In exceptional circumstances the Council is empowered to suspend subjects and to vary the syllabus of a subject. Any such alteration to the details of subjects will be announced on departmental noticeboards by the beginning of Orientation Week, 1971.
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CHAPTER 1

A SHORT HISTORY OF THE LAW SCHOOL

The history of the Law School cannot be seen in isolation from that of the two institutions with which it has always been so intimately connected—the University as a whole, and the Victorian legal profession. Here we must be satisfied with a sketch, and must forego a truly comprehensive account, but some suggestions for further reading and reference can be given.

Ernest Scott, then Professor of History, wrote *A History of the University of Melbourne* in 1936. A more recent work is Geoffrey Blainey's *A Centenary History of the University of Melbourne* (1957). An excellent series of articles on student life over the last four decades appeared in *Melbourne University Magazine* for Spring 1961. The University of the present day is described in *The University of Melbourne: A Centenary Portrait* (1957) by Norman H. Olver and Geoffrey Blainey.

A history of the Victorian Bar has been written by Sir Arthur Dean—*A multitude of counsellors: a history of the Bar of Victoria* (1968). There is much of interest also in J. L. Forde's *The Story of the Bar in Victoria* (1934), which covers the period 1839 to 1891, and in the books of P. A. Jacobs: *Famous Australian Trials* and *Memories of the Law* (1879-1928). See too the Law Institute centenary publication *The Law Institute Journal* (1879-1928). The activities of law students themselves have not gone unrecorded. F. Maxwell Bradshaw's address on 'The First Fifty Years' of the Law Students' Society of Victoria appears in (1937) 1 *Res Judicatae* 268, and there is an article on 'The Law Students' Society in the Nineties' in (1928) 2 *Law Institute Journal* 166. The Law Library holds an incomplete set of the Society's entertaining first journal, *The Summons*, which appeared from 1891 to 1903. For a few years, some news of the Society's affairs was published in *Res Judicatae* (1935-57).

Many men have contributed to the life and work of the Law School over the years and have made us what we are. A full roll-call with any amount of biographical detail would be a long one—too long for an essay of this kind. But there is always an especial interest in the beginnings of institutions such as ours, and this would seem to justify giving an otherwise disproportionate amount of attention to the early years and the 'founding fathers', to that misty and surprisingly long period of law teaching before the creation in 1873 of the Faculty as such and the appointment of the first Dean.

The foundation Statute of the University of Melbourne, which expressly contemplated a law course, received the Royal Assent in January of 1853. In the last days of December, the first four professors arrived from England and took up residence. A little over a month later, in February 1854, the Supreme Court of Victoria made its first Rules for 'colonial admissions', as they were called, providing for the examination within Victoria and the admission to practice of barristers, attorneys, solicitors, proctors and conveyancers. This happy and largely coincidental conjunction of events made it at least very likely that when law teaching in Victoria began it would be found within the University, and no doubt this was rendered all the more probable by the fact that the University's colourful and energetic first Chancellor, Sir Redmond Barry, was also a Judge of the Supreme Court. Furthermore, one of the foundation Professors, William Edward Hearn, appointed to the Chair of Modern History and Literature, Political Economy and Logic, was a barrister himself, an LL.D of Trinity College, Dublin, and well qualified, therefore, to supervise, at least informally, the foundation of a law school.
So it came about, then, that law subjects were first offered within this University in 1857, two years after the institution had opened its doors to students. The course was of two years duration, and seems clearly to have been designed to assist those who sought 'colonial admission'. Thirty-nine law students are listed in the 1857 Calendar. The lectures were held at 6 p.m. on Mondays, Wednesdays and Fridays during the University Terms, and fees were £4 per term (or £2 for the few matriculated students). The course was so arranged that the student studied virtually the whole of the substantive law in his first year: Constitutional Law, Jurisprudence, Tort, Contracts, Real Property, Personal Property, Corporations, Wills, Family Law — all appear in various guises in the syllabus. The second year was given over to the rules of pleading, evidence and practice of common law (both civil and criminal) and equity. Both lectures and tutorials were offered. The course did not lead to a degree, but the Council of the University granted certificates to students who 'kept their terms' and passed the two annual examinations. The certificate entitled the holder to practice as a barrister and solicitor, exempting him (by a fresh Rule of the Supreme Court) from the examinations conducted by the Barristers' and Solicitors' Boards.

The law students took little part in the life of the university', writes Blainey, as their lectures began long after the day students had departed. In fact they would have been happier if the lectures had been held elsewhere, for they objected to walking through unmade streets to the distant university and walking long distances home in darkness and rain. In May of that first year, twenty of them wrote to the Chancellor requesting that their lectures be held 'down town'. The Council refused the request, but arranged that 'the law lectures be delivered at an earlier hour during the winter months'. This qualified victory was to be followed soon after by an even greater one, as we shall see.

The first lecturer in the school, on the part-time basis which was to be standard practice for many years, was a respected criminal lawyer of the day, Richard Clarke Sewell, D.C.L., a Fellow of Magdalen College, Oxford, who had been called to the bar at Middle Temple in 1830 and had practised in Melbourne since 1856. He was the first editor of that short-lived journal The Victorian Law Times and Legal Observer (1856-7) and in his first editorial had supported the proposal for a local Inn of Court. We have preserved for us his Inaugural Lecture on 'The Study of the Law', delivered before 'The Chancellor and Students of the University of Melbourne'. It is a long, florid oration, rivalling some of those of Barry himself; here is the peroration:

And, lastly, to all who bear me to all to whom the future prospects and well-being of Victoria is a matter of deep and earnest interest — and more especially to you, Sir, who, as our Chancellor, have with your associates, been more immediately engaged in the foundation and government of this University, and instituting this new school for the study of the youth of Victoria — may I be permitted to say, in words which bring back to my memory happy days long past, in the peaceful retreats of Oxford, when, on festal days, we celebrated the anniversary of our Wykeham or Waynfleete, and filled the grace-cup to their memory, and the prosperity of the glorious monuments of their munificence, the Colleges reared by them — 'Stet fortuna domus. — Floreat in Aeternum Haec Academia Nostra'. Long may it flourish! — long may it be the nursery of the learned, the wise, and the good — of Statesmen and of Patriots — of Lawyers with patience to learn, wit to understand, and prudence and justice to administer the laws of their country — and of Citizens who have been taught to honour and obey them. Still onward be her progress, till her fame extend far beyond Australian skies, wheresoever learning shall be honoured and civilization shall have spread; and the names of those who have been nurtured within these walls, (where, but yesterday, the tall gum tree tossed abroad its gnarled and riven branches to the winds of heaven, in a wilderness tenantless, save by the wild beast, or still wilder savage,) shall be associated in men's mouths with the noblest of those that have been the boast of Oxford or Cambridge, of Padua or Paris — or who, in earlier days, gave to the world their lessons of wisdom, under the Plane Tree of Tusculum, or sought for truth in the classic groves of the Academus.*

But Sewell's career at the embryo Law School was to be as brief as his career as an editor. He missed his lectures so frequently that his students met one night at the

*Atq inter silvas Academi quaeerere erum. — Horace.
Temple Court Hotel and drew up a protest to the Chancellor. Dr Sewell, in reply, offered to make up lost time by lecturing during the vacation, a suggestion which the students rejected with dignified indignation. After an interview with the Chancellor, Sewell submitted it politic to resign on the ground of ill-health. It was hardly a propitious beginning!

On 29 June 1857, in time for the opening of the July Term, the Council appointed to the office of Law Reader one of the most colourful figures of his day, Henry Samuel Chapman. (It may be noted here that, although usage was not consistent, the law teachers in this early period before 1873 were generally designated 'Readers' rather than 'Lecturers', at least in the Minutes of Council.)

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In March-April of 1857, Chapman had been Attorney-General in the first O'Shannassy Ministry, and he again held that office in the second O'Shannassy Ministry of 1858-9. In 1862 he was made an Acting Judge of the Supreme Court while Sir Redmond Barry was overseas, and in 1864 he left Victoria permanently to take up a judgeship in New Zealand, where he had previously been a judge. We are told that he lectured here in law 'during the intervals of office', and we know held a lectureship for a continuous period between 1860 and 1862. His remarkable and varied career is summarized thus by Forde:

He began life as a bank clerk; then, spent some time in a stockbroker's office, and, before long, discovered that overcrowded London afforded no scope for his energy and ambition. He left England, and the rest of his life was spent in four British colonies, and two hemispheres. He became newspaper proprietor, politician, barrister, Minister of the Crown, and judge; sat on the bench of two different colonies; started the first daily newspaper in Canada; wrote on wool, and lectured on law; was familiar with the weaving of fabrics and making of constitutions, condemned transportation, and originated the ballot.

At the beginning of 1858, a second law class was formed. Chapman resigned to resume his political career, and he was succeeded by James Wilberforce Stephen and Richard Annesley Billing, who were responsible for first and second year teaching respectively.

Stephen, who was to hold his leadership until he resigned on grounds of ill-health in February 1860 (when Chapman was re-appointed), had been in the Colony since 1855. He was a Fellow of St. John's College, Cambridge, and had been called to the Bar of Lincoln's Inn in 1849. After a distinguished career as an equity lawyer, he became Attorney-General in the Francis Ministry of 1872. His most celebrated Parliamentary achievement was the Education Act of that year. In 1874 he succeeded Mr. Justice Williams on the Supreme Court bench, and died in 1881.

But it is Richard Annesley Billing, rather than Stephen, who really deserves our respectful attention, because he was the first of the early lecturers to hold his position for a considerable period of time, and thus to exercise a formative influence on the development of the school. He, Frank Stanley Dobson and William Edward Hearn, of whom more later, have the best claim to be regarded as the 'founding fathers'.

Billing was lecturer at the law school from 1858 until his death in 1882. He was one of that considerable group of early Melbourne barristers who had been called to the Bar at Queen's Inn, Dublin (in Billing's case, this was in November 1839). He was admitted to the Victorian Bar in 1856. His practice was large, and he took silk. For a few years before his death, he was a judge of the County Court. 'He was able without being brilliant', writes Forde. 'But he was a man of refined literary tastes, fond of good music, and never happier than when entertaining persons who excelled in the operatic or dramatic art.' For many years (until 1874) Billing gave a gold medal annually for competition amongst the members of his law class.

At the end of 1858, the first group of students completed the two-year course, and their certificates were issued by the Council in the following April: Bartrop, Finn, Henderson, Lanktree, Lewis, Numa, Plummer, Presswell, Wardrop, Woolcott J., and Woolcott R. Peter Finn, who did the law course while reading for a B.A., was the second 'colonial' barrister to be admitted, and practiced in Ballarat, Melbourne and New Zealand. (The first 'colonial' admission, on 21 June 1859, was of one Henry Lawes, who appears to have passed the professional examinations without, alas!, the assistance of the University law school.) The natural leader of this group would seem to have been Robert Edward Lewis. He it was who had communicated the various law student memorials to the Chancellor. At the end of his first year he had been awarded the Chancellor's Exhibition (twenty guineas), and in his second year...
he was placed second and awarded 'Mr Chapman's Prize' (five guineas worth of books). He was a member of the firm of 'Crisp, Lewis and Hedderwick', which survives today in Melbourne as 'Hedderwick, Fookes and Alston'. The first prize at the end of the second year on that occasion — 'Mr Billing's Medal' — went to Henderson. He too became a solicitor. Indeed, it would appear that only Finn and Lanktree practised at the Victorian Bar.

It seems that the University did little for its law students in those days beyond providing lectures and tutorials. In May of 1859, the Council received yet another memorial from them, praying on this occasion 'that the books prescribed for the Law Courses might be added to the University Library'. This very reasonable request was deferred for some months, but it stimulated the Council to appoint a Library Committee and in August when £500 was placed at that Committee's disposal the law students' memorial was referred to it. We may hope that their prayer was answered.

In November 1860, the University finally fulfilled the promise of its Statute and instituted the degree of Bachelor of Laws. 'It will be seen', commented the Chancellor in his Annual Report, 'that the course of study enjoined is such as to secure a well grounded and liberal education for [the legal] profession'. It was in fact close to what we would describe today as an Arts/Law course. The first year consisted entirely of Arts subjects, 'Junior Creek' and 'Junior Latin' both being compulsory. It was also necessary to pass in English, Logic I & II, Ancient History, History of the British Empire and either Constitutional and Legal History or Political Economy in the remaining three years of the course. In the second year, the law student took four Arts subjects and a subject called Law Part I, which comprised Rights of Persons, Personal Property, Contracts and Torts. In the following year, three or four Arts subjects were taken, together with Law Part II which comprised Real Property, Estates, Conveyancing, Wills and Intestacy and a subject called 'Legal Remedies for Torts relating to Real Estate'. The final year of the law course consisted of one Arts subject, Law Part III and Law Part IV, which together covered the law relating to Pleading, Evidence, Procedure, Crown Law, Criminal Proceedings, Equity, Insolvency, Admiralty and Courts of Inferior Jurisdiction.

Sir Redmond Barry himself seems to have had a good deal to do with the devising of the course, though the actual details of subjects were largely the work of the two Readers. No provision for further appointments was made, and the formidable programme of law teaching under the new regulations was committed on the same part-time basis to Chapman and Billing. The old two-year 'diploma course' (as it may be called) was still available to non-matriculated students, and remained so for some years. In 1861, the Council was asked by a member of the Bar, George Elliott Barton, to establish a branch lectureship in law at Ballarat, but it declined on the ground that 'as the University has already afforded to students facilities of obtaining admission to the Legal Profession by rendering the degree of LL.B. attainable without the necessity of attending lectures, it is not considered expedient to appoint a Law Reader to deliver lectures without the precincts of the University.' So the first attempt to establish a provincial law school failed.

Early in 1862, a most curious incident occurred. In the absence (at present) of more detailed information about it, it seems best to relate what appears in the Council Minutes and let the reader speculate as he will. At the last Council meeting of 1861, it was resolved to offer the Law readerships for 1862 once again to Chapman and Billing. When the Council met again, on 3 February 1862, it learnt that Billing had accepted the appointment, but that Chapman had declined 'in consequence of his having been appointed acting Puisne Judge during the absence of Sir Redmond Barry' (who had gone abroad). The Vice-Chancellor read to the meeting a letter from Barry suggesting John Atkins of the Equity Bar as Chapman's successor. But there was also before the Council an application for the position from George H. F. Webb. Webb had been one of the first students in the Law School, obtained his certificate in May, 1860. In 1858, at the end of his first year, he had taken the Chancellor's Exhibition. He had been admitted to the Bar in December 1860. He was to become a Judge of the Supreme Court, the first 'colonial' barrister to reach that bench and his name is linked with early Victorian law reporting. There seems no question but that his candidature was a serious one.

The Rev. Irving Hetherington moved for the appointment of Atkins. The Rev. Alexander Morrison, a foundation member of Council, moved an amendment recommending Webb. The amendment was seconded and carried, and Webb was elected.
Sixteen days later the Council met again. Now in those days, as the Minute book discloses, Council meetings were rarely large. Many times they lapsed for want of a quorum, and the average attendance would be about six. But on this occasion, no less than eleven were present, including the Chief Justice and the Speaker of the Legislative Assembly. It was moved by the latter, and seconded by the former, that the resolution appointing Webb be rescinded 'upon the ground that the notice required by the Statutes was not given.' "Discussion ensued", records the Minute laconically. Mr Speaker had to leave. The motion was put, and lost. Mr Webb remained in office.

Five days later (24 February 1862,) the Council met again. 'A letter from Mr Geo. H. F. Webb, resigning his office as Law Reader was read. Upon the motion of his Honor the Chief Justice it was resolved that Mr. Webb's resignation be accepted and that the Registrar be instructed to convey to Mr. Webb the appreciation by the Council of the feelings which prompted him to tender his resignation'. The Council decided to advertise its intention to appoint a Law Reader by notice in the Library of the University and the Library of the Supreme Court.

When the Council met on 10 March its only business was the appointment of the Law Reader. It had before it seven applications; the Minute does not name them, so we do not know if Mr Webb had applied again. But we do know that, upon the motion of the Speaker, the Council resolved to appoint — John Atkins

Atkins, like Billing, had read at Queen's Inn, Dublin, and had been admitted to the Victorian Bar on the same day as Billing in 1856. Forde tells us that he 'drifted into an equity practice'. He resigned in 1864, but was reappointed in 1873, and held the lectureship in Obligations until his death in 1873.

The year 1865 saw the conferment of the first bachelor degrees in law (awarded by examination) upon Robert Craig, John Madden, Archibald Gilchrist, and John Thomas Smith Jr. Madden was to have a most distinguished career; he became Chief Justice of Victoria, and was Chancellor of the University from 1897 until his death in 1918. Craig and Gilchrist were called to the Bar, and became in later life Inspectors of Schools. It would seem that Smith did not practice.

When Atkins left the Law School in 1864, the Council appointed Frank Stanley Dobson to the vacant lectureship. With Billing, Dr. Dobson (he took out his LL.D in 1870) was to carry the whole burden of law teaching until the creation of the Faculty in 1873, and he was to remain at the Law School until his death in June 1895, after over 30 years of service. Dobson was born in Tasmania in 1835, went to Hutchin's School, and graduated B.A., LL.B from Cambridge. He was called to the bar of Lincoln's Inn in 1860, and arrived in Victoria the following year. Three of his brothers became prominent in Tasmanian public life: Sir William was Chief Justice from 1885 to 1898, Henry was Premier from 1892 to 1894 (and later a Tasmanian Senator in the Federal Parliament), and Alfred was Attorney-General in 1877-8, leader of the Opposition in 1883-4, Speaker from 1885 to 1887, and Agent-General in London from 1901 to 1908. Dr. Frank Dobson shared his brothers political zeal. He was first elected to the Victorian Legislative Council in 1859, held the office of Solicitor-General from July 1881 to March 1883 in the O'Loghlen Ministry, and was Chairman of Committees in the Council from 1884 until his death.

When he was appointed [to the Law School], writes Forde, one of the Melbourne newspapers objected that 'being a good flute-player was not a qualification for a law lectureship'. But the doctor justified his appointment.

Great changes came to the Law School in 1873, and they were described thus by the Chancellor in his Annual Report:

"It [the School of Law] was formerly so blended with the School of Arts as hardly to possess a distinctive character. Now, by the establishment of a Faculty of Law, with the appointment of a Dean, and two additional lecturers, and three Public Examiners, two of whom are unconnected in any other respect with the University, a project long in contemplation has been carried out. The teaching will now ensure a more comprehensive and philosophical training than that which formerly obtained; and while the Classics, Mathematics, and General Literature are to be pursued during the first two years of the course, whereby an acquaintance with these branches of learning so necessary for an accomplished lawyer is required [sic], the studies of the last two years are directed exclusively to the attainment of a thorough understanding of the great principles of Roman, Constitutional, International, Common, Statute, and Criminal Law, and of Equity, with the other leading divisions of learning relating to the administration of justice."
And now, William Edward Hearn, who has hitherto been in the wings, as it were, moves to the centre of our stage. For Dr Hearn resigned from the Chair of History and Political Economy in July, 1873 to become the first Dean of the new Faculty of Law. He was, it will be recalled, a foundation Professor at the age of twenty-nine, and a member of the Irish Bar. Within a few months of his arrival in Melbourne, on the death of Professor Rowe, he found himself lecturing in Classics in addition to all his other duties. When the law school was established, he was asked by the Council to assist in the preparation of the examination papers, and, together with the Law Reader, to conduct the examinations, and we can safely assume that he continued his oversight of the school in the succeeding years. After 1860, of course, he was directly engaged in the teaching of law students on what might be described as the 'Arts' side of the degree course. It is for these reasons that he must be regarded as a 'founding father' of the law school.

Early in his Melbourne career, he precipitated a major controversy within the University, and, indeed, in the community at large, by announcing his candidature for Parliament. The election was held on 18 January 1859, and Hearn was decisively beaten. At the end of the month, the University Council passed a Statute to prevent (they hoped) such contentious activities for the future: 'The Professors shall not sit in Parliament, nor become members of any political association'. But Hearn's political ambitions were not so easily thwarted. His resignation from a professorship and his election as 'Dean' in 1873 brought him outside the terms of the prohibitory statute. He contested the election of 1874 unsuccessfully, but finally in 1878 was elected to the Legislative Council (of which, it will be recalled, his colleague Dr Dobson was already a member), where he gave distinguished service as an official leader of the House until his death in 1888. For eight unhappy months in 1886, Hearn was Chancellor of the University, in which time he managed to alienate most of the staff and to stir up another public controversy, with the Argus championing him and the Age in attack.

