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## Editorial: Autumn 2010

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# Editorial

Welcome to the autumn edition of *The National Legal Eagle*. While much of the world is at the mercy of natural disasters, including earthquakes, flood (at least here in Australia) and famine, we bring you an edition that is sure to keep your mind focussed on the excitement that understanding the law can bring. This edition is chocked full of interesting articles, addressing something old, something new, something inspiring and something that might make you feel a little less blue!

First, for something old. Our regular contributor and resident legal historian Joel Butler has written an insightful piece called *Australia's First Case: The Colony of New South Wales*. Far from the boring outline of a crusty old case, this article provides us not only with a historical outline of what the first case was in Australia, but also a valuable tale of Australia's early justice system. By examining an early NSW case, it is fascinating to see just how far the judicial system in NSW, and Australia in general, has come.

For something new, you cannot go past an analysis of the recent scandal involving Bernie Madoff, which affected over 15,000 investors, and involved \$50 billion. In the article *Gullible, Greedy or Just Unlucky: How Bernie Madoff Scammed About 15,000 Investors*, Assistant Professor Louise Parsons brings us a detailed account of the Madoff scam. Her article provides an excellent outline of a Ponzi scheme, and where it originated from (like all good swindles, it is named after Carlo Ponzi, the first person to undertake such a devious scheme). The article also provides an analysis of Madoff's scheme. Not only does it address what the scheme did, but also how it ended, who was involved, and what happened to Bernie Madoff (alas, poor Bernie got caught, dobbed in by his own sons!) Most interesting, the article addresses the failure of the United States Security Investment Commission (the body that governs investments and investors) to discover and end the scheme. Finally, the article questions whether such a scheme could occur in Australia, and the role of the law in regulating such schemes.

We promised something inspiring, and we have delivered in the form of an article that addresses that most fundamental question we all have considered... should I study law? In her thought-provoking article *Should You Study Law*, Senior

Teaching Fellow Leisha Browning examines how you can study law in Australia. She presents the two ways of obtaining a law degree, either at an undergraduate level (as your first degree, which is also known as a Bachelors degree) or at postgraduate level by completing the Juris Doctor (JD) (after you have already completed any other undergraduate degree.) The article also provides some timely information on exactly what you can do with a law degree (aside from the obvious avenue of practicing law!)

If you think you are having a bad day at school, think again. Until you have had your shoelaces and belt taken, and you have been locked up, your day is just ordinary, especially compared to Mr O'Brien, a lawyer charged with contempt of court and thrown in the cells. Now that is a bad day!!! In the article *A Bad Day at the Office*, Senior Teaching Fellow Suzie O'Toole discusses the little known area of contempt of court. The article focuses on two recent cases involving contempt of court, including the case of *O'Brien v Northern Territory*, where a young lawyer was imprisoned after informing a judge that his client should not have to enter a guilty plea because the police prosecutor had agreed to an alternate arrangement. In the end the Northern Territory Court of Appeal found that the magistrate did not have power to order Mr O'Brien to the cells. So next time you are feeling blue, think of poor Mr O'Brien, sitting in the cells, clutching his pants, just because he was doing his job!

Continuing our *What is...* series, Associate Professor Dan Svantesson provides an absorbing account of contract law in his article *What is Contract Law?* This article brings law into our daily lives, as it outlines the principles of contract law, and provides many examples of how contract law affects us, from buying a bus ticket to a bicycle to a car. Stay tuned for different areas of law in the future.

Senior Teaching Fellow Joel Butler, in his second article in this edition, provides more fodder for the *Who's Who in the Legal Zoo* series. This time, he presents one of Australia's youngest High Court judges, Justice H V Evatt. We hope you find the profile on Justice 'Doc' Evatt interesting.

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## DID YOU KNOW?

### Legal Terminology

**Contempt of court:** words or actions that interfere with the proper administration of justice, or constitute a disregard for the authority of the court. It comprises both the physical disturbance of court proceedings that prevents the court from attending to its business, and any interference with the authority of the court that impairs confidence and respect in the court and its judgments.

**Capacity:** the power, ability, or competence of a person or body. In contracts, capacity refers to the capacity to enter into contractual relations. There is a presumption at common law that a person who enters into a contract has full capacity to do so, and a person alleging they are protected from the normal consequences of their action due to incapacity has the burden of proving their incapacity.

**Remand:** to stand a matter over until a future date and as a consequence return the accused to custody, or continue bail.

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