

# NTU Law School update

Semester Two is now well under way and with it the reality of delivering law units to external and Alice Springs students. Enrolments have been very encouraging, and from a wide geographical area. We have external students in Katherine, Tenant Creek and throughout the remote regions of the NT and WA. Perhaps surprisingly, there are also students studying externally who live in Sydney and Perth: an indication of the unmet need for external studies in law in Australia.

Course material is delivered to all students via the NTU's "Learnline" intranet. Each subject offered externally or in mixed mode has a website within the system where all unit information, assessment information, study guides, tutorial problems and audio recordings of lectures are available. In addition the websites are an essential tool for communication with students, in particular the bulletin boards and chat facilities. Websites for subjects only offered internally have documents and notice facilities but not audio recordings at this stage. All internal subjects will progressively be offered for study externally over the next few years. In Semester 1 2004 it is intended to offer the subjects Legal Process Research and Writing, Torts B, Criminal Law and Procedure and Introduction to Public Law for external study.

A feature of study for external students that is being trialled this semester is the "e-tutorial". This involves students logging on to a voice chat program (the "e-tutorial room") which allows participants to speak to each other and to communicate via text. In addition the program has an internet browser window, which allows the tutor to display documents either from the NTU's computer system or the Web, eg. Austlii. The tutorials in Torts 1 are conducted at 8.30pm (after my kids are in bed!) from my computer at home. The flexibility that this technology offers is opening up new possibilities for students and staff. Initial feedback from the tutorials with external students has been positive and it is intended to continue with this mode of tutorial delivery for the balance of the semester.

In relation to the Law School's external studies program credit should be given to NTU Law School lecturer Ken Parish, who has worked tirelessly to ensure

that the technology is both appropriate and functional. Despite sometimes difficult issues he has succeeded in making the online study of law technologically possible at NTU this semester and his expertise with website design and in the setting up of the tutorial system (just to mention two aspects) has been invaluable.

In relation to the mixed mode program being offered in Alice Springs thanks must also go to the Alice Springs practitioners who have volunteered to assist in a practical way by acting as tutors. Ms. Nardine Collier of Collier & Deane has been the first with tutorials in Torts 1 (commencing the first week in August) and we thank her also for allowing those to be conducted in her conference room. Apparently the glass of wine on offer was a significant aid to academic discussion! Over the last few weeks a number of Law School staff have contacted practitioners in Alice Springs to discuss tutoring and although not everyone was able to assist immediately we are grateful for the support that those in Alice have shown. The Law School looks forward to a productive partnership with Alice Springs practitioners.

In other news, Senior Lecturer Stephen Gray is moving to a fractional appointment (of 25%) for the remainder of the semester. Stephen will spend the next few months adding the finishing touches to a book, working title "Northern Territory Criminal Law", for which he has a contract with Federation Press. The book is likely to be published in January 2004. There may be some who are disappointed to think that Stephen may be concentrating upon academic writing to the exclusion of his fictional work. Fear not! Stephen has also secured a grant from the Australia Council to assist with his new (third) novel and, whilst details are hard to confirm at this stage, it is said to be

set in the Territory with themes involving Aboriginal Australia and South East Asia. Look out for it in 2005.

It is the Law School's intention to offer as wide a range of subjects for study as possible and, as many of you may be aware, Head of School, Prof. Ned Aughterson has been working towards building partnerships with other university law schools both in Australia and overseas. Negotiations are presently well advanced in a number of areas, including with the University of Adelaide. As part of those arrangements the Law School is pleased to be able to host a course entitled "Transnational Crime and Terrorism" being delivered in Darwin by Dr Andreas Schloenhardt from The University of Adelaide Law School. The course will be taught in intensive mode in the period Saturday 20 September to Friday 3 October 2003, inclusive. Topics include the globalisation of crime, trafficking (narcotics, people, firearms and ammunition) and terrorism, both from an Australian and international perspective. Enrolment is available both to NTU students and to those who wish to study the unit as a short course. Fees are payable. Further details of course content and fees together with a brochure and application form may be obtained by contacting Ms. Jill Thyne on 8946 6833 or by email [jill.thyne@ntu.edu.au](mailto:jill.thyne@ntu.edu.au).

