is the community whose interests demand that courts remain, and retain the role of impartial umpire in disputes between citizen and citizen, and government and citizen, according to law.

Reflecting this concern in 1980, the Committee on Administration of Justice of the General Practice Section of the International Bar Association initiated a project to draft and prescribe a set Minimum Standards of Judicial Independence. This will be a main topic for discussion at the 19th Biennial Conference of the International Bar Association to be held in New Delhi, India, 17 to 23 October 1982.

The project has involved a detailed questionnaire dealing with all aspects of the relationship between Judges and the Executive, the Legislature and the Press; the terms and nature of Judicial Appointments and Removal and Discipline and Standards of Judicial Conduct in 100 countries of the world. Comprehensive replies have been received from most of the National Rapporteurs to whom the questionnaire was addressed and these have been analysed. From this a draft set of Minimum Standards has been prepared and a final draft will be presented for discussion at New Delhi. The Conference will be addressed by eminent speakers and papers will be submitted by jurists involved in the project.

In view of the importance of the project and so that it should be the subject of the widest possible discussion and debate, the International Bar Association invites judges from all judicial levels and lawyers, both practising and academic, to attend the New Delhi Conference and express their views. It is important

that as many countries as possible be represented there, so that the conclusion of the project will have the same wide international involvement as it has had to this stage of its development. Enquiries relating to the project and the programme and details of group travel arrangements for the Conference are welcomed and should be addressed initially to: I.B.A. Byron House, 7-9 St. James's Street, London, SW1A 1EE, England.

NEW CONSUMER CREDIT LEGISLATION

In some ways, the Credit Act 1981 (No. 9668), the Chattels Securities Act 1981 (No. 9650 and the Goods (Sales and Leases) Act 1981 (No. 9651) can be likened to the Trinity — it appears that they have always been and will always be and it takes an act of faith to believe that they will be the answer to the problems faced by consumers. In the 1960's it was perceived that the law relating to consumer transactions was inappropriate for a society based upon consumerism. Not unexpectedly, Australia lagged behind the U.S. which adopted a Uniform Consumer Credit Code in 1968. However, at the request of the Standing Committee of Attorneys-General, Professor Rogerson of the Adelaide Law School was appointed chairman of a committee to undertake a study of credit laws and laws relating to the sale of goods. The Rogerson committee submitted its report in 1969.

Following the Rogerson report, the Law Council of Australia was asked to form a further committee to do further work on the practical implementation of the recommendations contained in that report. The Council reconvened an already existing committee under the chairmanship of Mr. T.M. Molomby in 1969. After extensive consideration of the many complex areas relating to consumer credit the Molomby committee submitted its report in January 1972. Members of the Bar who were involved in the committee included McGarvie, Dwyer and, since 1971, Myers.

After presentation of the report there followed much widespread discussion, praise and criticism of its contents. Indeed, following a seminar in Melbourne in March 1973, a supplementary report was presented by the committee.

South Australia, not wishing to delay implementation of consumer reform introduced, in 1972, its Consumer Transaction Act but the other Australian States were more hesitant. After a false start in 1978 when three Bills were introduced into the Victorian Parliament, Victoria has now made its run with the three Acts previously referred to. Although the Acts have now passed through Parliament they have not yet been proclaimed, The precise date of proclamation is not yet known but it is likely to be toward the end of the year after the complex administrative arrangements necessary to administer the Act have been established.

The Acts are extensive and complex and it is only with hindsight will we be able to determine whether or not that which was conceived in the early 1970's and born in the early 1980's will be appropriate for the latter part of this century.

Credit Act 1981

The Credit Act repeals entirely the Money Lenders Act 1958 and removes from the control of the Hire Purchase Act 1959 those contracts which are regulated by the Credit Act 1981. The Act is extensive and the following cannot be considered anything but a summary of provisions considered to be more relevant.

The general theme of the Act is that it applies to the provision of goods and services where the cash price is $15,000 or less, or goods being a commercial vehicle or farm machinery in respect of which the cash price is more than $15,000 or to the provision of loans up to an amount of $15,000 where the interest rate is in excess of 14 per cent per annum. The $15,000 limit and the interest rate threshold may be changed from time to time by regulation (see Section 7).

Throughout the Act there are numerous exemptions stated but, in general, these exemptions provide that the Act does not apply where the debtor or mortgagor is a Body Corporate or the Creditor is within a certain category or is conducting only certain types of business e.g. a bank in relation to the provision of credit by way of overdraft or otherwise than by way of credit sale, continuing credit contract or term loan.

Sales

The Act does not purport to govern the content of all simple sale agreements. However, Part II of the Act does apply to the type of sales previously referred to where credit is to be provided by a person other than the supplier of goods and, in relation to the acquisition of those goods, the buyer makes it known to the supplier that credit is required. If credit is not forthcoming after reasonable steps have been taken to obtain the credit then the sale may be, within a reasonable period of time after it was made, rescinded. Part II provides for the return of the goods and the rescission of any mortgages etc. which may have been given at the time of the sale.

Section 24 of the Act provides that where the credit is provided by a person "linked" to the supplier of the goods then the creditor and supplier are to be jointly and severally liable for misrepresentation, breach of contract or failure of consideration in relation to the sale. Sub-Section 24 (4) provides a gloss on joint and several liability in that in most circumstances proceedings must be commenced against both the creditor and the supplier.

Regulated Contracts

Part III of the Act purports to regulate credit sale contracts, loan contracts and continuing credit contracts where those contracts relate to the provision of goods or credit where the amount involved is within the ambit of the general formula as to amount, type of goods or interest rate previously referred to.

The general theme of the Part, and indeed the whole of the Act, is that of ensuring that the consumer is provided with full information regarding the transaction entered into by him. Hence the Act prohibits persons entering into credit sales or loans that are not evidenced in writing and requires copies of contracts to be made available to consumers along with a summary of rights under the Act. In addition, Sections 34 and 35 require credit sale contracts and loan contracts to provide details of the amount being financed, the rate of interest, the amount of credit charges and the place of payment of instalments. The Schedules to the Act set out in detail how these amounts are to be calculated.

In relation to determining the rate of interest payable under a regualted contract, Section 37 sets out four situations and prescribes the relevant method of calculating the interest. Section 149 of the Act provides that any contract which requires interest payable at a rate in excess of 48 per cent per annum is unenforceable. However, even in situations where the interest rate does not exceed 48 per cent per annum, Section 147 provides that a Court may re-open a transaction where it considers the annual rate of interest payable is harsh and unconscionable.

Part III also applies to transactions relating to the provision of "store credit certificates" which are defined to be vouchers bearing a nominal value which may be used to the extent of that nominal value for the purchase of goods and services at the place of business of the supplier of the voucher or of a corporation related to that supplier.

