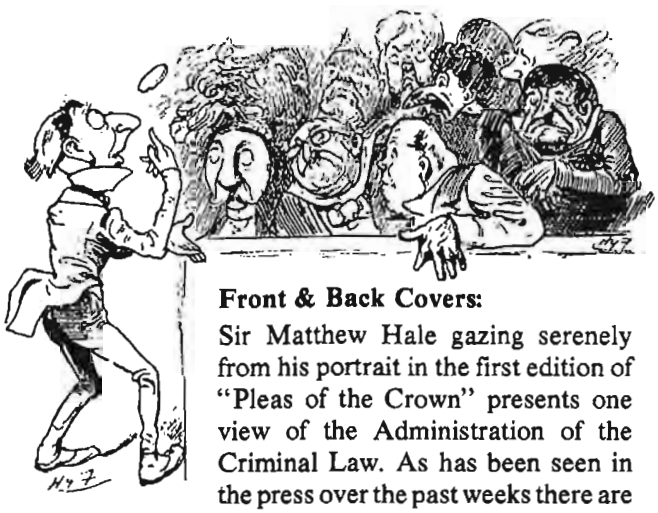
Victorian Bar News

WINTER EDITION 1984



Ayes or Noes.

Front & Back Covers:

Sir Matthew Hale gazing serenely from his portrait in the first edition of "Pleas of the Crown" presents one view of the Administration of the Criminal Law. As has been seen in the press over the past weeks there are various other views.

King's view is on page 41.

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BAR COUNCIL REPORT

Attorney-General
The Attorney-General attended a meeting of the Bar Council on the 12th of April 1984 and addressed the Council on a variety of matters which included —

(a) a proposal that a legal fees tribunal be established in Victoria. This tribunal would replace the present variety of legal fee fixing bodies;
(b) the appointment of temporary Recorders in both the Supreme and County Courts;
(c) a proposed extension of the Magistrates Courts civil jurisdiction to $10,000;
(d) consideration is being given to a proposal to change the office of Coroner in this State. Allied with this proposal is the suggestion that the Coroners Court be moved to a new site in South Melbourne and that there be established at Monash University a chair of Forensic Pathology.
(e) the Corporate Affairs Office will be computerised in the immediate future;
(f) that a discussion paper on the structure of the legal profession is presently being prepared by officers of the Attorney-General's department. It is expected that this document will be made available to the Bar Council within a couple of months.

The Bar Council has offered a response to a number of these matters.

County Court
Pleadings: The Victorian Bar Council has adopted a committee recommendation that generally there be pleadings in the County Court if requested by the Plaintiff in his Particulars of Demand except in cases of property damage and/or personal injuries arising from motor vehicle accidents.

Extension of Jurisdiction: At the request of the Chief Judge of the County Court and the Litigation Lawyers Section of the Law Institute of Victoria several members of the Bar have been nominated to an ad hoc committee to be established in order to monitor the effects on the County Court of its increased jurisdiction.

General Meeting
On Monday 21st May, approximately 40 members of Counsel attended the General Meeting of the Bar.

The meeting resolved to amend Counsel Rules by requiring that all barristers be insured against claims for professional negligence. Exempt from this requirement are Law Officers, Barristers who are not in active practice, Crown Prosecutors or such other categories or persons as may be described from time to time by the Bar Council.

The meeting also passed a resolution empowering the Bar Council to strike off the Roll of Counsel the name of any member who does not pay to the Treasurer, as and when required, the amount of any fine imposed upon him, or who has failed to lend to Barristers Chambers Limited the amount, not exceeding $4500, required to be lent pursuant to Rule 41A.

At the conclusion of the meeting the Chairman reported on the results of the questionnaire on clerking which had been distributed to all members of the Bar, and invited comments and discussion from those present.

Interstate Counsel Appearing in Victoria
The Bar Council has adopted the policy of the Australian Bar Association concerning the appearance of interstate counsel. That policy is embodied in the following resolution which was passed by the Australian Bar Association in February last.

> "That the Australian Bar Association adopt the policy that if a barrister practises in a State or Territory outside his home State in matters other than based in the Federal jurisdiction that barrister should seek membership of the Bar Association of the State or Territory in question".

Court Administration
The Bar Council has accepted the invitation of the Deputy Secretary for Courts to participate in "the Courts Management Program" being mounted by the Law Department. That program includes the following areas of inquiry —

- organisational options for courts management in Victoria;
- administrative systems and management information data;
- human resource development and management;
- communication and consultation;
- court house maintenance and development.

Bar Dinner

The Annual Bar Dinner was held once again at the function centre at the Moonee Valley Race Club on 2nd June. A record number of 350 members attended and heard Mr Junior Silk, A.C. Archibald QC propose the toast to the 11 honoured guests Speeches in reply were made by Dawson J, Nathan J, and Judge Rowlands.

Clerk "P"

On 28th May 1984, Bar Council gave its approval to Mr Peter Roberts to act as a Barristers Clerk. Mr Roberts was formerly employed by Mr Kevin Foley.

Mr Roberts will act as Clerk for those members of the old List "C" as have not transferred to other lists. The Bar Council actively supports and encourages applications for transfer to the new list in order to give it depth and stability.

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ETHICS COMMITTEE REPORT

Disciplinary Hearings
Since last reporting, the Committee has conducted two hearings concerning alleged disciplinary offences by Counsel. One of the complaints was dismissed.

The hearing at which the offence was found to be proved may be briefly summarised as follows:—

Misleading counsel for a co-accused in a manner which could have acted to the detriment of the said co-accused. (In this case counsel indicated to counsel for the co-accused prior to the trial that he was intending to call his client to give sworn evidence in circumstances that could be regarded as being against the interests of the co-accused. In the light of this indication the co-accused changed his plea from not guilty. It subsequently appeared that counsel did not intend to call his client).

There were found to be a number of exceptional circumstances surrounding the case and the Committee resolved to reprimand Counsel.

Rulings
The Committee was recently asked to consider the rule appearing at page 56 of Gowans. It is in the following terms:—

> "As a general rule Queen's Counsel should refuse all drafting work as being appropriate to Juniors only but there may in particular cases be exceptions to this rule."

The Committee is of the view that Queen's Counsel may draft letters which may become necessary in the course of litigation or the giving of advice, and fall within the exception to the rule.

Amendments to Ethics Rules
The Committee is currently considering amending the Rules to permit Counsel to use business cards in the course of practice.

The Committee is also considering the circumstances in which photographs of Counsel may be used for publication in conjunction with an article written by Counsel.

WELCOME: P. GRAY J.

On Wednesday 23rd May 1984, Peter Gray was welcomed by the profession, family and friends as a Judge of the Federal Court of Australia in its Industrial Division.

His Honour was educated at Carey Grammar and the University of Melbourne, graduating in LLB (Honours, First Class) in August 1968. He spent two years as an Associate to the Honourable Sir Richard Eggleston, who was then a judge of the Commonwealth Industrial Court. He then served articles at Mallesons for four months before embarking on a B.C.L. at Oxford University in 1970. He took his degree in June 1972. He was called to the Bar in England in November 1971 and, appropriately enough, elected to join Gray's Inn.

Mr Justice Gray signed the Victorian Bar Roll on 6th September 1972 and practised widely in various jurisdictions during his first five years at the Bar. This included a good deal of circuit work at Bendigo. From 1977 he came to specialize in Industrial Law and, at the time of his appointment, was one of the most able and forceful Industrial Law barristers in Australia with an exceedingly busy practice which took him to virtually all parts of the country.

He read with John Winneke and himself had four readers, Shane Marshall, John Goldberg, Paul Cosgrave and David Staindl. Asked to comment one day on the capabilities of his new master, the first reader remarked to a colleague that there was nothing surer than that one day Peter Gray would become a judge. It was not then realized how near that day was.

He is a fount of ebullient good humour. All of his readers and indeed, the rest of the sixth floor in Owen Dixon Chambers will attest to this. It will be an asset in the Federal Court as will his prowess in public speaking. In 1983 he won Rostrum's Jo Davis Cup, Victoria's premier public speaking contest. Furthermore, he will be the only vegetarian, tea-totaller, canoeist, water-polo player, cricketer and aerobics freak, all in one, to occupy judicial office in Australia. His fitness for the task ahead cannot be doubted.

Mr Justice Gray was married in 1971. He and his wife Ruth have two children, Belinda aged 10 and Alex aged 7, all of whom are justifiably proud of him.

His Honour has the distinction to be one of the youngest judicial appointments in the history of the Commonwealth. He celebrated his thirty-eighth birthday only last month. He has now commenced a 32 year sentence of intense and patient listening. The Federal Court's gain is indeed the Bar's loss.

Victorian Bar News

WELCOME: JUDGE HASSETT

Photo: J. Burnside

In 1953 John Hassett joined the State Public Service and served the Law Department as a clerk in the County Court. Thirty-one years later, the former County Court Clerk sat for the first time as a Judge of that same Court. On that day a large crowd of his friends gathered in the County Court to hear Barnard QC on behalf of the Bar and Mr Miles on behalf of the Solicitors of Victoria recount the events of that thirty-one years and to welcome the latest addition to that Court.

The path to the Bench was not an easy one. After leaving the Law Department at the age of 20, the young John Hassett worked for Galballys as a law clerk studying in his spare time to obtain his matriculation. His law studies were at the University of Melbourne as a clerk articled to Gair & Brahe. After he was admitted to practice on 1st March 1967, he became a partner in that firm and opened a branch office at Myrtleford. Following a period as a member of Messrs Walter & Hassett in Beaumaris, His Honour signed the Bar Roll on 4th February 1971 and read with Neil McPhee. He had two readers, Frank Brennan and Bob Williams.

He has been a devoted and active member of the Bar. He served on the Bar Council from 1974 to 1977 and held office in the Criminal Bar Association from 1978 to 1983. On 27th February 1979 he was appointed Crown Prosecutor which office he held until his elevation to the Bench.

His particular interest as a barrister has been the criminal law. In this field equally his involvement has been characterised by selfless service — to the community, to the profession and to his clients. The community has reason to be grateful for his contribution on the McGarvie Committee for Shorter Trials, for his many useful proposals for law reform and for his five years as Prosecutor. The profession is grateful for his work for the Law Institute and the South-Eastern Solicitors Group, for his service on the Bar Council and many of its committees and on the Criminal Law Association and for his participation in the production of the textbook "Indictable Offences in Victoria". His clients and his opponents have come to respect his energy, erudition and fairness.

His singularly wide background and his readiness to give generously of himself for others are qualifications which give the Bar reason to welcome John Hassett to the Bench of the County Court. They did so in great numbers on 17th May 1984.

ATTORNEY-GENERAL'S COLUMN

Recent Legislation
A number of pieces of legislation affecting the practice of barristers were passed in the Autumn Session of Parliament. I propose shortly to issue a law bulletin which will contain details of the legislation, but I will take the opportunity to mention the more important ones here.

The Interpretation of Legislation Act comes into force on the 1st July 1984. It allows courts to look at extrinsic materials in ascertaining the underlying purpose of legislation. The Act is a re-enactment of the existing Victorian Interpretation Act. The Act also provides in Section 45 that "may" means "may" and "shall" means "shall". The Act is set out in a new format with a clear table of provisions and section headings in bold type. All Acts enacted following the commencement of the Interpretation of Legislation Act in Victoria will be set out in the same format as the Interpretation of Legislation Act.

The Evidence (Amendment) Act provides for the extension of legal professional privilege to legal aid bodies; for waiver of medical privilege after the death of the patient by the legal person or representative of a patient or by the spouse or child of the patient; for the certification of public documents by the holder of an office declared by order of the Governor-in-Council published in the Government Gazette to be an office to which the section applies so that reproduction of a document may be admissable in evidence without further proof, and allows any solicitor holding a practising certificate to be able to take affidavits for use in any court in Victoria.

The Status of Children (Amendment) Act clarifies the status of children born as a result of artificial insemination and in vitro fertilisation procedures.

The Judgment Debt Recovery Act allows for the payment of judgment debts by instalment and abolishes imprisonment for non payment of judgment debts except in the case of wilful non payment.

The Supreme Court (Amendment) Act allows for representative actions to be taken and defended in damages cases and provides for the appeal to the Full Court from a single judge of the Supreme Court in all matters.

The Magistrates' Courts (Jurisdiction) Act increases the jurisdiction of the Magistrates' Courts to $10,000 in cases of property damage claims arising out of motor car accidents and $5,000 in all other cases. It also removes the jurisdiction of Justices of the Peace in criminal matters.

Various amendments were made to the Crimes Act in the Crimes (General Amendment) Bill. The Crimes (Conspiracy Incitement) Act codified the criminal law conspiracy and incitement and the Crimes (Criminal Investigations) Act provides for a six hour period for the police to interrogate persons arrested in respect of suspected crimes with provision for extension of time by a Magistrate or senior Clerk of Courts with the consent of the accused person.

The Courts
The quadrupling of the jurisdiction in the County Court has resulted in the lists in the Supreme Court being reduced by more than half. Pre-trial conferences have been instituted in personal injury cases transferring from the Supreme Court to the County Court and this has resulted in a settlement rate of about 80% in those cases. It has anticipated that pre-trial conferences will be extended to all personal injury cases in the County Court. Pre-trial conferences in personal injury cases have been instituted in the Supreme Court on circuit with very considerable success and it is anticipated that these will also extend to personal injury cases in the Supreme Court in Melbourne. The issuing rate in the Supreme Court is down by approximately 60% since the jurisdictional increase. The delays in the County Court from setting down a trial on the civil lists is minimal despite the jurisdictional increase The appointment of Judge Hassett to the County Court has brought the total strength of the County Court to 38 compared with 34 two years ago.

As well as rationalising the role of the Supreme Court and the County Court by involving the County Court as a major trial court (in the sense of being the court to hear the great bulk of civil and criminal trials) I have been concerned to upgrade the quality of justice in the Magistrates' Court.