He was a hard worker and a considerable scholar, and wrote pioneering works in constitutional law ('The Government of England'), economics ('Plutology') and jurisprudence, ('The Aryan Household'), as well as a students' text ('Legal Rights and Duties'). One of his great but unsuccessful projects was the codification of Victorian law, and he introduced a 676 page Bill to that effect in the Legislative Council in 1855. Here is Blainey's description of him:

He was an impressive man in appearance, with his black wig that lapped his ears, small eye-shaped glasses and a black beard that had the texture of teased rope and obscured most features of his large head. Hearn's lectures were restless and discursive, covering a wide field of knowledge, and strewn plentifully with jokes from his limited store. He would commence his lectures seated at his high desk, and then as he warmed to the subject he would descend the steps and pace up and down the room in his old slippers. Hitching his faded gown to his shoulder, plucking a book from his shelves of two thousand volumes, he would wander omnisciently from subject to subject until the sound of the bell made him hurry to finish his wandering theme. His influence lay in his infectious love of knowledge rather than in the knowledge he taught. 'A big man who dominated your mind for three years and turned you out as a thinking being'—such was the tribute paid to Hearn by one of his gifted pupils.

When the Faculty began in 1873, Hearn had four part-time lecturers on his staff: Billing, now lecturer on Property; Dobson, now lecturer on Wrongs; Atkins re-appointed as lecturer on Obligations; and Thomas A'Beckett, newly appointed as lecturer on Procedure.

Only A'Beckett needs some introduction. A nephew of the first Chief Justice of Victoria (Sir William A'Beckett), he had been called to the Bar of Lincoln's Inn in 1859, and had practised at the Victorian Equity Bar since 1860. He was to become himself a most distinguished member of the Supreme Court Bench.

Three examiners were also appointed in 1873. They were Hearn, Henry Lawes, and Hartley Williams. Lawes has already been referred to as the first 'colonial' barrister. Hartley Williams had been called at the Inner Temple in 1807, and he too became a Supreme Court Judge.

With the establishment of the Faculty, it is necessary to bring the detailed history of the law school to an end. For the rest, we shall do little more than notice the various professorial appointments to the present day.

Dr Hearn died in 1888, and in the following year the Council appointed as his successor a twenty-eight year old barrister and Cambridge graduate, Edward Jenks.
Prior to his appointment he was Director of Studies in Law and History at Jesus College and Lecturer at Pembroke, and in the same year (1889) he was made a Fellow of King's. Jenks stayed in Melbourne, however, for only a short period. He quarrelled with the University administration, and with a good many other people as well, and found himself (like Hearn) a centre of public controversy. Both Scott and Blainey detail some of the incidents in which he was concerned, including his famous combat with the law lecturer Dr McInerney. After less than two years of marriage his wife died in childbirth, and in November 1891 Jenks resigned his position and returned to England. While in Melbourne, he published a work which has not yet been superseded, The Government of Victoria (1891). He too shared Hearn's enthusiasm for codification; he referred to the matter in his Inaugural Lecture, and between 1905-17 there was published under his editorship A Digest of English Civil Law arranged along the lines of the German Civil Code. Jenks' subsequent career after the brief and unfortunate Melbourne episode was long and distinguished. He held a Chair at Manchester, the Readership in English Law at Oxford, and from 1903 to 1924 was principal of the Law Society's school in London. In that year, he took a Chair in the University of London which he held to his retirement. He published many important books and articles, several of which are still in print, and was regarded as a great teacher. He married again, and lived until 1939, thereby outliving his Melbourne successor, William Harrison Moore.

Harrison Moore was 25 on his appointment, and was to be Dean of the Faculty for thirty-five years until his retirement in 1927, eight years before his death. Scott, who knew him well of course, wrote of him thus:

Slight in build and remarkably young in appearance, with, indeed, an aspect of youth which was preserved even after he attained a fairly advanced age, Moore was a very hard worker, devoted to the study of the law, but also finding time to engage in the affairs of the many societies in which he was keenly interested. His books, Act of State in English Law and The Commonwealth of Australia, though substantial works involving assiduous research and hard thinking, were but part of his literary output.

To his University work Moore brought a power of lucid exposition and a wealth of learning which made several generations of lawyers his debtors. In addition to these qualities he was the kindest and gentlest of men, impeccably courteous and friendly; and if in setting high standards in his examinations he appeared sometimes to be remorseless, that was only because he had a strong sense of responsibility towards the community wherein his students intended to practise in the law; and he would go to great pains to explain to a 'decent duffer' why he had failed, often writing detailed criticisms upon an unsuccessful paper.

Harrison Moore, too, was a Cambridge man, as so many teachers at our Law School have been, and he graduated there in Arts in 1891. He completed his LLB at the University of London in the same year, and was called to the bar of Middle Temple. His interests lay primarily in constitutional and public law, and he made a special study of federal constitutional questions before and after Federation. For a few years he held the former position of constitutional adviser to the Government of Victoria and his opinions were often sought over the years by both state and federal authorities. He was knighted in 1925, and retired from his chair in 1927. In that year, and again in 1928 and 1929, he represented Australia at the League of Nations. He was Australian delegate at the important 1929 Conference on the Operation of Dominion Legislation, and had a hand in the drafting of the Statute of Westminster. He married a daughter of Sir Thomas A'Beckett, who was, it will be recalled, a former lecturer in the School.

On the retirement of Harrison Moore, the Council appointed Kenneth Hamilton Bailey as Professor of Jurisprudence. When in 1930 the Chair of Public Law was created with an endowment from the Supreme Court Library Fund, Bailey took this Chair (retaining the Deanship), and George Whitecross Paton was appointed Professor of Jurisprudence. Under the leadership of these two young men, whose careers to that point had been remarkably similar, the Law School entered a new era. Miss Florence Scholes, the Secretary to the Law School came in 1932. In 1940, the first full-time Senior Lecturer was appointed (Geoffrey Sawyer, now Professor of Law A.N.U.), and the long history of substantially part-time teaching began to draw to a close.

Bailey was in his thirtieth year at the time of his appointment, and Vice-Master of Queen's College. He had graduated from this University, and was Victorian Rhodes
Scholar in 1918. At Oxford, he read for the B.C.L. He remained Dean of the Law School until 1946, in which year he was made Commonwealth Solicitor General. He was knighted in 1958.

Paton was 28 when he gained his Chair. He too was a Melbourne graduate and a Rhodes Scholar (1926), and had been called to the Bar at Gray’s Inn. At the time of his appointment he was a lecturer in the London School of Economics. When Bailey left for Canberra, Paton became Dean of the Faculty, a position he held until his appointment as Melbourne’s Vice-Chancellor in 1951. He was knighted in 1957.

Bailey was succeeded in the Chair of Public Law by Wolfgang Gaston Friedmann. Friedmann had been born in Berlin, in which city he had taken his first degree, but had lived and worked in England since his late twenties. He held the London LL.M. and LL.D. and was Reader in Law in London University at the time of his appointment. After three years in Melbourne, he went in 1950 as Professor of Law in Toronto, and from there in 1953 to Columbia University.

With the resignations of Paton and Friedmann, both the law Chairs became vacant at almost the same time, and again the University Council appointed a pair of young men. In 1951, Zelman Cowen became Dean and Professor of Public Law, and David Plumley Derham was appointed to the Chair of Jurisprudence.

Cowen was 31, and a Fellow and Tutor of Oriel College, Oxford. He was a Melbourne graduate in Arts and Law, and Victorian Rhodes Scholar for 1940. At Oxford he had taken the Vinerian Scholarship. He had served with the R.A.N., and after the War had spent some time as Consultant on Constitutional Problems to the British and American Military Governments in Germany.

Cowen resigned at the end of 1966 to take up an appointment as Vice-Chancellor of the University of New England, the Council conferring upon him at that time the title of Professor Emeritus.

Derham, too, was 31, and was practising at the Victorian Bar. He had graduated in Melbourne, and had served in the A.I.F. during the War. For several years prior to his appointment, he had been the Independent lecturer in Constitutional Law. He resigned from the Chair of Jurisprudence in 1964 to become the first Dean of the newly established Faculty of Law of Monash University. In 1968 he returned to the University of Melbourne to succeed Paton as Vice-Chancellor.

The third law chair was established in 1932 as a Chair of Commercial Law, and its first occupant was Francis Patrick Donovan. Again, he was 31 at the time of his appointment, and he too had been a Rhodes Scholar (from Queensland). Prior to coming to Melbourne, he was Reader in Law in the University of Adelaide. He resigned in 1961 to become Commercial Counsellor in the Australian Embassy at Rome.

Donovan’s successor in the Chair of Commercial Law was Harold Arthur John Ford, who had as a Melbourne student read for the Articled Clerks’ Course before taking the LL.B. degree. As was the case with both Cowen and Derham, his years of study had been interrupted by a long period of war service. He took his S.J.D. from Harvard University.

The fourth chair was established in 1962 as the Hearn Chair in Law and Peter Brett was appointed to it. Brett graduated from the University of London and saw war service with the British army. He later lectured in the University of Western Australia where he obtained an LL.M. He joined the Law School teaching staff in 1955 as a senior lecturer and was promoted to reader in 1961. He holds the S.J.D. from Harvard University. In 1964 Brett relinquished his chair to succeed Derham as Professor of Jurisprudence and was himself succeeded by Colin Howard as Hearn Professor.

Howard was born in England and is a graduate of the University of London. He came to Australia in 1958 as Lecturer in Law in the University of Queensland, and in 1960 he was appointed Senior Lecturer in Law in the University of Adelaide. He holds the LL.M. of both London and Adelaide and was awarded his Ph.D. also by the latter University.

Cowen was succeeded in the Chair of Public Law by Edward Irving Sykes, who took up the appointment in May 1967. Sykes is a graduate in Arts of the University of Queensland, and in Laws of the University of Melbourne, where he subsequently received firstly an LL.M. and then his LL.D. At the time of his appointment Sykes was Dean of the Faculty of Law in the University of Queensland, having been a member of the full-time academic staff of that university since 1948.

Finally a word about the Law School buildings. Alone among the faculties of this University the Law School is housed today in the clusters in which it began. The old quadrangle has been its home since 1857. This, the original section of the
University, consisting then of the northern wing and portions of the east and west wings, was built in 1856 at a cost of £16,637. The professors lived in the eastern and western wings. Hearn's rooms were on the east side, adjoining the Law lecture room, and he was accustomed to shuffle into lectures in his slippers. This lecture room was also used by Harrison Moore. On the floor above, the first women graduates established the "Princess Ida Club", and Harrison Moore's complaints about the noise they made inspired a cartoon in Melbourne *Punch* for 1897, which is reproduced in Scott. The north wing of the quadrangle once housed the entire University. In more recent years it was the general library. When the Baillieu was opened in 1959 the Law School was given the north wing for its exclusive use, and the interior was re-designed with the Law Library on the ground floor and Law School offices and staff studies on two new upper floors.

The upper Law lecture theatre and adjoining rooms are in a section added to the quadrangle in 1874. The theatre was intended as a ceremonial hall, and the Commencement of 1875 was actually held there, but it was outmoded almost immediately by Wilson Hall.

Another addition was made to the quadrangle in 1930 when the southern ends of the east and west wings were built. In 1951 the north-eastern wing was added, initially to provide additional accommodation for the general library, but subsequently to be occupied by the University Administration. In 1969 this wing, which was known variously as the Scarborough Wing and Students' Records Wing, reverted to library use for the Law Library and a new cloakroom and entrance were constructed. At the same time the southern side of the quadrangle was enclosed to provide at the first floor level a new council chamber. In an extension westwards from the west wing towards the old Arts Building, accommodation was provided for two lecture theatres for the Law School. In 1969 also, the Law School was given possession of almost all the quadrangle for its own use, the size and capacity of the Law Library being increased and additional provision being made for staff accommodation and teaching facilities.

The arms carved on the walls of the quadrangle pertain to members of the Building Committee of the Council at the time. Barry's arms appear on the east gable. Those over the old central doorway of the northern wing are of one Louchlan Mackinnon. There is no truth in the rumour that the women's heads carved above this doorway are portrait studies of the wives of former deans of the Faculty of Law.
CHAPTER 2

GENERAL INFORMATION

Dates in 1971

22 January  Last day of enrolment for all students previously enrolled.
            New students must enrol by the date specified in the notice of selection.

1 March  Orientation for first-year students begins.

Lecture Terms: 1st: 8 March—15 May
                2nd: 7 June—7 August
                3rd: 30 August—16 October

8 March  Lectures begin.

22 July  Last day of entry for annual examinations.

25 October  Annual Examinations begin.

Courses

The following courses are available in the Law School:

(a) Bachelor of Laws (Reg. 3.14) comprises 20 subjects and is normally completed in four years of full-time study. For further details attention is directed to the regulation.

(b) Master of Laws (Reg. 3.15).

(c) Doctor of Philosophy (Reg. 3.60, in Calendar).

(d) Doctor of Laws (Reg. 3.16).

For details of these three postgraduate courses candidates should consult the regulations quoted and the information given in Chapter 5.

Apart from these degree courses the Faculty provides instruction in the subjects of the courses prescribed by the Council of Legal Education (these courses are also taught in a school established for the purpose and conducted by the Council—see also Chapter 5), and in subjects in which stipendiary magistrates are required to qualify.

Matriculation Roll

When beginning a course for a degree or diploma which requires matriculation, all students must sign the prescribed declaration at the time of enrolment.

Unless this is done no subjects passed can count towards a degree or diploma requiring matriculation. Before enrolling students should satisfy themselves that they are eligible to sign the matriculation roll.

In order to be eligible to sign the matriculation roll, candidates must have—

(a) satisfied the university entrance requirements of the Victorian Universities and Schools Examinations Board. Full information regarding the board’s requirements and conditions of exemption may be obtained from the secretary of the board, 437 St. Kilda Road., Melbourne, Vic. 3004.

(b) satisfied the special course requirements, if any, for their particular course.

(c) been selected for and enrolled in their course.

(d) attained the age of seventeen years by 31 March of the year concerned.

Special Course Requirements

In addition to satisfying the University entrance requirements candidates must have satisfied the special course requirements (if any) prescribed for their course. For the LL.B. course no special course requirements are prescribed.
Quota Selection

Entry into the first year of Law is restricted to 250 students, who are selected by a committee formed for that purpose. In broad terms selection is on the basis of academic merit disclosed by the results obtained in the Higher School Certificate examination.

All students applying for entry to the Law course, who do not have, or who have not been granted, credit for the subject Legal Process, must follow the procedure outlined below.

1. Obtain from the Victorian Universities Admissions Committee, 437 St. Kilda Road, Melbourne, an application form and a handbook of instructions (these are distributed to Victorian secondary schools each year in about the month of August.)
2. Complete and lodge the application form according to the instructions.
3. Attend as required during the month of December prior to the intended year of entry for such interviews or admission tests as may be notified.
4. Await the result of the application and if an offer is made attend promptly as required at the University.

Intending students, who have been granted credit or who wish to apply for credit for the subject Legal Process should communicate with the Senior Administrative Officer of the Faculty, during the month of October preceding the proposed year of entry, for advice and information regarding entry and entry procedure.

Approval of Courses

Each student is required at the beginning of each year to submit to the Faculty for approval the names of the subjects for which he proposes to enrol in that year and must similarly submit any alteration subsequently proposed. Application cards for this purpose, which are available at Students' Records office, should be obtained at the same time as enrolment forms, and lodged with those forms.

Students are advised, in their own interest, to comply with this requirement at the earliest possible stage of each year. By so doing they escape the possibility of dislocation of their course later through failure to appreciate the effect upon their position of a previous year's performance, through misunderstanding of the regulations or through ignorance of changes in the regulations.

Enrolment

New Students

No student, with the exception of those enrolling for subjects of the course for Stipendiary Magistrates (see page 43), or those who have been permitted by the Faculty to enrol for single subjects in Law, may enrol in any Law subject unless he has been selected in the entry quota and produces to Students' Records Office evidence of his selection.

Students must enrol within seven days of receiving written authority to do so.

The forms to be completed are as follows:
(a) enrolment card for lectures (or, in the case of students outside the metropolitan area, for external studies)—this must be lodged afresh at the beginning of each year;
(b) (for students who have not previously signed the matriculation roll) application for matriculation;
(c) application for approval of course (see above);
(d) bank slip for correct fees.

Students Previously Enrolled

Students enrolled in Law in a previous year and who have credit for Introduction to Legal Method must lodge their enrolments and pay their fees by Friday, 22 January, 1971. The forms required are as stated above for "New Students".
Late Entries

These may in special circumstances be accepted on payment of an additional fee, but no candidate, who has not enrolled for any subject within one month after the beginning of first term, will be admitted to the annual examination in that subject, except with the special permission of the Professorial Board.

Terminal Re-enrolment

In order to maintain the accuracy of the University's records, every student is required to lodge at the end of the first term a special re-enrolment slip, showing the subjects which he proposes to study for the remainder of the year.

A student who does not wish to proceed with his course must notify Students' Records Office in writing immediately.

Fees

Students must consult the Fees Section of Students' Records before paying fees when they enrol.

The Lecture, Sports, Union and Students' Representative Council fees can be paid yearly in advance or in three terminal instalments. Other fees are paid in full with the first term's fees.

Payment can be made to the University's account at any branch of the National Bank of Australasia. Branches are next to the Bookroom and on the first floor of the Union Building. As a service to students, the State and Commonwealth Savings Banks branches will accept payment of fees. They are located respectively on the ground floors of the Administration Annex and the Raymond Priestley Buildings.

Every student enrolled for any lectures in Law shall pay to the University a fee of two dollars per annum to be known as the Law Publication fee. This fee must be paid at the same time as the Lecture fees for the First Term. Fees so paid shall be made available by the Council for defraying the cost of publication of Melbourne University Law Review.

Law Materials

Materials and notes in a number of subjects in the Law Courses are issued to students each year from the Law School Notes Office. Certain of these must be paid for by students. Instructions regarding payments are issued by Students' Records Office.

Examinations

Annual Examination. All candidates for the annual examination must have enrolled at the beginning of the year for lectures or for external studies, and must lodge an examination entry with the Registrar not later than 22 July. The entry must specify whether the candidate intends presenting for pass or honours in each subject, no candidate being permitted to enter for both pass and honours in the same subject. Candidates who take the honour paper in any subject, but fail to reach honour standard, are eligible to be granted a pass.

A time-table of the annual examination will be available at the Students' Records Office some weeks before the examination commences. No additional examination fee is payable by those who have paid full lecture fees in the subjects for which they present themselves, but candidates sitting at country centres must pay a supervision fee of $3 per subject. Examination numbers for candidates presenting at the University will be available at Students' Records during the week before the examination begins, and must be applied for by candidates in person. Candidates sitting at country centres will receive their numbers by post.

Supplementary and Special Examinations

Applications for special consideration, together with medical or other evidence, must be lodged as required by Regulation 4.5. (See Chapter 3 at page 29).

Suspension and Limitation for Unsatisfactory Progress

Any student in any faculty who fails at the examinations may be reported to the Professorial Board, and may be excluded from such course or courses as the Professorial Board shall specify or may be limited in any year to subjects specified
by the faculty or the Board. Students should make themselves familiar with the provisions of Regulation 2.5. The Regulation is set out in full in Chapter 3 at page 28.

Graduation

The dates for conferring degrees in 1971 are as follows:

- Wednesday, 10 March
- Saturday, 20 March
- Saturday, 3 April
- Wednesday, 21 April
- Saturday, 14 August
- Saturday, 18 December

Candidates for degrees and diplomas must lodge an application on the prescribed form obtainable from the Students' Records Office, by the due date.

Student Counselling and Housing

Counselling

The staff of the Student Counselling Service, Mr. Jon Frederick, Mrs. Marjorie Priestley, Mr. Denis Kelynack and Mrs. Rhyll Nance, are available to help any student at the University with problems such as:

- difficulties in settling down to study or exams
- adjustment to University life
- practical problems—financial, housing, domestic and so on
- personal and emotional problems

Where appropriate, students can also be referred for further help to a medical practitioner, psychiatrist, or a speech therapist, for example.

The Counselling Office also offers a number of other services, including discussion group activities on a variety of topics and a tape recorder loan scheme for temporarily or permanently disabled students.

Intending students who are experiencing problems in choosing a course or who have other difficulties about coming to the University are welcome. The service is free, voluntary and confidential. The counsellors are available in the usual University hours, preferably with, but if necessary without an appointment. Intending students not yet enrolled should ring for an appointment.