Division 2 of Part III of the Act applies to continuing credit contracts. Although Section 53 of the Act defines a continuing credit contract the exact extent of the definition is yet to be determined. It is submitted that it is clear that the Division would apply to in-house store credit cards but whether or not it applies to third party credit cards such as Bankcard, Diners Club or American Express is open to debate. Section 53 defines a continuing credit contract to be one where one person agrees with another person to satisfy on behalf of that other person liabilities of that other person to a third person in respect of payment for goods and services supplied by that third person to that other person and to provide credit to that other person in respect of payment. Where a credit card is used it is debatable whether or not the cardholder has any liability to the supplier of goods and/or whether the card issuer agrees to extend credit to the cardholder.

Once again it is noted that the Act only applies to those continuing credit contracts under which the amounts to be provided are limited or the credit charges are in excess of the prescribed rate of 14 per cent per annum. However, the Act may apply to "unlimited" continuing credit contracts where having regard to all the circumstances it is probable that the amount owed by the debtor under the contract will not at any time exceed $15,000. Once again, the Act requires "full disclosure" in relation to continuing credit contracts.

Operation of Regulated Contracts

Divisions 3 and 4 of Part III are extensive and generally regulate the enforcement, variation and assignment of regulated contracts. They also provide that all loans are to be in cash or monies worth and are to be made without deduction. It is suggested that close attention be paid to Sections in these Divisions as they are all embracing.

Regulated Property Mortgages

In addition to regulating credit contracts, the Act, in Part IV, regulates property mortgages given by persons, other than Body Corporates, to secure debts under regulated contracts. Generally, Part IV controls the content of property mortgages, the method of enforcement of such mortgages and limits certain types of mortgages. For example, Section 101 makes void a provision by a natural person creating a blanket charge over all his property and assets, other than business property or assets. Section 102 makes void property mortgages of future property except in certain circumstances.

General

The Act contains a number of provisions which relate to contracts of insurance in respect of property mortgages or debts. For example, Section 134 (2) provides that **Scott v. Avery** clauses and certain other provisions in insurance contracts relating to arbitration are to be read as agreements to arbitration and not as preventing causes of action from accruing or being instituted.

The Act also regulates contracts of guarantee in respect of obligations of a debtor under a regulated contract. Of particular relevance is Section 142 of the Act which provides that a guarantee of the obligations of a minor is enforceable in certain circumstances.

Penalties

Failure to comply with the provisions of the Act may result in the imposition of fines, the details of which are set out in relation to each relevant Section. In addition, a breach of the Act may prevent a creditor from exercising rights under his contract e.g. Section 46 of the Act imposes a civil penalty where the Provsions of the Act relating to disclosure in credit sales and loans are not complied with. The maximum penalty is loss of all credit charges but under Section 89 a Court can reduce that penalty. In addition certain terms in contracts may be void and, indeed, the whole contract may be void in certain circumstances, e.g. where the interest rate exceeds 48 per cent per annum.

In addition to the foregoing, the Court has power to re-open contracts in certain circumstances where the transaction is harsh and unconscionable (see Section 147).

Administration

The Act provides for the Consumer Affairs Council to advise in relation to the administration of the Act. It establishes the position of Director who is to administer the Act and receive and investigate complaints from and give advice to natural persons in relation to matters to which the Act applies. The Director has power to enter premises and demand production of books and other records (see Section 165).

The Act also establishes a Credit Tribunal, the chairman of which will be the president for the time being of the Market Court. The Credit Tribunal will have jurisdiction over the judicial and quasi-judicial functions conferred by the Act but this jurisdiction is not exclusive (see Section 6). Questions of law arising before the Tribunal may be referred to the Supreme Court by the Tribunal or may be the subject of an appeal to the Supreme Court by any party to the proceedings (see Section 179).

Licences

Subject to the exemptions contained in Section 192, Section 191 of the Act prohibits persons from carrying on business as a credit provider unless he is the holder of a Credit Provider's Licence. Division 3 of Part X of the Act sets out the provisions relating to licences and the control of licence holders.

Chattel Securities Act 1981

This Act makes new rules regulating the creation and operation of all security interests in goods, whether they are obtained by mortgage, charge, retention of title, bill of sale or otherwise. The Act defines "security interest" as meaning an interest in or power over goods by way of security for the payment of a debt but does not include an interest arising under a lease of goods or under a hire purchase agreement within the meaning of the Hire Purchase Act 1959.

Notwithstanding the exemption for interests created by the Hire Purchase Act 1959, the provisions of Part II of the Act, other than Section 5, apply to leases and hire purchase agreements.

Section 6 of the Act prohibits a mortgagor, a lessee and a hirer from disposing of goods subject to the mortgage, lease or hire purchase agreement. But Sections 8,9 and 10 provide for the extinguishment of a mortgagee's security, a lessor's interest and an owner's interest in goods under hire purchase agreements where the goods are disposed of to a bona fide purchaser for value in good faith and without notice of the interest of the mortgagee, lessor or owner. As with the Credit Act 1981, the provisions of Part II of the Chattels Securities Act 1981 do not apply to interests in goods, other than a commercial vehicle or farm machinery, where the purchase price exceeds $15,000.

Part III of the Act establishes a register giving details of holders of certain interests in motor cars, trailers and motor boats. A person may make application to be registered on the register as a holder of a security interest, an interest as lessor in goods or an interest as an owner in goods under a hire purchase agreement. It is unclear as to whether or not the fact that an interest in a motor car, trailer or boat is registered is deemed to be notice to the whole world of the existence of the interest but it would seem that this was the intention of Part III. Sections 23 and 24 of the Act provide that a purchaser is not to be deemed to have notice of security interests in certain circumstances. Persons who suffer loss or damage by reason of the extinguishment of a security interest by operation of Sections 8, 9 or 10 may obtain compensation in certain circumstances. Similarly, where a purchaser of goods suffers loss or damage where the goods are registered he may obtain compensation. Compensation is to be obtained from a fund established for that purpose.

The Act repeals Part IV of the Instruments Act 1958 and amends Section 100 (3) of the Companies Act 1961.

Goods (Sales and Leases) Act 1981

This Act inserts a new Part IV in the Goods Act 1958 making provision for non-excludable terms to be implied in all sales of goods and services and certain leases of goods where the cash price of the goods or services is not more than $15,000 or, if it does exceed that amount, the goods and services are for personal, domestic or household use or consumption.

In relation to sales of goods there are implied conditions that the seller has title to the goods, they are free from encumberances and that the buyer will enjoy quiet possesssion of the goods. There are implied conditions in relation to sales of goods by description and sales of goods by sample. The Act also imposes conditions regarding fitness of goods or services for the purpose required.

