# **DEAKIN UNIVERSITY**

# **SCHOOL OF LAW RESEARCH REPORT No 16**

# **23/08 /2013**

## RECENT PUBLICATIONS

* 1. **Congratulations to the author of the following recent publication:**
  2. **de Koker, Louis** & Jentzsch, Nicola 2013, ‘Financial inclusion and financial integrity: aligned incentives?’ (2013) 44 *World development* 267-280. <http://dro.deakin.edu.au/view/DU:30054930>

## RESEARCH IMPACT

* 1. **Mirko Bagaric** has been cited as an authority by the following International Courts:

R. v. Rosenfeld, 2009 ONCA 307 Court of Appeal for Ontario

Daken v R [2010] NZCA 212 (4 June 2010) NZ Court of Appeal

R. v. Johnson, 2011 ONCJ 77 Ontario Court of Justice

DPP -v- David Curran [2011] IECCA 95, Irish Court of Criminal Appeal

Public Prosecutor v Tan Cheng Yew - [2012] SGHC 241 Singapore High Court

R. v. Foley, 2013 ONCJ 26 Ontario Court of Justice

**LAW SCHOOL RESEARCH SEMINAR SCHEDULE**

* 1. **Trimester 2**

1. **FRIDAY, 30 AUGUST**
2. **Ben Hayward**
3. **Arbitration, Private International Law and Optimal Procedural Frameworks**
4. Arbitration is a preferred dispute resolution mechanism in international commerce.  In most cases, parties arbitrating international commercial disputes have exercised their rights to choose the law that will govern their contract.  My thesis is concerned with what happens when they don’t – and how arbitrators go about identifying the governing law when the parties did not choose it.  Arbitrators have very wide discretions to choose any appropriate legal rules.  My thesis argues that a specific bright line test, the closest connection test, is a preferable way to solve these questions.
5. This presentation will be based on Chapter 6 of my thesis which addresses the key question being studied – is the closest connection test, whereby arbitrators apply the legal rules most closely connected to the parties’ dispute, the preferable approach to take?  This presentation will consider the issue of private international law in arbitration and how the choice of an optimal procedural framework might be made.
6. **FRIDAY, 6 SEPTEMBER**
7. **Professor Sandeep Gopalan**
8. Dean, Newcastle University Law School

**FRIDAY 27 SEPTEMBER**

**Dr Andros Kapardis**

Author of *Psychology and the Criminal Law* (Cambridge University Press)

1. **Trimester 3**
2. **FRIDAY 15 or 22 OCTOBER**
3. **Oscar Roos**
4. 'Section 73 of the Australian Constitution and Kirk v Industrial Court (NSW) [2010] HCA 1'.
5. **FRIDAY, 13 DECEMBER**
6. **Giuseppe Carabetta**
7. ‘Police and Industrial Relations’
8. **RESEARCH HUBS**
9. **Torts, Jurisprudence, Economics, etc Research Hub Meeting**

**Wednesday, 11 September 2013 at noon**

**Dr Jason Taliadoros will present**

1. It will be a work-in-progress paper in preparation for my poster presentation at the Australasian Compensation Health Research Forum, 10-11 October 2013, Sydney: ‘Eligibility for Lifetime Care and Support under the NDIS Act: Lessons from Accident Compensation Schemes in Victoria’.
2. Background: Chapter 3, Part 1 of the National Disability Insurance Scheme Act 2013 (Cth) (‘NDIS Act’) sets out the requirements for eligibility under that scheme for lifetime care and support. The key provision in this part is s 24, which sets out five cumulative criteria that a person must satisfy if they are to ‘meet the disability requirements’, and be entitled to access to a ‘participant’ plan under s 32.
3. Objective: How similar are the five cumulative requirements of s 24 in their form and likely practical application to the ‘serious injury’ narrative tests that exist—exclusively among Australian jurisdictions—in s 134AB of the Accident Compensation Act 1985 (Vic) (‘AC Act’) and s 93 of the Transport Accident Act 1986 (Vic) (‘TA Act’)?
4. Method: By examining the legislative provisions of s 24 of the NDIS Act, and comparing them to s 134AB of the AC Act and s 93 of the TA Act, in light of current case law, it is possible to determine if there is possible overlap in coverage for injured persons that satisfy the ‘serious injury’ requirements and the ‘disability requirements’.
5. Principal findings/Discussion: The potential for overlap between the NDIS and State accident compensation schemes is significant in two ways that I wish to discuss: first, it means that the provisions for loss-shifting between the two schemes will be activated, and so there is a need for this process to operate optimally on a practical as well as scheme-design level; second, the overlap between the conception of ‘disability’ under the NDIS Act and ‘impairment’ under the Victorian compensation schemes means that case-law and precedents from the latter will influence understandings of the former.
6. Conclusion: There is a need for a study such as this to identify potential policy directions to determine the eligibility requirements for those with a disability seeking lifetime care and support.
7. The NDIS Act is available from <http://www.comlaw.gov.au/Browse/Results/ByTitle/Acts/Current/Na/0>.
   1. **FORTHCOMING CONFERENCES**
8. **The Promised Land: The Future of Coal Seam Gas Regulation in Victoria.**
9. **November 2013, 8.30 am-5.45 pm**
10. **Victoria Suites, Sofitel on Collins, Melbourne**
11. The conference will examine how a future regulatory framework for unconventional gas might evolve in Victoria. **Samantha Hepburn** and **Lidia Xynas** have invited a number of high profile industry, government, science and agricultural stakeholders to discuss and evaluate the myriad of regulatory issues that are relevant to developing this industry.
12. See attached flyer
    1. **NEW JOURNAL OF INTEREST**
13. **Peking University Law Journal**
14. The aim of the Peking University Law Journal is to provide a window on Chinese law for anyone interested in the continuing development of Chinese law and society. In pursuing this aim the Journal publishes original English-language articles written by Chinese and foreign scholars on Chinese legal traditions, and the rule of law in Chinese society. It also publishes original English-language articles which engage comparatively with Chinese law and the rule of law in China.
15. The Peking University Law Journal is edited by members of the Law School of Peking University and is published twice a year by Hart Publishing.
16. The Journal invites submission of unsolicited manuscripts. The body and footnotes should contain fewer than 35, 000 words (combined), and both should be double-spaced. We regret that manuscripts cannot be returned. Manuscripts should be submitted to [zwfx@pku.edu.cn](mailto:zwfx@pku.edu.cn) or mailed to the Editorial Office of the Journal:
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