The Student Counselling Service is located at 268 Elgin Street, Carlton, just near the University and tram stop 11 in Swanston Street. The phone number is 34-0484, extension 6928.

Housing

The University Housing Office provides an accommodation service for students who require lodgings other than in colleges, halls of residence and hostels. Flats, full board, bed and breakfast, and rooms with the use of cooking facilities can be arranged through this office.

The Housing Officer, Mrs. Pamela Normark, and the Secretary, Mrs. Joy Skinner, are available during the usual University hours. Appointments can be made by ringing either 34-2023 or 34-0484 extension 6930, or by calling at the Housing Office, which is located at 255 Elgin Street, Carlton, opposite the Student Counselling Office.

Appointments Board

The Appointments Board provides a careers advisory and employment service for intending students, undergraduates, and graduates.

- **Intending Students.** The staff of the Board are always prepared to assist intending students with information and advice concerning the career implications of various courses of study. In addition, booklets on careers and information on scholarships are available free of charge.

- **Undergraduates.** The Board can assist undergraduates to find part-time work where necessary and also employment during vacations preferably relevant to their course of study.
• **Permanent Employment.** Graduates and undergraduates seeking full-time work are put in touch with suitable employers—special approaches may be made on behalf of particular students and graduates.

• **Careers Library.** The Careers Library has been extensively modified and expanded and any interested person wishing to make use of it is most welcome to do so.

**The Law Library**

Within the Law School Building is a branch library of the Baillieu Library, which is the general university library. This branch, known as the Law Library, at present houses over 30,000 books. There is a catalogue of these books—indexed usually under author, title and subject—in the Law Library; duplicate entries are also found in the general catalogue in the Baillieu Library.

**Hours**

Throughout the academic year the Library is open from 8.45 a.m. to 10 p.m. Monday to Friday, and on Saturday from 8.45 a.m. to 5 p.m. During the long vacation the Library closes at 5.00 p.m. and is not open on Saturday.

**Borrowing**

The Library is primarily a reference, not a lending collection. Volumes of statutes, law reports, digests, encyclopaedias, dictionaries, sets of three books or more, and periodicals ordinarily may not be removed from the Library at all. Other books may be borrowed on overnight loan. This means that, on completion of the appropriate slip and production of a union card to the librarian on duty, a student may take out a book from 5 p.m. on any day Monday to Friday and must return it by 8.45 a.m. the next day. (Books borrowed on Friday afternoon must be returned on Saturday morning). On Saturday a book may be taken from 4 p.m. and must be returned by 8.45 a.m. on the following Monday. Books taken from the open shelves for use in the Library should not be returned to the shelves, but should be left on the reading desks. Books borrowed overnight must be returned to the Reserve Desk. Outside the Law Library, near the entrance, there is a slot for the return of books when the Library is closed.

Students participating in moots may take law reports to the actual hearing. Before doing so, however, students must leave a signed list of the reports at the Reserve Desk.

By means of inter-library loans, students engaged in research may obtain books from libraries in other parts of Australia.

**Reserve Books**

Certain books, which are in constant demand, are retained at the Reserve Desk. This is indicated in the catalogue by a blue marker placed on the card indexed under the author's name. There is also a separate set of such catalogue cards at the Reserve Desk. These books may be borrowed for two hours at a time for reading in the Library and must be returned to the Reserve Desk. They may also be borrowed on overnight loan, subject to the same rules as for all other books.

**Regulations**

The Baillieu Library regulations apply in the Law Library. These are displayed in the entrance hall to the Baillieu Library and are also distributed in leaflet form. The Law Library is a place for quiet study. A special area of the Library is set aside to enable students to discuss their work with each other, such discussions being an essential part of legal study. In all parts of the Library outside the discussion area, silence is the rule. Eating is prohibited in all parts of the Library; smoking and reading of newspapers are prohibited outside the discussion area.

**The Law Students' Society**

The Law Students' Society of Victoria is the Faculty club for law students. It exists to organize and encourage extra-mural social and academic activities amongst law students, and to this end various functions, both formal and informal, are from time to time arranged. Members of the Faculty staff attend many of these and students are thus able to meet their lecturers in an atmosphere free from the formality of the lecture theatre. The Annual Law Students' Conference is held during a week-end of the first term vacation.
Academically, the society arranges talks by leaders of the profession, has discussion with the Faculty on students' problems and encourages debating and forensic speaking among law students.

Perhaps the society's most important function is its contribution to the cordial relationship which exists between staff and students of the Faculty.

All Law students are members of the society and may attend its functions. They may also wear the society's lapel badge which enables its wearer to hear Supreme Court cases from seats in the body of the Court. The society is administered by a committee of 24, elected annually by law students.

The Melbourne University Law Review

The Melbourne University Law Review, which is published twice yearly, provides an outlet for legal research and writing by law teachers, practising lawyers and student members. The editorial work on the Review is performed entirely by students who are selected on the basis of their academic performance to be members of the Melbourne University Law Review Association.

Law reviews have had great influence in fostering and facilitating the publication of legal research. Law reviews assist the effective operation of our judicial system by providing comprehensive references to the case law on particular topics. The standard of a law review is regarded as a measure of the standing of the law school which produces it.

Members of the Association, in addition to performing the essential tasks of footnote-checking and proof-reading, are given the opportunity to write careful analyses of important decisions of the Courts and to participate in research projects. Senior members are appointed by the editors to the position of student contributions editor, book-review editor and business manager. The editors are elected by the student members at general meetings of the Association.

At the Annual Dinner, the members of the Association act as hosts to members of the Faculty, members of the judiciary and leaders of the profession who have assisted in the publication of the Review by writing articles or book reviews or in other ways.

While work on the Review makes demands on student time, it provides a very fine training in legal research and writing. It is regarded as an honour to be invited to join the Association. Moreover, experience has shown that those who have worked on the Review have found the experience very useful in their professional careers.
CHAPTER 3
REGULATIONS

Regulation 3.14—Degree of Bachelor of Laws

When enrolling, students must quote the NUMBER as well as the name of the subject as listed below.

1. (1) There shall be:
   (a) a degree of bachelor of Laws; and
   (b) a degree of bachelor of Laws with honours.

   (2) The degree of bachelor of Laws with honours shall be obtained by qualifying for the degree of bachelor of Laws and in addition being classed in a final honour class list in accordance with section 18.

2. (1) A candidate for the degree of bachelor of Laws must subsequently to his matriculation continue his studies for four Years, pass examinations in accordance with the conditions prescribed herein, and unless excused therefrom by the Dean, carry out such moot court work as shall be prescribed in the details of subjects.

   (2) For the purposes of this regulation a special examination and the immediately preceding annual examination in any subject shall be deemed to be one annual examination in that subject.

3. (1) A candidate for the degree of bachelor of Laws who is taking the course for the degree of bachelor of Arts and has passed in two subjects of the Arts course shall not be required to pass in the two non-law subjects referred to in sections 3(1)(d) and 4(1)(e) her eof.

   (2) Any candidate who has passed in the subject 252 Criminal Law and Procedure pursuant to any repealed regulation shall be exempted from passing in the subject 252 Criminal Law.

4. The subjects of the examinations for the Second Year shall be—
   (a) 256. The Law of Torts.
   (b) 257. Principles of Contract.
   (c) 258. Principles of Property and Conveyancing.
   (d) one subject chosen by the candidate from any other course for a degree or diploma which subject (hereinafter called a "non-law subject"), if a subject of the course for the degree of bachelor of Arts, shall, except with the approval of the faculty, be one of a group of two recognized in that course as the first two parts of a major or, if a subject of some other course, shall be one of a group of two regarded by the faculty of Law as equivalent to the first two parts of a major for the purpose of the degree of bachelor of Laws.

   Provided that if a student in his previous work for the degree has shown a
weakness in English expression the faculty may require him to pass in Rhetoric instead of the non-law subject hereinbefore referred to.

5. The subjects of the examinations of the Third Year shall be—
   (a) 262. Equity.
   (b) 263. Administrative Law.
   (c) 264. Constitutional Law.
   (d) 265. Mercantile Law.
   (e) 266. Principles of Evidence.

6. (1) The subjects of the examinations of the Fourth Year shall be—

   (2) With the special permission of the faculty a candidate may enrol for all three subjects referred to in paragraph (b) of the preceding sub-section, provided that he shall not enrol then for any subject prescribed by paragraph (c) of that sub-section.

8A. Where the faculty is satisfied that a candidate has received a sufficient training at a post-matriculation academic level, or otherwise has had experience which the faculty considers to be adequate in substitution for such training other than in the study of law, the faculty may by resolution exempt him from the requirement of passing in one or both of the non-law subjects.

7. (1) Subject to the provisions of sub-section (3) of this Section every candidate shall at the beginning of each year submit to the faculty for approval the names of the subjects for which he is enrolling in that year and shall similarly submit any alteration subsequently proposed thereto. No candidate shall enrol or receive credit for any subject unless his enrolment has been approved by the faculty.

   (2) Subject to the provisions of sub-section (3) of this Section a candidate who has passed in any subject or subjects of a Year shall be entitled to credit therefor and may obtain credit for the remaining subject or subjects of that Year at a subsequent examination or examinations; and the faculty shall determine in what subject or subjects (if any) of a later Year of the course he may present himself for examination in addition to presenting himself for examination in the subject or subjects in which he has failed to pass.

   (3) A candidate who has not passed at one annual examination in Introduction to Legal Process, Criminal Law, and Constitutional History may not re-enrol for any of those subjects or enrol for any other subjects of the course for the degree of bachelor of Laws without first obtaining permission from the faculty.

8. (1) A candidate who:
   (i) is qualified to matriculate; and
   (ii) thereafter passes, in accordance with the rules of the Council of Legal Education (as defined in section 11(1) of this regulation), any subject or subjects at the University,
   may with the permission of the faculty receive credit in the course for the degree of bachelor of Laws for the subject or subjects so passed.

   (2) A candidate who, in accordance with the provisions of the preceding sub-section, has received credit for any subject or subjects may enrol as prescribed by
the faculty and may be admitted to the degree of bachelor of Laws on passing, subsequent to matriculation, in the remaining subjects of the course.

9. Except with the permission of the faculty, no candidate may obtain credit for more than four subjects in the First Year of the course, nor in more than five in the Second Year of the course, nor in more than six in the Third Year of the course, nor in more than six in the Fourth Year of the course. For the purpose of this section a candidate shall be deemed to be pursuing his First Year until he has received credit for at least three subjects of his course and thereafter to be pursuing his Second Year until he has received credit for seven subjects of his course, and thereafter to be pursuing his Third Year until he has received credit for thirteen subjects of his course, and thereafter to be pursuing his Fourth Year.

10. Where pursuant to regulations subsequently repealed or amended a candidate has obtained credit or may obtain credit in the course for the degree of bachelor of Laws, the faculty may determine in what further subjects he must pass in order to obtain the degree; and notwithstanding anything to the contrary the faculty may exempt him from such subjects of the course as are in its opinion the substantial equivalent of subjects already passed pursuant to such repealed or amended regulations.

11. (1) In this section (unless inconsistent with the context or subject matter) “admitted to practise” means admitted to practise as a barrister and solicitor of the Supreme Court of Victoria after taking the course for articled clerks or after qualifying for admission as a managing clerk in accordance with the rules of the Council of Legal Education in force from time to time, but the expression shall apply only to those persons who have passed at the University in the subjects prescribed by those rules.

(2) Notwithstanding the provisions of section 8 a candidate who has been admitted to practise may receive credit in the course for the degree of bachelor of Laws for the subjects in which he has passed.

(3) Any such candidate, who in accordance with the provisions of the preceding sub-section has received credit for the said subjects may, notwithstanding the provisions of sections 7(3) and 8, enrol for the remaining subjects of the course as prescribed by the faculty and may be admitted to the degree of bachelor of Laws on passing, subsequent to matriculation, in such subjects.

(4) Any candidate who has been admitted to practise for not less than ten years may, if the faculty is satisfied that he has achieved distinction in the application of the law whether in private legal practice or other occupation, be admitted to the degree of bachelor of Laws upon his submitting a thesis on a subject approved by the Faculty, which thesis is considered by examiners appointed by the Faculty to make a contribution to legal learning. The thesis may consist in whole or in part of articles, papers or books which the candidate has already published, but may not incorporate work previously submitted for a degree in this or any other university.

12. Notwithstanding anything to the contrary in any Regulation a candidate who has passed at the University in the subjects required to be passed at the University for appointment to the office of Stipendiary Magistrate according to the regulations made under the Public Service Act 1946, or any amendment thereof, may be admitted to the degree of bachelor of Laws on passing, subsequently to the completion of the course required for Stipendiary Magistrates, in the remaining subjects of the course for the said degree in such order as the faculty may approve: Provided that no such candidate may obtain credit for any such remaining subjects unless at least six months before presenting himself for examination he has matriculated.

Provided also that for the purposes of this section the expression “the course for the said degree” shall mean the course for the degree of bachelor of Laws as defined by sections 3, 4, 5 and 6 of this regulation with the exception of the subject Legal Process.

13. At the annual examination there shall be open to competition among students then taking in their course the subjects hereafter mentioned the following exhibitions and scholarships1 —

1 The Emmerton scholarship of $50 per annum, tenable for four years, in certain subjects to be prescribed is open to competition among articled clerks.

15. Candidates may be admitted to the examination in any subjects for the degree of bachelor of Arts with honours and may upon the conditions prescribed in the regulations for that degree be placed in the class lists and compete for the exhibition therein.

THE DEGREE OF BACHELOR OF LAWS WITH HONOURS

16. (1) The course for the degree of bachelor of Laws with honours shall be that prescribed for the degree of bachelor of Laws with the additional requirement of a research paper.

(2) Admission to candidature for the degree of bachelor of Laws with honours shall be at the discretion of the faculty, which shall approve the subject of the proposed research paper to be submitted by the candidate.

17. (1) There shall be a final honour board of the Faculty made up of the Dean and four other members of the Faculty nominated by the Faculty.

(2) The final honour board shall after considering the whole of a candidate’s course and his research paper determine his position in a final honour class list.

(3) The final honour board may co-opt or consult with such persons as it thinks fit.

18. A final honour class list shall be published containing in order of merit the names of the candidates who have obtained first class, second class or third class honours and indicating from among those who have obtained second class honours those who are in division A and those who are in division B. Candidates who have been so classed and who have qualified for the degree of bachelor of Laws may be admitted to the degree of bachelor of Laws with honours.

19. Notwithstanding anything now contained in this regulation, candidates who qualify for the degree of bachelor of Laws not later than 1st May, 1970, and who would have been admitted to the degree of bachelor of Laws with honours under the provisions of the regulations in force at any time prior to May, 1969, may be so admitted as if those provisions had remained in force.

Regulation 3.15—Degree of Master of Laws

1. A candidate for the degree of master of Laws shall be—

(a) a bachelor of Laws with honours, or

(b) a bachelor of Laws who has at a preliminary examination satisfied the faculty of his ability to pursue the advanced studies for the degree of master of Laws, or
(c) any graduate who satisfies the faculty of Law that he has received a legal training adequate for him to pursue the advanced studies for the degree of master of Laws.

2. The preliminary examination for a candidate who is not a bachelor of Laws with honours shall be prescribed by the faculty in the light of the candidate's proposed advanced studies.

3. A candidate shall pursue advanced studies through not less than one academic year.

4. A candidate shall submit a thesis upon a subject approved by the faculty within a time limit prescribed by the faculty.

5. A candidate who satisfies the examiners shall be classified either as having passed or as having been awarded first class or second class honours and may be admitted to the degree of master of Laws.

6. A candidate who at or before the final honour examination held in the first term 1950 was placed in any class at a final honour examination and who is a bachelor of Laws of not less than one year's standing, may be admitted to the degree of master of Laws without further examination or submission of thesis.

7. A candidate who is not a bachelor of Laws with honours and who has been enrolled in 1952 as a candidate for the degree of master of Laws shall be required to submit a thesis only, and shall not be required to pass the preliminary examination.

8. Notwithstanding the preceding provisions of this regulation a person who has submitted work for examination for the degree of doctor of Laws may be admitted to the degree of master of Laws on the recommendation of the examiners if they consider that the work submitted, though not qualifying the candidate for the degree of doctor of Laws is nevertheless of sufficient merit to justify the award of the degree of master of Laws.

Regulation 3.16—Degree of Doctor of Laws

1. A candidate for the degree of doctor of Laws shall be either—
   (a) a bachelor of Laws with honours, or
   (b) a bachelor of Laws,
      in either case of not less than four years' standing, or
   (c) any other graduate of not less than four years' standing who satisfies the faculty of Law that he has received an adequate legal training.

2. Every candidate must submit for examination a book or books, or a thesis or theses, or papers, or some combination of these, treating in a scientific manner of one or more legal subjects and forming an original and substantial contribution to legal learning.

3. Where the work submitted incorporates work previously submitted for a degree in this or in any other university, the candidate must clearly indicate which portion of the work was so submitted.

4. If any of the work submitted was prepared in collaboration with some other person, the candidate must state clearly and fully the nature and extent of that collaboration.

5. A candidate who has given evidence of research and ability satisfactory to the examiners and has fulfilled the prescribed conditions may be admitted to the degree of doctor of Laws.

Regulation 2.2.A—Enrolment for Higher Degrees and Postgraduate Diplomas

1. All applicants for candidature for a higher degree or a postgraduate diploma shall lodge with the Registrar an application in the form prescribed by the Professorial Board.

2. (1) A candidate on approval of his application for candidature or of preliminary studies by the appropriate faculty or the Professorial Board shall

   a. if a candidate for the degree of doctor of Laws, submit a book or books, or a thesis or theses, or papers, or some combination of these, treating in a scientific manner of one or more legal subjects and forming an original and substantial contribution to legal learning.

   b. if a candidate for the degree of master of Laws, submit a thesis.

   c. if a candidate for the degree of bachelor of Laws with honours, submit a thesis upon a subject approved by the faculty within a time limit prescribed by the faculty.

2. (2) A candidate on approval of his application for candidature or of preliminary studies by the appropriate faculty or the Professorial Board shall lodge with the Registrar an application in the form prescribed by the Professorial Board.

3. Where the work submitted incorporates work previously submitted for a degree in this or in any other university, the candidate must clearly indicate which portion of the work was so submitted.

4. If any of the work submitted was prepared in collaboration with some other person, the candidate must state clearly and fully the nature and extent of that collaboration.

5. A candidate who has given evidence of research and ability satisfactory to the examiners and has fulfilled the prescribed conditions may be admitted to the degree of doctor of Laws.
may be shall enrol within one month thereafter in the University by lodging with
the Registrar the form of enrolment prescribed by the Professorial Board.

(2) The approval granted pursuant to the preceding sub-section shall lapse
if the applicant does not enrol within the specified time.

3. (1) A candidate shall unless exempted by the appropriate faculty or the
Professorial Board re-enrol annually during the month of January or such later date
as may be determined by the Professorial Board until he has qualified for the award
of his degree or diploma or has completed a preliminary course of studies.

(2) The candidature of a person who fails to re-enrol pursuant to the pro-
visions of the preceding sub-section shall be deemed to be abandoned, provided that
the Professorial Board may on the recommendation of the appropriate faculty re-
instat a person's candidature.

(3) A candidate who desires to discontinue his course shall notify the Registrar
in writing of his intention to do so.

4. Every enrolment for the degree of doctor of Philosophy, any degree of master
or any preliminary course of studies shall be on terms that the person enrolled shall
be subject to the statutes and regulations from time to time in force while he remains
enrolled.

Regulation 2.5—Suspension and Limitation for Unsatisfactory Progress

1. Where a student fails in or is absent from any annual examination (including
any supplementary or special examination) and the appropriate faculty or board of
studies is of the opinion, after investigating the circumstances and giving the student
an opportunity to be heard, that—

(i) his attempt at the examination was so unsatisfactory, or
(ii) his absence was so inexcusable that the subjects for which he may enrol
in any subsequent year should be specified, it shall notify the student
accordingly and thereupon the subjects for which he may enrol shall be
as specified.

2. (1) Where a student fails in or is absent from any annual examination
(including any supplementary or special examination) and the appropriate faculty
or board of studies is of the opinion, after investigating the circumstances and giving
the student an opportunity to be heard that—

(i) his attempt at the examination was so unsatisfactory, or
(ii) his absence was so inexcusable that he should be suspended from the
course or subject concerned, it shall report its opinion to the Professorial
Board.

"(2) Where a student without the permission of the appropriate faculty or
board of studies fails to re-enrol for the course or subject concerned such faculty
or board of studies may require the student to show cause why he should not be
suspended from such course or subject and if it is of the opinion that he should be
suspended from the course or subject concerned it shall report its opinion to the
Professorial Board."