Where a sale of a service is involved and the seller shows to the buyer a demonstration of, or a result achieved by, services and the buyer is induced by the demonstration to buy the services of that kind, there is an implied condition that the services will correspond in nature and quality to the services shown in the demonstration and that they will be free from any defect rendering them unfit for the purposes for which the services are commonly bought. "Services" are defined to mean services by way of the construction, maintenance, repair, treatment, etc. of goods or fixtures on land, the alteration of the physical state of land, or the transportation of goods.

The new Section 95 of the Goods Act provides that any term of a sale which purports to exclude, restrict, or modify any of the implied terms and conditions id void. However, new Section 97 includes provisions permitting a limitation of liability to be included in a contract within certain specified limits.

New Sections 103 – 112 inclusive imply terms and conditions in relation to leases of goods and are similar to that relating to sales.

The three statutes when proclaimed will repay careful study by all practising in commercial law. There is no doubt that they will have a profound effect on the rights and obligations of many.

BERGLUND

MISLEADING CASE NOTE No. 17

R. v. McGoering, ex parte Fabian

The Full Court said recently:

> This is an appeal by the Crown against the grant of a writ of habeas corpus by Orwell J. and it will make matters simple to set out the relevant law and the history of the matter.
>
> In 1984 the State Parliament, after considerable pressure from the Police Department, passed the Summary Offences (Police Powers) Act. That Act empowers members of the Police Force to require any member of the public to give his name and address and a reasonable explanation of his conduct in a public palce. Where such reasonable explanation is not in the opinion of the officer forthcoming, he may arrest the suspect and charge him with a breach of the Act.
>
> It also substituted a summary hearing of that charge before a station sergeant for the more cumbersome and unreliable trial by jury. It also conferred upon police officers certain other minor powers considered necessary for the effective suppression of crime, but we are not concerned with these.
>
> Shortly after the enactment of the Summary Offences (Police Powers) Act, the respondent Mark Fabian was walking near his home in Malvern, when he was observed by Senior Constable Boots. What happened thereafter is adequately set out in the affidavits filed before Orwell J., which reproduce the evidence given at the summary hearing in respect of which the respondent sought habeas corpus.
>
> Senior Constable Boots was sworn, and said: "Sergeant, my full name is Jack Boots, I am a Senior Constable of Police in the Machine Gun and Dum-Dum Bullet Squad, presently attached to the Leaping out of Helicopters and Frightening the Children Section. On Tuesday 1 November, I observed the Defendant Mark Fabian, who is well known to me as a member of the public, walking at a fast rate of speed south in Glenferrie Road, Malvern. I intercepted him and detailed my observations to him, I said, 'I require you to give me your name and address and a reasonable explanation of your conduct here today'. The Defendant then said, 'Certainly officer, my name is Mark Fabian, and I live at 11 Uhuru Street, Malvern. I was just walking to the shop to buy a newspaper.'
>
> I immediately suspected on reasonable grounds that this explanation was insufficient, and I arrested the Defendant and conveyed him to Police Headquarters where I handed him over to Sergeant Mengele."
>
> Sergeant Mengele then gave evidence as follows: "My full name is Josef Mengele, I am a Sergeant of Police attached to the Body Sample Extraction and Medical Experimentation . . . . sorry, to the Body Sample Extraction Squad. I was on duty when Snr. Const. Boots introduced me to a notorious member of the public, the Defendant Fabian. I took from him the samples of blood, bone, flesh, skin, saliva, urine, hair and brain necessary to a complete forensic investigation, and after the statutory period of seven days detention without trial I brought him before this tribunal for sentence . . . sorry, for trial. I have been a member of the Police Force for 44 years, and in my opinion the Defendant is guilty."

The hearing took place before Snr. Sgt. McGoering,

who gave evidence before Orwell J., in the following terms:

> "My full name is Brian McGoering, I am Senior Sergeant, attached to the Police Tactical Air Force. On Tuesday 8 November I was on duty at Police Headquarters when the Defendant was brought before me, charged with failing to provide a reasonable explanation of his conduct to the satisfaction of a member of the Force, and with failing to provide body samples enabling a conviction to be obtained against him. After hearing the evidence of Senr. Const. Boots and Sgt. Mengele, and of Sgt. Heydrich and Constable Krugerrand of the Corroboration Squad, I convicted him and sentenced him to 3 months preventive detention, and also cancelled his pedestrian's license and disqualified him from obtaining another licence for 3 years."

After hearing all this evidence, and upon hearing Mr. Fabian and coming to the view that he had indeed only been walking to the shop to buy a newspaper, Orwell J. said:

> "I will grant this application. I cannot believe that Parliament meant what it said when it enacted these sections of the Summary Offences (Police Powers) Act. The whole scheme is a sham, and a parody of true justice. Police officers are by their nature and training suspicious of everyone, and thus tend to assume guilt rather than innocence when some minor mischance or coincidence confirms that suspicion. I do not like the equation of suspicion with guilt; nor do I like this new practice of swearing oaths by St. Agatha Christie, even if the famous detective fiction writer is now the patron saint of the Police Force. I will grant the application, and order the applicant released from custody forthwith."

Since Orwell J., who has not been seen for some weeks, delivered this judgment we have been considering the appeal which was lodged immediately. In our view Orwell J. was wrong in striking down this legislation, for the reasons we will enunciate hereafter.

Parliament's duty is to pass laws which can be enforced, and there is no doubt that this law can be enforced upon anyone. Orwell J. would, we think, agree with us thus far. Police statistics show that 98.3% of crimes (other than those concerning motor vehicles) are committed by pedestrians, and thus we can see nothing but good in the institution, in 1983, of a licence requirement for pedestrians. Of course it was also necessary to introduce a range of offences for which the pedestrian's licence could be cancelled, because any person who abuses his right to walk outside his home, such as persistently walking or by walking in an offensive manner, deserves to lose his licence. All of these matters were submitted to us by Deputy Chief Inspector Bormann, who appeared by special leave for the Crown, and we agree with him.

No arguments were put to us by Mr. Fabian who, as we understand it, fell down some stairs on the way to Court, and is presently indisposed.

It is true to say that liberties lost are gone forever. It may also be that the answer to Juvenal's rhetorical question "Quis custodiet ipsos custodes?" in the present day is "No-one". Be that as it may, Parliament has seen fit to enact this legislation, and it is not for us to strike it down.

GUNST
20 February 1982

THE BURDEN OF PROOF

The campaign in Australia against drug related crimes, heroin in particular, has the result that people charged with trafficking or importing heroin are invariably convicted.