The removal of Justices of the Peace from hearing and determining criminal matters was long overdue and has now been achieved. The Magistrates' (Appointments) Bill which is lying over in the Victorian Parliament until the Spring Session has the effect of removing Magistrates from the Public Service and lifting the qualification of Magistrates to that of persons admitted to practice as a barrister or solicitor in Victoria or another State. It will facilitate the appointment of legal practitioners to the ranks of the Magistracy as well as leaving the way open for Clerks of Courts who become qualified to be appointed as Magistrates.

I am also commencing consultation in relation to a review of the Coroner's Act in the function and qualification of Coroners. The Chairman of the Bar Council has a copy of the extensive materials which I am circulating in relation to that review and I would be pleased to hear from any member of the Bar who has any suggestions to make in that regard.

Legal Fees Tribunal
I am presently having discussions with the Law Institute Council and the Bar Council in relation to the establishment of a Legal Fees Tribunal. Such a Tribunal would replace existing fee fixing bodies. The fees fixed by the Tribunal would be fees which could be recovered on taxation but it would not be unlawful to charge fees above or below those fees fixed. The composition of the Tribunal is a matter which is presently being discussed.

I would like to record my appreciation for the great assistance which the Chairman and a great many members of the Bar Council have given to me in recent months in commenting on proposed legislation. I have found the input of practitioners to be invaluable assistance in improving proposed legislation. I look forward to continued assistance and I welcome any suggestions for legislative amendment which is seemed to be necessary by practitioners as a result of their day to day experience.

KENNAN

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SOCIETY OF LABOR LAWYERS ANNUAL CONFERENCE

The Annual Conference of the Society of Labor Lawyers will be held in Adelaide on the weekend of 12th-14th October 1984

Enquiries: John Howie, 64 Bennett St., North Fitzroy.

REPORT OF THE LAY OBSERVER

The Report of Mr Frank Eyre the Lay Observer appointed pursuant to Part IIA of the Legal Profession Practice Act 1958 has been presented to the Victorian Parliament. It covers the activities of the Solicitors' Disciplinary Tribunal and the Barristers' Disciplinary Tribunal during the 12 months from 1st January 1983 to 31st December 1983. The following is a summary of those parts of the report which pertain particularly to barristers.

1982 Recommendations

The Lay Observer notes the striking similarities between the basic problems which members of the public experience with solicitors and barristers, both in Victoria and in Britain. In his 1982 Report the Lay Observer made certain recommendations. In the Report for 1983 he repeats these recommendations and comments on the treatment accorded to them in the current year. 1982 Recommendation (3) is "that the Act be amended to give the Law Institute and the Bar Council power to impose compensation for complaints".

> *"This recommendation has been at the heart of my representations for the past two and a half years, because I found it unsatisfactory from the outset that both the Law Institute and the Bar Council considered that, except in cases involving fraud or misappropriation, it was not their responsibility to make any compensation for financial loss caused by the actions, or inactions, of lawyers. During the year the Council of the Institute finally, after a number of representations from me, decided in favour of this recommendation and referred the matter to the Attorney-General so that the necessary changes could be made to the Act.*
> *The Bar Council has not yet conceded that such a change is necessary, though its President, Mr. Stephen Charles Q.C., appeared to imply in an interview published recently that it was his personal view that it should be done. I understand, however, that it is the Attorney-General's intention that the appropriate clauses should be re-written so as to give the necessary power to both the Law Institute and the Bar Council. The power will be available, therefore, for the Bar Council to use, whether or not it formally asks that it should be given. The necessary revisions to the Act have, however, not yet been put to Parliament."*

In the December 1983 issue of the Law Institute Journal Mr Eyre wrote a paper on "The Public's Attitude to Solicitors' Costs". In his Report (paragraph 16) he summarized the findings of his published paper. Relevant to barristers are the following:

> *"(c) That the public did not understand the difference between party/party and solicitor/client costs, or that even if they won a case they would still have to pay some part of their own solicitor's costs.*

(d) *That the public was confused about the position with Legal Aid, did not fully comprehend the brief details on the form of acceptance they were asked to sign and as a result were frequently bewildered by requests for payment of quite large sums asked for by Legal Aid, and by, for example, the taking of liens on their homes.*

(e) *The major factor in the public criticism of lawyers' behaviour to them over compensation cases concerned settlements 'at the door of the Court'. Since these are nowadays the exception rather than the rule it seems to me essential that action should be taken to eliminate this failure of communication, which arises because barristers and/or solicitors appear not to make it clear enough to their client what is taking place and, above all, do not get confirmation of acceptance from them in writing."*

In his published paper Mr Eyre made three principal recommendations:

"A **That instructions should always be confirmed in writing.**

As I stressed in my 1982 report, at least fifty per cent of complaints could be answered immediately if written confirmation of their basic facts could be produced. I consider, therefore, that, as a matter of extreme urgency, two basic forms should be produced and that their use by both solicitors and barristers as required should be mandatory." (par. 17)

The first of these is already under consideration by the Law Institute and described by it as a 'Client Retainer Form'. Its title appears to indicate that the basic requirements are likely to be met by it. These are —

(a) Acceptance of an initial charge
(b) Confirmation of instructions given, and
(c) An estimate of likely costs and its acceptance by the client." (par 18)

"The second, equally important, form has not yet been agreed to or, so far as I know, ever formally discussed by either the Law Institute or the Bar Council. This is some kind of 'Acceptance Form' for use by the barrister and or his instructing solicitor when the client agrees to settlement. Some written evidence of this kind seems to me to be the only practicable way of removing a cause for dissatisfaction with which I am completely in agreement. Since the amount of a compensation for injury is often of vital importance to the Plaintiff's future life it seems to me a remarkable aspect of the jurisdiction that traditionally the client is given no written record of the findings agreed to by the Court. In the majority of cases when I come into the investigation of a complaint the only evidence that can be produced is some often indecipherable scrawls on the barrister's backsheet. The client is apparently usually told verbally the terms of the settlement details, but conditions in courts are so difficult, and the client is, naturally enough, so disturbed and puzzled, that it is not surprising that settlements should so often be challenged later.

"I consider that the production and use of both these forms, but especially the second, is so vital for the protection of the public, and for the improvement of the public's view of the law, that failure to have had the appropriate one completed by the client should in future be regarded as an act of misconduct and that the Legal Profession Practice Act should be amended to bring this about." (par. 19)

"B. **That accounts for costs incurred should be submitted at regular intervals and interim payment sought."**

The recommendations of the Lay Observer, under this heading, are of less significance for barristers than they are for solicitors. Nevertheless, it would be in the spirit of the Lay Observer's recommendation that whenever counsel is engaged in a long running case, accounts for fees should be rendered on a periodic basis so that the solicitor can monitor the costs as they accumulate, keep the client fully informed, and, where necessary, obtain periodic payments on account.

"C. **That the Legal Aid Commission should strengthen its procedures for advising claimants about the costs."**

Again, this recommendation is not primarily directed to barristers. Nevertheless, in cases where a client has assistance from the Legal Aid Commission, counsel can assist by explaining the cost implications of the litigation as it proceeds.

Mr Eyre's Report then turned to a number of specific matters including the following:—

Workers' Compensation Claims

"These continued to be a constant cause for complaint. As in previous years, although these investigations were invariably complex, and often prolonged (one was under investigation for nearly two years) the complainants' grievances invariably proved to be not genuinely against any failure of service by the solicitor but to arise from a confused view that he or she did not receive as much compensation as they should have done; that the person responsible for this was their solicitor or barrister rather than the court — and that they had been charged too much for a legal service which they considered had failed them. The matter of compensation had been decided by a court and was therefore not my concern and I rarely found anything of substance to criticise in the performance of the solicitor. So there was little that I could do to help the complainants. But I became increasingly frustrated during the year by the inability of either the solicitor or barrister concerned to produce written evidence, or any evidence that was more acceptable than the clients' statements, that the compensation settlement had been agreed to by the client. As I have said earlier a barrister's hastily scrawled annotation on his backsheet seems to me a poor substitute for the proper notification of a decision by the Court and I consider that compensation plaintiffs are entitled to something better. Anyone unfamiliar with the jurisdiction may find it hard to believe that this difficulty over finding the facts about the amount and conditions of a settlement exists. They may be inclined to suspect me of exaggeration, or to believe that it is only because of my own lack of specialized legal knowledge that I have this difficulty. I should emphasise, therefore, that the professionally qualified investigators at the Law Institute, with their wide experience of investigating complaints of this kind, often find it equally difficult. The plain fact is that, in most cases, a comprehensive written statement covering all the details of the settlement simply does not exist.

"The failure of communication between lawyer and client that this entails is obvious, as is the effect on the investigator's ability to satisfy the complainant. Less obvious, but even more serious, is the possibility of deceit and/or misappropriation that such a situation introduces; for if the client is never given proper information about what he should have received it is impossible for him to be certain that his solicitor has paid him the right amount. It is this situation, I consider, that leads to so many complaints involving compensation settlements. The major Melbourne firms specializing in such cases have varying ways of dealing with the problem, one of them completes a detailed form setting out the amount of the settlement, the costs and disbursements that were deducted (when any disbursement is permissible (S. 72)] and insists that the client sign this before any payment is made. These major firms are no doubt impeccable but, without going into too much detail, it is clear that there are a number of fringe practitioners in this area who have developed all manner of suspect practices. The Law Institute appears to be doing what it can to remedy this situation but under existing conditions it is difficult for it to exert sufficiently strong disciplinary pressure." (par. 24)

"It is for this reason that I consider that it should be a mandatory requirement for a full written statement of the terms of settlement to be given to the client somewhere in the chain of events between the day of the hearing and the payment. Neither the Law Institute nor the Bar Council appear willing to accept the responsibility for this task. From informally given opinions I deduce that the Institute believes that, (since the barrister is the last link in the chain, and it is he who first has to tell the client the terms of the settlement), if there is to be any formal written presentation of these terms it should be done by the barrister. The Bar Council, on the other hand, argues that it should be the solicitor's job, because he is the one who deals directly with the client; who commissioned the barrister, and who finally, after the case is settled, has the task of making the payment to the client — at which stage he has also to collect his own costs and recover the barrister's fees (which he has to pay). Barristers also argue that conditions in the courts make impracticable anything other than the present verbal presentation, which usually has to be done in impossibly crowded conditions standing up in a corridor outside the Court." (par. 25)

"There are valid arguments for both points of view, but, on balance, I incline to the view that it ought to be the duty of the solicitor; for he begins the job with

the client; everything that subsequently happens follows as a result of his actions (which is why he is always referred to by barristers as 'the instructing solicitor') and he should therefore be the one to end it; but a Lay Observer cannot be expected to do much more than point to a need and the importance of its being met. I am nevertheless convinced that complaints and misappropriations will continue until the completion of some form of written acceptance by the client is made compulsory and hope that the Law Institute and the Bar Council will get together to discuss this problem and produce a solution that is satisfactory to them both — and also adequately meets the need I have described." (par. 26)

The Bar Council

"As I explained in my 1981 report, the Bar Council's method of investigating complaints is completely different from the Law Institute's. All complaints are investigated by the Bar Ethics Committee, which consists of six QC's and three counsel, all giving their services voluntarily. The Law Institute employs a staff of some thirty people in its 'Professional Practice and conduct Division', at an estimated annual cost of nearly a million dollars a year. Two factors make this discrepancy less significant than it may sound. The first of these is that there are many fewer barristers than there are solicitors, the second is that barristers do not deal with their clients' money, and there is, as a result, much less cause for complaints to arise. Nevertheless the Bar Council's methods of investigation must put a considerable strain on the goodwill and public spiritness of a few. The Ethics Committee meets once a fortnight, at lunch-time during the Court's recess, for most of the year to deal with normal business and over the same period its members also attend evening sessions several times a month to sit on Summary Hearings. The fortnightly meetings invariably have a very full agenda and this can only be dealt with adequately if its members have previously digested and considered the lengthy papers that are circulated to them about complaints and other matters. Because I have no other way of assessing complaints made to the Bar Council I attend if possible every meeting of the Ethics Committee and most of its Summary Hearings and am impressed by the objectiveness and at times even harshness of its treatment of offending barristers and the time given to the work by the Committee members." (par. 33)

"I have no criticism of the decisions ultimately come to over any complaints in which I have been involved. A committee with so many highly qualified and experienced members appears to be able to come, perhaps intuitively, to decisions on complex-seeming complaints without finding it necessary to produce convincing reasons for its decisions. But the end result of the very brief type of answer that it usually gives to complainants is that if they then appeal to the Lay Observer it becomes my job to produce the explanations. Without the benefit of the detailed reports which, for example, the Law Institute's investigators produce, I often find it difficult to explain satisfactorily an issue which I myself have not always found it easy to comprehend from the allusive type of discussion which takes place at meetings. So although I am impressed by the effectiveness of the Bar Council's investigations so far as the decisions taken are concerned, I would find it valuable if some equivalent of the Law Institute investigator's liaison with me could be provided by the Council, to assist me both in my own understanding of the issues involved and in communicating them to the complainants." (par. 34)

"I have also, throughout the year, continued to stress, whenever an opportunity arose, the needs I perceive —

(a) for compensation to be provided for clients of barristers who have suffered financial loss as the result of action or inaction by barristers;

(b) for more consideration (and time) to be given by barristers to the plaintiffs for whom they are acting, especially in compensation cases. Although it is difficult for complainants to produce acceptable evidence of such things as rudeness and impatience I have now listened to the investigation of many complaints and am satisified that some barristers do treat their clients impatiently and dismissively over the discussion of such things as settlements at the door of the court. I appreciate that this is to some extent a matter of personal good manners and general behaviour, but believe that it would be in the interests of the Bar to draw the attention of Counsel to the need for a more understanding treatment of their clients.