3. In considering a report pursuant to section 2, after giving an opportunity to
the student to be heard, the Professorial Board may determine that the student shall

(i) be suspended from all courses or such course or courses as it shall specify,
or
(ii) be suspended from all subjects or such subject or subjects as it shall
specify, or
(iii) be limited in any year to such subject or subjects as it shall specify, or
(iv) be permitted to continue his course
subject to such conditions as the Board may determine and the determination of the
Board shall be effective from the date thereof.

4. Any student suspended from any course or courses or from any subject or
subjects under section 3 may apply for re-admission to any such course or subject.
If the Professorial Board is satisfied that the condition or circumstances of any such
student have so changed that there is a reasonable probability that he will make
satisfactory progress in any such course or subject, it may authorize the re-admission
of that student to any such course or subject, and may impose such conditions as it
may determine.
5. No student who has entered a course for a degree or diploma in any university or university college and who has been suspended from that course shall be permitted to enter for any course in the university for a degree or diploma without the permission of the faculty or board of studies controlling that course: Provided that a student who has been refused such permission may appeal to the Professorial Board.

6. For the purposes of this regulation five members of the Board not including the dean of the faculty concerned shall constitute a quorum.

Regulation 4.5—Supplementary and Special Examinations

1. Any faculty or board of studies may direct that students in courses appropriate to that faculty or board of studies who fail in any subject at the annual examination may, subject to recommendation by the appropriate examination board and to such conditions as the faculty may determine, be admitted in that subject to a supplementary examination which shall be held early in February of the following year or at such other time as Council may in special cases on the recommendation of a faculty approve. Unless a faculty or board of studies so directs in any year there shall be no supplementary examination in that faculty or in relation to that board of studies in that year. Except when otherwise provided an annual examination and its supplementary examination shall be deemed to be one examination.

2. When a candidate is prevented by illness or other serious cause from presenting himself for examination at the annual examination the appropriate faculty or board of studies may order a special examination for that candidate in the subject or subjects in which he has been unable to present himself at the annual examination.

3. When a candidate's studies during the academic year have been gravely hampered by illness or other serious cause the appropriate faculty or board of studies may (upon application being made to the Registrar prior to the commencing date of the annual examination supported by medical or other proper evidence) direct the examiners to take the circumstances into account in determining whether or not a special examination or test should be provided for the candidate in any subject in which he does not pass at the annual examination.

4. When a candidate at the annual examination is to a substantial degree affected by illness during the course of an examination in any subject the appropriate faculty or board of studies may (upon application being made to the Registrar within three days after such examination supported by medical or other proper evidence) direct the examiners in that subject to take the circumstances into account if the candidate does not pass therein in determining whether or not a special examination or test should be provided for him:
Provided that no such application shall be considered unless the candidate either during or immediately after such examination reports to the supervisor in charge the circumstances relied on in the application.
CHAPTER 4

ADVICE TO NEW STUDENTS

How do I become a Lawyer?

If you intend to practise as a lawyer in Victoria the usual means is for you to obtain the degree of bachelor of Laws (LL.B.) at a University and then to spend one year as a clerk articled to a practising solicitor and during that time, to pass examinations in certain additional subjects. If you complete this course and training satisfactorily, you will normally be entitled to admission as a Barrister and Solicitor of the Supreme Court of Victoria.

Another road to admission is to complete a course prescribed by the Council of Legal Education (which includes a majority of the subjects of the course for the LL.B. degree) while spending most of your working hours as a clerk articled to a practising solicitor. This course will take you longer to complete, as you will have far less time for your studies; but it is open to you to choose this method of qualifying. However, you will not obtain a University degree.

Details of the course for the LL.B. Degree and the "Articled Clerks' Course" are set out in Chapter 3 and Chapter 5 respectively.

What Subjects will I study at the Law School?

The Degree Course consists of some 20 subjects; it may be completed in a minimum of four years of full-time study.

FIRST YEAR

In the First Year, if you are a full time student, you will study these four subjects.

1. Legal Process
2. Criminal Law
3. Constitutional History
4. One non-law subject (which you may choose from a fairly wide range, usually in Arts or Science).

A full-time student may not proceed further in the course unless he has passed in three of the four subjects of first year, or in certain circumstances in two of those subjects. If he passes in less than two he is unlikely to be eligible to continue in the course.

A part-time student must pass in both subjects in which he is required to enrol, in order to proceed. After first year, he is not required to pass any specified number of subjects in any one year.

The regulations also permit students to combine other courses with Law. The student who wishes to broaden his knowledge and take advantage of an even fuller education may do a combined course in Arts and Law, or Commerce and Law. He may do these at the level either of Honours or Pass. Many of the more able students take combined courses and show real wisdom in spending an additional year or two at the University if their circumstances allow.

The general purpose of the First Year syllabus is to provide a sound foundation for future study and to enable the beginner to find out if he has the ability to complete a course in Law.

The subjects themselves illustrate this aim. For example:

Constitutional History: Law has not developed as an isolated phenomenon. The well-equipped lawyer needs to appreciate the general historical framework—in particular, the constitutional issues—within which our law developed in England, her colonies and dominions over some eight hundred years.

Additional Subject: The Lawyer is also a citizen and he obviously ought to have a broad comprehension of some areas related to law such as economics, politics, philosophy, a foreign language, psychology. In his first year he can cover only a
limited area but, by taking one such subject, he can maintain his general education. This subject must be chosen as the first of a group of two comprising a course of study in a single discipline.

**Introduction to Legal Method:** He must make a start in grasping the techniques a lawyer requires. Lawyers, like other intelligent people, use logic and analogy and observation of facts in coming to conclusions; but they have their own special ways of applying these intellectual tools. In this subject the student will investigate—

(a) the *system of Courts* in Australia and in England, the rules of procedure applied in legal proceedings, the authority of legal decisions; the history of these courts; the introduction of English law into Australia;

(b) the *fundamental principles and attitudes* of the Common Law as we inherited them from England, the methods of analysing decisions and as the judges have used them to decide legal rights and duties; the effective kinds of lawyers’ reasoning;

(c) the *interpretation of Legislation—Statutes* and rules and regulations made under Statutes;

(d) the *best ways of finding the law*—in Reports, Statutes and legal literature and of writing in a lawyer-like manner.

**Criminal Law:** In order that his growing knowledge may find immediate application the first year student finds himself involved in a close study of one important sphere of actual legal debate: that of the criminal law.

In first year he will participate in the course in *Legal Writing* and tackle tasks set for him in the discovery and use of library materials and the correct methods of collecting and setting out information thus obtained. This course is not a matter for examination but it is an essential adjunct to the other subjects of the first year.

At the end of the year he ought therefore, to be able to understand a law report, to work out the meaning of a statute and to know his way about in a law library.

**SECOND YEAR**

*In his Second Year* he applies these techniques to other selected areas of law, which between them include the bulk of matters with which a lawyer has constantly to deal. These are divided into the subjects of Torts, Property in Land, and Contracts.

In addition he maintains his general interest by taking the second non-law subject.

**THIRD AND FOURTH YEARS**

*In his Third and Fourth Years* he continues to learn about certain fields of law affecting relations between individuals (Mercantile Law, Equity); he ventures also into new fields of “public law”, in which individuals are brought into touch with government operations (Constitutional Law and Administrative Law) or with situations in which the legal rules of foreign governments or courts or institutions may be relevant (International Law, Comparative Law, Conflict of Laws). He is encouraged in Jurisprudence to see Law as a whole, to realize the influence of social forces and of legal philosophers on the forms, decisions and practices of the past and the present legal order.

Finally, he has an opportunity of grasping the essential features of specialized matters that his future clients will ask him to attend to—in such subjects as Taxation, Industrial Law, Legal Persons, Family Law.

He will, after all this, have a great deal more to acquire before he is a competent lawyer. But he will know, as far as a University can teach him;

- where the law is to be *found* and how to find it,
- the main principles, rules, concepts and standards which constitute the tools of trade of a lawyer,
- a solid core of useful *information*,
- how to think, argue and write, analyse and form opinions,
- some of the influences derived from social behaviour, economic trends, religious and moral beliefs, political attitudes, which directly or indirectly affect legislators and judges—and therefore himself and his clients—in the operating of a legal system as a vital part of a modern community.

In his Fourth Year, and to a lesser extent in his Third Year, the student has some degree of choice of the subjects which he may study.
What are the Special Capacities of the Lawyer
and How are They Acquired?

The lawyer will find it essential to develop certain capacities in his special professional work:

(1) **Ability to use and interpret words and terms**

Law, like every other occupation and discipline has its own vocabulary. The lawyer who has to draw a will, a lease or a contract, who has to read a Statute or a by-law must come to realize the legal meaning and effect of words, phrases, and clauses in these documents—and to use them so that their meaning will be precise and clear to Courts and to other lawyers.

(2) **Ability to express legal ideas in speech and writing**

He will need to be able to stand before a tribunal and argue in good English or to draft pleadings setting out the client’s case before trial or to write a letter that aptly expresses his intentions—all tasks involving skill in communicating his ideas to others.

(3) **Ability to find the law**

Today, no one can know all the law; but there are many technical aids which will enable him to discover the legal rules governing any particular issue. In practice, he will often have to depend on his own skill and knowledge, without outside help, to find the relevant materials.

(4) **Ability to discover what is relevant in a mass of information**

In any issue he must be competent to discard what is immaterial or trivial and to move easily from one step in thought to the step following—and so to a correct conclusion, always seeing the legal implications of particular facts.

Such abilities are developed and become fully effective only after long experience and training. During the four years of his course the student will have dealt with many hundreds of cases in which rules of Statute or Common Law have been discussed, will have read many textbooks and listened to many experts talking about these rules and techniques. Moreover, he will have been obliged to make strenuous efforts to grasp and explain legal concepts and rules—and it is by such personal activity that he will best acquire “legal” wisdom.

To enable him to develop his intellectual strength the Law School provides:

(a) discussions of cases in class after preparation;
(b) tutorial discussions and exercises;
(c) written exercises;
(d) Moot Court arguments and procedures;
(e) lectures.

**Case Discussion**

The student taking four subjects in the First Year will have nine or ten lecture classes per week. It is most important that he should not expect—especially in his first two years—merely to memorize notes (dictated in class or issued in printed form) which he will give back in an examination. He will find in *Introduction to Legal Method* for example, that he receives little formal instruction. He is provided with a set of cases and materials. The lecturer will announce in advance that certain cases will be discussed at the following class. The student will be expected to have spent adequate time before class reading carefully these cases, analysing their contents, making his own summary of them. In class he will be called upon to give facts of propositions of law and to argue for or against a particular explanation of the decision. The lecturer will interrogate, raise issues, comment, perhaps sum up, but the value of his effort will depend on the work done by the student before class begins.

If therefore, you have not done the preliminary work, you will gain little from attending lecture classes. In general, you should aim at giving three hours of your own study for every hour you spend in class—most of it in preparing for the class. It is most important then to have made your own summary of the case, stressing:

(a) the Courts in which it was heard;
(b) the claim of the plaintiff, the objections of the defendant;
(c) the material facts of the situation;
(d) the decision of the Court;
(e) the reason (usually set out in the judgment) given by the Court for its decision.
You will need your own notebook in which to make these points, leaving space to include, at or after the class, any other information you have acquired. You will be referred occasionally to books or to articles in law reviews which will be helpful in supplementing your original material.

It is, however, what the student does for himself that matters—how seriously he prepares his cases and how actively he joins in discussion. One of the main reasons for dividing the class in LL.M. into small groups is to make it easier for everyone to have his say in class.

**Tutorial Classes**

These are provided in a number of subjects. In that small group of about a dozen people to which you will be assigned, you will again find yourself engaged in writing and reading short papers on a prepared subject, in advancing ideas or combating other people’s ideas, in arguing for a plaintiff or defendant. If you seize your opportunities, you will grow more ready, fluent, accurate in ideas and language, more accustomed to debate among your peers. Your tutor is there to prompt, to query, to answer some difficulties—but not to deliver another lecture or save you the trouble of “working it out”. You should of course come to him for advice if you are encountering difficulties.

**Written Exercises and Essays**

These will be set at intervals in several subjects. Everyone is expected to undertake them. They consist of projects or problems involving some research and argument on difficult issues. In some subjects longer essays or mid-year tests are prescribed. These are taken up, corrected, marked and returned: the student is very unwise who declines such tasks or does them perfunctorily. Doing them well is the best preparation both for examinations and for understanding the law.

**Moot Courts**

After the first year students are required to take part in Moot Court work. Here in a “judicial atmosphere”, in an assembly presided over by an experienced lawyer, he will be able to develop his talents of exposition and debate in conditions similar to those he will encounter in real trials later.

**Research**

You are well aware how futile it would be to study physics and biology without a laboratory where your materials and instruments are stored. The library is the lawyer’s laboratory as well as his treasury. It can, however, be a confusing place until one learns one’s way around in it. In your first year you will be shown in the Legal Writing Course how and where to find a reported case, a section in a Statute, a valuable review article, a history of a case in digest form. Thus equipped, you will be able to put your hands on the material needed for study or for research for moot trial briefs in later years. What a lawyer needs above all is to know where to look for his law.

**Law Review**

The Melbourne University Law Review is published and edited by an editorial board, consisting of students of proved ability, under guidance of a member of the Law School staff.

Will all this make me a Good Lawyer?

Such training, as you will see, is far from being merely “academic” in the derogatory sense in which that term is often employed. It covers many of the practical situations with which a lawyer will have to cope in his office, attacks concrete issues to be settled by investigation and reasoning based on known principles and rules. At the same time the process is “intellectual”: it involves a combination of qualities, including especially:

(a) **Analysis**

The student will have dissected numerous cases, selecting those facts which had legal results, noting how the courts applied principles of law to those results. He will have considered possible variations of those facts, in class and outside, realizing that no client will ever come to him with facts exactly similar to those in any reported case.
(b) **Inductive Reasoning**

He will have collected legislation, decisions, review articles, opinions of experts, coming to conclusions as to the probable legal effect of certain words or behaviour—striving to predict, with some confidence, what a court would regard as the principles most relevant to these facts.

(c) **Deductive Reasoning**

In class, in set exercises, in examinations he will frequently have been obliged to put forward accepted legal propositions and to maintain that these provide an authoritative answer to complex and difficult fact situations. This is the opposite process to induction: we need to employ both methods, each according to the different situations.

(d) **Practical Reasoning**

He will have realized that much legal reasoning is “reasoning by example”, involving often subtle distinctions or similarities which a court will have to consider—keeping in mind the history of the doctrines, their relationship to other principles, the degree to which common-sense or justice or precedent would allow a decision in one field to be applied in a “like” field. Lawyers are accused of relying over much on “nice distinctions”: these distinctions, however, must be made by thoughtful men in every sphere of life in order to meet actual situations where a “line has to be drawn”. The Common Law grows from case to case, usually by analogy, until a general principle can be established from the cases.

**Theory and Practice**

Everyone realizes that, while the law is all in the books, it is there for use by human beings. It is intimately concerned with life itself, with the vagaries of human behaviour, with the tensions and uncertainties of human relationships. It has been shaped by history, by a people’s sense of justice, by practical convenience. Just as one cannot learn to ride a horse by working through treatises on equitation, so one can not ultimately become an efficient practising lawyer other than by dealing with clients in one’s office or in the Courts. Certain qualities cannot be gained by a university training: for example, shrewd judgment, ability to handle human beings, office management or the art of cross-examination. It would be absurd to expect a university to guarantee financial and forensic success for its graduates, or to teach them those minute details of their craft which only an experienced legal practitioner can impart “on the spot”, or to furnish them with personal skills required for particular careers.

It is a very important fact, however, that an increasing number of Law graduates do not engage in private practice. The truth has long been recognized abroad that a trained lawyer is a valuable man in many spheres. Today in Australia lawyers are being sought by large business organizations for executive roles, and by governments for administering laws, in foreign trade advising on commercial dealings. The solicitor may feel that his prime duty is to help his clients; but other lawyers need to look abroad more widely and to comprehend how much law today is made by legislators and administrators under the influence of social pressures. For such men a narrow technical instruction would be quite inadequate: they obviously require a knowledge of Constitutional Law, of Psychology, of History, and of Philosophy to be competent guides to those who rely on them in this fast moving world of ours.

So all this apparatus of training will be only partly effective unless the student makes good use of it. For example, if he neglects to prepare the problem set in a tutorial, fails to take part in discussions unless prodded by the tutor, makes no effort to grapple with the issues debated (through shyness or apathy), he will be largely wasting his time.

Similarly he must do something to fill gaps in his own knowledge. For example, he will be constantly encountering unfamiliar terms in his books. He must train himself to discover their meaning without delay—by asking his tutor or by looking at his Law Dictionary. He must sharpen his mind by informal discussions with fellow students on controversial questions.

He will need to remember, too, that the University year is quite brief—only 28 weeks of lectures generally. Thus the short vacations are not a “holiday”: they are periods left for the student to catch up on his reading, not to abandon work entirely.
What to Read

Preliminary Reading for New Students

They should realize that in many University courses the lecturer does not cover the whole subject matter in class. A considerable amount of general reading is left to the student's own efforts.

The more essential reference to books and review articles are listed in the Details of Subjects; these will be added to or varied by the lecturer during the year. In every subject the wise student will begin his reading early—remembering that there will be many distractions—meetings, dances, concerts, sports, special functions—from his regular studies in the early weeks and that, if he does not watch out, he will find an entire term has slipped by without his having done more than the essential preparation for lectures, notetaking, essays and exercises.

We recommend that all new students try to read before lectures begin in first term:

- *An Introduction to Law* (Derham, Maher, Waller) Law Book Co. 1966, specially written (and designed) for Australian first year students.
- *The Queen's Courts* by Archer (Pelican) which provides useful and interesting information about many aspects of the English legal system and of legal history.
- *The Pelican History of England*—Vols. III, IV, V, VI, VII, VIII. Many new students, we find, have little knowledge of English history; they would find it helpful to have some background of medieval and Tudor history before the year starts.

Reading throughout the Year

A student who wants to make the most of a University life will not be content to read only prescribed texts. Our law itself is not a series of edicts, nor an electronic brain which produces automatic responses. It has been the work of human hands toiling patiently over ten centuries or more. It bears the imprint of the great judges, the sage writers, the forceful advocates. Nothing is more likely to inspire a young man with a sense of the dignity and worth of the law (as well as of its natural weaknesses and past errors) than the lives of its many great architects.

You will find some interesting biographies and sketches of eminent lawyers in the Law Library. Examples are:

- Birkenhead, *Fourteen English Judges*.
- Sullivan, *The Last Serjeant*.
- Biddle, *Mr. Justice Holmes*.

There are, too, some legal novels—such as those of Henry Cecil, which provide useful information about lawyers and the law as well as entertaining reading. Cecil’s *Brief to Counsel* is specially recommended, as are the “Misleading Cases” of Sir Alan Herbert.

*Law Dictionaries* are less exciting but more useful. The new student, as we pointed out, will encounter, on almost every page of a Statute or a Report, terms and phrases about whose meaning he will be either ignorant or vague. It is foolish to remain in this uninformed state: he must make it a habit to consult a reference work forthwith. There are many larger works in any law library; but it is a good investment for the student to buy a smaller one (say Osborn’s *Legal Dictionary*) and keep it handy for use.

Quota for Students entering the Course

The number of students who may enter for Legal Process is now limited and as this is one of the essential first year subjects, failure to get into the quota means that one cannot begin any course in Law at the University.
On present indication, there will be more applicants than the number for whom facilities are available. The Faculty of Law will select the most suitable candidates according to standards approved by the University. The most important criterion is success in previous examinations, especially those for Matriculation purposes.

It is open to new students to apply for admission to courses in more than one faculty. Those selected in the quota for Law will be notified as soon as practicable and asked to make a final decision almost immediately.

Examinations

There is no space here to discuss study methods. They are obviously most important: many industrious students fail because they do not know how to work. The University leaves you free to work when and as you wish. You should, then, consult people with experience: senior students, lecturers and tutors. If you get into real difficulties, arrange to talk with the Student Counsellor.

In preparing for examinations there is much value in making yourself work on questions set in previous examinations. These papers are printed in book form and can be seen in the Library or bought at the Bookroom.

As a general rule there are no supplementary examinations in Law. Examiners, however, may recommend a special examination after the annual examinations in certain situations. If you had an illness or some other real personal handicap during the year, you would be wise to write to the Registrar before your examinations, informing him of the facts and enclosing evidence such as medical certificates. These will then be available to the authorities should it be necessary to consider them in a student’s favour.