In Australia there has, in the State of Victoria, at least, been a resurgence in the media, mainly Police inspired, for "reforms" in the Law ranging from abrogation of the right to silence, the Jury system and so on.

The burden of proof, being so well entrenched in the minds of not only Jurists brought up in the Common Law traditions, but the people at large, is hard to openly attack. Yet in Australia inroads are being made by Judicial interpretations of Statute and also by specific legislation.

The principle that the prosecution has the task of proving beyond reasonable doubt every ingredient of a criminal offence is deeply imbedded in the English system of justice and those countries which have adopted it.

The trend in Australian Courts away from the "Golden Thread" is a matter which should concern all lawyers brought up on this basic requirement of the Common Law. The direction taken by Australian Courts differs in this respect from other Common Law countries. Australian Courts are not authoritatively bound by the conclusion in Woolmington.

The sanctity of Mens Rea or the objective standard of morality as an essential element of crime at Common Law, has been weakened in recent years. Nevertheless it has, for long past, been firmly established as a cardinal feature of the Criminal Law.

In New South Wales the Court of Appeal concluded that the word "possession" in Section 233B(1)(e) of the Customs Act of the Commonwealth of Australia means that once established, knowledge of the nature of an article that the possessor has in his actual or de facto custody, is not necessary to establish possession; Mens Rea does not have to be established.

Section 233B(1)(e) provides that if possession is established, the burden is upon the possessor to show reasonable excuse for his possession.

Such an excuse may be that he was unaware of the nature of the article possessed.

The decision in **Bush** was reaffirmed in the New South Wales Court of Criminal Appeal.

It was there held that for the purposes of the Section, knowledge in possession (of drugs) is not an essential ingredient of the prosecution case. It is on the accused to prove reasonable excuse on the balance of probabilities. The decision in **Bush's case** has been followed in New South Wales in other cases.

In the State of Victoria, the Court of Criminal Appeal considered the reasoning in **Bush's case** correct, although the matter does not appear to have beeen argued in this particular appeal.

The High Court of Australia refused leave to even consider **Bush's case** in **Rawcliffe** supra and **R. v. Kennedy** as neither appeals, in the Court's view, were matters for the High Court to consider.

Bush's case was probably based on **Williams v. Douglas.** In this case it was held that the word "possession" in a section of the Western Australia Gold Buyers Act 1921-48 means "physical possession" as defined in the Common Law and does not extend to constructive possession, but that physical possession means both actual custody or control and de facto possession.

The approach in the English cases to the question whether the offence contains Mens Rea is that illustrated in **Sweet v. Parsley, Lim Chin Aik v. The Queen, Warren v. The Metropolitan Police Commissioner,** and **Director of Public Prosecutions v. Brookes.** These decisions of the House

of Lords and the Privy Council establish that in the case of a serious offence the presumption should be made. When there is no clear indication whether Mens Rea is required or not, there has been, for centuries, a presumption that Parliament did not intend to make criminals of people not morally blameworthy.

In **Sweet v. Parsley** Lord Reid made it clear enough that in cases of minor regulations or public health offences, the presumption is weak — in cases of a serious nature the presumption is very strong indeed. That an essential ingredient in the offence is Mens Rea in acts of a truly criminal character (for a conviction under the Commonwealth Customs Act of being in possession of heroin, the penalty is 25 years maximum and, in certain circumstances, life!).

In the **Director of Public Prosecutions v. Brookes** the Privy Council was considering the decision under Section 7 of the Dangerous Drugs Law of Jamaica.

Following an earlier case, the **Queen v. Livingstone,** the Privy Council held that the word "possession" in Section 7c of the Dangerous Drugs Law requires that he must have had knowledge that he had the thing in question, and that he must be shown to have had knowledge that the thing he had was ganja.

The other side of the coin — specific statutory legislation, and Section 233 of the Customs Act must now be so regarded, is no less disconcerting.

Under the provisions of the Poisons Act of Victoria, "possession" is defined as expressly so as to be constituted where a thing is upon any land or premises occupied by an individual or is used, enjoyed or controlled by him in any place whatsoever unless it be shown that he had no knowledge thereof.

It has been held that formula places the onus of proof of lack of knowledge on the balance of probabilities upon the defendant. There has been no protest by lawyers or others about this provision; and similar provisions exist in other states.

What is going to happen to "terrorist offences" or difficult-to-prove white collar crimes? Should the burden of proof be eased in these cases because they are unpopular or difficult to establish? Undoubtedly these matters will become very real questions in the immediate future.

It must be borne in mind that in Common Law countries there is no investigatory procedure to make sure the material is adequate before a person is charged. That is a decision left to the Police to determine and, in indictable offences, if there is some credible evidence, a Magistrates generally commits.

A further question has to be considered, namely — do Juries only convict when satisfied beyond reasonable doubt?

I probably have as much experience in Criminal Trials as anyone here, and to this nebulous and never examined question, I say in most cases Juries do not.

This is not because Juries are perverse. They are conscientious, clever and intelligent and, except in most rare instances, right in their verdicts. Nevertheless, testing the matter on the basis of common sense, if a case on the real probabilities, not merely the balance of probabilities, satisfies a Jury, will they acquit because they are told the accused must be acquitted unless they are satisfied beyond reasonable doubt? They will surely say in these circumstances we are so satisfied.

So what does the burden of proof solemnly put to all Juries amount to anyway?

It tends to make sure that the evidence against the accused will be looked at critically.

Police evidence, for example, in many cases the basic prosecution evidence, will be subject to close scrutiny.

Surely we must look realistically at the disadvantages of the accused.

He is just that — the accused. In many Common Law countries the accused is in a dock flanked by uniformed prison attendants. There surely is a "proneness in all of us" to assume such a person guilty.

Permanent Prosecutors with ample time to prepare their case — all the resources of the State available to them to obtain evidence and information is a formidable attack. Few accused can afford equal representation as well prepared.

The whipped up prejudice in present day communities through enormous and universal access of media material, in drug trafficking problems and any "newsworthy" crime is a problem. The recent "Ripper" media treatment is now commonplace, and violently prejudicial to any trial. The tendancy of many trial Judges is to show preference, subtle or otherwise, to the evidence for the prosecution.

These are merely some problems all trial lawyers in criminal cases experience when appearing for persons accused of crime.

The only real weapon to try and balance the scale is being able to tell the Jury about the burden of proof and explaining its meaning and hopefully its sanctity in relation to their preconceived notions and prejudices.

Defence material will still continue to be looked at with suspicion and doubt. After all, why is he charged if innocent! A fair trial is, after all, what is being safeguarded. Ther burden of proof does not mean that guilty people must escape conviction. It does result in most cases in the trial being a fair one.