(c) *for consideration to be given to some method of providing family law and compensation clients with a written statement of the essential points of the Court's findings. Mr. Justice Smithers of the Family Court and Mr. John Barnard Q.C., the Chairman of the Ethics Committee have been generous of their time in demonstrating to me the problems involved and I am appreciative also of the courtesy extended to me by other Justices of that Court in permitting me to sit in on their proceedings. I am indebted to them all, and to Mr. Philip Mandie Q.C., for their help, and hope that my having raised this issue will encourage the Bar to pursue it and find some way of solving what appears to me to be a regrettable failure of communication — in so far, that is, as this is a matter for the Bar. As I have said earlier (S.25) it may well be that the ultimate responsibility in this matter may eventually be found to rest with the instructing solicitors, but I would like to feel that barristers can be persuaded to take a more active interest in communication with their clients on the effects on them of decisions taken by the Courts."* (par. 35)

1983 Recommendations

"2. *That the Legal Profession Act be amended to give both the Law Institute and the Bar Council power to enforce compensation to complaints (repeated from 1982 report)."*

"4. *That the Law Institute and the Bar Council give consideration to the need for some form of written presentation of the terms and conditions of settlements in both Family Law and Compensation cases to be given to their clients, and their acceptance of these confirmed in writing. (Ss. 24)."*

Subsequent Developments

Since the publication of the Lay Observer's Report the Bar Council has taken the following steps towards implementing his recommendations:

1. Mandie QC has been appointed to act as a liaison officer between the Bar Council and the Lay Observer.

2. On 17th May 1984 the following resolution was passed:

"1. That the Bar Council supports in principle an amendment to the Legal Profession Practice Act whereby the Bar Ethics Committee is empowered if it thinks fit to order a barrister to compensate a complainant for pecuniary loss in a sum not exceeding $3,000 within a time specified by the Committee subject to the following:

(a) that the precise amendment may be considered by the Bar Council before a Bill is introduced;

(b) that the amendment provide, inter alia:

(i) that the power be exercisable only in cases where the proven disciplinary offence has directly caused the pecuniary loss suffered by the complainant;

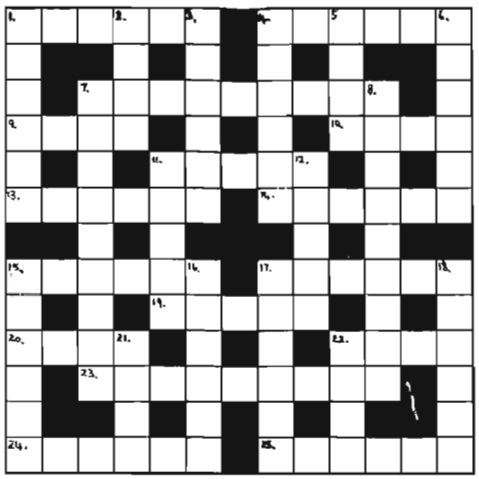
(ii) that the power be exercisable only in cases where it appears that the pecuniary loss is unlikely to exceed $3,000 in total;

(iii) that the amount of compensation be paid to the Treasurer of the Bar Council who shall pay it to the complainant;

(iv) that the fact of the disciplinary proceedings, any admissions made in the course thereof by a barrister and the order for compensation may not be used in civil proceedings except to be taken into account where appropriate prior to any judgment for damages."

"2. That the Bar Council envisages that, if an appropriate amendment were enacted, the Bar Council would make it a disciplinary offence to fail to pay the compensation within the time ordered (as is the case with fines)."

CAPTAIN'S CRYPTIC No. 48



ACROSS

1. Without an ell this would be awful (6)
4. Widower's re-marriage (6)
7. Litigant slow off the mark (9)
9. This young girl is fabricated (4)
10. Dark and Dour (4)
11. Procreate in ancient times (5)
13. They bear the pane (6)
14. Stay (6)
15. Uplifts with difficulty (6)
17. Unsuccessful defendant in affiliation proceedings (6)
19. Don't wash in public (6)
20. Spicy sauce will suffice (4)
22. Not a mark of age for this Judge (4)
23. Unreal (9)
24. Jotless (6)
25. These are not evidence of the contents: **Patel v. Customs Comptroller** (1966) AC 356 (6)

DOWN

1. 1st August (6)
2. Barrister paid (4)
3. Subjects of the Queen (6)
4. Evasive circular (4)
5. Noisome medal (4)
6. Freeholder, but not a gentleman (6)
7. Work day for a Roman Judge (4,5)
8. What does the traitor? (9)
11. Oblique cut (5)
12. Man with a ten gallon brain (5)
15. New County Court Judge wants tea (6)
16. Sole (6)
17. The weed smells of aniseed (6)
18. H.M., H.R.H. et al (6)
21. The clock is in reverse (5)
22. Clutch (4)

(Solution Page 43)

WILLIAM AH KET
1876 – 1936

One member of the Bar of earlier years who would have been saddened but not surprised at the recent exhibitions of racial chauvinism was William Ah Ket, who was an Australian born Chinese.

Ah Ket was born on 20 June 1876 at Wangaratta, Victoria. His father, a storekeeper and tobacco grower had arrived in this State in 1855 and was for some years on the goldfields before establishing a tobacco farm on the King River. His father, whose name was simply Ah Ket, and his mother, Hing Ung, were married in Melbourne in 1864 and the barrister-to-be was educated at the Wangaratta High School and the Wangaratta Grammar School. After matriculating, he entered law at the University of Melbourne in the 1890s.

He pursued the articled clerks' course, being articled to Mr. Richard Cross of the firm of Maddock & Jamieson (later Maddock, Jamieson & Lonie).

In several obituaries published immediately following his death in August 1936, it was said that in 1902 he had won "the Supreme Court Judges' Prize". This statement is repeated in the Australian Dictionary of Biography's entry for Ah Ket.

In the article by Peter Balmford "The Pursuit of Excellence" in the March 1984 Law Institute Journal, the table of prize-winners of "The Principal Supreme Court Prize" indicates that no prize was awarded in 1902.

Nonetheless, the Supreme Court Prize Fund cashbook which is in the custody of the Supreme Court Librarian, discloses that William Ah Ket did in fact, receive a prize of forty pounds in 1902. This was not the amount of "the" Supreme Court Prize which was then one hundred and twenty five pounds.

It appears highly likely that what Ah Ket did win was the Supreme Court Judges' Prize for articled clerks in that year.

Ah Ket was admitted to practice in May 1903 and signed the Bar Roll (being No. 88 on the present Roll). He read with Stewart McArthur (later a Supreme Court Judge from 1920 to 1934).

From his early teens, Ah Ket had acted as a Chinese interpreter and it was in this role that he had his first contact with the law. Whilst he was still an articled clerk, he became increasingly active in the Chinese community's resistance to discriminatory laws and practices and in 1901 he was amongst those who sought to combat the proposed immigration restriction bill.

Over a period of years in the first decade of the century Ah Ket was actively involved in opposing attempts to drive the Chinese out of industrial areas in which they were in competition with Europeans. This included both his practice in the Courts in cases such as **Ah Yick v. Lehmert** (1905) 2 C.L.R. 593 and his general participation in the active support of the Chinese community. He was the author (in 1906) of a paper on "The Chinese and the Factories Acts".

In Dean's, A Multitude of Counsellors it is said that Ah Ket was "the only man of Chinese origin to practise at the Bar". If this is restricted to full-blooded Chinese then it is still a correct statement. There have been, however, others whose parentage was partly Chinese.

Sir Robert Menzies, in his book "The Measure of the Years" said of Ah Ket:—

> "He was a sound lawyer and a good advocate. His bland oriental features gave nothing away; his keen sense of fun was concealed behind an almost immovable mask. A certain prejudice among clients against having a Chinese barrister to an extent limited his practice, though instructing solicitors thought very well of him. He was considerably senior to me but we were great friends"

Despite any prejudice of the kind referred to by Menzies, Ah Ket did enjoy an excellent general practice. He was recognised as an able cross-examiner with a superb command of language.

In Dean's book, it is also said:—

> "He acquired a reputation as a negotiator of settlements, being persuaded that in general, his clients would be wiser to come to terms with their opponents rather than incur the risks and expense of litigation".

This reflects two aspects of a view that was apparently current during Ah Ket's years at the Bar, namely that he was an enthusiastic "settler" but also that he was a shrewd and effective negotiator.

Menzies recounts a tale which was told to him by Ah Ket "with solemn pleasure". Travelling by train to a distant country town where he was briefed to appear, Ah Ket was sitting alone in a compartment when he was joined, with some reluctance by a "commercial" who had found no room elsewhere. For a time there was silence but then Ah Ket's companion apparently felt the need to talk and the following exchange occured:
Commercial: "Have you been in this country long, John? Do you savee English?"
Ah Ket: "Ah yes, twenty year, thirty year. Likee country very muchee".

And so it proceeded with Ah Ket keeping up his strange language and the traveller matching it. Finally, after some hours of this splendid farce both Ah Ket and his travelling companion alighted at their destination. The solicitor instructing Ah Ket was at the station. There was a solitary horse and cab there and all three entered it

The solicitor at once began to discuss his case with Ah Ket who responded in his usual impeccable English and in a very learned manner. The commercial grew paler and paler as the proof of his own folly piled up against him.

Menzies said that he used to tell Ah Ket that the story should have ended with the traveller falling out of the cab and breaking his leg. But, he said, Ah Ket's reply was characteristic:—

> "Oh, no, he could see that I was a Chow, and wanted to be sociable; so I was!"

In the folklore of the Bar this story has long since been embellished by the addition of the travelling companion turning out to be a witness in Ah Ket's case in court and being subjected to a most penetrating cross-examination by Ah Ket in absolutely correct English with the concluding question being "You likee closs examination?"

Of course, at the Bar truth has never been allowed to spoil a good story.

Menzies was not alone in regarding Ah Ket with warmth and affection. By all accounts, Ah Ket was popular and greatly respected for his integrity as well as his abilities. He was a prominent Freemason being a member of the Grand Lodge and a past Master of the East Caulfield Lodge

He was interested in sport, particularly cricket, golf and racing. An illustration in Dean's book pictures Ah Ket with a Bar Cricket Team circa 1900. Unless he was an articled clerk this date should be 1904 at the earliest. From his rather formal dress in the photograph, it seems likely he was the official scorer.

He was an original member of the Woodlands Golf Club and a member of the V.A.T.C. Ah Ket was renowned for being a very enthusiastic punter but not, it seems, a markedly successful one.

Once case in which his interests in gambling and in the law coincided was **Ex parte Gleeson, In re The Shanghai Club** (1907) V.L.R. 463 in which Ah Ket appeared with Duffy K.C. for the Club to resist a police claim that its premises in Little Bourke Street, Melbourne were a common gaming house where fan tan had been played for money.

In 1931 Ah Ket, who had been in room 23 of Selborne Chambers for over twenty years, moved with a group of eminent counsel including Gorman K.C. and Herring to Equity Chambers. This movement relieved some of the considerable pressure for accommodation that the Bar was then experiencing.

Ah Ket, who had married Gertrude Victoria Bullock in 1912, died in August 1936 leaving two sons and two daughters.

MICHAEL DOWLING QC

THE ABC BUILDING

Since the announcement of the choice of Leighton/ Schroder Darling as the developer of the ABC site, considerable progress has been made.

Town Planning approval has now been obtained. Leightons retained Bates Smart & McCutcheon as their architects and they have made substantial alterations to the octagonal shaped building shown in the Autumn Edition of the **Bar News.** This was necessary to provide greater internal efficiency and also to ensure a larger range of views from barristers' chambers.

The Bar Council, Directors of BCL and the ABC Sub-Committee have all agreed that the changes have produced an even more attractive building than that originally proposed. Plans and possibly a model of the new building will shortly be displayed in the Essoign Club

The Law Department has indicated a desire to obtain two floors for the accommodation of County Court Judges. This would require a link between the County Court building and the new building at about 5th floor level. Whether or not this occurs depends upon the costs of providing two additional floors and the link, and a satisfactory leasing arrangement being negotiated with the Law Department. Such proposal will also require planning approval. All that can be said at this point of time is that it seems likely that the two additional floors will be provided.

Planning approval has been given on the basis of access to the new building from William Street being via the existing passageway in O.D.C. to an enclosed walkway over Guests Lane to the new building. It had been hoped to have an entrance either through the Commonwealth Bank Building or the State Bank Building, both of which are long term lessees. However, no agreement has yet been able to be reached with either of the banks whereby this could be achieved.

Naturally a most important consideration is the siting of the clerks in the new building. The architects are preparing plans which will show the space available for Clerks. Discussions will then take place with the Clerking Committee and the Clerks as to whether the whole or what parts of the operations of each of the clerks can be located within the ground floor area of O.D.C. and the new building. Obviously this is a matter which will require the closest consideration before a final decision is made.

The Committee has sought the view of the Bar Library Committee as to whether the library should remain in O.D.C. or whether there is a need for and the site of a larger library.

The above are just a few of the many and complex considerations involved in the planning of the new building. The McLachlan Group continue to provide expert assistance in the negotiations of a building and funding contracts and the Head Lease and Sub-Lease.

The vitally important legal aspects of this are being attended to on behalf of the Bar by Mr. Graeme Johnson of Hedderwicks.

There has been some delay on the part of the builder and financier in the provision of draft contracts but it is hoped matters will be finalised within the next few weeks.

The new building has not been named. Readers are requested to forward to **Bar News** suggestions for an appropriate name. Include in not more than 100 words the reasons for your choice. Suitable entries will be published. There will be a prize for the most original and appropriate suggestion

MOVEMENT WITHIN THE BAR

On 10th April a General Meeting of the Bar supported a resolution proposed by McPhee Q.C. which in effect removed most of the existing restrictions upon movement of counsel between the existing lists. It will be recalled that the motion was put forward to enable the emigrees from List C to find a place on the other lists.

