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# Editorial: Spring 2006

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# Editorial

Questions of justice and fairness across a range of topical matters dominate this issue of *The National Legal Eagle*.

In *Rights of the Wrongfully Convicted*, an article at the cutting edge of Australian criminological research, Assistant Professor Robyn Lincoln and Masters of Criminology graduate Carol Morrison examine the causes and effects of miscarriages of justice, as well as the limited options available to those seeking exoneration.

Moral, ethical and legal dilemmas abound in Assistant Professor Jo Hintz's article *'Wrongful Life' and the Law*. Jo focuses in this piece on the recent High Court decision in *Harriton v Stephens* [2006] HCA 15 and ponders these unsettling questions: Do we have a right not to be born? Is it better to never have been born than to have been born with catastrophic disabilities? Can life itself be an injury?

Postgraduate Fellow Joel Butler points out in *WorkChoices – Bashing Unions or Helping Business?* that the history of industrial relations in Australia has always been about finding the 'right balance'. In that spirit, Joel's article assesses the Federal Government's current emphasis on 'individualising' employment relations in terms of fairness and flexibility for employees and employers.

The *WorkChoices* legislation governs employers and employees, and the *Independent Contractors Bill* 2006 (Cth) has been introduced to regulate independent contractors. But how do you tell whether a worker is an employee or an independent contractor? (Many of you will recall that this was a critical issue in this year's Mooting Competition.) In *Working it Out – Employee or Independent Contractor?*, I outline the multi-factor approach to determining the nature of the work relationship between two parties.

Last but not least, those of you who participated in the Bond University High Schools' Mooting Competition earlier this year, and those who wish they had, will enjoy Associate Professor David Field's review of the 2006 competition, *Liability for the Actions of Others*. It's both educational and entertaining! Hopefully David's article will inspire even more schools to sign up for the competition next year.

As you reach the end of this column, you will notice my name, and not Professor Michael Weir's, set out below. Editorial responsibility for this publication has now passed to me, but of course Michael will remain an avid reader. I know you would want to join me in thanking him for all his hard work on previous issues. Thank you Michael!

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## DID YOU KNOW?

### Legal Terminology – Some interesting Latin phrases

***Ab initio*** – 'from the beginning'; the term is used, for example, to describe contracts which are null and void from the very beginning (void *ab initio*).

***Consensus ad idem*** – 'agreement to the same result'; the common consent necessary for a binding contract.

***Curia advisari vult*** (abbreviated as *cur adv vult*) – 'the court wishes to be advised'; this signifies, in law reports, that the decision was not delivered immediately.

***In camera*** – 'in chamber', privately; a hearing where the court considers it desirable in the interests of justice or in order to prevent undue hardship to any person to order specified persons or all persons except those specified to remove themselves from the court room during the whole or any part of the proceedings.

***Nemo dat quod non habet*** – 'no-one gives what they do not possess'; in other words, a person cannot assign a greater interest than the interest possessed.

***Pro bono*** – 'for the public good'; legal work performed (usually for free or at a reduced fee) in the public interest on issues of broad community concern or with significant impact on disadvantaged or marginalised groups.

***Res judicata*** – 'a judicially decided matter'; the rule that if a dispute is judged by a court of competent jurisdiction, the judgment of the court is final and conclusive as to the rights and duties of the parties involved.

***Sui juris*** – 'of one's own right'; a person who is of full age (over 18 years of age) and full legal capacity.

*(Source: Butterworths Concise Australian Legal Dictionary 2004.)*



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