It is hard to identify all the disadvantages of the accused, but all trial lawyers know them and are disturbed by them. Getting a Jury to agree, it's great to live in a country where the burden of proof is on the Crown, is easy — in theory! It's another matter persuading them to exercise that theory in practice.

So what happens when the burden is put on an accused to exculpate himself albeit on the balance of probabilities.

The chances are pretty good that the balance of probabilities will be equated with the Jury's ideas of what the Crown's burden beyond reasonable doubt really amounts to, or close it. It seems probable, unless the evidence of the accused is accepted, not merely raising a real doubt, he will be convicted. To have accepted the evidence of an accused person with the atmosphere and prejudices against him or her in most trials is to hope for a minor miracle. The chances of a fair trial are remote. The chances of a person, indeed and in fact wrongly charged, being convicted, are a reality. It has happened and will continue to happen even with the safeguard of the burden of proof.

Accordingly, I view any tarnishing of the "golden thread" as a serious inroad into a by and large good legal system.

Such a burden merely makes a fair trial more likely than not – it is, with the Jury system, probably the last of our real liberties.

LAZARUS

A paper presented to the Lisbon Conference.
May 1981.

PERSONALIA

Professor Louis Waller has been appointed Victorian Law Reform Commissioner.

● ● ●

In July 1982 Dr. Robin Sharwood retires as Executive Director of the Victorian Law Foundation. The position will be taken by Professor Ian Scott.

● ● ●

T.H. Smith has been appointed full time member of the Australian Law Reform Commission for a further term of twelve months commencing March 1982.

● ● ●

BUILDING DISPUTES PRACTITIONERS SOCIETY

The Society is holding two evening Seminars at the Master Builders Association Albert Street, East Melbourne, on Wednesday 21st April and Thursday 29th April.

On the first evening two papers will be presented – "Obligations of the Builder with respect to the quality of workmanship" by Geoff Masel.
"The measure of damages where rectification is not possible" by David Byrne.

The second evening will be devoted to the House Builders Liability Legislation. Mr. Forbes (MBA) and Mr Gilhooly (HIA) will discuss the legislation and its implementation. David Henshall will comment.

Papers will be published.
Cost (including dinner)..... $25.00 for members
$30.00 for non-members

Enquiries to Michael Ryan, Messrs Wainwright Ryan & Co., P.O. Box 40, Mitcham, 3132. (Tel. 874 (Tel. 874 7377)

CAPTAIN'S CRYPTIC No. 39

ACROSS

1. partners, or nearly so (10)
8. new Chief Judge (7)
9. the tree that grows in Colorado (5)
10. legumes become a church recess (4)
11. freshwater lobster (8)
13. given the boot (6)
15. Oxon's counterpart (6)
17. bring up, as in a young person (8)
18. stretch from end to end (4)
21. French right of admission (6)
22. Popeye's elixir (7)
23. "But where are the snows of . . . "(Villon) (10)

DOWN

2. An illiterate yachtsman would pick these up (5)
3. not yours (4)
4. next best thing to bulls (6)
5. "that night . . . ."(G.M. Hopkins Carrion Comfort) (4,4)
6. captious reasoner (7)
7. at the lawyer's pinnacle
8. in any wise (10)
12. actions stood over to next sittings (8)
14. that for which the jury stands (7)
16. to whom a lease is granted (6)
19. Hindu life force (5)
20. wee (4)

(Solution Page 41)

LEGGE'S LAW LEXICON
"H"

Habendum. "to have and to hold". That part of the ceremony which recognises that marriage is indeed a species of property.

De Haeritico Comburendo. A convincing (but unfortunately obsolete) argument in favour of not doing your own thing.

Hand-cuff. A common law bond.

Hangman. One of the oldtime swingers.

Harbouring. The offence of concealing deserters, felons and constables on duty. (Three classes of persons).

Hard Labour. One month for the Crown in the Full Court.

Harsh and Unconscionable. The solicitors on the other side.

Hartog. An obscure eighteenth century silk reputedly one of the anonymous authors of the Barristers' A.B.C.

Hat-Money. La Contribution des chausses ou pot de vin du maitre.

(H)avya. An oral question mark used with most effect in running down cases and demarcation disputes. 13 S.A.L.R. 242. In cross-examination the proper form is **(H)avncha;** see also didja, dinja, y dincha.

He. Despite the views expressed by Dicey (Law of the Constitution, 9th Ed. p. 43) s.61 Property Law Act shows what Parliament can do if it really tries.

Hearing. The ostensible activity of an appelate court.

Hearsay. The evidence of a corroborating police witness.

Heir apparent. One's sixteen year old son on pay day.

Heir presumptive. One's sixteen year old at any time.

Heraldry. An old and obsolete (sic) abuse of buying and selling precedence in the paper of causes for hearing.

Hereditary duties. A full court consisting of Starke, Fullagar and O'Bryan. J.J.

Heretic. A stake-holder.

Hermeneutics. The art of interpretation and construction.

Victorian Bar News

High Court. A court of last resort in the Australian antipodes so anxious not to allow the brilliance of advocacy to overcome the justice of the cause that all argument was required to be reduced to one page of writing and destroyed not less than 12 months before judgment was delivered. For the same reason its members were permanently confined in the interior of the continent and protected from all mundane influences.

Hi-Jack. The common-law misdemeanour of familiarity towards the C.J. (now obsolete).

Highway. The road to Canberra.

Highway Robbery. Fee given to counsel for the respondent on applications for special leave to appeal.

Holder in due course. Counsel who receives a floating brief in good faith and without notice of the title of the drawer.

Holding Company. A firm of solicitors acting for the plaintiff in an industrial accident case.

Holding out. The art of counsel instructed by such a firm of solicitors who does not settle until the third day of the trial.

Honorarium. Despite S.10 of the Legal Profession Practice Act, this is still a voluntary fee to one who exercises a liberal profession.

Honorary Services. Those rendered by counsel for an unsuccessful plaintiff in Supreme Court juries.

Honorable. A title of courtesy given to Maids of Honor and judges of the Supreme Court.

Horse power. The force required to persuade McPhee, Q.C. to assist a Royal Commission.

Hostile Witness. One who gives evidence before the Royal Commission into the Builders Labourers Federation.

House breaking. Criminal conversations (q.v.)

House of correction. County Court chambers.

Hue and cry. (i) Pursuit with horn and voice. (ii) Minstrelry.

Husband and wife. Formerly one now often three.

Hush money. The fee for appearing on an originating summons, (see "whispering")

Hustings. The County Court of the City of London (and elsewhere).

Hyrnes. ????