If the new Bar Telephone Directory can be relied upon, it seems that 44 members have profited from this new freedom — 37 of them from List C. From the other lists — List M has lost 5, List H has lost 1 and List B also has lost 1.

The beneficiary of the moves, at least in numbers, has been List W which has picked up 11 new members including 4 otherwise than were from List C. The figures for the other Lists are as follows: List F — 6, List H — 4, List D — 10, including 2 from a list other than List C, List S — 7, including 1 from a list other than List C, List R — 7, List B — 2 and List M — 1.

For those interested in these matters, the following table sets out the seniority in years of call of those who have changed clerks since the telephone directory was published in April.

What is perhaps surprising is that the movement within the Bar in recent months has been so slight.

ANALYSIS OF MOVEMENT

By Origin

List of Origin	5 yrs. or less	6-10 yrs.	Over 10 yrs.	Silk	Total
C	30	5	1	1	37
M		4	1		5
H			1		1
B		1			1
					44

By Destination

Recipient List	5 yrs. or less	6-10 yrs.	Over 10 yrs.	Silk	Total
W	5	4	2		11
D	5	4		1	10
S	6	1			7
F	4	1	1		6
H	4				4
R	3				3
B	2				2
M	1				1
					44

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JUDGMENTS OF THE CRIMINAL COURT OF APPEAL OF VICTORIA

The Law Department, Victoria, is offering for subscription a service which will include a cumulative index and summary of all judgments of the Court of Criminal Appeal in Victoria on a periodic basis together with complete copies of the more significant judgments when these are handed down. This service will include judgments commencing from February, 1984. The annual subscription payable to the Law Department, Victoria, is $250.00.

Your order, together with mailing address and remittance, should be forwarded to the Director of Finance, Law Department, 221 Queen Street, Melbourne, Victoria, 3000.

BARRISTERS' INDEMNITY INSURANCE

On 21st May 1984, a General Meeting of the Victorian Bar passed a resolution empowering the Bar Council to require that members hold a current policy of professional indemnity insurance. For some years now, there has been in existence a system of voluntary insurance provided by Steeves Agnew as part of an Australia-wide insurance cover for barristers

In all, 1140 barristers throughout Australia presently hold this cover The distribution between the States is as follows:

State or Territory	Numbers of Insured	Percentage of Total
Victoria	578	50 7
New South Wales	331	29.0
Queensland	165	14.5
Western Australia	40	3.5
Aust. Cap. Territory	16	1.4
Northern Territory	10	0.9
	1140	100.0

For those who have expressed surprise on seeing the differing premiums imposed in the various States, it will be comforting to know that this does not reflect a differing claims history The Policy has a standard premium of $230 for all barristers The differences lie in the varying Stamp Duties imposed from State to State

But there is a geographical difference in the claims made. This is not to the credit of the Victorian Bar Since the scheme started in 1980, there has been a steady increase in the number of claims made: 1980 — 8 claims, 1981 — 15 claims, 1982 — 20 claims, 1983 — 23 claims and in 1984 to date — 14 claims Throughout Australia there have been 80 claims lodged since 1980 These are distributed as follows:

State or Territory	% of Policy Holders	Nos. of Claims	% of Total
Victoria	50.7	46	57.5
New South Wales	29.0	19	23 7
Queensland	14.5	12	15.0
Western Australia	3.5	2	2.5
Aust Cap Territory	1 4	1	1 3
Northern Territory	0.9	–	–
	100.0	80	100.0

How are these claims made up? Again the answer provided by the Brokers is surprising. By far the greatest number of claims are those for incorrect advice.

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Type of Claims	Nos. of Claims	% of Total
Failure to heed Time Limitation	20	25.0
Conduct and Running of Trial	12	15.0
Incorrect Advice	42	52.5
Recommendation and Issue in Wrong Jurisdiction	3	3.75
Libel/Slander	2	2.5
Loss of Documents	1	1.25
	80	100.00

When asked what is meant by "Incorrect Advice", the Broker says that it means just that. The claims allege a failure to comprehend instructions, a failure to be aware of the relevant case law or statute law. He hastened to add that the fact that an allegation of this kind is made does not mean that it is true or that, if incorrect, the advice given was negligent. Nevertheless, the number of these claims must be a matter of concern to us all.

For those who have the misfortune to be the subject of a claim or to have received notice from any person that he intends to allege a breach of professional duty, the Brokers advise members to contact them **in writing** advising them of the claim made and the circumstances. Failure to do so promptly may entitle the Underwriter to avoid liability: Condition 3.

Furthermore, in accordance with normal principles of insurance, a member taking out insurance for the first time or renewing an existing policy must also disclose to the Broker any such claim or notice of intention to claim, or indeed any circumstance which might give rise to a claim against him.

Finally, the Brokers advise —

(a) Take care in performing your professional duties.
(b) If a claim is made on you, advise the Brokers in writing immediately.
(c) Do not admit liability or settle any claim or incur any costs or expenses without the written consent of the Underwriters.

BAR CENTENARY ORATION

On Wednesday 18 July 1983 at 8 pm in the Wilson Hall, University of Melbourne a most distinguished member of the Victorian Bar, Sir Ninian Stephen, Governor-General of the Commonwealth of Australia, will deliver an Oration to mark the centenary of the Victorian Bar.

His Excellency's theme is the history of the unorganized and organized Bar in the State of Victoria, with its origins before a Bench of early Irish Judges, its development in the extraordinary period of forty years that followed the discovery of gold and the debate between the supporters of a fused profession and those of a separate Bar.

The Centenary Oration is open to the public and all are welcome.

All members of counsel are urged to attend this historic occasion.

LEGGE'S LAW LEXICON

"Q"

Qua: The apostle commands wives to submit to their husbands surely qua husbands not qua men. *Shorter O.E.D.*

Quadruplicate: To put the same argument in the Full Court as in the court below.

Quaint: A judge's witticism.

Quaker: A reader in County Court Chambers.

Qualification: The unsolicited response of a brick-dropper.

Qualified Endorsement: A cheque signed by one with a debit balance.

Quality of Estate: A home in Toorak.

Quamdiu Se Bene Gesserit: The condition upon which judges of the Supreme Court are allowed to stay up until midnight.

Quandary: A dangerously helpful but ambiguous answer in cross examination.

Quangos: Criticism has been directed at the shameless way in which politicians have used their powers to appoint their friends as members of these authorities usually at excessive salaries.

Quantity Surveyor: A taxing master.

Quantum Meruit: The fee paid to a barrister who gets a verdict for less than the amount paid into court.

Quartering Traitors: A penalty also reserved for one who explains to the Chief Justice the real meaning of the Bar Centenary Revue.

Quartet: A case in which silk is briefed on each side.

Quash: A judge's response to a quotable (q.v.).

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Quasi Contract: The promise of a brief.

Quasi Judicial: The behaviour of any statutory tribunal.

Quaver: The question next after a Quandary. (q.v.).

Queen's Counsel: A senior barrister so created by letters patent the contents of which prove that the Governor in Council has a vivid imagination and possibly a perverse sense of humour.

Queen's Evidence: She is not to be believed without corroboration.

Question: The application of torture as part of a judicial examination.

Questionable: Every witness on the other side.

Questionless: A junior to a new silk, also a new junior to an old silk.

Question of Fact: Any question too difficult for a judge to answer.

Question of Law: Any difficult question the answer to which will get the plaintiff home.

Quiet Enjoyment: Venery between mutes.

Qui Prior Est Tempore Potior Est Jure: An application for a car park in Owen Dixon Chambers.

Quotable: My witticism (c.f. Quaint).

Quo Warranto: Dog latin for "Who the hell are you?"

QUTB: ??????????

• • • • •

"THE LIFE AND TIMES OF JUDGE JOHN DOE"

"Let me take you back"

The exquisite delight of being a theatre critic lies in the power to promote or pan current stage productions.

Reviewing a show that ceased six weeks ago reduces a critic to painful impotence. Fortunately this is a state I have learned to endure. (If power is an aphrodisiac I have led a particularly powerless life.)

The Life and Times of Judge John Doe was a tour de force. Directed by Simon Wilson and produced by Graeme Thompson, the staging of this Centenary extravaganza was totally professional. I couldn't help contrasting it with the days of the Dining-In Night Mini Revues when David Ross and myself would hover anxiously in the 13th Floor Catering Staff Changing Rooms hoping that the cast would be sober enough to remember the lines and the Judges drunk enough to forget them.

Photos by Hardy

"Is Mr Cum Quot Mai in Court?"

The excellent script for "John Doe" was a joint effort by Paul Elliott, Douglas Salek, Simon Wilson and Simon Cooper (together, of course, with the unwitting assistance of members of the Bench and Bar).

The uncertain flutterings of a fledgling barrister is the theme which enables the writers to showcase the various Chambers of Legal Horrors into which the profession daily venture in search of money and justice (and usually in that order).

"I'll litigate all over you"

When "John Doe" commenced there was fear of defamation actions. By the time it closed, barristers were submitting signed statements of their eccentricities in the hope of getting a mention.

"A Battleship on the Seas of Matrimonial Warfare"

Photos by Hardy

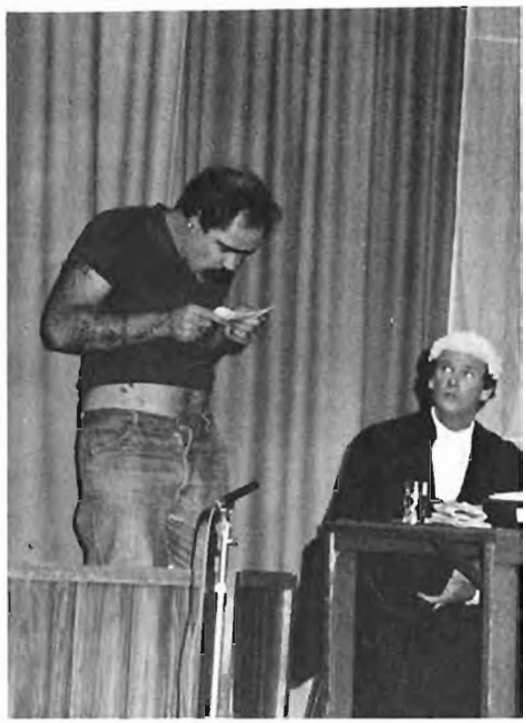
The subject matter is endlessly recyclable. Watching the Magistrates Court scene I recalled the exchange between Frank Vincent and myself (Dining-In Night — circa 1972).

Coldrey: That magistrate has a wonderful grasp of police court principle.
Vincent: What do you mean?
Coldrey: He believes that defendants should not only be done, but they should appear to be done; and if they don't appear to be done they're done in their absence. . .

Or circa 1973:
Vincent: I can't understand all this excitement about no fault liability.
Coldrey: Why?
Vincent: Well there's been no fault liability for years in Magistrates Courts.
Coldrey: What, in running down cases?
Vincent: No, in police prosecutions.

. . .And so it goes on.

"What am I offered?"



The Unsworn Statement

The Revue cast were uniformly excellent and it is perhaps unfair to single out individuals. Nevertheless I intend to do so.

Simon Cooper as John Doe not only provided the production with the necessary continuity but his depiction of the tribulations of young counsel was frequently so real that one winced in painful recollection.

The top class peripatetic performance of Paul Elliott was reminiscent of a theatrical Brian Bourke.

Doug Salek's extraordinary talent for impersonations may well have provided Premier John Cain with a refresher course in personal presentation.

Liz Curtain (as Leonie Dawson) demonstrated the reason why, despite penury, some counsel choose to keep away from the Family Law Court.

Much has been said about Colin Lovitt as the Crown Prosecutor. Let it just be recorded that he was well cast in the role.

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"Give 'em the old Razzle Dazzle"

Photo Courtesy "the Age"

Beverley Vaughan and Alan Marshall demonstrated themselves to be extremely versatile revue actors.

Michael Strong's able presentation of the Criminal Court Judge would appear to have benefitted from the ample opportunity of Crown Prosecutors to observe the judicial persona.

Whilst this was a Bar Revue (and indeed enjoyed the Vice-Legal Patronage of Berkeley QC) it was disappointing to note that a bare 50% of the Company were barristers.

This is no criticism of the performers, who provided magnificent entertainment, but it is an indictment of those members of the Bar, who prefer to sit back and be titillated rather than getting up and having a go.

COLDREY

VERY INTERESTING

On 2nd May 1962, with the coming into operation of S.79A of the Supreme Court Act 1958 following recommendations by the Chief Justice's Law Reform Committee, Victoria became the first Australian State to make provision for interest on damages for personal injuries.

Unlike other jurisdictions in which the award of interest on damages for personal injuries remains discretionary S.79A (and, since 1972, S.30C of the Supreme Court Act of 1935-80 of South Australia) require the award of interest unless "good cause is shown to the contrary".

Since 1962 S.79A has been the subject of amendments, principally to the rate of interest, and the effect of those amendments will be examined and tabulated. First, however, as interest is often crucial for a Plaintiff to overcome the consequences of a payment into Court the principles governing the award of interest in personal injury actions will be discussed.

Purpose of the Award of Interest

In **Ruby v. Marsh** (1975) 132 C.L.R. 642 at 652-3 Barwick C.J. said: "The purpose of giving Courts the power to award interest on damages is to my mind twofold, and neither aspect of the purpose should be lost sight of. In the first place the successful plaintiff, who by the verdict has been turned into an investor by the award of a capital sum, and whose claim in the Writ has been justified to the extent of the verdict returned, ought in justice to be placed in the position in which he would have been had the amount of the verdict been paid to him at the date of the commencement of the action. In the second place, the power to award interest on the verdict from the date of the Writ is to provide a discouragement to defendants, who in the greater number of actions for damages for personal injuries are insured, from delaying settlement of the claim or an early conclusion of proceedings so as to have over a longer period of time the profitable use of the money which ultimately the defendant agrees or is called upon by the judgment to pay".