Faculty Officers

At the head of the Faculty organization is the Dean. To assist him he has the Sub-Dean and the Senior Administrative Officer. It is to these officers that students should apply on matters concerning regulations, courses in general and administration. Members of the teaching staff are usually very willing to advise students regarding the problems of the course at large or of a particular subject.
CHAPTER 5
DETAILS OF COURSES - ADMISSION TO PRACTICE
MOOT COURT

Degree Courses

BACHELOR OF LAWS

For this degree a course of study of four years duration is required of full-time students. The course normally includes twenty subjects.

The degree of LL.B. (Hons.) is awarded on the basis of—

(i) a review of the student's course for the degree of LL.B.; and
(ii) an assessment of a research paper of 12,000-15,000 words to be written between the end of the Third Term of the Third Year and the end of the Second Term of the Fourth Year.

The review of the course will be conducted in such a way as not to exclude a candidate whose academic results become distinguished only in the latter part of his course; a “late-developer” could obtain the degree with honours.

A paper of 12,000-15,000 words should be submitted before the end of the Second Term of the candidate’s final year. In the case of a part-time student there is a discretion to allow submission in a year other than his final year.

The subject of the paper should in general be chosen by the student from a list of subjects prescribed by the Final Honour Board of the Faculty. The subject will be approved or rejected by the Faculty not later than the end of the second week of First Term of the Final Year and not earlier than the end of the Third Term of the Third Year of the course. Students who contemplate preparing a Final Honour research paper in 1972 should lodge with the Secretary of the Law School an application for approval of subject after 15 September 1972 and before 30 January 1972. Application forms are available at the Law School Office.

Admission to candidature for the degree of LL.B. (Hons.) is at the discretion of the Faculty of Law.

Each research paper is to be accompanied by a written statement by the candidate that the paper is the product of his own work.

To be in proper form for submission a paper should be typed and should be accompanied by a bibliography and tables of cases and statutes.

The research papers will be graded in time for the final honours results to be published in December.

BACHELOR OF ARTS (ORDINARY DEGREE) - BACHELOR OF LAWS

If approved Arts subjects are taken, these two courses may be taken together over a period of five years. A candidate will receive credit in the Arts course for three subjects in group 2 in respect of his Law studies. This will be granted after the candidate has completed the third year of the Law course. He must pass in not less than six Arts subjects of his choice, plus either Constitutional History, British

1 For candidates writing research papers in 1970 the following list of subjects was prescribed:

<table>
<thead>
<tr>
<th>Administrative Law</th>
<th>Legal Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Law</td>
<td>Property</td>
</tr>
<tr>
<td>Comparative Law</td>
<td>Private International Law</td>
</tr>
<tr>
<td>Constitutional Law</td>
<td>Public International Law</td>
</tr>
<tr>
<td>Criminal Law</td>
<td>Statutory Interpretation</td>
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<tr>
<td>Evidence</td>
<td>Succession</td>
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<tr>
<td>Family Law</td>
<td>Taxation</td>
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<tr>
<td>Industrial Law</td>
<td>Trusts</td>
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<tr>
<td>Jurisprudence</td>
<td></td>
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<tr>
<td>Legal History</td>
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</tbody>
</table>

Subjects could be chosen from any of the foregoing classifications or any combination of them. However the Final Honour Board of the Faculty has been willing to consider individual requests to submit a paper on a subject falling outside the list.
History, or later British History. These subjects must include one major and a sequence of two subjects.

Students proposing to take these combined courses should, for the purpose of planning their subjects, consult the Sub-Dean of the Faculty of Arts and the Senior Administrative Officer (Law).

Two examples of courses are:

(1)

First Year: Legal Process
Criminal Law
German I
Philosophy I

Second Year: British History
German II
Ethics
The Law of Torts

Third Year: German III
Principles of Contract
Principles of Property and Conveyancing

Fourth Year: Third Year Law
Fifth Year: Fourth Year Law

(2)

First Year: Legal Process
Criminal Law
Modern Government A
Indian Studies A

Second Year: Constitutional History
The Law of Torts
Modern Government B
Indian Studies B

Third Year: Modern Government C
International Relations
Principles of Contract
Principles of Property and Conveyancing

Fourth Year: Third Year Law
Fifth Year: Fourth Year Law

BACHELOR OF ARTS (HONS)—BACHELOR OF LAWS

Special six-year courses have been approved for students who wish to combine a course for bachelor of Arts (degree with honours) with the course for bachelor of Laws. Details of these courses in the School of History and the School of Political Science will be found in the Faculty of Arts Handbook. For details of other combined Arts (Honours) and Law courses students should consult the Sub-Dean, Faculty of Arts.

BACHELOR OF COMMERCE—BACHELOR OF LAWS

The courses for these two degrees may be combined over a period of five years. The approved order of subjects is as follows:

First Year: Economics A
Accountancy I
Economic Geography I or an approved Group III Commerce subject
Economic History A

Second Year: Economics B
Statistical Method
An approved Group II (Grade 2) Commerce subject
Legal Process
Criminal Law

Third Year: Economics C
Principles of Contract
Principles of Property and Conveyancing
The Law of Torts

Fourth Year: Third Year Law

Fifth Year: Fourth Year Law—including Legal Persons and Taxation, and Securities and Creditors’ Rights or Industrial Law

The candidate does not qualify for admission to either degree until the whole of the work of the five years has been completed.

Because there is no Law content in the First Year of the course, intending students should apply initially for selection in the Commerce course only, but they must indicate on enrolment an intention to pursue the combined course.

Students will be required, at the end of the First Year, to apply for selection in Law. Those who have been completely successful in their First Year studies will be permitted to proceed with the second and later years. Students who have not been so successful may be offered places in the Law quota, but as they will not be permitted at that time to proceed in the combined course they must make an election between continuing in the Commerce course and transferring to the Law course.

Students who wish to undertake studies in the combined course (but who have not enrolled for the regular course shown above) may make application to do so. They should consult the Sub-Dean, Faculty of Economics and Commerce and the Senior Administrative Officer, Faculty of Law, for advice.

Students who have commenced six-year combined courses approved prior to 1970 may elect to proceed in the new course. They, also, should consult the Sub-Dean (Commerce) and the Senior Administrative Officer (Law).

DIPLOMA IN SOCIAL STUDIES—BACHELOR OF LAWS

The course for the diploma in Social Studies may be combined with that for the degree of bachelor of Laws over a period of six years. An approved course is shown below. For further advice students should consult the Reader-in-Charge, Department of Social Studies and the Senior Administrative Officer, Faculty of Law.

First Year: Legal Process
Criminal Law
Psychology I
Social Biology

Second Year: Constitutional History
The Law of Torts
Psychology II A
Social Work I

Third Year: Principles of Contract
Principles of Property and Conveyancing
Social Work II
*Social Organization A

Fourth Year: Social Work III
*Social History

Fifth Year: Third Year Law

Sixth Year: Fourth Year Law

BACHELOR OF LAWS—DIPLOMA IN CRIMINOLOGY

The courses for the degree of bachelor of Laws and the diploma in Criminology will normally be taken in succession over a period of five years of full-time study. The student completes all 20 subjects of the LL.B. course during the first four years and in the fifth year Criminology A, B, C & D. It is possible, however, for Criminology A & B to be included as part of the LL.B. course. The student, who proceeds in this manner, must enrol in the fifth year for Criminology C & D and two other approved subjects.

For further advice students should consult the Reader-in-Charge, Criminology Department, and the Senior Administrative Officer, Faculty of Law.

* Subject to attendance at certain lectures and the submission of satisfactory essays, students may be exempted from passing the annual examination in these subjects.
MASTER OF LAWS

Candidates will, under supervision, prepare a thesis on a subject chosen by the candidate and approved by the Faculty. They may do so as either full-time or part-time students. Regulation 2.2A should be consulted regarding conditions of enrolment.

Preliminary Examination

A bachelor of Laws with honours may enrol as a candidate for the degree of master of laws without preliminary examination.

A bachelor of Laws, who is not a bachelor of Laws with honours, who desires to become a candidate for the degree of master of Laws is required to satisfy the Faculty of his ability to pursue the advanced studies for the degree of master of Laws, by passing a preliminary examination. The preliminary examination will be prescribed by the Faculty in the light of the candidate's proposed advanced studies.

A candidate for the preliminary examination must submit before 31 May the subject of his proposed advanced studies to the Sub-Dean of the Faculty for approval.

When the subject has been approved, the candidate will be informed of the scope of the examination prescribed, and he must enrol within one month.

The preliminary examination will be held as necessary.

Enrolment as Candidate for the Degree of Master of Laws

A candidate should arrange an interview with the Sub-Dean of the Faculty for the purpose of obtaining approval of the proposed subject of the thesis. When his thesis has been approved the candidate will be notified and he must enrol within one month of that notification.

A supervisor for each candidate will be appointed.

An entry form for examination for higher degrees must be submitted to the Registrar when the thesis is submitted.

If the thesis will not have been submitted by 28 February in the year following enrolment the student must re-enrol by 31 January if he wishes to renew his candidature.

Three copies of each thesis (quarto, typewritten, double-spaced) should be submitted. One copy, bound in the manner prescribed by the Faculty, will be deposited in the University Library.

DOCTOR OF PHILOSOPHY

This is a degree for full-time research workers. A candidate must be a graduate of this or some other university recognized for the purpose, must be of such standing as may be required by the Professorial Board for graduates in his Faculty, and must be accepted as such by the Professorial Board on the recommendation of the head of the department concerned. He must pursue for at least two years a course of advanced study and research under a supervisor or supervisors appointed by the Board, and on its completion must present a satisfactory thesis embodying the results of his research.

The only part-time candidates who are accepted by the Professorial Board are permanent members of staff. (See Reg. 3.60, 1970-71 Calendar.)

DOCTOR OF LAWS

This degree is awarded for work comprising an original and substantial contribution to legal learning and involving the scientific treatment of one or more legal subjects. A candidate for the degree must normally be a bachelor of Laws of not less than four years' standing.

Other Courses

THE ARTICLED CLERKS' COURSE

The course is one of those prescribed by the rules of the Council of Legal Education as a prerequisite to admission to practise. The following subjects are offered in the Law School. By completing these a student will comply fully with the rules as regards formal studies in Law:

Legal Process
Criminal Law
Principles of Contract
The Law of Torts
Constitutional Law
Administrative Law
Mercantile Law
Principles of Property and Conveyancing
Equity
Land Contracts
Securities and Creditors' Rights
Principles of Evidence
Taxation
Procedure
Executors and Trustees
Legal Persons
Conflict of Laws or Family Law
Accounts
Professional Conduct

Note: (1) Students who have passed in Conveyancing are not required to pass in Land Contracts, and Securities and Creditors' Rights.

(2) Students who have passed in the old course in Constitutional Law offered prior to 1967 will not be required to pass in the new course in Constitutional Law or in Administrative Law.

Examinations in the first four subjects must be passed before the student enters into articles of clerkship. These four subjects may be taken in one year of full-time study, but must be taken over two years by part-time students. The remaining subjects are taken over the four-year period of articles in the order prescribed by the Faculty. In the first year of articles three subjects may be attempted, in the second year, three, in the third year, four, and in the fourth year, five.

The rules should be consulted by all candidates for this course and, if in doubt, reference should be made to the Secretary of the Board of Examiners of Barristers and Solicitors, Supreme Court, Melbourne.

THE MANAGING CLERKS' COURSE

This course is another prescribed by the rules of the Council of Legal Education. The candidate must pass in the same subjects as for the articled clerks' course. His service as a managing clerk is governed by the rules, which should be consulted, and advice should be obtained from the Secretary of the Board of Examiners.

Note: The Council of Legal Education has established a school to give instruction in the subjects of the articled clerks' and managing clerks' courses. Entry is restricted to persons who are otherwise eligible to enrol for the subject of Legal Process, but have been prevented from doing so by reason of the operation of the quotas in Law. Applicants for this course must therefore apply, in the first instance, for selection in Law at this University and Monash University.

STIPENDIARY MAGISTRATES

Under Public Service regulations candidates for appointment as stipendiary magistrates are required to pass in the subjects of Introduction to Legal Method, Principles of Contract, Tort, Criminal Law, Mercantile Law, Evidence, Constitutional Law, Administrative Law, Family Law and Legal History. Because of the operation of certain conditions of quota provisions, it is unlikely that these candidates will be able to enrol for Legal Process. Normally they will be required to pass a departmental examination in this subject and will then be permitted to enrol in the University for the remaining qualifying subjects.

SINGLE SUBJECTS

No person may enrol at the University in any law subject without the permission of the Faculty. Intending students should consult the Sub-Dean regarding this.

EXTERNAL STUDIES

No external studies are available for students taking the course for the degree of bachelor of Laws.

Students resident in Victoria outside the metropolitan area, who are taking
subjects in the articled and managing clerks' courses, or for qualification as a stipendiary magistrate, and who are employed full-time either in solicitors' offices or in the Law Department of the State of Victoria, as the case may be, will be permitted to enrol as external students. No formal correspondence tuition is given, but students may seek advice from the teaching staff on any specific problems which may arise. Apart from this students must work alone relying on their own resources. The task of studying law, with its requirements of reference to textbooks, law reports and journals, is extremely difficult in these circumstances. The fees for tuition are the same as those payable by students attending lectures. External students are not required to pay Union, sports, Students' Representative Council and Library fees.

The special attention of country students is drawn to the regulations, which provide that no student shall be admitted to examinations in any subject in which he has not entered either for lectures or for external studies within one month after the beginning of the first term. Applications for extension of time for enrolment must be made to the Registrar.

Admission to Practise

The admission of barristers and solicitors in Victoria is regulated by the rules of the Council of Legal Education administered by a board of examiners appointed by the Supreme Court. Students proposing to seek admission should make themselves familiar with them in due course. The requirements for candidates qualifying by way of the Articled Clerks' course are that they pass in the nineteen subjects of the course and serve in articles for four years.

Candidates who have obtained the degree of bachelor of Laws are required to serve for one year in articles. They must also pass, either as a part of the course for the degree or otherwise, in the subjects of Evidence, Taxation, Procedure, Accounts, and Professional Conduct.

No person will be admitted who is not a British subject aged 21 years or more.

Professional Admission Summer School

The University of Melbourne Law School in conjunction with Monash University Law School conducts a Professional Admission Summer School on behalf of the Council of Legal Education in the period January-March.

The subjects of the Summer School are—

Accounts
Evidence
Procedure
Professional Conduct
Taxation

Persons qualified for the degree of LL.B. of the University of Melbourne, Monash University, or the Australian National University may in certain circumstances be admitted to the Summer School. The conditions of eligibility and further details are exhibited on the Law School Notice Board.

Persons qualified for the degree of LL.B. who contemplate service under Articles of Clerkship outside the Melbourne city area may find it advantageous to qualify for their post-degree subjects in the Summer School.
CHAPTER 6

MOOT COURT

Moot Court Hearings

A Moot Court is held during first and second terms. The main purposes of this exercise are to encourage students to shed their nervousness in addressing courts, to teach them court manners, to instruct them in the fundamentals of preparing proper briefs, and to give them practice in arguing and thinking effectively and quickly whilst on their feet, and, more fundamentally, to analyse cases and apply the law to the case so analysed.

Students from third and fourth years are assigned to argue cases as Senior Counsel. Students from second year are assigned to act as Junior Counsel. Students from third and fourth years are required to act as Solicitors and to prepare the necessary papers and instructions. Junior Counsel are expected to participate actively in some stage of the argument, if the case is suitable for this exercise.

Students are required to participate as assigned by the Moot Master.

Any student desiring to ensure participation in the Moot Programme or of being allotted a preferred role (i.e. as counsel or solicitor as the case may be) or date, should apply on the form obtainable at the Law School Office.

Advice of Allocation of Moots

Advice by Letter

Students who will be advised by letter that they are to participate in a moot will be those selected for the moot court hearings during the first fortnight. Moot court hearings commence a fortnight after the beginning of first term.

Advice on Notice Board

At the beginning of first term, alphabetical lists of students will be posted on the Moot Court Notice Board and from these lists selection will be made for participation in the moot series. The selection of students, as participants, will be made from these lists within seven days of being shown on the notice board.

Queries and Exemptions

Any student whose name appears in the lists above and who wishes to raise any query or seek exemption from participating in a moot must call on the Moots Secretary within seven days of the lists appearing on the notice board to determine the query or formally apply for exemption as the case may be.

Advice on Selection

As far as is practicable, priority of dates, roles and teams will be made from the students who have made application for special dates or particular roles. After participants have been selected, a new alphabetical list will be posted on the Moot Court Notice Board showing, with regard to each participant, the name of the person and the number of the moot in which he or she is expected to take part. Students must file at this time a notice of acceptance of the retainer. Forms are available from the Law School Office.

List of Hearing Dates on Moot Court Notice Board

The list of hearing dates will be available on the Moot Court Notice Board. This list may be subject to change and should therefore be kept under notice, but the approximate date of the case can be ascertained from the current list. When the list is posted on the Notice Board, members of each moot team may obtain from the Moots Secretary information to enable them to get in touch with each other. The statement of the case will be available from the Law School Office not less than approximately 14 days before the listed hearing date and may be available earlier. In the case of Solicitors in Moot Cases, copy of Instructions to Counsel must be filed 7 days before the hearing date (unless the date is extended by leave and notice of extension filed.)
Responsibility for Contacting other Members of the Team

It is the responsibility of every member of the team to see that the other members are available and have seen the notice that they are to take part in a moot. This should be done immediately the teams are selected and posted on the Moot Court Notice Board. If any difficulty is experienced in getting in touch with a member, the Moots Secretary will provide further information. If a student fails to carry out this request, it could be too late to provide a replacement and the student may find that he has to act in both capacities of Senior Counsel and Solicitor. In any case, absence may spoil the efforts of a number of other students.

Participating in Moot Cases

Participation in Moot Cases is considered by the Faculty as an important element in the course of studies. Absence from Court without an Order of the Moot Court granting leave will be treated as a disciplinary offence, particularly in view of the effects upon other participants who desire to proceed.

Notes on Moot Court Work

These notes are intended to provide a very general guide to work in the Moot Court so that the maximum advantage may be drawn from participation. In some of the leading Law Schools in the Common Law world Moot Court practice is elaborate and extensive. It is looked upon as an essential element in legal education. In general with us one student is unlikely to participate in more than one case in each year, apart from extra curricular activities. It is well worth while to take time and trouble over the particular case. Do not suppose that this experience is of value only to those proposing to practise at the Bar. Those contemplating practice as Solicitors should realize that they may often have to appear in court—and in country districts will be often quite independent of Counsel. Even limited practice, as for instance in company work, leads to situations in which oral exposition and argument (to colleagues, to creditors, to officials, to local government councillors and so on) is an essential part of professional life. In many ways such activities can only be learned by performance—and, in the early stages, that means at your client’s expense. Therefore every opportunity for practice under less exacting circumstances should be embraced.

But moot court work is not solely concerned with the art of exposition. Hard work on a case provides exercise in analysis of facts from the legal point of view, research into the law and acquaintance with the practical equipment which is available to the practitioner: Digests, text books, Current Notes, and all the modern machinery for making the law reports useful. Remember that the law you learn in the careful preparation of a specific case will stay with you longer than almost anything else.

Finally there is the practice in preparing the argument, getting everything at your finger tips both to put forward your own view and to combat your opponent—all with the full and certain knowledge that nothing will work out quite as you expect. The Court may consider as self evident something you have never thought of and will be quite ignorant of some proposition you learned in your first week in the Law School. If your preparation has been half-hearted all this will be irritating and disappointing. But if you have mastered your case you will adjust yourself to interruption, interrogation, and the unexpected without delay or embarrassment. Beneath your outward appearance of respect and conventional formality, there will be your own conviction that you have considered every possibility and contemplated “all the answers”. You will feel the master of your contentions. The result is one of the most stimulating mental experiences available in our civilization—so it is worth taking some trouble to enjoy it.

The Functions of Participants

First of all let us consider the “team” that will be engaged on the case and their roles and mutual relations. First on the scene comes the Solicitor. He has to prepare and file his instructions or brief to Counsel. There will be more in detail about this part of the work hereafter. Having completed his brief he should arrange a consultation with both Counsel so that—after they have read his brief—all three can talk over the way the case should be presented. There is the anticipation of what will be presented by the other side, there is the examination of authorities and their arrangement, digesting the facts of cases and the decisions, preparing quotations
and references to be handed to the Court—perhaps searching in unusual places for
authority. All this can be divided up between the team and at a subsequent meeting
"pooled" and arranged. Counsel can try out his argument on his solicitor and the
solicitor can criticize and attack the suggestions as a way of improving them. The
conduct of all real litigation is a matter of team work.