Autumn 1982

Kent, in the course of a plea for a drug offender, was telling Kaye J. that his client was repentant, that a crushing sentence would be inappropriate and that the Judge should be confident that he would not sin again.

His Honour:	There is no way of really assessing it.
Kent:	You can only judge that after the sentence is served, Your Honour.
His Honour:	And you never know.
Kent:	Well, you know if they come back, Your Honour.
His Honour:	The judge never knows or rarely knows.
Kent:	Sometimes they do, Your Honour. Sometimes they are unfortunate enough to come back before the same judge.
His Honour:	In ten years they have not come back before me.
Kent:	I was just wondering, Your Honour, whether they were all still in.
His Honour:	Thank you. Well, that must be a very encouraging note to sit down on so far as Skelly is concerned.

His Honour sentenced Skelly to 12 years with a minimum of 9 years.

R. v. Skelly
9th November 1981

Editors Note: His Honour is due to retire in 1991.

• • •

Chairman to unrepresented defendant who pleaded not guilty to shoplifting:

> And if you go into the witness box and give evidence on oath you can be cross-examined by the bench and the sergeant here too.

Sunshine Magistrates Court (2nd Division)
19th October 1981

• • •

Boris Kayser was cross-examining a kidnap victim, and attempting to show that a co-accused was the obvious ringleader

Kayser:	"He was subject to violent swings of mood, was he not?"

Witness looks puzzled.

Kayser:	"If you don't understand my question you only have to say so".
Dugan S.M.:	"He might think you are referring to Benny Goodman".

Police v. Bentvelzen (committal)
Melbourne Magistrates' Court,
20th January 1982

• • •

Beder, making a plea for the prisoner to be released pursuant to the provisions of Section 13 Alcoholics and Drug Dependent Persons Act 1958:

Beder:	He has graduated from glue sniffing to drinking now – he gets a bigger kick out of it.
Judge:	So he doesn't really sniff glue now then. He's more of a drinker than a glue sniffer – given up the glue now.
Beder:	Well occasional.
Judge:	Just a social glue sniffer now is that what you mean.

R. v. Wooley,
Cor. Judge Ravech
5th February 1982

• • •

In the course of giving reasons for finding the charge of theft proved:

I find there was theft without the intention of permanent gain. I am not satisfied there was an intention to return although I do find there was no intention to permanently deprive.

Tenni S.M.
Sunshine Childrens Court
8th December 1981

● ● ●

Zayler making plea: My client works as a bar steward at State Parliament House is also a qualified psychiatric nurse . . . .

S.M.: That qualification would be pretty useful in his present employment.

Cor. Cosgriff S.M.
Seymour Magistrates Court
8th February 1982

● ● ●

It is 10.05 am, and 40 degrees Celsius. The Monday morning after a large Friday night raid on St. Kilda massage parlours.

If any person present, the gentlemen that is would feel more comfortable without a coat he can feel free to take it off. The ladies take off what they like.

Cor. Duggan S.M.
City Court
15th February 1982

● ● ●

Hardy to Turkish Interpreter after a long discussion between the Interpreter and a witness.

Hardy: Mr Interpreter, would you tell us what the witness has been saying?

Interpreter: I am trying to get the right answer.

Cor. Burke S.M.
Broadmeadows Court
10th February 1982

● ● ●

On the 11th December last the 1.00 p.m. lift at Owen Dixon Chambers was full with those bound for the 13th Floor and elsewhere. Respectful and subdued conversation as usual.

Something startled a young lady. "Are **you** a judge?" She asked of P. Murphy J. incredulously.

There was an emberrassed silence.

"I think I should give the 'Trial by Jury' answer" said Murphy J.

Editors Note: His Honour was probably referring to the Gilbert & Sullivan operetta:

Judge: For now I am a Judge!
All: And a good Judge too!
Perhaps he had forgotten what is said a little later:-
Judge (pianissimo) It was managed by a job -
All: And a good job too
Judge: It is patent to the mob
That my being made a nob
Was effected by a job.

● ● ●

S.M.: (to quietly spoken female witness): Madam could you please keep your voice up and look across the Court.

S.M.: (30 seconds later): Madam you must keep your voice up. Everyone must hear what you have to say.

S.M.: (30 seconds later): Madam I want you to give your evidence like you're screaming at the kids.

Cor. Cosgriff S.M.
Benalla Magistrates Court
12 January 1982

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Counsel: When did you have your first drink?
Witness: At 11 a.m.
Counsel: Where?
Witness: At the courthouse.
McAllister S.M. Where did you say?
Witness: At the courthouse Sir . . . .
The Courthouse Hotel.

Footscray Magistrates Court
cor McAllister S.M.
24th February, 1982.

● ● ●

SPORTING NEWS –

Once again the Solicitors had to eat humble pie following a thrashing at the hands of the Bar and Bench at the annual Golf Match. The annual event, playing for the Sir Edmund Herring Trophy, was held at Royal Melbourne Golf Club on the 26th February in ideal weather conditions. Mr Justice Treyvaud's acceptance speech sounded identical to that of the year before and we believe he could be repeating it next year. Croyle and Peter Kozicki almost completed the rout of the opposition by sharing the prize for the best individual pair.

● ● ●

Expressions such as "he couldn't run a message" or "he couldn't run out of sight on a foggy night" were laid to rest when certain members of the Bar and Bench competed in a legal "fun run" late in December. In almost ideal running conditions, about 70 members of the legal profession participated in the event known as the "Legal Niner". For some reason the Hartog Berkeley Copper Shoe Trophy was not available for competition – perhaps it is too valuable to be moved from the cabinet at Owen Dixon Chambers. Danos ran second in the event and amongst those who competed were Gray J. Judge Byrne, Castan Q.C. and Francis Q.C. The last mentioned completed one lap of the two lap event and it is believed he was given both oxygen and smelling salts before being photographed by the "Age" photographers. Sir Murray McInerney played a major role in the running of the event and looked fit enough to give many of the younger brigade a run for their money. It was perhaps with this in mind that he donated a trophy for the fastest time. The presentation of the trophies took place at the Albert Cricket Ground during the luncheon interval of the Bar – Law Institute Cricket Match which, incidentally, was won by the Bar by the narrowest of margins.

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"Four Eyes"

Photo: Courtesy of "The Age"

What is the exchange taking place between McInerney J. and Francis Q.C. at the fun run?

The winner of this caption competition will have his name and entry in the next edition.

BAR CRICKET 1981

While the leftover tinsel and forgotten plastic lights of Christmas intruded into the summer haze of 1982, cricket lovers at the Bar were still discussing and debating the sensational year that was which culminated in the Bar again wresting the Sir Henry Winneke Trophy from the Law Institute.