Six years later in **Batchelor v. Burke** (1981) 35 A.L.R. 15 at 19 Gibbs C.J. was to sound the warning that "the interest is awarded to compensate the plaintiff for the detriment that he has suffered by being kept out of his money, and not to punish the defendant for having been dilatory in settling the plaintiff's claim".

Delay by the Plaintiff in instituting or prosecuting an action will not ordinarily avail the defendant. Gowans J. said in **Marsh v. Ruby** (1975) V.R. 191 at 193:

> "Since the rule is that interest is to be allowed the defendant has the onus of showing why he should not be required to pay according to the tenor of the section for the benefit he has derived from his use of the money since it was first claimed against him in the action. As I see it, such discretion as is conferred is not intended to be directed to penalizing the plaintiff but to alleviating the defendant in a proper case. He may be able to show that he has been disadvantaged in some way by the plaintiff's conduct, for example, by showing that he had ceased to have the use of the money by paying it in cash into court, and that the plaintiff had then delayed the progress and hearing of the action for a prolonged period during which he did not have the benefit of the money. But in general the defendant will not establish that he has been disadvantaged by showing that he has had the

use of the money for longer than he should have been allowed to keep it. He would need to show collateral effects of the delay to his disadvantage".

Despite the strength of the remarks of Gowans J., in **Williams v. Volta** (1982) V R. 739 at 754 McInerney J. said, "It is common experience to find that the plaintiff's undue delay in prosecuting his action to trial is urged on the trial Judge as 'good cause' why interest should not be allowed in respect of the whole period from the date of the issue of the Writ to the date of entry of judgment". Also, Professor H. Luntz makes the point that in times of high inflation when real returns on investments may be negative, a defendant might well be prejudiced notwithstanding the fact that he has had the use of the money. See Luntz's **Assessment of Damages** 2nd Edition page 498.

Failure by the plaintiff to accept a payment into Court in an action based on negligence will not constitute "good cause to the contrary" and interest should be calculated by the Judge to the date of judgment rather than to the date of any payment into Court. See **Williams v. Volta** supra.

Exclusions

1. S.79A(3)(a) excludes interest on "compensation in respect of liabilities incurred which do not carry interest as against the person claiming interest". This covers past medical and like expenses whether paid by or for the plaintiff or unpaid See **Murphy v. Murphy** (1963) V.R. 610 at 614.

2. S.79A(3)(b) excludes interest on "compensation for loss or damage to be incurred or suffered after the date of the award". Thus no interest should be awarded on damages referrable to loss of future earning capacity, future medical and the like expenses or to future pain and suffering and loss of enjoyment of life. This subsection "can have no application to an award of damages under Part III of the Wrongs Act" per Pape J. in **East v. Breen** (1975) V.R. 19 at 31. (Approved by the High Court in **Ruby v. Marsh** supra. But see also **S.G.I.O. (Qld) v. Biemann & Anor.** (1983) 57 A.L.J.R. 704). Thus, in Victoria, if the claim is one for damages under Part III of the Wrongs Act 1958 interest should be allowed on the full amount of the judgment from the date of issue of the Writ until judgment

3. S.79A(3)(c) excludes interest on exemplary or punitive damages

4. Interest should not be awarded on that portion of a judgment which represents loss of earnings before trial where the Plaintiff has earned at least equivalent Worker's Compensation during that period. See **Batchelor v. Burke** supra. It would seem that to the extent that the plaintiff's ordinary wages if uninjured exceeded the Workers' Compensation payments or unemployment benefits or Motor Accidents Board payments or sickness benefits, only that excess should be included in the sum on which interest is calculated.

Method of Calculation

Whilst Smith J. in **De Nitis v. Seekts** (1962) V.R. 417 said that the Judge has the option "either to go into the matter of interest on an accountancy basis, as it were, if he is so disposed, or instead to deal with it by a very broad method", he followed the broad approach himself. In **Cullen v. Trappell** (1980) 29 A.L.R. 1 at 15 Gibbs J. went further and said "However, the award of interest should always be approached in a broad and practical way, and this matter should not be allowed to assume disproportionate importance at the trial or in the Judge's consideration of the matter".

If there is contributory negligence on the part of the Plaintiff one method would appear to be to assess on what items interest is to be calculated, to then calculate the interest and add it to the plaintiff's damages then reduce the total sum by whatever percentage is appropriate having regard to the plaintiff's contributory negligence. But as Hudson J. said in **Murphy v. Murphy** supra at 620 "whether you start from the total amount and make the reduction from that basis and then later make the allowance for contributory negligence, or whether you make the reduction by reason of the finding of contributory negligence, first, and then make the allocation on that basis is, I think, a matter for the individual choice of the Judge". The lesson to be learned from **Murphy v. Murphy** supra is that error occurs if non-interest bearing items are deducted in unreduced form. Sholl J. would have overcome that problem by allowing interest on the reduced (three-quarter) amount of interest bearing special damages and on three-quarters of the sum appropriate for past general damages. **Murphy v. Murphy** supra at 618-19.

Rate of Interest

The same rate should be used for all types of damages whether economic or non-economic in nature. **Cullen v. Trappell** supra.

The Supreme Court (Interest on Judgment) Act No 6874 of 1962 provided for interest to be awarded "at such rate not exceeding eight per centum per annum as he thinks fit. . "

S.4 of the Penalty Interest Rates Act 1981 (Act No. 9633 of 1981) which came into operation on 1st April 1982 provided for the award of interest "at such rate not exceeding the maximum rate approved by the Australian Loan Council at the time the judgment is entered or the order made for long-term borrowing for new Public Securities issued by Semi-Government authorities as he thinks fit..." The maximum rates approved by the Australian Loan Council from time to time are set out in Table 1.

TABLE 1

Period	Maximum Rate %
1. 2.75 – 30. 6.75	9.8
1. 7.75 – 30. 6.76	10.4
1. 7.76 – 30.11.76	10.6
1.12.76 – 16.10.77	10.9
17.10.77 – 30.10.77	10.6
31.10.77 – 31. 1.78	10.3
1. 2.78 – 31. 7.78	9.6
1. 8.78 – 31.10.78	9.4
1.11.78 – 11. 2.79	9.2
12. 2.79 – 22. 4.79	9.4
23. 4.79 – 13. 6.79	10.1
14. 6.79 – 16. 1.80	10.5
17. 1.80 – 22. 3.80	10.9
23. 3.80 – 29. 4.80	11.7
30. 4.80 – 2.11.80	12.3
3.11.80 – 7.12.80	12.9
8.12.80 – 8. 1.81	13.1
9. 1.81 – 5. 7.81	13.6
6. 7.81 – 13. 8.81	14.4
14. 8.81 – 3. 2.82	15.7
4. 2.82 – 16. 5.82	15.8
17. 5.82 – 8. 8.82	17.2
9. 8.82 – 29. 8.82	17.4
30. 8.82 – 5. 9.82	17.2
6. 9.82 – 12. 9.82	17.1
13. 9.82 – 19. 9.82	17.0
20. 9.82 – 26. 9.82	16.1
27. 9.82 – 3.10.82	15.5
4.10.82 – 17.10.82	15.1
18.10.82 – 31.10.82	14.4
1.11.82 – 7.11.82	14.6
8.11.82 – 29.11.82	14.8
29.11.82 – 12.12.82	15.2
13.12.82 – 27.12.82	14.9
28.12.82 – 3. 1.83	14.4
4. 1.83 – 9. 1.83	13.8
10. 1.83 – 16. 1.83	13.6
17. 1.83 – 23. 1.83	14.4
24. 1.83 – 13. 2.83	14.1
14. 2.83 – 20. 2.83	14.7
21. 2.83 – 27. 2.83	14.8
28. 2.83 – 6. 3.83	15.1
7. 3.83 – 13. 3.83	15.3
14. 3.83 – 27. 3.83	15.2
28. 3.83 – 19. 4.83	15.8
20. 4.83 – 1. 5.83	14.8
2. 5.83 – 15. 5.83	14.7
16. 5.83 – 29. 5.83	14.5
30. 5.83 – 13. 6.83	15.6
14. 6.83 – 30. 6.83	15.8

On 1st July 1983 the Penalty Interest Rates Act 1983 (Act No. 9967 of 1983) came into operation. S.6 of that Act provides for the award of interest "at such rate not exceeding the rate for the time being fixed under S.2 of the Penalty Interest Rates Act 1983".

S.2 of that Act provides:

"2.(1) For the purposes of this Act interest payable under the provisions of the enactments referred to in this Act shall be payable at the rate of 15.8 per centum per annum or, where interest is payable under such a provision at a rate to be determined, at a rate not exceeding 15.8 per centum per annum until 30 September 1983 or the proclaimed day (whichever is the later) and thereafter at such rate as is fixed by the Attorney-General, having regard to the advice of the Treasurer of Victoria, by notice published in the Government Gazette in respect of each quarter year or part thereof commencing on and from 1 October 1983".

The rates so fixed by the Attorney-General to date are as follows:

Period	Maximum Rate %
1. 7.83 – 30. 9.83	15.8
1.10.83 – 31.12.83	15.8
1. 1.84 – 31. 3.84	13.3
1. 4.84 – 30. 6.84	14.7

Because of the hiatus which occurred between the last maximum rate approved by the Australian Loan Council and the coming into operation of the 1983 Act it was necessary to include two sections to cover the transition period. Thus S.14 validated orders made on or after 1st July 1983 and before 22.11.83, being the date on which the Act received Assent, based on the last approved maximum rate by the Australian Loan Council. Further, S.15 provided plaintiffs with the ability to apply to the Court to make an order for the payment of interest at a rate not exceeding 15.8 per centum per annum in those cases where interest had not been awarded because of the cessation of the Australian Loan Council in approving the maximum rates of interest.

Clearly enough the 1981 and 1983 Penalty Interest Rates Acts provided ceilings in that the Judge was not to exceed the maximum rate applicable at the time of judgment. But is the Judge obliged to award interest at one rate, be it the ceiling rate or some other rate selected by him, over the whole period? Can or should

he use different rates for portions of the period to reflect the changes in rates or should he, in selecting the rate not exceeding the ceiling, have regard to the changes by striking an average?

A simple example demonstrates the different results that could be obtained. Assume a Writ was issued on 30.3.79 and a judgment was given on 30.3.83. At the time the Writ was issued the maximum rate was 9.4%. At the time of judgment the maximum rate was 15.8%. Assume the sum on which interest was to be awarded was $10,000. If the rate of 15.8% was used for the period from date of issue of Writ until judgment the sum of $6,320 would result. On the other hand, if the rate was 9.4% the sum would be only $3,760. The difference between the two rates of interest is 6.4%. Should the Judge select the mean between the two rates and use 12.6% which, in the example, would result in an award of $5,040, or should he look in detail at the rates set out in the Table above and note that with the exception of 33 days in January-February 1983 the rate never fell below 14.4% from 6.7.81 till judgment and therefore strike some other average, or should he use each of the different rates applicable during the period? In any given case a broad approach to averaging the rates may be detrimental to either party's interests.

By pegging the maximum rate to firstly, the Australian Loan Council rate and then to the rate announced by the Attorney-General and having regard to the fluctuations which have occurred in those rates may not the matter of interest now assume "disproportionate importance"? Will it come to pass that a plaintiff will seek the advice of an economist to see whether he may not benefit by a forecast increase in the rate at the commencement of the next quarter and so delay or adjourn his trial to take advantage of that benefit if Judges slavishly follow the maximum rate applicable at the time of judgment and do not have regard to the fluctuations in rates which have occurred over the period in which interst is to be awarded?

On the other hand if the fluctuations are taken into account is not the Plaintiff more likely "to be placed in the position in which he would have been had the amount of the verdict been paid to him at the date of the commencement of the action" than if a single rate of interest is applied throughout the relevant period? Similarly it is suggested the Defendant will receive more equitable treatment than if a single rate is arbitrarily adopted for the whole period.

Table 2 below calculates the amount of interest on $1,000 at the rates applicable for the periods set out therein. Returning to the example used above, if the actual rates of interest are applied for the appropriate periods, interest on $10,000 for the period 30.3.79 – 30.3.83 would be $5,360.70, or $320.70 more than the mean between the rates applicable at the beginning and end of the period and $959.30 less than if the rate applicable at the end of the period (15.8%) were applied throughout. The different results are striking even with the comparatively modest base figure of $10,000.