Another short course, available to practitioners and others on a fee-paying basis, is to be offered by visiting University of Paris academic Prof. Antoine Bullier in September/October 2003. Taught in intensive mode on Friday afternoon and Saturday over 4 weeks commencing 19 September 2003, the course is entitled "The French Legal System" and includes an introduction to the civil law via the law of France with topics dealing with

*continued page 13*

# East Timor's legal system thrown into doubt

On the 15 July 2003, East Timor's Court of Appeal ruled that Indonesian law had never been validly in force in the country and that Portuguese law should be applied.

According to the Judicial System Monitoring Programme (JSMP) "the decision has generated an enormous amount of uncertainty, confusion and division within the Courts, East Timorese legal fraternity and community at large regarding the fundamental basis, or source of East Timorese laws."

The Court of Appeal decision was based on the case of Armando dos Santos who had been convicted of murder and sentenced to 20 years imprisonment by the Special Panel for Serious Crimes in September 2002. In a split decision (2:1) the Court of Appeal ruled that Dos Santos was guilty of genocide under the Portuguese Criminal Code (a crime he had not been charged with) and increased his sentence to 22 years.

The ruling is based on the United Nations Transitional Authority in East Timor (UNTAET) Regulation 1999/1; Section 3.1 which states:

"Until replaced by UNTAET regulations or subsequent legislation of [the] democratically established institutions of East Timor, the laws applied in East Timor prior to 25 October 1999 shall [continue to] apply..."

The Court has ruled that as Indonesia's occupation of East Timor from 1975 until 1999 was unlawful under international law, Indonesian law was never validly in force in the country.

The majority of the court comprised Judge Claudio Ximenes (presiding) and Judge Jose Maria Antunes affirmed their position that the appropriate subsidiary law in East Timor is Portuguese. The third panel member, Judge Jacinta Corria da Costa expressed a dissenting opinion, stating that she found no ambiguity regarding the clear intention of UNTAET that Indonesian law apply as the subsidiary law in East Timor.

"Subsequent to its decision on 15 July, the Court of Appeal has applied Portuguese law in several subsequent appeal cases. However... the Dili District Court, including the Special Panels for Serious Crimes, appear to have decided they are not obliged to

follow the Court of Appeal's decision, and are continuing to apply Indonesian law in their decisions," JSMP reported.

"In its broader application, the Court of Appeal decision has the potential to render invalid many transactions conducted in East Timor during the last 28 years because they have been determined under Indonesian, and not Portuguese law. These would include commercial contracts, registration of births, deaths and marriages, bank loads, bankruptcy proceedings and other matters, such as criminal prosecutions undertaken between December 1974 and 25 October 1999. Taken to its full extent, the Court of Appeal decision has the potential to cause massive disruption to life in East Timor, to business centres, and the East Timorese economy."

Since the decision there have been several further developments in East Timor:

- \* the Prosecutor-General filed an appeal to the Court of Appeal (sitting as the Supreme Court) seeking a declaration that Indonesian law is the applicable subsidiary law in East Timor;
- \* the Special Panel for Serious Crimes issued a decision in the case of *Public Prosecutor v Joao Sarmiento and Dongos Mendonca*, declaring that they did not consider themselves bound by the decision of the Court of Appeal, and that they considered the proper source of subsidiary laws to be the Laws of Indonesia; and
- \* nine Members of Parliament have tabled a draft bill in the national Parliament which proposes that Indonesian, and not Portuguese law be confirmed as the applicable law

in East Timor.

"The future of commercial investment in East Timor is likely to hinge on whether East Timor can deliver a mature, developed and properly-functioning legal system able to provide commercial certainty for investors," said the JSMP.

"Given the present uncertainty regarding this fundamental issue of law. JSMP considers that it is incumbent upon the national Parliament to intervene.

## NTU Law School update cont...

legal profession and civil and administrative law and procedure. The Law School looks forward to welcoming Prof. Bullier, as he offers a rare opportunity to study European law in Darwin. Those interested in enrolling in either this unit or that offered by Dr. Schloenhardt should enrol as soon as possible.

Finally, the text of the 4<sup>th</sup> Prof. Ahmad Ibrahim Memorial Lecture entitled *Sacrificing Personal Freedom in the Name of National Security* delivered by Prof. Jesse Wu at the International Islamic University in Kuala Lumpur on 12 July 2003 (mentioned in last month's column) can now be found at <http://www.ntu.edu.au/lba/law/staff/wu/wu1.htm>. It's well worth a read.

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