For the first time, 1981 saw the Bar play against the Melbourne Grammar School XI on Sunday 6th December. In an exciting game of high standard, the school batted first and withstood a blistering pace attack from S.K. Wilson, Dean Ross and Dyer who all exhibited tenacity and the occasional quick one that sent the school boys ducking for cover. The boys were blitzed by Wilson's left arm swingers, Ross's extreme pace (just short of a length) and Dyer nagging away consistently at the off stump.

The end of 39 overs saw the school a 6 for 145. Not a large score but one that was to prove difficult to overtake.

The Bar innings opened crisply and quickly with Wraith and Couzens scoring freely. Wraith was first to go, bowled by a swinging full toss for 11 runs. Couzens scored 22 runs before holing out in the covers.

New boy Sharpley, impressed, staying around for some time to collect 18 runs and Tony Neal looked stylish before being bowled by the best ball of the day – a beautiful in-swinger. Southall, batting aggressively, struck the ball hard on several occasions for "fours".

With only 3 overs left to bowl, the Bar passed the school's total but had lost 8 wickets in the process The school had lost only 6 wickets and their two opening batsmen had retired. The game was an exciting, well fought spectacle and the boys played the game in a spirit and manner to be admired and emulated by all. Tony Neal (Old Paradian) overhearing the two Old Melbournians, Wilson and Couzens praising their successors' behaviour and sportsmanship interjected that "the boys might well have been to a Catholic College". The Bar's thanks go to Richard Birchenall the Cricket Master at Melbourne Grammar, who, with Wilson, organised the match which it is hoped will now become an annual event.

Intrigue, as only the Bar knows it, surrounded the selection of the team to play the Law Institute. Prior to the match the Old Triumvirate of Dove Q.C., Gillard Q.C., and Wraith sat late into the night in an effort to select the 11 players who would bring back the Sir Henry Winneke trophy to Owen Dixon. In the weeks preceding the game, there had been moves by a prominent Q.C. to usurp the Captaincy from Wraith, which moves, in the light of subsequent events, fortunately proved unsuccessful. When the team was announced there were two notable omissions in hard-working executive officer and opening bowler Wilson and the top scorer from the Melbourne Grammar game Cooper, which brought howls of protest (especially from them).

On the 21st December at the Albert Ground, the Bar batted first, scoring 156 runs in their 40 overs. Highlights of the Bar innings were a fine 51 runs by Captain Wraith who sacrificed his wicket attempting to push the run rate along, and yet another little gem of an innings from Connor who scored 34 runs not out. A prominent Q.C. scored 8 runs.

In one of the most exciting finishes ever witnessed in a Bar v. Law Institute Cricket Match. at the end of 40 overs, the solicitors scored 9 for 155 just 2 runs short of victory. Connor opened the bowling with his medium pace leg cutters and the opening batsman J. Ryan was caught off Connor's bowling by wicket keeper Peter Couzens who took a magnificent diving catch in front of first slip. Dean Ross who had promised so much in the game against Melbourne Grammar bowled only 4 overs before breaking down with a hamstring injury. Cavanough and Harper fulfilled the stock bowling effort taking 2 for 21 and 1 for 32 respectively with aggressive and accurate bowling.

Connor finished with the fine figures of 1 for 13 off 8 overs and shared with Wraith the nomination for man of the match. The Bar's fielding was excellent. This was evidenced by the fact that, of the 9 wickets to fall, 5 were catches and 2 were run outs. One of the run outs included a magnificent piece of fielding by Connor who threw down the wicket from his position at mid wicket.

The last over was fittingly bowled by Captain Wraith at which time the solicitors required 4 runs to win and the Bar required 1 wicket to win. Captain Courageous in an Underwood-like exhibition bowled his left arm orthodox leg breaks, keeping the solicitors to 2 runs. The Bar won the game for the second time in 3 years. This is a magnificent effort considering the huge disparity of numbers from which the Law Institute and the Bar can select players.

S.K. WILSON

EXOTIC APPOINTMENTS

An exchange of correspondence occurred last year between the Editor and the Crown Agents in London. The Crown Agents handle judicial and other legal appointments in countries outside the United Kingdom.

Bar News to Crown Agents

10th September 1981

Dear Sirs,

I am of the Victorian Bar, and editor of the Victorian Bar News which is published quarterly.

I understand that you have responsibility for negotiation of judicial and other appointments outside the United Kingdom. It strikes me that some of the members of the Victorian Bar would be inclined to apply for such appointments, and may well be suited to them.

It is of concern to me that the availability of any appropriate positions be brought to the notice of our members. Would it be possible for you to notify me of any such positions and how and by whom they should be applied for?

I would hope that any information you could provide would appear in the next issue of the Victorian Bar News for 1981.

Yours sincerely,

David Ross
Editor, Victorian Bar News

Crown Agents to Bar News

6 October 1981

Dear Sir

I refer to your letter of 10 September concerning possible legal appointments.

2 Whilst I agree that a number of the members of the Victorian Bar may wish to apply for the appointments we handle on behalf of Overseas Governments, I regret that in view of the difficulty in interviewing Australian candidates etc. it would be impractical for us to advertise in the Australian legal press.

3 All our interviews are carried out in London often with technical/specialist assistance provided by the Government in question or the Overseas Development Administration. Any candidates who are resident overseas wishing to travel to London for interview have to do so at their own expense.

4. In view of the above remarks I regret that I am unable to take up your kind offer of advertising vacancies in your quarterly magazine. Your letter will however be kept on file and should a vacancy arise which requires qualifications/experience specific to Australasia we shall of course reconsider our decision. In the meantime a copy of your publication would prove a useful addition to our files.

5 Thank you for the interest you have shown.

Yours Faithfully,

Anne E. Eames
Administration Officer

Bar News to Crown Agents

14th October 1981

Dear Madam,

Thankyou for writing to me on October 6. I will bring the contents of your letter to the notice of members.

As requested I enclose a copy of **Victorian Bar News.**

Yours sincerely,

David Ross
Editor, Victorian Bar News

Victorian Bar News

RECENT CRIMINAL LEGISLATION

Notified in Government Gazette since 14/9/81

Motor Car (Miscellaneous Provisions) Act 1980 (No. 9477)
S.4 to operate 21/10/81 (G.G. 21/10/81, p.4340).