TABLE 2

Period	Days	Rate %	Interest on $1000 $
1. 2.75 – 30. 6.75	151	9.8	40.54
1. 7.75 – 30. 6.76	365	10.4	104.00
1. 7.76 – 30.11.76	153	10.6	44.43
1.12.76 – 16.10.77	320	10.9	95.56
17.10.77 – 30.10.77	14	10.6	4.06
31.10.77 – 31. 1.78	93	10.3	26.24
1. 2.78 – 31. 7.78	182	9.6	47.86
1. 8.78 – 31.10.78	92	9.4	23.69
1.11.78 – 11. 2.79	103	9.2	25.96
12. 2.79 – 22. 4.79	71	9.4	18.28
23. 4.79 – 13. 6.79	52	10.1	14.38
14. 6.79 – 16. 1.80	216	10.5	62.13
17. 1.80 – 22. 3.80	65	10.9	19.41
23. 3.80 – 29. 4.80	38	11.7	12.18
30. 4.80 – 2.11.80	187	12.3	63.01
3.11.80 – 7.12.80	35	12.9	12.36
8.12.80 – 8. 1.81	33	13.1	8.97
9. 1.81 – 5. 7.81	178	13.6	66.32
6. 7.81 – 13. 8.81	38	14.4	14.99
14. 8.81 – 3. 2.82	173	15.7	74.41
4. 2.82 – 16. 5.82	104	15.8	45.01
17. 5.82 – 8. 8.82	84	17.2	39.58
9. 8.82 – 29. 8.82	20	17.4	9.53
30. 8.82 – 5. 9.82	7	17.2	3.29
6. 9.82 – 12. 9.82	7	17.1	3.27
13. 9.82 – 19. 9.82	7	17.0	3.26
20. 9.82 – 26. 9.82	7	16.1	3.08
27. 9.82 – 3.10.82	7	15.5	2.97
4.10.82 – 17.10.82	14	15.1	5.79
18.10.82 – 31.10.82	14	14.4	5.52
1.11.82 – 7.11.82	7	14.6	2.80
8.11.82 – 28.11.82	21	14.8	8.51
29.11.82 – 12.12.82	15	15.2	6.24
13.12.82 – 27.12.82	15	14.9	6.12
28.12.82 – 3. 1.83	7	14.4	2.76
4. 1.83 – 9. 1.83	6	13.8	2.26
10. 1.83 – 16. 1.83	7	13.6	2.60
17. 1.83 – 23. 1.83	7	14.4	2.76
24. 1.83 – 13. 2.83	21	14.1	8.11
14. 2.83 – 20. 2.83	7	14.7	2.81
21. 2.83 – 27. 2.83	7	14.8	2.83
28. 2.83 – 6. 3.83	7	15.1	2.89
7. 3.83 – 13. 3.83	7	15.3	2.93
14. 3.83 – 27. 3.83	14	15.2	5.83
28. 3.83 – 19. 4.83	23	15.8	9.95
20. 4.83 – 1. 5.83	11	14.8	4.46
2. 5.83 – 15. 5.83	14	14.7	5.63
16. 5.83 – 29. 5.83	14	14.5	5.56
30. 5.83 – 13. 6.83	15	15.6	6.41
14. 6.83 – 30. 6.83	17	15.8	7.35
1. 7.83 – 30. 9.83	92	15.8	39.83
1.10.83 – 31.12.83	92	15.8	39.82
1. 1.84 – 31. 3.84	91	13.3	33.15
1. 4.84 – 30. 6.84	91	14.7	36.64

Payment Into Court

In 1977 the Rules of the Supreme Court were altered to give effect to the decision in **Murphy v. Murphy** supra by the inclusion of Order 22 Rule 6A. Accordingly, in order to assess the amount the plaintiff recovers for the purpose of seeing whether Rule 6 applies, one looks at the amount for which he is entitled to judgment plus interest and plus the amount of any payments made pursuant to the Workers' Compensation Act 1958.

The fact of any payment into court should not be communicated to the Judge and in **Williams v. Volta** supra the approach of Smith J. in **Schulte-Hordelhoff v. Patons Brake Replacement Pty. Ltd.** (1965) V.R 369 and Southwell J. in **Montalto v. Ashton** 28th May 1980 — an unreported decision, were not followed.

In **Williams' Case** Anderson J. at 756 took the view that the period in respect of which interest was to be fixed was unequivocally laid down and that while good cause may be shown why no interest at all was to be allowed, S.79A did not permit or provide any discretion as to the period in respect of which interest was to be awarded.

McInerney J. at 756 expressly refrained from expressing any concluded views on that question until it became necessary to answer it.

On the other hand Jenkinson J. at 758 thought that the section "authorised not only a refusal by the Judge to give damages in the nature of interest at all, but also a limitation by the Judge of the period in respect of which the interest is allowed to less than the period specified in the subsection". No member of the Court, however, saw any warrant for terminating the period at the date of the payment into Court.

B.H. STOTT, QC

MOUTHPIECE

Place: Four Courts Cafe — lunchtime.
Conversants: Ambitious Young Barrister No. 1
Ambitious Young Barrister No. 2
Background Milieu: The noise of cervical-collared Plaintiffs, bored jury panel members, and police boys and girls all devouring chicken schnitzel sandwiches.

A.Y.B1: Been busy lately?

A.Y.B2: Oh can't complain, can't complain. Just onto the second fee book, actually.

A.Y.B1: See you're not robed — not in court today?

A.Y.B2: What? Oh no, just knocked off a Mareva before the Chief in the Pracky. What about yourself?

A.Y.B1: Oh, no. Been catching up on the paper work I have to work most nights to keep up with it.

A.Y.B2: Oh. Of course I spend my nights preparing my cases for the next day. I usually get in about 6 in the morning to handle the paperwork. Keep the rest for the weekends — got to keep the girls and the word processor busy you know.

A.Y.B1: Oh. You know the changes in jurisdiction are going to affect things. I mean I'll have to decide whether to go back to the magistrates.

A.Y.B2: I'm sure you will. Of course I had a chat to some of the senior blokes in my suite and they all think I should stay in the Supreme — bit of a retrograde step going back to the County.

A.Y.B1: Oh. Are you going to the July Legal Conference in Surfers? I've booked an apartment overlooking the surf.

A.Y.B2: No. I'll be in Canberra in July, but I'm looking forward to the September Conference in Austria. Hope to fit in a bit of skiing in Moritz.

A.Y.B1: Oh. Excuse me waiter, could I have a cappuccino please?

A.Y.B2: Oh Lorenzo, the usual Vienna with lots of cream. In court tomorrow?

A.Y.B1: Oh. Well yes, its just a consent adjournment in Chambers at Melbourne Magistrates. What about yourself?

A.Y.B2: Oh. (Long pause, adjusts rose in lapel, runs fingers through closely cropped hair). Er, looks like we might be opposed.

ELLIOTT P.

THE BAR IN SOUTH AUSTRALIA

— Twenty Years Old —

In South Australia, all practitioners are admitted as "barristers, solicitors, attorneys and proctors." Like Victoria, we have a fused profession and, apart from any personal undertaking or inclination, any practitioner can practise in any area of the law.

Prior to 1955, there do not appear to have been any practitioners who claimed to practise solely as barristers. Certainly there were practitioners who largely concentrated on "barristers work". In many instances, such practitioners accepted instructions from other practitioners to appear or to advise. This was particularly the case with many of the silks. There were however, silks who rarely, if ever, ventured into Court.

Until a couple of years ago, all silks were either sole practitioners or members of firms, sharing in the emoluments and obligations of their firms as would any other partner. Now, any person who takes silk is required by the Chief Justice to undertake to practise solely as a barrister at the independent bar.

In 1955, C.J. Legoe (now Mr. Justice Legoe) commenced practice solely as a barrister. He appears to have been the first practitioner so to elect. R.R. Millhouse (now Mr. Justice Millhouse) was next in 1962. By the end of 1970, a total of 17 people were at the Bar. Thirty-three joined the Bar during the next ten years and in the eighties there were a further thirty-one.

Obviously, not all are still practising at the Bar. Apart from deaths, many have been made judges, others have returned to the fused profession or have gone into academic or other pursuits.

At present there are some 62 barristers actually in practice, of whom twelve are silks.

In 1964 the barristers then practising (Legoe, Elliott, Zelling and Millhouse) created an unincorporated body "The South Australian Bar Council" and the Bar Roll was commenced.

Since that date the Bar Council (now more generally known as the South Australian Bar Association) has on many occasions requested one or another member to prepare a set of Rules for the South Australia Bar. This task seems never to have been completed, no doubt for very good reason!

In the meantime, it was resolved in 1964 that the rules of the Victorian Bar Council be adopted as the rules in South Australia, subject to the deletion of the Victorian rules dealing with elections to the Bar Council and the substitution of a truly democratic rule providing that every signatory of the Bar Roll should be a member of the Bar Council.

It has been the invariable practice to waive the requirement for an intending barrister to read as a pupil in chambers. On occasions, students and others have sat in chambers for various periods of time, but that has not been the common practice. In particular, any period of time so spent did not, in the old days, count towards the service in articles of clerkship which was a necessary prerequisite to admission to practice; nor does it now count towards the present prerequisites.

There has at no time been any statutory recognition of any separate requirements for the Bar as to discipline or otherwise. All disciplinary powers have been vested in a statutory committee created pursuant to the Legal Practitioners Act or its predecessors. The day to day management of that committee is and has been vested in the Law Society. Nevertheless it is a visible indication of the strength of our Bar that the Law Society in consultation with the Bar Association is presently taking action to incorporate in its proposed Rules of Conduct a separate section headed "Bar Rules".

Membership of the Law Society has never been mandatory either for barristers or solicitors. However, the large majority of barristers are members. For many years, those practising at the separate bar have been heavily committed to Law Society activities and it might even be argued that a disproportionate number of Law Society office holders have been barristers. This link is still maintained.

Until 1982, almost all barristers were in one set of chambers. Accordingly, it was easy for the affairs of the Bar Association to be managed around the lunch table. That is no longer the position. There are now six sets of shared chambers and nineteen barristers practice from other premises.

For any worthwhile expression of opinion from "the Bar" it is necessary to call appropriate meetings. Inevitably, at least some of the old informality must go.

It is perceived by some that there must be occasions on which the Bar will wish to express a view different from that which might be expressed by the Law Society. Such considerations have led to a decision that the South Australian Bar Association should become an incorporated body. The Association is presently seeking incorporation. All the joys and woes of our new status now await us!

D.F. BRIGHT
(of the South Australian Bar)

COUNSEL OF GOOD SENSE AND CO-OPERATIVENESS

Barristers in Victoria are generally required to be tenants of Barristers Chambers Limited. Available premises for the most part are of three categories with respect to secretarial space. There are those with no such space. Some rooms have exclusive use of a space for a secretary. The third type comprises suites where two or more rooms connect with a common secretarial space. Into this last category fall the chambers offered more recently in the new buildings — Latham, Aickin and Seabrook.

In recent years, certainly since about 1980, many suites have installed expensive electronic equipment. Some of these sophisticated items now in frequent use are electronic typewriters equipped with memory and visual display units, computers, photocopiers and binding machines. Additional equipment may include refrigerators, coffee machines, paper shredders and general secretarial equipment. Some suites even have arrangements for commonly owned libraries. The cost of such apparatus may range from a modest $5,000.00 or thereabouts for an I.B.M. electric typewriter without storage facilities and secretary's furniture to $20,000.00 or more for the latest electronic aids. These items may be purchased for cash or more often are leased. To operate this apparatus it is necessary to find a skilled experienced secretary who must be well paid and who has or will attend training courses to operate her battery of equipment. Commonly, the cost of this equipment and the ongoing costs, such as wages, lease payments insurance and the like are shared by the barristers who enjoy these facilities.

When a tenant vacates a room in a suite which shares secretarial space, the remaining tenants are described by Barristers Chambers Limited as "continuing tenants". The rights of continuing tenants in relation to shared secretarial space on the reletting of the room adjoining such space are laid down by a set of Rules which were promulgated as long ago as 30th June 1977.

The Tenancies of Secretarial Space Rules 1977 consist of an introductory paragraph, the Rules themselves and a concluding aspiration. The Rules in their entirety are as follows:—

TENANCIES OF SECRETARIAL SPACE

Introduction

As doubts seem to exist as to the rights of tenants in relation to tenancies of secretarial space, it is desirable to publish the rules long acted on by the directors in this regard, (and to lay down the practice to be followed in future in advertising vacant rooms). It is emphasised that as in all these matters the directors reserve the power, in special circumstances, to make decisions other than as dictated by these rules. Such cases arise only very rarely.

A. Secretarial Space Totally enclosed within one Room

1. *Such space is let only with the tenancy of the room, and the tenancy of the room will not be let without the space.*
2. *The disposal of that space is within the sole control of the tenant of the room, who may make such arrangements as he wishes, with whatever other barrister he wishes, as to sharing the use and cost of the space and/or secretary housed therein.*
3. *No such arrangement will of its own force survive the tenant's tenancy. The incoming tenant takes the space free from any pre-existing obligation and may make such arrangements for the future as he chooses.*
   NOTE: The directors have always rejected the claim of some other room to have on the basis of historical connexion, some permanent right to share in the use of a secretarial space totally enclosed in some other room. They consider it

impossible to lay down any satisfactory rules as to how long such a connexion would need to have existed, what its basis was, whether it made a difference that telephones were routed through the space, etc., etc. The only course they considered practicable is for the rights of each tenant to be subject only to such arrangements as he has himself made.

B. Secretarial Space Connecting with Two or More Rooms

The directors are concerned to ensure that so far as possible applicants for tenancies are treated in order of seniority, and to reconcile that principle with the general comfort of all. In particular, the directors do not regard the fact that barrister A's secretary does not like barrister B as a ground for refusing a tenancy to barrister B. The general rules applied are:

1. *The tenancy of a space connecting with two or more rooms will be granted to one barrister only, being in general offered to the connecting tenants in order of seniority. The rent is the sole responsibility of the tenant thereof.*
2. *Subject to the right of the connecting rooms to have unrestricted access through the secretarial space, the mode of use of the secretarial space is at the discretion of the tenant thereof. He is not required to share the use of the space with the tenants of the connecting rooms, and is not entitled to demand that they share with him its cost. Arrangements for such sharing are entirely the matter of the persons concerned.*
3. *(a) If the tenant of the secretarial space gives up the tenancy of his room, he automatically loses his tenancy of the secretarial space.*
   (b) The tenancy of that space will then be offered to the continuing tenants of the other connecting rooms, in order of seniority.
   (c) If a continuing tenant takes the tenancy of the secretarial space, the vacant room will be advertised as "Connecting with secretarial space". The incoming tenant of the vacant room is not required to share in the cost of the secretarial space and is not entitled to demand that he be allowed to share its use. Applicants should prior to application for such a room satisfy themselves in regard to this by discussion with the continuing tenant holding the tenancy of the space.
   (d) If no continuing tenant takes the tenancy of the secretarial space, the vacant room will be advertised as "With tenancy of secretarial space". In such a case the continuing tenant is not required to share in the cost of the secretarial space and is not entitled to demand that he be allowed to share its use. It is for the continuing tenant to decide whether he wishes to accept any risk involved in his not taking the tenancy prior to advertising of the vacant room. Applicants for such rooms should satisfy themselves prior to application whether they wish to and can make satisfactory arrangements for sharing.

