

LEGAL PROFESSION ADMISSION BOARD

LAW EXTENSION COMMITTEE

SUMMER SESSION 2013-2014

ORIENTATION DAY PROGRAMME (FRIDAY, 8 November 2013)

LPAB "ORIENTATION DAY" WELCOME TO STUDENTS

By

Justice Geoff Lindsay, Board Member

1. Welcome, one and all (to the Orientation Day of the LPAB, and the Law Extension Committee, for the Summer Session, 2013-2014).
2. On behalf of the Legal Profession Admission Board, I congratulate you on your decision to study law.
3. For some of you, the choice you have made is to study law for the first time, leading to an award of a Diploma in Law.
4. For others, with overseas qualifications in law, the choice is to seek qualification as a lawyer in Australia.
5. Either way, your **choice** implies, I hope and expect, a **commitment** to study law as perceived, and practised, in a jurisdiction with a rich tradition and new world promise.
6. Australians have long regarded themselves as citizens of an independent country. Of course, exactly when and how we became a country at all is still the subject of debate, not entirely free of confusion in our collective mind. Was it thousands of years past, in an Aboriginal Dreamtime? What does "Australia Day" (26 January) commemorate: Captain Cook's visit to these shores in 1770, the

arrival of the First Fleet in 1788, or just (as many suppose) the end of annual summer holidays? The federation of the Australian colonies on 1 January 1901 has never been likely to be celebrated as a national day, if only because New Year's eve and the day after already have a separate, longstanding tradition of their own.

7. In any event, as lawyers you will know, or learn, that Australia did not, in law, become truly independent of Britain until 3 March 1986, with the joint proclamation of the respective *Australia Acts* of the Australian and Imperial Parliaments.
8. Some voices, crying in the wilderness, have for some years wondered aloud why, if independence is so important to our national identity, we can say “no” to a public holiday on the 3rd of March each year.
9. No-one listens to a call for a public holiday on 3 March!
10. And rightly so.
11. In the broad scheme of things the 3rd of March is too close to a clutter of important holidays already entrenched: Australia Day, ANZAC Day, and Easter in between.
12. Perhaps, the true importance of 3 March each year is its passing unnoticed.
13. The fact that it passes unnoticed is a reflection of the good fortune we have enjoyed – with a legal system that has evolved from a convict colony into a democracy, in large part due to respect for that elusive but foundational concept “the rule of law”.
14. Within months of the arrival of the First Fleet in Botany Bay, under the governorship of Captain Arthur Phillip, a foundation for the rule

of law, with a distinctive setting, was laid. The first civil litigation conducted in the colony resulted in a judgment in favour of two convicts who sued the Master of one of the First Fleet ships for loss of their baggage during the voyage. The judgment of the Judge Advocate, David Collins (a non-lawyer), is now reported as *Cable v Sinclair* [1788] NSWKR 7. A copy of the report has been distributed to you this morning for your information and enjoyment. The local “Court of Civil Jurisdiction” adapted English law to local conditions.

15. The convicts had no right to sue anybody under English law because, having been convicted of a capital offence before their transportation to New South Wales, they were, in law, “dead”.
16. Local law was adapted to local conditions, to meet the needs of a colony with aspirations (even then) aimed at a free society, governed by law, with nobody above the law.
17. If you want to read more of how law developed in the Anglo-Australian tradition, I recommend you peruse the two volumes, published by Federation Press this year, entitled *Historical Foundations of Australian Law*, edited by Justin Gleeson (the Australian Solicitor-General) and the Sydney barristers, James Watson, Ruth Higgins and Elizabeth Peden.
18. If you want to see how law develops *via* learned minds engaged in conversation, another means to that end is to study the development of Australian law in judgments of the High Court of Australia since that court became Australia’s ultimate court of appeal in 1986.
19. Before that time, there was a possibility (albeit a possibility diminishing with time) of an appeal to the Privy Council. Since that time, the High Court has, unequivocally, taken up the challenge of defining the content, and limits, of Australian law.

20. The decision of the High Court in *Mabo v Queensland* [No 2] (1992) 175 CLR 1 is a product of the *Australia Acts* of 1986.
21. In that decision Australian property law, based on English law going back to William the Conqueror in 1066, was adapted to local conditions, to accommodate native title, by a process of judicial reasoning.
22. What you will learn in the studies which you are about to undertake is how to think, as an Australian lawyer, with an Australian perspective.
23. You might well be struck by similarities between the law of Australia and elsewhere (hopefully you will be), but beware of imagining that Australian law is without its idiosyncrasies. In a sense, all law is local; as we are told of politics.
24. Law is different things to different people. Indeed, it often appears to each one of us in a different guise.
25. For some of us, or perhaps for all of us sometimes, it presents itself as a series of **commands**. The legislation of a parliament, and the delegated legislation (regulations and by-laws) of executive government, present the clearest picture of law as a command. What is written is, ostensibly, “the law”.
26. But law is not just, or even, a set of rules. It is also, for better or worse, an **experience**.
27. For lawyers, especially, it is often an experience in the nature of a **conversation**.

28. In your study, and in the practice of law, you will do best if you immerse yourself in “the law” with the aim of joining in the conversations that lawyers, as a **community**, routinely have.
29. Those conversations, ultimately, are about **problem solving** using legal concepts, applied through legal technique, in legal institutions.
30. That does not mean that the problems you seek to solve will begin their lives as “legal” problems. In many cases they will, almost certainly, **not** take that form. They will be everyday problems: part social, part economic, part political, part cultural, part religious, whatever.
31. It may take time for those of you who are new to the law to **see** the **legal** dimension of problems. Be patient, be persistent. The more you immerse yourself in the law, the more likely it is you will see both the legal dimensions of a “problem” and a range of legal “solutions” available.
32. You will, in time, learn the importance of seeing different **perspectives** of a problem, including the “big picture” and the importance of small things in that picture.
33. On the whole, lawyers are “purpose driven”. Not uncommonly, they identify a problem, advocate a solution, and work backwards to assemble a persuasive case for moving towards that solution.
34. By **choosing** to study law, and **committing** yourself to that discipline, you are well on the way to that mindset if you **persevere** towards your goal.
35. The legal profession can be a very satisfying endeavour, a life that offers opportunities to help others and to enjoy diverse friendships.

36. On behalf of the Legal Profession Admission Board, I wish you every success.