**DEAKIN UNIVERSITY**

**SCHOOL OF LAW RESEARCH REPORT No 6**

**28/3/2014**

**Congratulations to the authors of the following recent publications:**

**Badenhorst PJ**, and Olivier ‘Conversion of jointly-held old order mining rights: an all and nothing ruling? *Minister of Mineral Resources of the RSA v Sishen Iron Ore’* (2014) 77 *Journal of Contemporary Roman-Dutch law* 145-155

**Badenhorst PJ**, ‘Towards a theory on publically-owned minerals in Victoria’ (2014) 22 *Australian Property Law Journal* 157-186.

**Hepburn S**, ‘The implications of the Victorian Gas Market Taskforce report on unconventional gas development in Victoria’, (2014) 29 *Australian Environment Review* 17-20.

**Hepburn S**, ‘Ownership Models for Geological Sequestration: A Comparison of the Emergent Regulatory Models in Australia and the United States’ (2014) *Environmental Law Reporter* 10,310-10,327.

**Report on ERA 15 discussions at the Council of Australian Law Deans, Hobart, 20-21 March 2014.**

During the meeting of the Council of Australian Law Deans (CALD), which I attended as Prof Bagaric’s nominee, two Directors of the ARC, Dr Tim Cahill and Dr Marcus Nicol, up-dated the CALD about ERA 2015. They again emphasised that:

1. There will be *no journal rankings* for EAR 1025; instead Law will be evaluated and rated strictly by peer-review of its output in general and closely examined on 30% of submitted publications.
   1. Each publication in the 30% group will have to be available online in full (apart from books – can be less than 30%); each publication in each group (articles, books, book chapters, non self-initiated reports) will be submitted for a review by several reviewers - ARC intends to start soon selecting 150-180 reviewers for Law via nominations;
   2. Each reviewer will be trained in using specified criteria (as well as personal judgment), to determine the quality of each submission in accordance with ERA 1-5 tiers;
   3. Quality profile of total outputs for each discipline and the University: charts will be compiled for feedback to the Law Schools against the Australian average (Deakin Law School was used as the notional example);
   4. Peer-review results will be compared with metrics, though at this point, *after* the ERA 2015 exercise to determine correlation. Apparently in science there was a very close correlation between ERA 2012 peer-review rankings and Scopus/Thomson Reuters’ rankings. This comparison will be extended to Law in 2015.
2. Book publishers will be coded to see how many books have been published by a particular publisher at the given institution by discipline and across all disciplines: ie, how many OUP books were published by the Law School academics as well as academics across the University (the first compilation will be used as a factor in determining the Law School’s EAR Level, the 2nd – for statistical purposes);
   * Books will need to be digitised, but not at 30%;
   * Foreign publications will be counted for peer-review; only the bare minimum needs to be translated (unless it’s a totally unknown publisher in a language spoken by few people);
3. Research reports for external bodies will be counted but **not if not self-initiated**. To be counted, research reports must:
   * form part of the CRCs;
   * be commissioned/specifically invited via grants/tenders, etc by Federal, State, Local, non-for-profit, and charitable organisations.
   * 30% of the selected reports will have to be submitted for peer-review evaluation;
4. Publication outputs by salaried academics at less than 0.4 FTE will be acceptable: if the author has one article with the institution’s by-line - *all* his/her output can be claimed.  Moreover, if the author has 0.25 FTE in four institutions, and has one publication with a by-line acknowledging each of them – all four can claim the whole output. There will be lots of lucrative offers of 0.2 appointments by Law Schools to the top quality publishing academics.
5. In the CRCs – each institution can claim all joint output.

The census date for 2015 ERA 3 is 30 March 2014, and the research performance assessment will cover years 2008-2013. *Higher Education Research Data Collection Specifications for the collection of 2013* *data* is available at Higher Education Research Data Collection Specifications for the collection of 2013 data is available at <https://education.gov.au/higher-education-research-data-collection>

Consequently, I sincerely thank all of you for the great research effort over that period, and in particular, the past two and a half years. We now have a substantial body of excellent, high quality publications ranging from monographs, articles and book chapters to influential reports; importantly, we also have the most prestigious competitive grants.

With careful and strategic management of the data and a well-drafted Background Statement, we should be able to reach ERA Level 4.