Motor Car (Further Amendment) Act 1981
To operate 20/12/81 (G.G. 16/12/81, p.4148)

Firearms (Shooters Licences) Act 1981
S.2(2) operates 1/1/81 (G.G. 9/9/81, p.2939);
Remainder of Act operates 1/1/82
(G.G. 16/12/81, p.4148)

Motor Car (Amendment) Act 1981
S.1,2,4,5,6,7,8 and 10 operate 20/12/81 (G.G. 16/12/81 p.4147)

Community Welfare Service Act 1978
S.22,23,34 and 57 operate 6/1/82 (G.G. 6/1/82, p.6)

Juries (Amendment) Act 1981
Whole Act (except Section 5) operates 2/2/82 (G.G. 27/1/82, p.264);
S.5 operates 3/5/82 (G.G. 27/1/82, p.264)

REGULATIONS

Juries (Fees and Rates of Compensation for Jurors) Regs. 1982 ..... S.R. 23/1982
Road Traffic (Public Transport Priority) Regulations 1981 S.R. 498/1981
Evidence (Crown Witnesses Allowances) Regulations 1982..... S.R. 1/1982
Community Welfare Services (Prisoners Earnings) Regs. 1981..... S.R. 518/1981
Motor Car (Speed Measuring Devices) Regulations 1981 ..... S.R. 520/1981

HASSETT

LETTER TO THE EDITORS

Dear Sirs.

In the light of the vast and increasing number of notices seeking return or location of lost or borrowed books from Chambers of members of the Bar, may I suggest that the Victorian Bar News provide a facility for members of the Bar to advertise such notices.

If such request is acceded to may I begin by requesting the person who borrowed my Uniform Building Regulations to return them to my room.

Yours Faithfully,
HENRY JOLSON

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SOLUTION TO CAPTAIN'S CRYPTIC No. 39

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■	■	A	■	U	■	N	■	H	■	O	7 O
8 W	A	L	D	R	O	N	■	9 A	S	P	E	N
H	■	E	■	S	■	E	■	T	■	H	■	T
10 A	P	S	E	■	11 C	R	A	Y	F	I	S	H
T	■	■	■	12 R	■	S	■	E	■	S	■	E
13 S	A	14 C	K	E	D	■	15 C	A	N	T	A	B
O	■	O	■	M	■	16 L	■	R	■	■	■	E
17 E	D	U	C	A	T	E	D	■	18 S	19 P	A	N
V	■	N	■	N	■	S	■	20 T	■	R	■	C
21 E	N	T	R	E	■	22 S	P	I	N	A	C	H
R	■	R	■	T	■	E	■	N	■	N	■	■
■	■	23 Y	E	S	T	E	R	Y	E	A	R	■

MOVEMENT AT THE BAR

Member who signed the Roll since the Summer 1981 Edition

Stephen John ARCHER (N.S.W.)

Member who has transferred from the practising list to the Masters and other official appointments List.

T.A. Hinchliffe

Members who have had their names removed from the Roll of Counsel at their own request.

I. Luke (Mrs.)
P.W. McCabe
P.W. Davison

Total Number in Active Practice **747**

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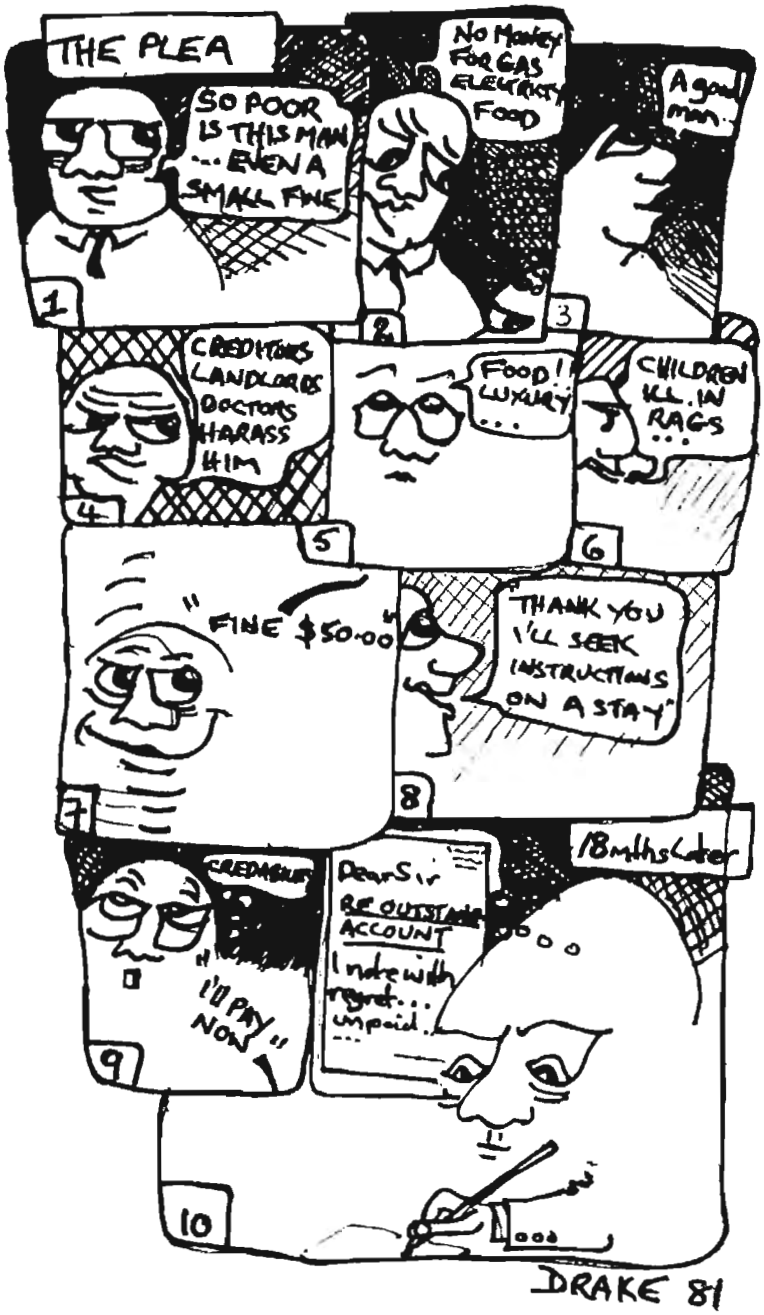
THE PLEA
SO POOR IS THIS MAN ... EVEN A SMALL FINE
No Money FOR GAS ELECTRICITY FOOD
A good man.
1
2
3
CREDITORS LANDLORDS DOCTORS HARASS HIM
4
FOOD! LUXURY ...
5
CHILDREN ILL IN RAGS ...
6
"FINE $50.00"
7
"THANK YOU I'LL SEEK INSTRUCTIONS ON A STAY"
8
CREDITOR
"I'LL PAY NOW"
9
Dear Sir RE OUTSTANDING ACCOUNT I make with regret... unpaid. ...
18 mths Later
10
DRAKE 81