QUT LAW ASSOCIATION
ANNUAL LAW DINNER
HILTON HOTEL
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7PM

Chief Justice Paul de Jersey AC

It is a great pleasure to be with a group of prospective young lawyers. Of course you would be surprised if I did not immediately say that! But you will be pleased to hear that I do genuinely enjoy the company of lawyers and those who aspire to be lawyers. We jointly hold the key to some of the most fascinating aspects of the human condition, and contrary to popular myth, that renders us interesting, both to others, and to each other.

Your legal education has features, commonplace to you, which were utterly beyond contemplation in the 60s when I received my initial tuition in the law. Perhaps most dramatically, there is the support of the Internet – "wonderful in what it can do for us, and terrifying in what it might do to us". (Naughton: "A terrible beauty has been born", *New Statesman* 10 July 2000 p29). Then there is the focus on female empowerment, with gender the flavour of the era, and well organised, dedicated women said to be striding well ahead of their less directed male counterparts. And also startlingly differently, you are the beneficiaries of what I will call the "fundamentalist" movement: non adversarial, non adjudicative dispute resolution, plain English and the like. You are working forward in a bristlingly competitive circle, and you will graduate into a profession where traditional pillars are being shaken: witness, other matters apart, the House of Lords' recent removal of advocates' immunity from suit for negligence.

But you are confidently rising to these challenges, I expect, and one good counsel is to keep one's head – be keen to the reality of situations and not distracted, for example, by an approach which is fatuously politically correct. To illustrate, we shouldn't carry the "simple English" thrust to the point of rendering matters uncertain. On the other hand, I noticed the other day that the Commonwealth Parliament could lift its game somewhat in this arena. I had cause to examine the power of the Taxation Commissioner under the anti-avoidance division of the GST Act. For the purpose of making certain declarations, the Commissioner may, extraordinarily enough, and I quote from this "plain English" legislation:

"(a) treat a particular event that actually happened as not having happened; and

(b) treat a particular event that did not actually happen as having happened and, if appropriate, treat the event as:

(i) having happened at a particular time; and

(ii) having involved particular action by a particular entity; and

(c) treat a particular event that actually happened as:

(i) having happened at a time different from the time it actually happened; or

(ii) having involved particular action by a particular entity (whether or not the event actually involved any action by that entity)."

How should we, in the vernacular of the young, respond? "Like, what is going on here?", "I can't believe what I'm hearing!", or simply, "Sad!". (cf Linklater, *The Times* 3 August 2000, p18).

Topical interest in matters electoral brings to mind what I have long thought a most memorable piece of legislative drafting. It is s 213 (I) of the *Commonwealth Electoral Act,* which prescribes how to determine the order for listing candidates on ballot papers:

"(1) Where under section 210 or 212 a person is required to determine in accordance with this section the order of the names of candidates or of groups in ballot-papers to be used in an election:

(a) the person shall, at the declaration time for the election, at the place where nominations for the election were publicly produced and before all persons present at that place:

(i) prepare a list of the names or groups, as the case may be, in such order as the person considers appropriate;

(ii) read out that list;

(iii) place a number of balls equal to the number of candidates or groups, as the case may be, being balls of equal size and weight and each of which is marked with a different number, in a spherical container large enough to allow all the balls in it to move about freely when it is rotated;

(iv) rotate the container and permit any other person present who wishes to do so to rotate the container;

(v) cause a person who is blindfolded and has been blindfolded since before the rotation of the container in accordance with subparagraph (iv) to take the balls, or cause the balls to come, out of the container one by one and, as each ball is taken or comes out, to pass it to another person who shall call out the number on the ball;

(vi) as each number is called out in accordance with subparagraph (v), write the number opposite to a name or group, as the case may be, in the list prepared in accordance with subparagraph (I) so that the number called out first is opposite to the first name or group, as the case may be, in the list and the subsequent order of the numbers in the list is the order in which they are called out;

(vii) place all the balls back in the container;

(viii) rotate the container and permit any other person present who wishes to do so to rotate the container;

(ix) cause a person who is blindfolded and has been blindfolded since before the rotation of the container in accordance with subparagraph (viii) to take the balls, or cause the balls to come, out of the container one by one and, as each ball is taken or comes out, to pass it to another person who shall call out the number on the ball;

(x) prepare a list of the numbers called out in accordance with subparagraph (ix) set out in the order in which they were called out in accordance with subparagraph (ix); and

(xi) write on the list prepared in accordance with subparagraph (x) opposite to each number the name or group, as the case may be, set out opposite to that number in the list prepared in accordance with subparagraph (I); and

> (b) the order in which the names or groups, as the case may be, are set out in the list prepared in accordance with subparagraph (a)(x) is the order of the names or groups, as the case may be, determined by the person under this section."

Now, are you clear on that, or should I go through it again?

