

2008

Editorial: Autumn 2008

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Recommended Citation

Marshall, Brenda (2008) "Editorial: Autumn 2008," *The National Legal Eagle*: Vol. 14: Iss. 1, Article 1.
Available at: <http://epublications.bond.edu.au/nle/vol14/iss1/1>

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Editorial

There's some riveting reading in this issue of *The National Legal Eagle*. You won't want to skip a page.

The Second Time Around, by Associate Professor David Field, is a timely and informative exposition of Queensland's new 'double jeopardy' laws, written with the author's usual flair and clarity. The double jeopardy rule, which effectively prevents a person being re-tried for the same offence, applied unchallenged in Queensland until the passing of the *Criminal Code (Double Jeopardy) Amendment Act 2007* (Qld). David's article outlines the origins of the rule, traces the pressure for reform in Queensland, and provides insightful commentary on the circumstances in which the re-trial of a person previously acquitted of a crime may now be permitted. This is essential reading on a very current development.

Professor Lee Stuesser's article, *'Mr Big' Comes to Australia*, is a fascinating account of the legality of undercover police operations based on the 'Mr Big' scenario. The concept, which originated in Canada, is relatively straightforward: undercover police play the role of gangsters and invite a target suspect to join their gang provided the target passes muster with the gang leader, Mr Big, which involves confessing any prior misdeeds. Given Canada's experience of these sorts of sting operations, and his own Maple Leaf credentials, Lee's expertise translates into an authoritative analysis of Australia's recent 'Mr Big' case, *Tofilau v The Queen* [2007] HCA 39.

How do you feel about lying and liars? Assistant Professor Liz Spencer and Adjunct Teaching Fellow Yvette Zegenhagen will challenge your views with the comprehensive canvassing of practical and philosophical aspects of mistruths set out in their article, *Lies and Deception*. Is it

wrong to lie? Are all lies wrong? Can certain lies be justified? Do you always notice when you are lying? Can you tell if someone is lying to you? The article addresses these and other interesting questions, while also considering a series of cases that raise important ethical issues in respect of deception in family relationships.

In *A Bill of Rights for Australia? – Part 2*, Senior Teaching Fellow Joel Butler fulfils his promise to argue for a greater focus on citizens' responsibilities, not their rights. In Joel's view, rights and responsibilities are inextricably linked, but it is the responsibility to act in a certain way which is paramount. Without a pre-existing responsibility, he asserts, there can be no corresponding right. According to Joel, we fall back on rights only when others fail to uphold their responsibilities. Thus, he says, it is not a Bill of Rights that Australia needs – if anything, it is a Bill of Responsibilities.

Corporate competitors in Australia are prohibited by ss 45-45A of the *Trade Practices Act 1974* (Cth) from making or giving effect to a contract, arrangement or understanding that has the purpose or effect of fixing the price of any goods or services they supply. In *What's Price Fixing Got to Do with It?*, I examine the threshold requirement for breach of the price fixing provisions of the TPA – that a 'contract, arrangement or understanding' to fix prices exists between competitor corporations – and analyse the defeats suffered by the Australian Competition and Consumer Commission in two recent cases of alleged petrol price fixing.

Happy reading everyone! And best of luck to those of you taking part in the Bond University High Schools' Mooting Competition 2008.

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DID YOU KNOW?

Legal Terminology

Autrefois acquit – 'formerly acquitted'; a defence to a charge both at common law and by statute that the accused has previously been acquitted of the same charge on the same facts.

Autrefois convict – 'formerly convicted'; a defence to a charge at common law and by statute that the accused has previously been convicted of the offence charged on the same facts.

Compos mentis – 'of sound mind'; competence to conduct legal transactions.

Family member – a person's spouse, child, the child of their spouse, and any other person who is or has been ordinarily a member of the person's household.

Keeping the peace – at common law, a court has power to make an order in respect of any person

before it requiring the person to keep the peace where the court is satisfied that the person has been guilty of violent conduct tending to breach the peace.

Open court – a court room to which the public has free access during the hearing of proceedings before the court and in respect of which a report of the proceedings may be published.

Rule of law – the principle that every person and organisation, including the government, is subject to the same laws.

Tampering with evidence – suppressing, concealing, destroying, altering, or falsifying evidence that is or may be required in a judicial proceeding.

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