Professor Samantha Hepburn as the Associate Head of School (Research) will be the ERA Discipline Leader for the Law School. Good luck Sam!

**DEAKIN LAW SCHOOL RESEARCH DOCUMENTS WEB SITE**

I have been working with Martin Brandwyk from the Program Management Office on the DEAKIN LAW SCHOOL RESEARCH DOCUMENTS web site for several months (this is separate from the intra-net site). DLSRD site should become operative in April-May 2014. The SharePoint Platform creates a secure document centre site where all attachments related to each of the Research Reports, seminars, and other research events can be stored in separate document libraries/folders. An URL link to these documents will be embedded into emails of authorised members of the Law School. The recipients, whether internal or external, will then access all relevant attachments/papers through this link without the need to sign-in.

Professor Samantha Hepburn as the Associate Head of School (Research) and Sheryl Pascoe will be in charge of this site; I’ll have access in relation to the *Torts, Jurisprudence, Economics, etc Research Hub* communications and materials.

**SCHEDULE OF FORTHCOMING SEMINARS**

**DEAKIN LAW SCHOOL RESEARCH SEMINARS**

Professor Samantha Hepburn will be co-ordinating and Chairing Deakin Research Seminars

**FRIDAY, 11 APRIL 2014**

**Dr Claire Fenton-Glynn** LLM (Oxford) PhD (Cambridge)

Lucy Cavendish College, Cambridge

**“International Parenthood: The right to a child?"**

**FRIDAY, 2 MAY 2014**

**T. Leigh Anenson, J.D., LL.M.**

Associate Professor of Business Law, Department of Logistics, Business and Public Policy

Robert H. Smith School of Business, University of Maryland

**FRIDAY, 8 MAY 2014**

**Pieter Badenhorst**

**“A Tale of two Expropriations: Newcrestia and Agrizania”**

**TORTS, JURISPRUDENCE, ECONOMICS, ETC RESEARCH HUB**

I shall be continue to co-ordinate and chair Torts, Jurisprudence, Economics, etc seminars

**Meetings are held on the first Wednesday of each month at 5pm**

**WEDNESDAY, 2 APRIL 2014**

Sandeep Gopalan

Dean of the Newcastle Law School

**Disclosure based approaches to promoting ethical conduct by companies.**

**WEDNESDAY, 7 MAY 2014**

Sharon Erbacher

**Illegality Defence and Duty of Care**

**WEDNESDAY, 4 June 2014**

John Morss

**WEDNESDAY, 6 August 2014**

Richard Polikinghorn

**Venues:**

Melbourne: Boardroom, Level 3, Deakin City Center, 550 Bourke Street

The Waterfront: F BL Mtg Room AD Level 2 ad2.308 (all Deakin Staff)

Burwood: Moot Court: C 4.05

The VPN telephone number, to which *all* parties must, dial is: **5223 6933**

**Events of interest**

[](http://www.law.unimelb.edu.au/obligations)

Dear friends and members of the MLS Obligations Group,

You are warmly invited to the third Obligations Group event of 2014, which will be held on **Tuesday, 22 April**.  It will be a seminarled by **[Dr Eric Descheemaeker](http://www.law.ed.ac.uk/people/ericdescheemaeker" \t "_blank),** fromUniversity of Edinburgh.

**Topic: 'Challenging Heterodoxy: Defences in the Law of Tort'**

**Abstract:**  In Tort Law Defences, Dr Goudkamp seeks to reconceptualise defences (and while the ambit of the project is confined to the law of tort, it has implication for large swathes of private law). Some of the points made by the author, like need to distinguish sharply between defences properly so called and denials, ought not to be controversial. Others will be. In this talk I intend to focus on two interrelated claims made by Goudkamp, which are foundational to the book yet ought not in my mind to be accepted. First comes the idea that a defence is defined as ‘a rule that relieves the defendant of liability even though all the elements of the tort in which the claimant sues are present’: in other words, for the author, the definition of a defence is substantive (a plea in confession and avoidance) not procedural (based on the empirical observation of who bears the onus of proving what). Second is the idea that defences are distinct from torts, rather than part of the definition of the causes of action, a view which can be described as ‘dualism’. Contra Goudkamp, I would want to defend unitarianism and also – at least when it comes to what the author calls ‘justification defences’ – the view that defences do in fact prevent the tort from arising in the first place. I would also like to highlight one reason why Dr Goudkamp’s attempt to consider defences as a whole is of great importance, even though the author does not himself rely on it: namely that (despite the above criticisms) it paves the way for a reclassification of defences, which would be highly beneficial for the rationality and accountability of the law of torts.