One particular aspect of the "team" is the role of Junior Counsel. In a good
many of the cases the subject matter of the argument may involve a branch of the
law with which he is not familiar—and indeed as to which he knows nothing. He
should not abandon all effort to understand the matter in these circumstances.
Remember that in professional practice you may often come upon problems in some
branch of the law which hitherto has been unknown to you. It is important to learn
how to explore these untouched territories and most court work can help in this
experience. The leader and his solicitor can shorten some of the junior’s work by
indicating the general substance of the particular issue and the relevant part of
the relevant text books. The junior should then try to "get up" the law of the case.
Almost certainly what is learnt in this way will stick much longer than much taken
from lecture room and references. This is a useful exercise if the ground work is
quickly covered by the leader.

Then the junior can be given some particular assignment to work up—perhaps a
particular point in the case which is within his grasp or the cases and references
to be found in a particular textbook or digest. Again he may be asked to set out
the points of argument which have been covered in conference or fill in the citations
which will support the propositions. Finally it may be decided to allot to him a
specific part of the argument. And in any case the junior must be ready to do his
best with the case if anything prevents his leader being present. It hardly needs
mentioning that in a few years the student “leaders” will be depending upon the
friendly assistance of senior practitioners in a hundred different ways.

Preparation of the Case

Now coming closer to the preparation of the case and the argument, it will be
convenient to commence with the preparation of the brief to counsel particularly
because the process of analysis and organization of the argument will be common
to the Solicitor and Counsel who will deliver the argument.

The first thing will be an intensive study of the facts of the case. This should
not be done in a hurry. Scrutinize every detail of the facts with the greatest care,
particularly noting what is stated and what is omitted. You are entitled to make
the most of any omission. You may feel certain that some particular matter took
place even if it is not stated. But don’t jump to conclusions. You may be able to rely
on the omission to help your case—if the onus of proof is on your opponent and
the fact is not set out. But perhaps the missing fact is vital to your case. Then you
have to consider whether you can assert the missing facts as a fair and proper
inference from the facts which are stated. But these considerations will only arise
after you have carefully considered the facts and decided what legal issue is
raised by them. They illustrate the truth that you must examine the facts with
much closer attention to the details than perhaps you have ever previously ex-
pended on any statement.

One particular aspect of the examination of the “facts” refers to any documents
which are incorporated in the case (letters, wills, accounts, contracts-in-writing).
As to these, remember there may well be questions of interpretation. Don’t jump to
conclusions as to meanings. Consider firstly what meaning your case demands and
then study how the documents may be construed to produce a result favourable
to your case. You must be prepared to explain why your view should be accepted
as the true one. Conversely try to think out what construction your opponent may
wish to adopt and then consider how you can contend that such a construction is
erroneous.

Having studied the facts in deliberate detail, the next step is to determine the
nature of the legal issue. If you are for a plaintiff this will mean determining the
nature of your cause of action and its precise form and character as affected by the
details of the case. In many cases in actual practice this step presents great difficulties;
though probably the moot case will carry its character fairly clearly on its face.
Nevertheless be sure you have exhausted the possibilities of this phase of the prob-
lem. Don’t be satisfied to say that the case is one in which you are claiming damages,
Fix in your own mind the legal features of the claim—the nature of the duty on
the defendant, the nature of his breach, the measure of damages and so on.
It may be that at this stage you need to consult a textbook to get clear some of the features or the outlines of the cause of action (or the defence to it). It may be useful then to look at the books to clear the ground and to make sure of the main issue. For example, you may be appearing for a vendor suing for the price of goods sold. If this is clear, so you will read the relevant sections of the Goods Act and then go through the textbook on the particular topic (such as Benjamin on Sale) to make sure you have in your mind the general problems and issues which can arise in this class of case.

Now back to the facts—which you studied carefully in the first instance and which you have in your mind. This time you are ready to see how they fit into the general legal pattern. Further queries will arise. Are all the facts which you need for your case disclosed? if not, are there inferences to be drawn? Are there questions of construction to be worked over? May inferences adverse to your client be drawn? Finally what are the unresolved or essential issues which bring you to court and to the argument? These issues must be formulated in your mind in concrete terms relating to the facts of the particular case. Don't get too far away from these facts to the inevitable generalizations of the textbooks. The problems for the text writer may be "What is the true measure of damages"—but the problem for you, if you are for the plaintiff, is "What is the way to get the maximum damages available in these particular circumstances?" No doubt theoretically the question is the same for the text writer and for yourself. But you must abandon his method of formulation and proceed with the one with which your argument is concerned. You are no longer concerned with the law in the abstract but your client and his interest in the concrete.

Having clarified the issue in your own mind, now comes the real task of research. There are many different approaches to this and you should try and find a way that suits you best. One way is to begin with a large and relatively exhaustive text—say Halsbury or Benjamin on Sale or Jarman on Wills. Sooner or later you will become used to some particular texts and the way they set out their subject. But you will still come on problems which are novel and textbooks which are novel and unfamiliar.

Having located the relevant part of the text (and the terms thereof) you will not stop there. Look up the cases cited. You will never be satisfied with a mere textbook description or citation of the case. Remember each case probably refers to other cases either in the notes of Counsel's argument or the judgment. These further references can be checked in a Digest to see if they are keeping close to the point you are working on or are drifting off. If they are seen to be relevant you may need to read them. And the reference to the Digest will probably give you other cases which may be worth looking at. As this process of reading and checking cases goes on you will finally begin to feel that you have got a grasp of this part of the law. The same principles will be repeated in the judgments and will become clear to you—and the limits and exceptions to the principles. Either you will come to know that the law has been settled and is clear or that you have followed it up to the point where it is unsettled. In all this process you may have been using English authorities. If so, you must check up with Australian authorities. Probably the quickest way is to look at the Australian Digest. You will know enough at this stage to know what heading and sub-headings to look under. And don't forget to trace the matter up to the latest date—in the supplements and even in the monthly digest almost up to the day of your investigation. [This last point applies also to your searches in the English law—the Current Law will provide an easy reference to recent years as also will the All England Law Reports Digest. Remember also that Current Law will put you on to notes and articles in legal periodicals if you are on to a really tricky point.]

You can easily tell whether you have done enough research. You will have found a clear enunciation of the points you have isolated as essential in your case, or you will have found a clear statement in textbook or judgement that the point is undetermined. It will be very rare that adequate research will not bring you to one or other of these conclusions. Keep at it until you feel reasonably satisfied one way or the other—trying different textbooks for references and checking on footnotes until you feel that you are on the target. Remember that once you have found a decision or two squarely on the point that the "Index of Cases" is a good way to find the relevant parts of an unfamiliar textbook.

All this has then to be related to your client's point of view. Does it appear
to be settled against him? Then look carefully at the facts for some distinction or some inference which will let him escape.

If it is unsettled then work hard at the reasons why it should be settled now in his favour. It is no use merely saying that the law is unsettled, and therefore not decided against you. Why should it be decided in your favour? If you can make these reasons persuasive you will win!

And remember, also, you must try and imagine what the man on the other side will be doing. What cases will he cite? What do you want to say about these? If the law is unsettled, what reasons will he bring forward to support his client's case? How will you answer these?

Finally, if the point is unsettled and you can find no analogous authority, maybe you will think it worthwhile looking at Canadian and American authority. Here you can begin with a relevant textbook. Look up the cited authorities and proceed as before.

You may feel that there is a great deal to be done in following out all these suggestions. You might remember a few things by way of consolation.

In the first place you will probably not do more than one formal Law School moot in a year. It is your opportunity to try yourself out on a course which you will have to follow in your practising life. Later on, and in only a few years, you will be worried at your lack of experience. By this time it could mean so much to your success or failure. So it is worthwhile doing this work as well as you can, when there is no principal to be depressed and no client to be disappointed. Moreover, as you follow the case through the argument to the conclusion, you will be able to see for yourself how well or ill you did your task. This is one of the experiences from which you can learn as an inevitable consequence of what unfolds itself at the hearing. And finally, it must be pointed out once more, the law you learn in this way will stay with you longer than almost everything else you learn during your course.

Producing Brief for Counsel

Now let us turn to the preparation of the Solicitor's brief to Counsel. The researches described above will be carried out by each of the three participants for one client (plaintiff or defendant), in the course of his equipping himself for his role. Then comes the formulation of the brief.

As to the form of this, remember that the language has become formalized by long professional tradition. The Counsel to whom the observations are addressed is approached objectively. He is not referred to by the personal pronoun (“You”) but as “Counsel.”

Thus “Counsel will note”.
“Counsel will consider”.
“Counsel may think”.

In the same way the Instructing Solicitor will be referred to in impersonal terms.

“Your Instructing Solicitor suggests”
“In the view of your Instructing Solicitor, etc.”

Moreover the traditional attitude of one branch of the profession to the other has more than mere history to commend it. It may be suspected that the formalized flattery ("Counsel will be good enough to consider", "Will Counsel consider whether . . . ?" "Counsel will no doubt be familiar with . . . ”) is soundly based psychologically and well calculated to draw forth the maximum effort from a competitive class who do not universally tend to underrate their capacities. The proper use of this language, nicely balanced to avoid absurdity and adroitly used to stimulate maximum results, is a matter for the exercise of skill. An example, in the imaginary case of Rylands v. Fletcher, appears at the end of these notes. Further as to form—remember it is worth while to take trouble over the appearance of the brief. If it is reasonably possible try to have this typed out so that it will be properly studied by the Court and your Counsel, and so that copies are available for each Counsel, the Court, and yourself.

It should be produced on large size paper with a wide margin. Break up the text into short paragraphs, so that each point stands out clearly. It is not traditional to number paragraphs, but it may be convenient to do so.

Take a separate line for each citation and never quote a case without its reference.
The brief should be covered by a "back-sheet" in a standard form, consisting of a sheet folded down the length, and filed on or before the date allowed by the case. The form of the "back-sheet" will be—

In the Moot Court,
Law School,
University of Melbourne.

Case No. of 1971

Jones v. Brown
As in the Supreme Court of Victoria
[or as the case may be]

For hearing on the day of

Brief to Counsel for Plaintiff
[or Defendant]

Mr. XY
with you Mr. Mr. AB

Phone number
Solicitor for the Plaintiff
[or as the case may be]

Filed on the day of
in Moot Court Office.

Apart from the obvious formal requirements remember that the arrangement and clarity of the document are worth some trouble. When the case is over the Moot Master will discuss it with you and try to help by criticism. This will be useful to you if you have made a serious attempt yourself.

Above all the production of documents is an enormously important part of a lawyer's life. The contents are no doubt of primary importance. But unrelenting care and precision of detail is essential and the habit of setting out in a form and order and pattern which has been carefully considered will help you to these desiderata.

Now as to the contents of the "instructions": Obviously it will not be necessary to repeat all the details of the contents of the Moot Case as issued. But these facts may need re-arranging so as to point up the issue and to leave in obscurity whatever is irrelevant. What can be inferred and is important must be set out. Where there are dangerous facts which tell against your client, these should be noted. All this re-arrangement of the facts will lead up to the formulation of the point(s) of the case.

Then set out the essential issues as they have been revealed to you by your study of the case.

"In this case the main point for consideration appears to be the claim on behalf of our client that a contract was made on the . . . day of . . . It is understood that the defendant will contend that no contract was made, and no admissible evidence exists, etc."

Having made the issue(s) clear in a direct and summary way the brief will proceed to suggest the main contentions which may be put forward. E.g.,

"Though no formal contract was reduced to writing Counsel will agree that the existence of a Contract may be implied from conduct see Anson p. . . ."

"Counsel may think that difficulties arise over the absence of any memorandum in writing as required by the Instruments Act, etc."

"but attention is directed to what is said hereafter as to the possibility of contending that the absence of any memorandum is covered in this case by part performance."
As to this doctrine Counsel is referred to . . .”

“As to part performance Counsel is referred to the conduct of the Defendant on the day of and the acts of his agent in . . .”

It will be a matter of judgement whether you prefer to set out the contentions with the relevant facts attached in their proper place and then summarize the legal proposition and authorities or proceed with a composite formulation in which each contention with the relevant facts and the authorities appear paragraph by paragraph.

You are not writing for a lay reader but one able to quickly appreciate what you are saying. You owe it to your client to omit nothing which will help his case, including anything which will assist to defeat the opponent’s case. In consequence you should analyse with equal care what you assume will be your opponent’s contentions and the answers thereto.

In conclusion this is an opportunity to practise a difficult professional and technical task—with comment and correction to put you on your way.

It is almost certain that your net gain, in a practical way, will depend upon the time and trouble you spend. Don’t rush: Don’t skimp: Study all the results and reactions: Don’t be satisfied merely to hand in your finished result and forget it. Retain a copy for yourself. Keep it before you during the argument and try to profit by any shortcomings then displayed. This whole task is precisely one of those assignments which is wasteful of time and effort if it is only half done—for you will then learn little or nothing from your defects.

Preparation and Delivery of the Argument

Obviously this is not the place to attempt to set out a guide to successful oral argument: even assuming that such a result can be accomplished by formal instruction. The probability is that no such guide can be formulated, else the number of defective arguments delivered in courts almost every day would be smaller.

There is only one way to learn, and that is to try as often as possible. There are some fortunates to whom the matter comes easily—and great advocates who, in their beginnings, were incredibly bad.

These notes are designed to enable you to get the most advantage out of your opportunities to practise. The rest must depend upon yourself.

There is no doubt that the first and most cogent advice is that you should avoid treating your opportunity for practise as merely a casual ordeal to be disposed of. In many cases a conviction of incapacity or limitations which is the product of a quite legitimate or even barely conscious modesty leads Counsel to exaggerate informal speech, uncontrolled voice, and unorganized exposition. It is almost as if the individual dare not appear to be making a real effort lest his failure become the more apparent. It is rather like the bad dancer we have all seen who allows himself to be worse than he need be so that no one will imagine he is trying to be any good at all. In these exercises in Moot Court, which is after all a “Trial Spin” more or less in private, it is worth aiming high even if you do not reach the target.

The Manner of Your Argument

In particular these remarks apply to the form of your speech and exposition. Do not be satisfied that you cannot improve upon your ordinary voice and diction. Unless you are exceptional these will normally tend to be casual and even careless—the tone not very attractive, the enunciation inadequate and hurried, the words imprecise, and the whole escaping from you rather than directed to a listener. We all tend to talk as if it was rather the fault of the listener if he failed to catch our pearls. When you come to address a Tribunal of whatever character your purposes are to attract his attention, to charm his mind, and to make sure that you do communicate your message to him. This needs some conscious effort. Remember to speak out so that your words are projected to the Tribunal—aimed at it as a target. Of course you don’t need to shout at him—you will want to speak out rather than speak up. That means you look at the Tribunal and not down at your notes or away to some corner of the Court. And remember that, on this matter, you can “range on the target”. Keep trying with the tone and pace till you see that some listeners will prefer one tone and pace and some another. Gauge your listener’s capacity and adjust yourself to that. Don’t expect him to adjust himself to you. Above all having decided on your tone and pace don’t lose it by dropping your voice or swallowing the end of the sentences. If you are rending a passage
don't let the book drag your face and voice down to your hands at about your chest or lower—still less down to the table. Hold the book right up and your face will lift with it. Try even to keep "half an eye" on the court as you read. Remember that the word read from print must be read very slowly if it is to be grasped by the hearer. Remember also it is more than ever necessary to enunciate clearly when you are addressing.

But "aiming at the target" is only half the battle. Indeed if you hit the target with an uncontrolled and ugly tone, or with an air that your native tongue means little or nothing to you, you will hardly be likely to persuade. It is true that the Tribunal is under a duty to listen. But no human being is under a duty to be charmed or attracted or won over. Yet the function of the advocate is to persuade. Language is the tool of your trade. You may not produce epigrams or witticisms or memorable phrases, but any individual who bothers to try can be clear, musical, audible and free from vice. All these features make listening vastly pleasanter and consequently more likely to be patient and understanding.

Much of this applies, mutatus mutandis, to your bearing and manner. As the Court is robed, it is natural that Counsel will do the same. Gowns are readily obtainable in a University for a particular occasion. Human beings not unnaturally yield to the appearance of respect and care, and tend to dislike casualness and unconcern. This may be a human weakness, but who are you to disregard such traits? If you lounge, or thrust hands into pockets, or otherwise display unconcern, you will not convey that desire to make your point as the most urgent necessity before you. You can create the atmosphere of conviction about your case by making every fibre of your body appear to be asserting it. But too much is like too loud. It is suppressed but inescapable enthusiasm, respectful assertion, controlled but complete conviction which will interest and beguile your audience.

This will, in practice, all become a natural part of your life. No doubt it can only be learned ambulando. But if you have clearly in your mind what you are trying to do—you will have got off to the most important start. In fact this start often takes longer than you might suppose.

Preparation of the Argument

Now as to the arrangement and delivery of the argument. Here each must pursue his own methods and, indeed, may find these vary from case to case. One man may require the most complete annotations so that he can concentrate on each point, without worrying about what comes next. Another man may wish to be free from his notes, so that his mind evolves his contentions as he proceeds. You must find your own way. No Tribunal will object if you proceed step by step from notes. But however this may be, the argument must be yours. Nothing is less persuasive than the argument that comes from the paper and not from the speaker. Of course you must not read out a fully prepared text. It is your task to argue. But this is not to say that you should not take the most elaborate pains over your notes—however little or much you use them when you are on your feet. You cannot order these notes too carefully. Odd bits of writing on odd bits of paper that are picked up and discarded or shuffled amongst merely indicate laziness. Even if you are going to cut free from your notes when you are on your feet—study their formulation and the order of them when preparing your argument. Space out each point and attach some label or cross heading so that, under stress of questioning or novel suggestion, you can pick on a point. You will be able to find it if your notes are spaced out—your authorities separated from the text, and each in a separate line—the references underlined—the material deliberately and consciously prepared.

And now we have arrived at the point where you must work for yourself. Let us recapitulate. You will have read and re-read the "case" until you are sure of every fact; every date and every detail. You may have re-arranged these in a new summary with cross headings and numbered paragraphs if this is necessary. You should remember that the Court may ask to see your notes, and you should not be ashamed to reveal them.

You will have considered your "instructions" with their formulations of the legal issues and you may have reconsidered or refashioned these. You have worked on the authorities and decided whether you need to read passages or merely cite the facts and the conclusions. You have set out the order of your contentions and stated these in your notes.
Delivery of Argument

Finally you come to your argument. Here you may remember three matters which will help you.

Firstly the argument is not abstract but concrete. It involves the combination and application of law to your particular facts. You need to formulate with care and precision this combination. It is no use to begin by saying—"Consideration is any detriment suffered by the promisor" when you mean—"The giving up by the plaintiff on December 24th of his possession of the motor car was good consideration". That is your "proposition" whilst the description of consideration ("any detriment, etc.") is in part a justification for it.

At each stage of the argument try and formulate your "proposition" in clear and complete form—not saying more than you must nor less than you need. Try and measure this carefully because the Court will seize on your proposition and turn it round and over and see if it is valid. Every word can therefore be of importance and must be carefully selected. This is the kind of thing you want the Court to write down.

As the argument proceeds questions will be asked. These present you with your opportunities. They show what the Court thinks important or relevant. You may not agree as to this but you should not disregard any question. Indeed as you become accustomed to this method of forensic discussion you will come to relish the question as a "lead" to your argument. You will come to dread the silence of a Tribunal which is not interested enough or understanding enough to ask questions. Meanwhile—how to deal with the questions asked? The first and most important rule is—"Don't fail to answer—don't dodge or evade". In the last resort, if it is necessary, say—"I'm afraid I don't know the answer to that question". That saves time—it is candid—it relieves you from defensive dodging which rarely succeeds. But it is an admission of failure. It is not a line to be welcomed! If you are going to try and answer the question it is, of course, vital to make sure you have appreciated precisely the enquiry. It may or may not have arisen by way of interruption to you during your own speaking. Stop when it begins and try and listen to it. Check your understanding of it by asking for light on any necessary point. Then do your best to deal with it. This method of question and answer is really, if not the essence of forensic argument, particularly on points of law, at any rate a very substantial part of it.