Conclusion

The good sense and co-operativeness of Counsel has been such that in fifteen years only a handful of difficulties has arisen. It is hoped that this will long continue

The rights of a continuing tenant in relation to shared secretarial space when a room in his suite is advertised for reletting are unknown or misunderstood by many members of Counsel. Many are of the view that the continuing tenant or tenants, or the senior of them, have the right of veto in respect of an incoming tenant who does not wish to share a secretary or secretarial space in the suite where this has been the erstwhile practice. This view is erroneous, as the Rules set out above demonstrate.

Difficulties also have arisen because of the manner, or lack of guidance as to the manner in which the discretion vested in the Directors of Barristers Chambers Limited under the Rules is exercised. Inconvenience has occurred because the Rules for their proper operation depend on "the good sense and co-operativeness of Counsel". These virtues have not always prevailed.

Consider the situation where a suite comprising of two rooms which have connecting secretarial space containing jointly leased expensive electronic equipment and where a first class secretary is employed. Tenants of these chambers have shared a secretary since the opening of Owen Dixon Chambers. One of the tenants of the suite leaves his former room which is then advertised for reletting. Eleven Counsel apply for the room. The seven most senior applicants, although wanting the room do not desire secretarial facilities and decline to take up the lease because they do not wish to force their way into chambers where the sharing of secretary and equipment is expected. The eighth applicant likewise wishes to lease only the room of the

outgoing tenant, but has no need or inclination or financial capacity to share the joint secretarial expenses. Such applicant, although already having a room, refuses to wait for another room without shared secretarial facilities. The ninth senior applicant wishes to take over the share of secretary and common equipment given up by the outgoing tenant. In these circumstances, if the eighth senior applicant demands the lease of the room in question, then under the present Tenancies of Secretarial Space Rules, such applicant can impose himself upon the continuing tenant. The consequence of this may be that the continuing tenant cannot alone bear the cost which was previously shared. He may have to give up these facilities altogether. This situation, except as to the final consequence, recently occurred, in substance, in Owen Dixon Chambers.

From time to time the Directors of Barristers Chambers Limited have been confronted with the situation where an existing tenant has sought to leave his room because he no longer wishes to use shared facilities. In such a case, the Directors have been known to offer to the tenant without advertisement a room without secretarial space. His old room would then be generally advertised in the usual way. On some such occasions, as the price of obtaining someone who will share the joint facilities, it has been necessary for the continuing tenant to pay for the removal of the departing tenant's own fittings — his telephone, air-conditioner, shelving and other fittings!

There is an understandable reluctance on the part of Barristers Chambers Limited to depart from the rule, based essentially on seniority, in favour of one which might permit a continuing tenant to command key money or to exercise a right of selection with a view to developing a suite of specialists. But events in the seven years since the Rules were promulgated have changed the circumstances in which they must operate. Groups of like-minded specialists have developed in adjoining chambers. Sums unheard of in earlier years are invested in the decoration, furnishing and fitting out of chambers including secretarial and waiting room areas. Since 1981, an incoming tenant has been required to purchase shelving and other fittings in the room of the departing tenant. Why should he not also be required to take over the burden and the benefit of the facilities which the departing tenant owns or uses in conjunction with the continuing tenant? Why should counsel who is prepared to outlay expense in improving shared areas not be entitled to expect security and support from the landlord in maintaining existing arrangements on the departure of his neighbour for whatever reason?

It is indicative of the antiquity of the 1977 Rules that the Directors have established their own practices without regard to the terms of the Rules other than the provision which gives them an overriding power in "special circumstances". If, for instance, the closing date for applicants to apply to lease a room with shared secretarial space falls within the long or short vacation, and no applicant who wishes to share established facilities applies, then the continuing tenants may require the room to be re-advertised after the commencement of Term The practice concerning the purchase of the shelving and fittings in a tenant's room has already been mentioned

In the very short term all rules relating to accommodation for Counsel in premises administered by Barristers Chambers Limited should be consolidated. They should be widely published as soon as possible. This publication should include a summary of decisions made by the Directors, in special circumstances when they have departed from the specific dictates of the Tenancies of Secretarial Space Rules.

The revision of the Rules should provide, as soon as possible, the following two rules:—

(a) As amongst applicants for a room which shares secretarial space connecting with one or more other rooms, at the option of a continuing tenant or tenants, priority shall be given to applicants who are prepared to make a fair contribution towards the cost of secretarial equipment and secretarial services in proportion to the number of rooms adjoining such secretarial space, or such lesser amount as the continuing tenant or tenants may request, and the continuing tenant or tenants shall be permitted to negotiate with such applicants on this basis

(b) If on the first advertising of a room which shares secretarial space with one or more other rooms, no applicants who wish to share such space apply, the continuing tenant or tenants may request that such room be re-advertised, and it shall be so re-advertised

It is to be regretted that the operation of the Tenancies of Secretarial Space Rules 1977 no longer can be left to the good sense and co-operativeness of all Counsel.

• • •

LAWYER'S BOOKSHELF

THE LAW AND PRACTICE OF COMPROMISE by David Foskett; xxx and 198 pages; Sweet & Maxwell, London; 1980; hardcover $60.

First of all the bad news: At a retail price of $60, the cost to the purchaser of this book's 190 pages of text and index (7 pages are totally blank and another virtually so) is over 30 cents a page. Given that the page size is not large, the typeface not unduly small or close-set, and that a number of the printed pages are partially blank, containing only an introductory paragraph or the concluding portion of a chapter, it will be seen that this volume, in effect a long essay, is expensive.

But, even at that price, this little book should prove invaluable to all practising lawyers, and particularly to Common Law barristers. Lord Lane states in the Foreword; "When one realises the importance of these skills. . . it is surprising that there is so little guidance on the subject." As far as this critic is aware there is no Australian text on the topic, somewhat awkwardly entitled, the Law of Compromise. (Would the Law of Settlement or the Law of Accord and Satisfaction sound any more appropriate?) The author, a London barrister, defines the subject as a body of law founded essentially on contract which has grown up to govern the rights and obligations of parties engaged in the resolution or attempted resolution of legal disputes.

The importance of this area of the law to lawyers involved in litigation needs little elaboration. The author indicates in the Preface that the moving factor leading to his writing the book was the necessity to "consider a number of settlements which had gone wrong". There are few, if any, areas in which lawyers are likely to have a more direct participation than the settling of disputes, and clients are justified in assuming that this is an area of law with which their representatives are well familiar. However, to quote Lord Lane again, "It may look easy but there is much to learn and many pitfalls." The truth of this statement is demonstrated by comparing the diverse and intricate questions covered by three recent Victorian decisions, **Paynter v Willems** (1983) 2 VR 377 (a question of whether there existed any accord), **Fraser v Elgen Tavern P/L** (1982) VR 398 (a question whether satisfaction had or had not been given) and **Koutsouradis v Koutsouradis** (1983) 2 VR 487 (capacity of solicitors to compromise and bind their client).

The book is set out in five parts: The Legal Foundation and Consequences of Compromise; The Role of Legal Advisers in Compromise; The Machinery, Practice and Enforcement of a Compromise; The Practice on Impeachment of a Compromise; and Some Particular Areas of Compromise.

The author's style is plain and straightforward and reads like a lecture. Much of what he states is simple enough in itself. An example; "Communications between counsel on opposing sides made in the course of negotiations to settle an action or to agree on an issue are impliedly without prejudice." One would hope that most readers would be familiar with such a principle. But it is the marshalling of such basic concepts in logical sequence and the listing of relevant authorities which are of value here. Moreover, the author sets out the lesser known qualifications to which such basic precepts are subject. Much of what is contained in the book is merely the highlighting of the rules of the law of contract in their application to a particular subject matter. The author acknowledges this. The book's major value lies in the extracting and emphasising of such distinctions as exist between the general principles of Contract and those applicable to Compromise.

Although the book contains xiv pages of listed cases, including many unreported Court of Appeal decisions and those reported only in "The Times", a scanning of this list reveals only one case from outside the British Isles, (a N.Z. one). The Australian case law on the subject including, it is thought, some significant decisions has not been included. This is unfortunate. Given the book's relatively narrow topic, the author could be expected to have included references to decisions in other Common Law jurisdictions.

Final mention should perhaps be made of the large number of precedents contained in the book including those for entering judgment, obtaining a stay or adjournment, restoring proceedings, issuing summonses or writs to set aside consent orders and so forth which are undoubtedly of worth.

The last word may be left with Lord Lane CJ: "This is a book which anyone handling litigation would do well to read."

DAVID SHARP

LAW REFORM REPORT

The State Government has been very active in the area of Law Reform. The Attorney-General has sought the views of the Victorian Bar in relation to the changes in the law and the Bar has, through the Law Reform Committee, responded. The Attorney-General maintains a close liaison with the Criminal Bar Association and the reforms which have taken place in the last 12 months in the criminal law area have been done in consultation with that Association.

The purpose of this report is three-fold.
Firstly, to draw the attention of members of the Bar, to the changes in Civil Law which have not met with the approval of the Law Reform Committee of the Bar.
Secondly, to seek the assistance of Counsel to monitor the practical effect of the changes in the law which have taken place over the last 12 months.
Thirdly, to inform members of the Bar of a law reform matter presently under consideration by the Law Reform Committee relating to Limitation of Actions.

CHANGES IN THE LAW

(i) **Interpretation of Legislation Act 1984**
This Act comes into operation on the 1st July, 1984. It repeals and replaces the Acts Interpretation Act. It contains a highly controversial section relating to the use of extrinsic materials in the interpretation of all forms of legislation. The section is S. 35. A number of members of Counsel considered the section prior to its enactment and all condemned it in its present form. The matter was debated at Bar Council and the Bar Council disapproved of the section on two grounds, namely that it was unacceptable in principle and will create uncertainty in the law and prolong litigation and it failed to define the extrinsic materials which could be used. A letter was forwarded to the Attorney-General indicating the grounds of disapproval. Some of the grounds were, that the right to consult extrinsic material was not confined to a situation where the legislation was ambiguous, the plain and ordinary meaning of the words could not be relied upon because reference to other materials may reveal that the draftsmen had not correctly stated the purpose of the legislation, the lack of definition of extrinsic materials would create uncertainty in the law and references to extrinsic materials would lengthen litigation
The report of the Legal and Constitutional Committee states that the Committee believes extrinsic materials will only be referred to if the legislation is ambiguous. The Attorney-General opined the same view on television. (Is the transcript of his views relevant extrinsic material?) Despite those views, the legislation does not state that the use of extrinsic materials will only be permitted where there is an ambiguity.
In an age when more and more professional persons are being sued for negligence, can any Counsel after 1st July give an opinion on the meaning of legislation without inserting a disclaimer clause at the end of his opinion in which he states that he believes he has referred to all extrinsic materials to aid the interpretation but he does not warrant the advice given as being based on all extrinsic material?
The section permits reference to "any matter or document that is relevant including but not limited to", and thereafter a number of source materials are referred to. What is "any matter"?

Despite the criticisms of the practising profession the Government has passed the section in the form put forward by the Legal and Constitutional Committee.

The Commonwealth has passed a similar provision (see S. 15 AB of the Acts Interpretation Act) but in accordance with typical Commonwealth approach to drafting, it is twice as long as the State section and more obscure.

Members of Counsel are requested to monitor closely the operation of this section. If Counsel come across any instances which create uncertainty in the law or prolong litigation, he is requested to inform the Law Reform Committee so that representations can be made to the Attorney-General. For the cynics amongst us the new section will be good for our business and that of the Government Printer!

(ii) **Occupiers Liability Act 1983**

This Act which amended the Wrongs Act does away with the common law relating to occupiers liability. Instead of the various duties of care owed by an occupier, there is one general duty of care owed by an occupier to all classes of entrants. A number of criticisms were made of the Act by the Law Reform Committee. The Attorney-General noted the criticisms but indicated he would not amend the Act. He stated that Officers of his department would closely monitor the operation of the new law.

On one interpretation of the Act, an absentee landlord may be held liable even though he was unaware of the existence of any danger on the leased premises.

A further criticism was that the Act imposes a duty in relation to the state of the premises, but it does not cover activities thereon. In addition, it does not impose any duty to supervise or control the conduct of others on the premises. The matters not covered by the Act will be dealt with according to the general law of negligence. However, there may be arguments about whether or not the Act covers a particular situation where the activity involved relates to the use of the land. This may create problems in practice.

The Act requires an occupier to owe a duty of care to trespassers. The law had developed over the last 10 years, gradually recognizing limited duties of care to some trespassers. The new Act may impose an unfair burden on an occupier towards a trespasser. The Act on one interpretation also reduces the duty of care formerly owed by an occupier to a contractual entrant.

Finally, a doubt may arise as to the applicability of the defence of volenti because of the express reference to the provisions relating to contributory negligence.

Counsel are requested to monitor the operation of this Act and bring to the attention of the Law Reform Committee any problems encountered in practice.

(iii) **Limitation of Actions Act**

An amendment to the above Act in 1983 extended the period for personal injury claims. The period is now 6 years. Now time begins to run from the date when the plaintiff is aware that he has suffered injury. The amending Act contained a transitional provision. The section was not happily worded. The view was taken that those persons who had ascertained a cause of action within the 6 year period prior to the commencement of the Act could bring proceedings. However, a close analysis of the transitional section reveals this was not so. Hence, persons whose cause of action had expired before the six year period had commenced, even though they were not aware that they had cause of action, could not bring proceedings. There are a number of persons in this State who suffer from asbestosis and hearing loss due to their employment conditions In a great number of cases, the potential plaintiffs were never aware of their condition until the expiration of the limitation period.