**DATE:  Tuesday**, **22nd April**

**TIME**: 1-2pm (a light lunch will be available from 12.45)

**VENUE:** Room 731,Level 7, Melbourne Law School, [185 Pelham Street](http://www.law.unimelb.edu.au/LawSchoolStreetPlan.jpg), Carlton

If you would like to attend, please register by replying to this email: Sue Grogan [<mailto:grogans@unimelb.edu.au>]

[Professor Elise Bant](http://www.law.unimelb.edu.au/melbourne-law-school/community/our-staff/staff-profile/username/Elise%20Bant) & [Associate Professor Matthew Harding](http://www.law.unimelb.edu.au/melbourne-law-school/community/our-staff/staff-profile/username/Matthew%20Harding)

Co-convenors, [Obligations Group](http://www.law.unimelb.edu.au/obligations)

**GRANT FUNDING**

Professor Nava Subramaniam ([nava.subramaniam@deakin.edu.au](mailto:nava.subramaniam@deakin.edu.au)) has invited Law School academics and HDR candidates to apply for ICAA funding in the following themes:

1. Sustainable Development and Corporate Governance; (2) Learning Technologies and Educational outcomes, and (3) Developing and Assuring Social Performance Indicators.

The grants will be $10,000 maximum for each project. Nava will also consider initiatives for larger projects.

***Journal of Law, Finance and Accounting***

Nava has also alerted me to a **new journal** and a **conference** that may be of interest to you:

“We are pleased to announce the launch of a new interdisciplinary *Journal of Law, Finance and Accounting* (JLFA), and to invite you to submit your manuscript for presentation at the first annual JLFA 2014 Conference.

The *Journal of Law, Finance, and Accounting* is a new publication sponsored by the NYU Stern School of Business and NYU School of Law. JLFA will offer an outlet for high quality empirical or theoretical scholarly work at the intersection of law, finance, and accounting. It will be published by Now Publishers and hosted by the Social Science Research Network (SSRN). This intersection includes research having implications for the ways law and regulation affect the structure, governance, performance, and function of the firms, markets, and institutions that comprise the financial system, as well as research that addresses the different ways capital is raised and the links between financial markets and the real economy. This interdisciplinary research area is sometimes called “law and finance,” although much relevant work comes from scholars whose principal home may be in accounting, economics, or political science. For more information, see the journal website at [www.jlfaonline.com](http://www.jlfaonline.com).

The conference will be held at NYU on Friday, September 19, 2014. The deadline for submissions is May 31st, 2014. Please submit papers through SSRN at <http://hq.ssrn.com/conference=jlfa-2014>. All submissions will be reviewed by the JLFA editors. Accepted papers will be presumptively eligible for expedited publication in JLFA (subject to the authors’ compliance with referee and editor requests).

We look forward to receiving your submissions.

JLFA Executive Editors:

Viral Acharya (NYU Stern School of Business) John Armour (Oxford, Law Faculty and Said School of Business) Barry Adler (NYU Law School) Lucian Bebchuk (Harvard Law School) Bernard Black (Northwestern School of Law and Kellogg School of Management) Ronald Dye (Northwestern Kellogg School of Management) Julian Franks (London Business School) Joshua Ronen (NYU Stern School of Business)

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Sudipta Basu (Temple)

Anne Beyer (Stanford)

Robert M. Bushman (University of North Carolina, Chapel Hill) Jeffrey Callen (University of Toronto) Chandra Kanodia (University of Minnesota) April Klein (NYU) Stephen Ryan (NYU) Catherine Schrand (University of Pennsylvania)

If you have any questions, please do not hesitate to contact me (Zac Rolnik [zac.rolnik@nowpublishers.com](mailto:zac.rolnik@nowpublishers.com))

or any of the Executive Editors.”

This is my final *Deakin Law School Research Report*, thus



With kind regards,

Danuta