Finally you may think it necessary to go back to the point in your argument at which the intervention occurred. You may wish to conclude the point you were on—or proceed to a new one. Hence the need for clearly arranged and conspicuously articulated notes enabling you and your colleagues to pick out the point at which you were. And, of course, whatever your sense of frustration or irritation at the question, maintain the appearance that the questions are more than welcome, that they assist you to make clear your contention and to demonstrate that what appear as obstacles in your path are, properly understood, nothing of the kind.

It is obvious if you are to satisfy your questioner and also continue your argument, that you must be the master of your case, and not merely an arranger of points to be asserted. It may sound difficult—but it done every day in almost every court. Listen and practise yourself.

And remember whilst your opponent is arguing it is vital for you to attend to the questions he is asked—and to his answers. Do they seem convincing? Has he revealed a chink in his armour? Has the question and answer shown you the necessity of altering your own carefully prepared line of discourse—your own nicely ordered notes? Maybe his answer is convincing and you have to rely upon an exception or qualification which previously you had overlooked. Maybe the question and answer suggest a completely new line because the answer is unconvincing or palpably wrong. Obviously you can't afford to miss any detail of his argument, still less of intervention by the Court. By the time you stand up to begin you should have a good idea of what is in the mind of the Court and where your opportunities and dangers lie. Be ready to frame your argument all over again in the light of what you have learnt. The more completely you have prepared your contentions and the more clearly and completely you have constructed your notes the more possible will be this change in your plan of campaign.

So now we can all do our best with these exercises. You may feel that you would wish for many such opportunities for practice. In this you would be right—but such opportunities as do occur will be much more useful if you start with a clear idea of what you are trying to acquire. In the end you hope to achieve that kind of
complete yet detached mastery which enabled Cyrano de Bergerac to fight a duel and compose a poem at the same time.

"I move a pace.  
Lof Such and such,  
Cut over, feint,  
What Ho! You reel.  
At the Envoi's end—I touch!"

Sample Form

What follows is set out merely as an example of the traditional modes of expression. It is not in any sense a complete brief of the kind required in the Moot Court. For this purpose it is necessary to arrange and disclose the facts in such a way as to make clear to your counsel what is the "point" or "issue" in the case. Then it is necessary to set out in a careful and systematic way the legal rules and the authorities. The sample below was in a case on appeal to the House of Lords and where the facts were thought to be clear enough in the judgements below.

Even so it is probable that the brief would be more informative on both the facts and the law in actual experience. Some examples of students' briefs from previous years are available upon enquiry in the Library but as Moot work has by now developed a good deal you should be able to improve upon these examples. You will have an opportunity to discuss your brief after the hearing with a Moot Master and the more effort you put into the writing of it, the more you will benefit from criticism.

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Observations for Counsel

Rylands v. Fletcher

on appeal in the House of Lords

In this case Counsel is requested to appear for the appellant and to argue that the decision in the Court of Exchequer was wrong in Law and should be set aside.

The facts sufficiently appear from the statement set out in the judgement under appeal. Nevertheless it would appear that insufficient detail has been included, at any rate on one or two points. The view of your instructing Solicitor is that no specific mention has been made of the professional standing of the engineers and contractors who were employed by our client. In our view this was of such a nature as to remove any shadow of criticism which might otherwise attach to them. Counsel will note that they were the owners and operators of a mill and themselves unskilled in the construction of a reservoir. In the view of instructing solicitors no more can be asked than in matters of this kind, mill owners will go to reputable professional men for advice and then accept it. In the view of instructing solicitors the views which prevailed in the Exchequer Chamber would, if permitted to stand, impose an altogether novel obligation upon landowners, the ultimate consequences of which it is difficult to foresee.

Counsel might consider just how far-reaching these consequences could be, taking into account the rapid development which is already taking place in our industries. Whilst the matter is ours for final decision by Counsel, the possibility of the decision as it stands altering the whole basis of liability in relation to ownership or occupancy of land is a matter which should be strongly pressed upon their Lordships.

Counsel may be interested to learn of an unfortunate experience suffered by your instructing solicitors when occupying offices in Lincoln Inn Fields. A cistern in the upper story of the building wherein we occupied the ground floor provided a water supply for tenants therein. This cistern was permitted to overflow through the negligence of cleaners who were engaged as independent contractors by the tenants. We ourselves suffered considerable damage—valuable documents being entirely destroyed. We took the advice of Mr. Kelly, as he then was, and His Lordship expressed the clear view that we could not recover from the tenant superincumbent upon our holding.

A copy of Mr. Kelly's opinions is attached for perusal by Counsel. It is appreciated that the opinion is not authoritative as against the judgement which Mr. Justice Blackburn delivered for the Exchequer Court. It is respectfully suggested to Counsel
that Mr. Kelly's conclusion was well founded and that any other view would, in the long run, render occupation of office space under modern conditions in our great metropolis unduly burdensome.

Counsel will give consideration to the arguments adduced below and to the strong reliance placed upon the analogy to be derived from the law of cattle trespass. In the view of instructing solicitors, this argument represents a resort to historical precedent in an extremely singular manner. Counsel may recall that his Lordship, Mr. Justice Blackburn, had a very limited practice at the time of his elevation to the Bench and spent much of his enforced leisure in an examination of the law of past ages, having little concern with the quite revolutionary conditions which have characterized the reign of Her Majesty.

Counsel will, of course, treat these observations as representing the impressions of instructing solicitors. His own experience of the attitude which the Lord Chancellor adopts to the views of Mr. Justice Blackburn may be a much safer guide on this matter.

In the view of instructing solicitors, the true rules of law governing this matter are to be found in those respecting liability in connection with subterranean water not flowing in a predetermined stream.

Counsel is referred to:

Acton v. Blundell, 12 M. & W. 324.
Chasemore v. Richards, 7 H.L.C. 349.

and upon the general question of liability


Counsel may be interested to learn that the law is to the same effect in America. A learned correspondent in that country, knowing of our interest in this matter, has forwarded a reference—

Pixley v. Clark, 32 Barber's Reports (in the Supreme Court of New York).

Counsel will be more familiar than instructing solicitors with the attitude which Their Lordships in the House of Lords may adopt to citation of such authority. Counsel may find the reasoning of the American judges of some assistance.

It is appreciated that the matter in issue in this appeal is almost entirely one of law, but our clients are very deeply involved and greatly concerned. Under these circumstances they have expressed a desire to discuss the matter with counsel, particularly as Counsel was not in fact present at the argument below. If it is at all possible could Counsel be so good as to appoint a conference, and if we may apologize for mentioning the matter, might if possible give consideration to the fact that our clients reside in Ainsworth in Lancashire.

Counsel will please appear and argue that the appeal be allowed.

Moot Court Briefs

The Moot Court briefs may be approached from a number of points of view. They do provide a genuine exercise in producing a legal document. Gaining experience in this is of great value—even if writing briefs to Counsel is not now as common as it was, other documents are still produced which call for similar skills. The following notes merely indicate ideas which have arisen as a result of having discussed briefs with the students who have prepared them over a period of years.

There are at least three aspects all of which may be kept in mind and exploited when producing briefs.

In the first place the brief may be looked upon as the product of Analysis and Research. These two words may usefully be expanded. So far as analysis is concerned it is fairly obvious that the student when presented with a moot problem should analyse the facts so as to lay clear the legal issues which were involved and which will arise in the course of argument. Looking at the brief over all in a general way it should be tested from this point of view. Does it show the correct analysis and in particular does it show the true appreciation of the proportions of the problem. I have frequently found that whilst the points involved have been disclosed, and in this sense the analysis has been complete, yet very often, the least important points are over-emphasized and the more significant points underrated. I mention this matter merely to indicate that the consideration of the brief as a piece of analysis ought not to be approached in too mechanical a manner, but some attempt should be made to assess the quality of the analysis. A practitioner hardly realizes
how in the course of his experience he learns to detect which points are of such
common knowledge that no lawyer would think to elaborate on them in discussion
with another lawyer and which points involved some particular matter which no
doubt in theory "every lawyer is supposed to know" but which in practice he
probably does not know. It is hardly necessary in instructing counsel or in preparing
other matters to be presented to lawyers to explain for example that a binding
contract presupposes an offer and acceptance. On the other hand, if the case is one
involving say the communication of an acceptance, then the rules relating to this
matter require to be carefully elaborated. It is not easy for students to guess without
experience what are the matters which can be taken for granted and what are the
matters which demand explicit treatment. An attempt has to be made to guess at
this "balance". Discussion will then disclose how effective is the solution.

Secondly there is a matter of research, that is to say the study of the proper
authorities, textbooks, discussions and so forth. It will be found in many cases
if two briefs on the same Moot Court are compared that one shows that the normal
resources and research has been completely investigated whilst the other has not
penetrated very far into the material. No doubt each individual practitioner has his
own methods of setting about ascertaining the law in relation to a particular case
with which he is dealing. This brief writing is an opportunity to try and find out
how the tools of trade in the way of digests, text books, counsels' arguments in law
reports and so on can be utilized to chase up basic points.

The second aspect of the moot document is that it is a carefully arranged and
ordered legal argument. This is one of the lessons which most needs to be learned.
Some students approach the problem of attacking a brief without any clear idea
of what is a logical order, with the choice of the most important arguments in the
forefront, and subsidiary or alternative or weaker contentions put, as it were, into
reserve class. I have generally put it to students that the brief is as it were a
written argument, as carefully constructed, and prepared, as Counsel's argument
will be, when he speaks in Court. Indeed it may be said that if the brief is not
well done in this respect, the oral argument may not be any better, but if the
brief is well done, the oral argument almost certainly can be made better. It is
important then to endeavour to instil concern for the proper construction of a brief.
One writer may prefer to analyze the facts and then proceed to the legal contentions,
whilst another writer adopts the alternative of setting out an issue of fact and the
appropriate legal contentions, and then the next issue of fact, and so on. Whatever
methods be adopted it is the logical pattern of the arrangements, and the careful
consideration of structural importance, which brief writing gives an opportunity to
develop by experience and then criticism.

Finally, there is the difficult though not vastly important problem of the lan-
guage and actual physical arrangement of the document itself. The conventional
linguistic manner of Counsels' instructions are naturally somewhat strange to the
beginner. It is perhaps surprising that students fall as well as they do into the tra-
ditional style. The departure can readily be picked out and corrected. In the course
of this part of the work some attention should be given not only to language, but
to minor features of physical presentation as, for example, the proper way to type
or write case references, or the spacing out, or tabulation, of references obtained
from texts. The clear marking of paragraphs and sections, and even in this modern
age, the satisfactory use of paragraph numbers and sub-paragraphs should be con-
sidered. I have placed emphasis on the matter contained earlier in this memorandum
to suggest what is the real intellectual purpose of the brief writing. I add these later
remarks because they should not be overlooked.

If the writing of the brief is just a disagreeable task to be got out of the
way, you will of course gain little advantage either from writing it or having it
criticized. If you realize that "paper work" in one form or another forms a sub-
stantial part of the working life of a good many lawyers you will seize this
opportunity to work at this exercise and then see what criticism results. The fact that
it is a "brief for Counsel" is a minor fact. If you can adjust yourself to the require-
ments of this particular task you will adjust yourself to other requirements as these
occur. It would be profitable if there were opportunity for you to prepare a dozen
briefs in each year of your course. As it is you may not produce more than one
or two. Don't underrate the opportunity to learn.

It may be useful to add a few words on the language which practice has
established as suitable for use during argument. Year after year those arguing in the
Moot Court are heard saying. "I think .... Were it not for iron self-control this
expression might prompt the reply "not really" or words to that effect. The customary
phrase is "I submit" or "In my submission". It should not be necessary to add that such expression need not be inconsistent with actually doing as much "thinking" as possible.

It is generally remembered that the Tribunal is addressed by some appropriate title—"Your Worship" in a Court of Petty Sessions, "Your Honour" in County Courts, the Supreme Court and the High Court. A convenient phrase indicating that some direction, correction, or perhaps rejection (of a submission) has been conveyed would be—"If the Court pleases" or "If it please the Court" or "If Your Honour pleases". All these niceties of speech have their importance. One consideration, apart from the demonstration of respect for the judicial institution, is that the Bar, engaged upon a difficult and demanding task, expects patience and consideration from the Court and earns this by its own good manners. Similarly a sense of good taste and decorum dictates some restraint in bearing and deportment. It is not an unvarying rule that Counsel should not thrust his hands into his pockets but it is no doubt a good one, and so generally restrained movements add to dignity and decorum. Remember also if you read from a book or documents that it is fatal to turn your eyes and then your face down to the table where you have placed the book or document. Your voice will follow down to the table. Lift up your book or document and keep looking towards and talking towards the Bench. Don't be afraid to lift your voice and make yourself heard. It is rare for a judge to complain of being deafened but not so rare to find, as he advances in years, that he becomes hard of hearing. Remember that names are more difficult to hear than ordinary words, when hearing is losing its youthful acuity, so that it is necessary to emphasize the names of the parties in cases which are cited. And remember also that there is a natural tendency to emphasize the first name (plaintiff, appellant, etc.) and slur over the second name (defendant, respondent, etc.). When citing a case after reciting the names of the parties, begin by quoting the report (without contractions, i.e. Commonwealth Law Reports and not C.L.R.), together with the page at which the report begins, and then the page from which a quotation is to be read. Above all, do not refer to some judicial authority whom you are citing without his proper title, such as Lord Justice Woolf", "Mr. Justice Lamb", etc. The apparently respectful "Wool L.J. is not appropriate. And of course "Wool" without more, merely stamps you as a brash young man whose ignorance and inexperience does not attract the forbearance which it would otherwise enjoy.

Finally a word on formulating argument. At a critical point in your exposition you will need to enunciate a submission. This demands the most careful thought in selecting the precise words and in shaping the exact idea. It may lie that after years of experience you will be able to produce extempore a precise and effective sentence to embody your contention, a sentence that the Judge will appreciate to be worthy of critical dissection and examination. Until you reach this stage you should try and work over your "submissions" so that you have them in a form, and in terms, which exactly express what you desire to contend. When the Judge writes such an expression down you will not have to withdraw what you have said, or begin qualifying or modifying the expression. You can, if you wish, write down beforehand the precise form of the expression but do not become a slave to your note. Lead up to your submission by free oral exposition and then, if you wish, say "I can put my submission in this way, your Honour ..." [and then quote the crucial sentence]. Remember that this sentence invites criticism from both the Court and your opponent. Every word counts. It should say no more than is necessary for your case—and, of course, not less. But, whilst this submission invites criticism, the failure to make such a precise and unmistakable submission is a fatal failure—it indicates beyond any doubt that you have not thought out your argument and do not know what your contention is. You have not begun to be an advocate, even a bad one. On the other hand if you can find a precise, clear and intelligible submission, you may cover over a dangerous place in your case and skate gloriously and successfully over the thin ice. The formulation of submissions with care and critical analysis will not guarantee you against surprise, novel suggestions, or a change in the drift of the argument. These you must meet as best your wit and convictions suggest. But much can be done before you get on your feet.
CHAPTER 7

DETAILS OF SUBJECTS

DEGREE OF BACHELOR OF LAWS

AND

Subjects Prescribed by the Council of Legal Education or in the Course for Qualification as a Stipendiary Magistrate

WRITTEN WORK DURING THE YEAR

Whenever in these Details there is a statement in respect of a subject that written work is required, the satisfactory performance of that written work is a condition precedent to obtaining a pass or honours in the examination in that subject unless the Faculty of Law otherwise directs.

ANNUAL EXAMINATIONS

In those subjects which have been divided into two or more class groups separate examinations may be set for each such group.

VACATION STUDIES

Students are advised to use a considerable part of the summer and spring vacations in studying their subjects. In some subjects vacation readings are specified in the following details; in others lists of readings may be posted on the notice boards. Where essays are required to be done during the vacation particulars will be posted on the notice boards.

READING GUIDES AND MATERIALS

In a number of Law subjects reading guides are prepared for issue to students either at the beginning of the year or periodically throughout the year. These give references to textbooks, journals, cases and statutes on each topic dealt with. In addition case and other materials may be available for issue. Details will be posted on the notice board at the beginning of the year.

PURCHASE OF BOOKS

Books marked with an asterisk are essential and students should buy them. Students are advised to consult their tutors or lecturers before buying books not so marked, or before choosing between alternatives which are so marked.

HONOUR WORK

Except in subjects where special details are published, the syllabus for Honours will be the same as that for Pass.

CLASSES IN LAW SUBJECTS

Where classes are divided students are expected to remain in the divisions to which they have been allotted and must not change without permission. This is vital in view of the methods of teaching used in the school.

286. ACCOUNTS

Mr. S. C. Hogg

A course of one class per week throughout the year with such class exercises as may be directed by the lecturer.
SYLLABUS

A general knowledge of the principles of accounting and the practice of bookkeeping; partnership and company accounts; book-keeping in a solicitor's office; executors' and trustee accounts.

BOOKS

Recommended for reference:

Further references will be given by the Lecturer.

EXAMINATION. One 3-hour paper for Pass only.

263. ADMINISTRATIVE LAW

Professor E. I. Sykes and Mr. F. K. H. Maher

A course of two classes per week throughout the year.

SYLLABUS

This course examines from a legal point of view the relationships between the citizen and the executive branch of government.

This subject owes its significance to the fact that in the modern community the life of the citizen is likely to be very much affected by increasing powers of regulation and decision-making vested in the executive arm of government or instrumentalities brought into being by the executive arm of government. Such powers may be manifested by wide authority to enact subordinate legislation given to the Governor-in-Council or by considerable discretions in decision-making given to tribunals which function quite independently of the courts of law.

The subject concerns the extent to which and the means by which such powers are rendered subject to judicial control and scrutiny. Judicial control may be exercised over delegated legislation, whether by the executive or by local authorities, by means of the doctrine of ultra vires and by various techniques, such as the prerogative writs, over these powers of decision-making vested in 'administrative tribunals' which are usually, though not very precisely, termed 'judicial' or 'quasi-judicial'.

The changing face of administrative law, which now produces an ever-increasing number of decisions each year, involves more and more critical inquiry into the adequacies of the traditional methods of review. The topic primarily involves the question of the validity of administrative decisions, but the issue of the liability of the administrators for their acts may be also involved. Hence the question of the liability of the Crown and of other bodies of a public nature is also considered.

Throughout the course, attention is given mainly to problems which are common to the States and the Commonwealth. The student's attention is directed to the special problems which arise under the Commonwealth Constitution, but detailed consideration of these problems is omitted. The method of instruction is mainly through an analysis of the cases which are either printed at length or summarized in the Case Book mentioned below. The details of the main topics are substantially those dealt with in the Case Book itself, but any recent decisions of significance will be considered.

BOOKS

(a) Prescribed casebook:

(b) Recommended for reference:
Hamson, C. J., *Executive Discretion and Judicial Control.* (Stevens, 1954.)

(More detailed advice on texts will be given at the beginning of the course.)

**EXAMINATION**

One 3-hour paper for Pass and/or for Honours. A mid-year test may be held; if it is the results obtained may be taken into account in assessing a candidate's final result.

Students may also in addition or by way of alternative be required to complete a course of written exercises bearing on problems in this subject; in that event the results obtained may be taken into account in assessing a candidate's final result.

**273. ADVANCED CONSTITUTIONAL LAW**

Professor C. Howard

A course of two classes a week throughout the year.

**SYLLABUS**

This course is for students who want a more detailed understanding of the operation of Australian federal constitutional law than is imparted in the third year constitutional law course. Each year certain areas of the federal Constitution are selected for intensive study. The selection varies from year to year, depending partly on current developments, but in general is made from the following topics: techniques of construction; distribution of power; separation of powers; judicial power; federal jurisdiction; legislative powers of the Commonwealth; constitutional guarantees. Discussion is not limited to judicial interpretation of the Constitution. The capacity of the Commonwealth to regulate critical areas of the national life, such as finance, trade, natural resources, health, education, housing, regional planning, aviation, defence and external affairs comes under consideration to a greater or lesser extent, depending on the emphasis in any particular year. The effectiveness of the functioning of the Constitution in the selected areas also receives consideration. Class discussion of the problems which arise is required.

**BOOKS**

(a) Prescribed textbook and materials:

*Commonwealth of Australia Constitution Act, 1900.* (Government Printer.)
*Judiciary Act, 1903-1966 (Cth.)* (Government Printer.)

(b) Recommended for further reading or reference:

Sawer, G., *Australian Federalism in the Courts.* (M.U.P., 1967.)
Report of the Joint Committee on Constitutional Review, 1959. (Govt. Printer, Canberra, 1959.)
EXAMINATION

One 3-hour paper, for Pass or for Honours respectively. Students selected for a research group will be required to submit a written paper on the subject of their research and may elect to be graded for honours on this paper instead of on the November examination. It remains open to all members of the course to obtain honours in the usual way at the November examination. Membership of the research group is restricted to a maximum of ten.