I regrettably have to concede lack of concise clarity is not unknown in our courts. Let me give you an example. This occurred during the recent questioning of a doctor during an alleged murder trial:

> "I want you to comment now by looking – assuming that the man is in the position in Exhibit 20 – assuming that a man is seated in the position as he is in Exhibit 20, or something very similar to that position anyway – assuming that a person has – that man is completely unaware of a person basically directly behind him – do you understand what I am saying?-- Mmm.
>
> Well, completely unsuspecting that anything is going to happen to him. Now, would you accept that in that sort of position the whole of the throat is completely vulnerable to attack by somebody holding a knife such as the knife that you have in front of you, exhibit 2?-- I am out of my area of expertise here.
>
> Is that what you are saying?-- I generally operate on people, not attack them."

Of course it is important, as you become lawyers, that you have a clear idea of what you want to achieve. For some it will, unsurprisingly, be wealth. As attributed to the great American trial lawyer Clarence Darrow: "How can I ever thank you?", gushed his client after winning her trial. "My dear woman", replied Darrow, "ever since the Phoenicians invented money, there has been only one answer to that question." But you should not be overconfident about achieving wealth and opulence through the law.

As Justice Meagher of the NSW Court of Appeal recently said to law graduates at the University of Sydney (cf 2000 Australian Law Journal 495):

> "Why should you practise law, those of you who want to? It is not really to amass a large fortune … Sir Garfield Barwick was right when he said that nobody ever got rich from practising law. I myself practised law for nearly 30 years in a state of abject poverty, until I went to the bench and experienced utter destitution."

I am sure however that your broad expectation is much nobler than simply amassing money. We all lament blinkered professionalism. The legal profession is very absorbing, and there is a consequent risk that lawyers, preoccupied professionally, may ignore broader public issues. People in the law have a potentially wide public role, and I hope that you will remain interested in topical issues – like, as but one example, the disturbing aspects of the trial of Anwar Ibrahim in the Malaysian High Court. If you enter legal practice you will have to be careful to resist likely pressure in order to ensure that you do retain a balanced outlook on life. One key is to read books. Former High Court Chief Justice Sir Anthony Mason used to advise barristers to read at least 40 non-legal books a year!

We form part of a profession which I believe will assume increasing significance in this society. The law and its institutions are primary symbols of stability and continuity, as well as justice. It is said that moral consensus is fading: as that happens, people turn to law (cf Bork: "Thomas More for Our Season" 1999 First Thing 94 (June/July) 17-21). You will become part of the mechanism which upholds these basic institutions.

As you probably know, we are, in the courts, striving to render our processes more comprehensible, more accessible - to avoid any perception of aloofness, arrogance. We appear in this area to be well ahead of at least one of our counterparts in the United States of whom I recently read: a Texas judge was reprimanded for repairing two single action Colt revolvers on the bench as he presided over jury selection in a murder trial. The State Commission on Judicial Conduct said that the judge "failed to act in a dignified manner". It appears that the Judge was also cited for allowing a court bailiff to read, during jury selection, a British tabloid "which included a picture of a man being eaten by a python". ("Toronto Sun", 14 July 2000) repeated in NSW: "Bar Brief")

We have become very conscious of the image of our courts. That is as it should be, although the reality is that work as we may, the courts of law can never present a "friendly" image. Those who complain about aspects of our modern procedure would do well to consider the difficulty of court processes in 18th century England. To obtain a divorce, for example, it was necessary to secure a private Act of Parliament. Listen to these "user friendly" words attributed (Tait: Court in the Act, Federation Press 1992, p81) to Maule J, passing sentence on a hapless bigamist, one Hall, in 1845:

> "Prisoner, you have been convicted of the grave crime of bigamy. The evidence is clear that your wife left you and your children to live in adultery with another man, and that you then intermarried with another woman, your wife being still alive. You say that this prosecution is an instrument of extortion on the part of the adulterer.
>
> Be it so; yet you had no right to take the law into your own hands. I will tell you what you ought to have done; and, if you say you did not know, I must tell you that the law conclusively presumes that you did.
>
> You ought to have instructed your Attorney to bring an action against the seducer of your wife for criminal compensation. That would have cost you about £100.
>
> When you had recovered (though not necessarily actually obtained) substantial damages against him, he should have instructed your proctor to sue in the ecclesiastical courts for a divorce a mensa et thoro. That would have cost you £200 or £300 more.
>
> When you had obtained a divorce a mensa et thoro, you should have appeared by counsel before the House of Lords in order to obtain a private Act of Parliament for a divorce a vinculo matrimonii which would have rendered you free and legally competent to marry the person whom you have taken on yourself with no such sanction.
>
> The bill might possibly have been opposed in all its stages in both Houses of Parliament, and altogether you would have had to spend about £1000 to £1200.
>
> You will probably tell me that you never had a thousand farthings of your own in the world, but, prisoner, that makes no difference. Sitting here as an English judge, it is my duty to tell you that this is not a country in which there is one law for the rich, and another for the poor."

Indeed! Oh to be so robust!

I encourage you, ladies and gentlemen, to adopt a realistic, measured approach to current issues in the law as you progress; always remember to try to exert your potential influence upon the resolution of important public issues; don't be deterred by fashionable criticism of the law – most of it is captious; and above all, as you go forward, keep a lively sense of humour – and I hope you are not by this stage thinking I've entirely lost mine!

My best wishes to you all!