The 1983 amending legislation was brought in to overcome the decision of the House of Lords in **Cartledge v. Jopling** (1963) A.C. 758. It was held in that case, that a cause of action in tort is complete when the injury is suffered irrespective of whether the plaintiff is aware of it or not. Representations were made by the Bar Council and others to the Attorney-General to amend the new legislation, so that persons who did become aware of their injuries in the 6 year period prior to the commencement of the Act could bring proceedings. Initially, the Attorney-General was favourable to amending the legislation, however, he has recently informed the Law Reform Committee that the transitional provision in the amending Act was drafted not to cover the particular cases under discussion. He said he would not consider amending the Act without reference to the Insurance Industry. The Law Reform Committee proposes to take the matter again to the Bar Council and seek its assistance to persuade the Attorney-General to amend the legislation to provide remedies for these deserving plaintiffs.

Reform Under Consideration

The Law Reform Committee has been recently considering the question of the limitation of actions in building disputes. There has been, in recent years, a spate of cases where defects in buildings have manifested themselves many years after the limitation period has expired against the original builder and those responsible for construction. It is thought that the law ought to be amended to bring it in to line with the recent amendments relating to personal injuries namely that the cause of action should not commence to run until the damage to the building is first observed.

The Law Reform Committee is considering the matter at present, and seeks the views of any members of Counsel as to what amendments should be made to the law.

One proposal put forward is that there should be a limitation period of 15 years in relation to building works commencing from the time when the damage first occurs. This would appear fair to both those who suffer the damage and to those responsible for the construction.

The Committee intends to make representations to the Attorney-General in the near future.

The Law Reform Committee cannot speak for the Bar as a whole. Accordingly, it seeks to gather the views of those members of Counsel who have knowledge and experience in a particular area of the law. Reports and recommendations are forwarded to various Law Reform Bodies with the statement that they represent the views of certain members of Counsel.

Members of the Bar can make a useful contribution to law reform in this State. Judges and Barristers are probably in the best position to make an assessment of the practical operation of the law. If any member of Counsel comes across a situation which produces an unfair or unjust result, or prolongs litigation or makes litigation more expensive or uncertain, then he should report the matter to the Law Reform Committee with a recommendation for change.

The Law Reform Committee requests members of Counsel to report to it instances where the law does not work adequately in practice. I do not confine that request to the matters set out above.

The Law Reform Committee on occasions seeks the assistance of members of Counsel. If any member of Counsel wishes to assist with references to any particular area of the law, he is requested to forward his name to the Secretary, John Hockley, with details of his area of speciality.

E.W. GILLARD, QC
Chairman, Law Reform Committee

INTERNATIONAL SYMPOSIUM ON THE ROLE OF THE LEGAL PROFESSION IN THE TWENTY-FIRST CENTURY

Vancouver Canada — August 22nd-24th, 1984

To mark its Centenary, the Law Society of British Columbia, Canada, is hosting an International Symposium to discuss the needs of the Legal Profession and the Justice System in the future.

Speakers come from all countries including Australia.

The Symposium will be held at the Hyatt Regency, Vancouver and will cost $295 (Canadian).

Enquiries:
International Symposium
Law Society of British Columbia
300-1148 Hornby Street,
Vancouver B.C.
CANADA V6Z 2C4

SIXTH INTERNATIONAL FAMILY LAW CONVENTION

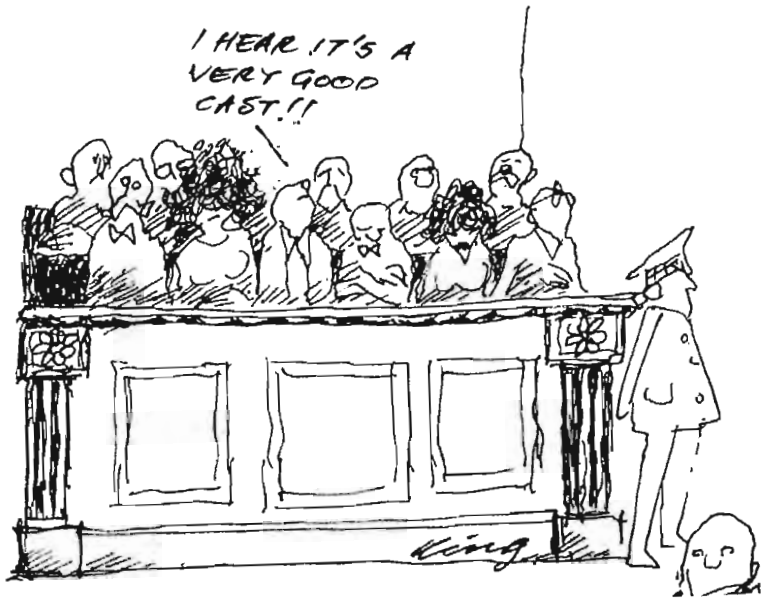
— NEW YORK

New South Wales Family Law Practitioners Association will hold the Sixth International Family Law Convention in New York between 5th October to 7th October 1984.

The papers will deal with United States and Australian experience in different aspects of Family Law including custody, access and matrimonial property.

Enquiries:
Wallis International Pty Ltd
34 Glebe Point Road,
Glebe, N.S.W. 2037

THE JURY



"11 FOR. 1 AGAINST - DO YOU THINK SHE WILL CHANGE HER MIND !! "

Winter 1984

VERBATIM

Prominent Q.C. (cross-examining Witness): "I cannot translate that into evidence you see".
Witness (losing patience): "I will break it down for you. I did not realise you were so obtuse".
Prominent Q.C. (in ameliorating tone): "I am sorry, you will have to live with me as I am".
Witness (unforgivingly): "I will endeavour to manage while I am here".

Court transcript.

From: **"Brief" — May 1984,**
Journal of the Law Society of Western Australia.

• • •

The Clerk was calling for adjournments in the District Court: "Thomas Alexander Hinshelwood and Bertram Michael Gillman".
Two young solicitors step forward:
"I. . .er, um. . .appear for the Defendant. I. . .er,. . .think he may be a Stipendiary Magistrate".
His Worship:
"He most certainly is!"

Cor. Gillman SM
4th April 1984

• • •

The solicitors for the husband filed a cross-application in the Family Court at Melbourne. Among the relief sought was the following:

(a) In order that the husband have the soul custody of the child of the marriage. . .;
(b) such further and other orders as the Court deems fit.

• • •

In the Family Court the Judge was about to commence the pre-trial Call-over.
"Ladies and Gentlemen, before we start the Call-over, is there any Practitioner with any out of the ordinary matter — not just run of the mill stuff, but any interesting matters? The reason being that there are to be present in court three V.I.P.'s who wish to see a Form 6 List in action. . .No? Anyway, just mention it to my Associate.
Nikakis: "May it please your Honour, I can dance".

Cor. Lusink J.
May 1984

• • •

The Judge in the Practice Court was refusing to tie up his court for seven days.
Judge: "This is the Practice Court it is not for the hearing of cases that will take that time. It seems to me that Football cases should not be heard in this court".
As to whether such cases should be given priority in the Miscellaneous Causes List —
Judge: "It seems to me, Mr Fagan, there are other matters in the Miscellaneous Causes which are more important than football cases".
Fagan QC: "Delay is likely to defeat a just claim".
Judge: "What, a football club? See if you can persuade the Listing Master".

Cor. Kaye J.
11th April 1984

• • •

From the Law List;
Mr Justice Beach. 10.30 —
Bail Applications. SEC v. Donpar P-L (Pt. Hd.);
Chamber Business. Deputy Commissioner of Taxation v. The Hells Angels Ltd (For judgment).

• • •

Following Charles QC's objection to very lengthy saga by witness as being irrelevant and hearsay:
Sheppard J.: "If the rest of the evidence is admissable — which I do not think it is — then this is".
Evatt J.: "Besides, Mr Charles, we don't want to miss the end of the story. . .but your objection is noted".
Witness: "Can I continue on?"
Evatt J.: "Yes".
Witness: "I have forgotten where I was now for a second".

BLF De-Registration Case
Federal Court
Cor: Evatt, Sheppard & Morling JJ.
24 May, 1984.

VICARIOUS LIABILITY IN THE UNITED STATES

Miss Nora Cahill sued Peter Lekutanaj for $5 million damages for negligence arising out of her having been beaten and raped by the Defendant's brother, Nikola.

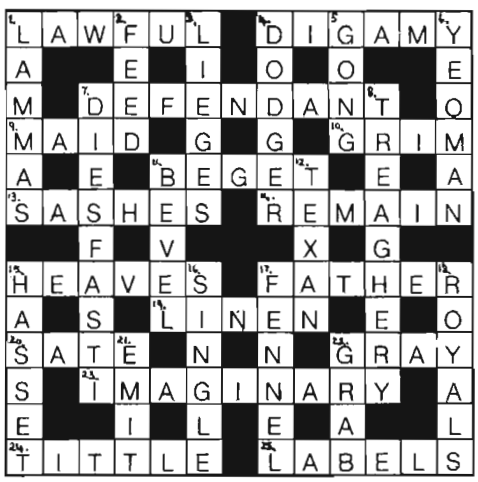
The Plaintiff met Nikola in an apartment building owned by Peter. He had been sent there by Peter to attend to a plumbing problem. In a conversation with her, Nikola said that Peter owned an apartment which was available for rent. They went to inspect it together. It was there that Nikola beat and raped her. He was convicted, sentenced to serve 7 to 21 years imprisonment and then absconded.

In her action against the brother, the Plaintiff alleged that he had negligently allowed Nikola to work in the apartment house where they met despite his known "propensity for violence". Evidence of this propensity was that Nikola had previously been arrested on charges of assault and possession of a weapon.

Unfortunately for legal scholars, this case did not proceed to judgment. On the fourth day the Plaintiff accepted the Defendant's offer of $475,000.

from "The New York Times"
12th October 1983.

SOLUTION TO CAPTAIN'S CRYPTIC No. 48



LETTER TO THE EDITORS

Dear Sirs,

Re: Your item on Bix Beiderbecke

I was tempted to write to tell you that I have not (unfortunately) collected all Bix' records, that what I purchased was not a cornet, that I am not responsible for In Memoriam notices in "The Age", that I do not pronounce it "N'Orleans" and that I did not need "dedicated practice" to realise that I was no Bix.

However, as these matters are of little consequence I shall refrain from mentioning them. After all, improvisation is the lifeblood of jazz, so I can hardly complain if you indulge in some improvisation of your own.

But you are guilty of certain inexcusable inaccuracies.

Bix was **not** born in 1901.
He did **not** die on 9.8.1931.
His first name was **not** Bismark.
Bix is **not** a nickname and should not appear in brackets.
His name is **not** spelt Biederbecke.

Moreover, the saddest thing of all is that "the music form nurtured by Bix and others", whilst "alive and well", is not "stronger than ever", except amongst his "small but loyal" band of faithful. No doubt the recognition now afforded him (albeit belatedly) by your music critic will swell that band.

Indeed how could any magazine which acknowledges Bix be described as "undergraduate"!

Although **Bix lives** through his music, it is true that his death is commemorated in my chambers each year. Both you and your readers are welcome to attend but note that the commemoration will be held on his anniversary and not on the 9th August.

HART QC

MOVEMENT AT THE BAR

Members who have signed the Roll since the Autumn Edition

Terence John O'DONNELL (Qld.)	
Jeremy Hugh GOBBO	Graham/Howells
Alan Walter SANDBACH	D.C. Munro/Dever
John Bernard SAUNDERS	Monteith/Foley
Angela Mary MALPAS	Magennis/Foley
Ian Donald McDONALD	Howden & P. Gray/Howells
Fiona Margaret STEWART	R. Gillard/Hyland
Peter Howard COSTELLO	Macaw/Stone
Andrew Peter Stewart ALSTON	G. Moore/Hyland
Andre MILSHON	Golombek/Duncan
Michael Seamus KILDEA	Barnett/Muir
Neale Andrew JAMES	Lally/Dever
Edwin Jan TANNER	Redlich/Muir
Ronald David CURTAIN	Heliotis & J.V. Kay/Hyland
David John BAMBER	van der Weil/List "C"
David George COLLINS	Robson/Spurr
Helen Mary SYMON	I. Sutherland/Foley
James Christopher CONQUEST	Canavan/Hyland
Antony David TROOD	Hore-Lacy/Spurr
Michael John CORRIGAN	Heerey/Dever
John Ainslie BELL	Bryant/Dever
Paul Bernard JENS	A.J. Myers/Hyland
Rozeta STOIKOVSKA	P.A. Wilson/Cooney/Duncan
Eugene Joseph TRAHAIR	J.R. Moore/Spurr
Graham William ROBERTSON	Ackman/Dever
Michael Edward KING	Henshall/Dever
Geoffrey Allan BYDDER	Nikakis/Duncan
Kenneth Duncan MACFARLANE	Meagher/Duncan
Peter Daniel (Dan) SWEENEY	Kent/Stone
Patricia HUDSON	Kingsley Davis/Foley
David Millward CLARKE	Finkelstein/Muir
Timothy John MARGETTS	Fajgenbaum/Foley
Joye Silvia ELLERAY	Dane/Hyland
Edwin James LORKIN	W.J. Martin/Spurr
Simon Richard MOLESWORTH	Porter/Muir
Clarinda Eleanor MOLYNEUX	Ramsden/Duncan
Alexandra RICHARDS	Phipps & Hayne/Hyland
Peter Julian HAAG	Lincoln/Dever
John Willem DE WIJN	Davey/Howells
Julie Patricia SPEHR	Cashmore/Duncan
Wallace Stuart CAMERON	Jolson/Stone
Ronald Alan CLARK	D. Smith/Duncan
John Terence HEALY	Kennon/Spurr
Jonathon James NOONAN	P. Galbally/Spurr
Neil Yorke RATTRAY	P. Rattray/Spurr
Duncan Leslie ALLEN	T. Wood/Howells
Norman FRANZI	Mattei/List "C"
Gregory Mark BORCHERS	Coldrey/Muir

Members whose names have been removed from the Roll at their own request

P.T. MAGINN
A.J. NOLAN
Z. FRIEDMAN

Members who have transferred to the Master and other Official Appointments List.

J.T. HASSETT
P.R. GRAY

Total in active practice: 920

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