267. COMPARATIVE LAW

This subject will not be available in 1971.

272. CONFLICT OF LAWS

Professor C. Howard

A course of two classes per week throughout the year.

SYLLABUS

Conflict of laws is concerned with the problems which arise when a foreign or interstate element enters into a legal transaction or problem. In this course particular attention is given to problems of jurisdiction, that is to say the rules determining when a Victorian court would assume jurisdiction in such a case; choice of law, that is to say the rules for determining the selection of the most appropriate law for the decision of a particular problem once a Victorian court has assumed jurisdiction; and foreign judgments, that is to say the rules which a Victorian court will apply in deciding whether to recognize and enforce a foreign or interstate judgement or order. In the interstate sphere, the solution of problems may be affected by the existence of special legislation, by the provisions of the Commonwealth Constitution, and by the fact that the units are States of the same Commonwealth.

BOOKS

(a) Prescribed text:

(b) Recommended for reference:
Nyg, P. E., Conflict of Laws in Australia. (Butterworth, 1968.)
Cowen, Z., and Mendes da Costa, D., Matrimonial Causes Jurisdiction. (Law Book Co., 1961.)
Dicey, A. V., Conflict of Laws. (7th ed., Stevens, 1958.)

EXAMINATION. One 3-hour paper, for Pass and Honours respectively.

253. CONSTITUTIONAL HISTORY

Mrs. E. R. Campbell

Note: Students who are taking the LL.B. degree with an Arts degree including a major in History may enrol for British History (Arts) and should consult the Arts handbook for details of this subject.

A course of two classes per week throughout the year.

SYLLABUS

This is a course in British constitutional history, from the middle ages to the twentieth century. It consists of studies in the history of government in England from the eleventh century; of government in Great Britain from the eighteenth century; and of British imperial relations, with special reference to North America and Australia.
Most of the course is concerned with the history of government in England and Great Britain. This involves studying, not only written constitutional laws, but also the development of political institutions and of constitutional relationships—of habits, customs, conventions—of unwritten usages which have become accepted as part of the constitution. Other aspects of British history—especially economic and social changes, political thought and religion—are also studied, not for their own sake, but for the light which they throw on constitutional development.

The course also includes some examination of the development of constitutional relationships between Britain and her North American and Australian colonies in the eighteenth and nineteenth centuries, and a brief consideration of the federal constitutions adopted by the United States, Canada and Australia.

During the year, students may be required to write one essay of about 2,000 words, as well as two shorter exercises and a mid-year test paper.

BOOKS
(a) Recommended for preliminary reading:
(b) Prescribed textbook:
*Stephenson, C. and Marcham, F.C., Sources of English Constitutional History, (Harper.)
(c) Recommended for reference:
A reading guide will be provided.

EXAMINATION
One 3-hour paper which will be a common paper for Pass and Honours. Written work and test described above may be taken into account in assessing a candidate's final result.

264. CONSTITUTIONAL LAW
Mr. I. D. Elliott
A course of one class a week throughout the year.

SYLLABUS
This course deals with the basic principles of the Constitution of both the States and the Commonwealth. The study embraces not only the formal constitutional documents, such as the Constitution Acts of the various States, the Colonial Laws Vailidity Act, 1865, the Commonwealth of Australia Constitution Act, 1900 and the Statute of Westminster Adoption Act, 1942, but also some of the unwritten and ill-defined constitutional conventions that shape the actual working of government at both the State and Federal level. In addition, there is an analysis of some of the problems posed by the clash of the interests of the community and those of the individual; this analysis is undertaken within the context of a discussion of the law of public meetings and processions.

In Australia, the Commonwealth Constitution allocates specific governmental powers to the Commonwealth, the residue of powers remaining with the States. This course briefly analyses the distribution of powers and the main problems facing courts in the interpretation of the Constitution. A detailed discussion of specific problems arising for interpretation under the Constitution will be reserved for the course in Advanced Constitutional Law.

BOOKS
(a) Recommended for preliminary reading:
Menzies, Sir Robert, Central Power in the Australian Commonwealth. (Cassell, 1967.)

(b) Prescribed textbooks:
**Commonwealth of Australia Constitution Act.** (Government Printer.)

(c) Recommended for reference:
Sawer, G., *Australian Federalism in the Courts.* (M.U.P., 1967.)

**EXAMINATION**

One 3-hour paper which will be a common paper for Pass and Honours. A mid-year test may be held; if it is the results obtained may be taken into account in assessing a candidate's final result.

**252. CRIMINAL LAW**

Professor P. Brett and Mr. I. D. Elliott

A course of two classes per week throughout the year.

**SYLLABUS**

This course includes an investigation of the nature and purposes of the criminal law and the aims which that branch of the law seeks to achieve. The crimes of homicide, less serious offences against the person, and theft (including crimes analogous to theft) are examined in considerable depth, and certain other crimes are dealt with in less detail. Finally, the course examines the doctrines applicable to all crimes, e.g. the various defences which can be made to a criminal charge, the law of conspiracy and attempt, and the requisite mental element of a crime. Throughout the course the student is encouraged to consider not only what the law is, but also what it ought to be.

**BOOKS**

(a) Recommended for preliminary reading:

(b) Prescribed textbooks:
*Crimes Act, 1958 and amending Acts.*

(c) Recommended for reference:
Howard, C., *Strict Responsibility.* (Sweet & Maxwell, 1963.)

**EXAMINATION**

One 3-hour paper for Pass and for Honours.
A course of two classes per week throughout the year.

SYLLABUS

The first section of the course is concerned with intestate and testate succession. It includes a study of arrangements inter vivos as substitutes for wills, the formalities of execution and revocation of wills, revival of wills, republication of wills, probate of wills, grants of administration, failure of testamentary dispositions by lapse, disclaimer, etc., and equitable doctrines of conversion, election, satisfaction and ademption.

The second section of the course consists of a study in depth of the equitable doctrines governing the creation of trusts. The trust-concept underlies much of modern property and taxation law and it has had an influence on the law of corporations. In the early part of the course the trustee-beneficiary relationship is distinguished from a number of similar relationships such as those involved in agency, bailment, debt and a company. In the course of considering intention to create a trust the opportunity is taken to consider dispositions on condition, dispositions subject to a charge and powers in the nature of a trust. The doctrine of consideration is studied next in relation to trusts by declaration, imperfect gifts, trusts by transfer, assignments of future property, assignment of choses in action by way of trust, covenants to create trusts and trusts of covenants. Requirements of form are considered by dealing with the Statute of Frauds, and various doctrines affecting testamentary trusts such as those relating to secret trusts and the cognate topic of incorporation by reference. In dealing with the object of a trust the problem of trusts of imperfect obligation is considered. The treatment of property the subject-matter of a trust includes consideration of the difference between an interest and an expectancy and the problem of trusts of promises with special reference to life insurance trusts. The effect of a trust for illegal purposes is studied next. There follows a study of perpetuities doctrine and legislation affecting trust funds and of the rules affecting accumulation of trust income. The treatment of trusts is concluded by a study of charitable, resulting and constructive trusts. The administration of trusts is left for study in the fourth-year subject of Executors and Trustees.

BOOKS

Prescribed books:

* Ford, H. A. J., Cases on Trusts. (Either 1st or 2nd ed., Law Book Co.)
* Cases and Materials on Wills—Obtainable from the Law School.
* Administration and Probate Act 1958 (Victoria).
* Perpetuities and Accumulations Act 1968 (Victoria).
* Trustee Act 1958 (Victoria).
* Wills Act 1958 (Victoria).

EXAMINATION

One 3-hour paper for Pass or for Honours respectively. A mid-year test may be held; if it is the results obtained may be taken into account in assessing a candidate's final result.

278. EXECUTORS AND TRUSTEES

Mr. R. H. Searby

A course of one class per week throughout the year.

SYLLABUS

This subject consists of the law relating to the administration of trusts and the law relating to the administration by personal representatives of estates of deceased persons. The former limb comprises five main topics, viz. duties of trustees, consequences of breach of trust, powers of trustees, rights of trustees, and appointment of trustees; the latter, four main topics, viz. appointment of personal representatives, devolution of assets of deceased persons upon their personal representa-
tatives, powers of personal representatives in respect of property devolving upon them, and duties of personal representatives.

The subject is not treated primarily on historical principles; in that and other respects the syllabus is designed not to repeat what has been covered at an earlier stage in the course. The intention is to present to students the basic propositions of the developed law under the two headings abovementioned, with particular reference to the Victorian statutes; it is essentially a practical treatment of the subject. Procedural matters are not, however, adverted to, nor, except incidentally, the problems so far as they affect the subject involved in the construction of trust instruments.

**BOOKS**

There is no prescribed textbook. The following books are recommended for reference:

- Lewin, T., *Trusts*. (14th, 15th or 16th ed., Sweet & Maxwell.)

In addition, students should provide themselves with copies of the following Acts, which will be used in lectures:

(i) Trustee Act 1958
and the following amending Acts:
- Trustee (Amendment) Act 1959.
- Trustee (Mortgages) Act 1959.
- Trustee (Variation of Trusts) Act 1962.
- Trustee (Mortgages) Act 1962.

(ii) Administration and Probate Act 1958.
Reprint No. 3 (22 March, 1966) of this Act incorporates amendments up to and including Act No. 7732 and is complete for present purposes. Alternatively students should obtain the Act as originally printed and the following amending Acts:
- Administration and Probate (Amendment) Act 1962.
- Administration and Probate (Family Provision) Act 1962.
- Administration and Probate (Surviving Actions) Act 1965.

(iii) Probate Duty Act 1962


**EXAMINATION**

One 3-hour paper for Pass or for Honours respectively.

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**276. FAMILY LAW**

Mr. R. Sackville

A course of two classes per week throughout the year.

**SYLLABUS**

The role of law and lawyers in establishing, administering and reorganizing family relationships will be considered. Existing legal rules and the function of lawyers in their administration will be examined as well as a critical evaluation of these rules in the light of social objectives will be undertaken.

Topics for discussion will include: the establishment of formal family relationships, including the role of the State in regulating marriage and adoption; the formal
family relationship as viewed by other branches of law; State assistance to the family and social welfare; informal family relationships and the rights of de facto spouses and illegitimate children; the adjustment of intra-family conflicts short of formal dissolution, e.g. disputes as to property, maintenance or custody; State intervention into the family relationship, as with the withdrawal of children from parental custody. The dissolution and consequent formal reorganization of the family will require a study of the law and practice of matrimonial causes and ancillary relief, particularly maintenance, custody and settlements; the role of lawyers and others in the process of dissolution and reorganization; an evaluation of the merit of the existing system. The dissolution of the family relationship by death and related problems will also be discussed, e.g. testator's family maintenance, the appointment of guardians.

BOOKS and STATUTES

(a) Recommended for preliminary reading:

(b) Prescribed statutes and regulations:
*M matrimonial Causes Act, 1959-1966. (Com.)
*M marriage Act, 1961. (Com.)
marriage Regulations, 1963. (Com.)
maintenance Act, 1965. (Vic.)
maintenance Rules, 1966. (Vic.)
marriage (property) Act, 1962. (Vic.)

(c) Recommended for reference:
Webb, P. R. H., and Bevan, H. K., Source Book of Family Law. (Butterworths, 1964.)
Toose, P., Watson, R. S., and Benjafield, D. G., Australian Divorce Law and Practice. (Law Book Co., 1968.)

EXAMINATION
One 3-hour paper for pass or honours respectively. Students may be required to submit an essay not exceeding 3,000 words. The result achieved in such essay may be taken into account in assessing a candidate's final result.

280. INDUSTRIAL LAW
Professor E. I. Sykes
A course of one class per week throughout the year.

SYLLABUS
A Study of the Law Relating to:
1. The employer-employee relation as a legal relationship in industry.
   A knowledge of the general principles of the law of contract and tort is presumed and this part of the course deals with the formation of the contract of employment, the terms commonly implied into such a contract, the duties owed by both the employer and employee to each other, and the remedies for the breach thereof, the performance and termination of the contract, and the liability of the employer for the wrongs of the employee (in which the social philosophy running behind the judgments is examined especially in relation to insurer's indemnity).
2. Protection of the employee against injury.
3. Workers' compensation.
The general background of the workers' compensation law is discussed followed by a general study of the Victorian Act. Selected parts are studied in depth and in this sphere the Commonwealth Act, the acts of the other States as well as workers' compensation legislation of other countries are examined.

4. The general structure of the Federal and State industrial tribunals.

5. State and Federal Law relating to the organization of labour and trade unions, and the law governing industrial conflict between management and organized labour.

6. State and Federal law relating to wages and working conditions in industry.

BOOKS

(a) Prescribed textbooks and materials:
- *Cases and Materials on Industrial Law.*—(Obtainable from the Law School.)
- *Wedderburn, K. W., The Worker and the Law.* (Penguin.)
- *Trade Unions Act, 1938.* (Victoria.)
- *Employers and Employees Act, 1958.* (Victoria.)
- *Labour and Industry Act, 1958.* (Victoria.)
- *Workers Compensation Act, 1965.* (Victoria.)
- *Conciliation and Arbitration Act, 1904-66.* (Commonwealth.)

*Students must obtain copies of these.

(b) Recommended for reference:
- Isaac, J. E., and Ford, G. W. (eds.), *Australian Labour Relations Readings.* (Sun Books.)
- *An Outline of Industrial Law.* (Commonwealth and New South Wales). (2nd ed., Law Book Co.)
- Brissenden, P. F., *The Settlement of Labor Disputes on Rights in Australia.* (Institute of Industrial Relations: University of California, 1968.)
- Citrine, N. A., *Trade Union Law.* (Stevens.)
- Foenander, O. de R., *Development of Law Governing Workers Compensation in Victoria.* (Law Book Co.)
- Foenander, O. de R., *Industrial Conciliation and Arbitration in Australia.* (Law Book Co.)
- Foenander, O. de R., *Trade Unionism in Australia. Some Aspects.* (Law Book Co.)
- Anderson, K., and Beach, B. W., *Workers Compensation Acts.* (Butterworth.)
- Portus, J. H., *The Development of Australian Trade Union Law.* (M.U.P.)
- Sykes, E. I., *Strike Law in Australia.* (Law Book Co.)
- Mansfield Cooper, W., *Outlines of Industrial Law.* (Butterworth.)
- Vester, H., and Gardner, A. H., *Trade Union Law and Practice.* (Sweet & Maxwell.)

EXAMINATION

One 3-hour paper for Pass and Honours respectively.

268. INTERNATIONAL LAW

Mr. G. A. Brennan

A course of two classes per week throughout the year.

SYLLABUS

In this course an analysis is made of the nature and function of International Law in order to assess its impact on contemporary International Society.

International Law is a dynamic field which provides an orderly framework for the relations between Sovereign States and such international organizations as have been endowed with international legal personality.

A sociological enquiry will be made into the reasons why States generally act in
conformity with International Law and also why in certain circumstances a State may disregard a rule of International Law.

The course will deal mainly with the International Law of peace which will be expounded by reference to the seven fundamental and interrelated principles of International Law, namely: Sovereignty, Recognition, Consent, Good Faith, Freedom of the Seas, International Responsibility and Self-Defence. Other topics for discussion are the law of treaties, state succession and the position of the individual in International Law.

At the level of organized international society, superstructures such as the United Nations and its specialized agencies will be studied.

Finally, the course examines the jurisdiction of the International Court of Justice and the whole problem relating to the peaceful settlement of disputes both at the level of unorganized international society and at the level of organized international society.

The teaching method used is the inductive method which treats the decisions of international courts and tribunals as the best evidence of the rules of International Law. Students will therefore be required to study a large number of cases during the year and to discuss them in class.

BOOKS

(a) Recommended for preliminary reading:

(b) Prescribed books:
*Cases and materials on International Law (obtainable from the Law School).

(c) Recommended for reference:
Friedmann, W., The Changing Structure of International Law. (Stevens & Sons, 1964.)
Greig, D. W., International Law. (Butterworth, 1970.)
Hall, International Law. (8th ed., O.U.P., 1924.)
Jenks, C. W., The Common Law of Mankind. (Stevens, 1958.)
Lauterpacht, H., The Development of International Law Through The International Court. (Stevens & Sons Ltd., 1958.)
O'Connell, D. P., International Law. 2 Vols. (Stevens, 1965.)
Rosenne, Shabtai, The Law and Practice of the International Court. 2 Vols. (Sijthoff, 1965.)
Schwarzenberger, G., The Frontiers of International Law. (Stevens, 1962.)

EXAMINATION

One 3-hour paper for Pass or for Honours respectively. Candidates for Honours will be required to attend Honours Seminars in the Second Term.

269. JURISPRUDENCE

Professor P. Brett (for Pass students)
Professor Sir George Paton (for Honours students)

A course of two classes per week throughout the year.

SYLLABUS

Throughout the ages the term Jurisprudence has been used to cover a wide range of enquiries and pursuits, which differ considerably in their aims. Analytical
Jurisprudence has concentrated upon the analysis of legal concepts and the study of the techniques of legal reasoning. Legal Philosophy has endeavoured to explore the relationship between law and justice. Sociological Jurisprudence has concentrated upon the workings of law in its social context.

In this course, an endeavour is made to examine the role of the law and the lawyer in contemporary society. Specific problems of proposed legal reforms are studied in depth and the different solutions to which the differing approaches of the various jurisprudential "schools" lead are discussed and evaluated. The two great techniques of legal reasoning—statutory interpretation and the use of precedent—are also studied in depth and evaluated.

As regards reading, all students should obtain and read the book starred below. They should also endeavour to read a wide range of different writers who have expounded their own particular outlooks. A suggested selection of suitable works from which students can choose is also given below.

There will be separate papers for Pass and for Honours, in each case the paper being of three hours' duration. In addition, students who wish to obtain an Honours' grading may be required to submit, before a date to be announced at the beginning of the year, an essay on an approved topic of their own choice.

**BOOKS**

(a) Prescribed for preliminary reading:

(b) Recommended for reference:
Cardozo, B. N., *The Nature of the Judicial Process.* (Yale U.P., 1921.)
Lloyd, D., *Introduction to Jurisprudence.* (Stevens, 1959.)
Pound, R., *An Introduction to the Philosophy of Law.* (O.U.P., 1934.)
Stone, J., *The Province and Function of Law.* (Maitland, 1946.)

**EXAMINATION.** One 3-hour paper for Pass or for Honours respectively.

**282. LAND CONTRACTS**

Mr. J. K. Aitken

A course of one class per week, throughout the year.

**SYLLABUS**

**Generally:**

The Course deals with the sale of land under the Torrens system and the general law; and related topics.

The following topics will be covered:

Options and other documents preliminary to the formal contract of sale of freehold land.
Statute of frauds.
Contract of sale of freehold land; implied provisions; conditions in Table A in
seventh schedule to the Transfer of Land Act 1958 and in the third schedule
to the Property Law Act 1958; breach of contract.
Investigation of title; usual searches and inquiries; completion.
Sale of Land Act 1962 and amending legislation, including Sale of Land Act
1965.
Regulation of land use under the Town and Country Planning Acts and by
municipal by-law under the Local Government Act.
Slum Reclamation and Housing Legislation. Building Regulation.
Subdivision of Land.
Ownership of and dealings in flats and home units.
Estate Agents: Estate Agents Act 1958; entitlement to commission; power to
bind principal and receive money on his behalf.
Dealing in leasehold interests, including registration of leases under the Transfer
of Land Act.

BOOKS

(a) Prescribed textbook:
Voumard, L., Sale of Land. (2nd ed., Law Book Co.)
Copies of the following Acts will be required:
Instruments Act 1958.
Town and Country Planning (Amendment) Act 1968.
Strata Titles Act 1967.

and all amendments to the above-mentioned Acts.

(b) Recommended for reference:
Stevens, 1960.)
Dickerson, R., The Fundamentals of Legal Drafting. (Little, Brown & Co.,
1965.)
Co., 1968.)
Storey, H., Real Estate Agency in Victoria. (Butterworth, 1967.)

EXAMINATION

One 3-hour paper for Pass or Honours respectively.

256. THE LAW OF TORTS

A course two classes per week throughout the year.

SYLLABUS

The law of torts is concerned with the protection of interests in personal
security (both bodily and otherwise), property, and various human and economic
relationships. It operates primarily by requiring the person who invades such an
interest to make monetary compensation at the suit of the person harmed.

The syllabus covers the law of torts generally. Particular attention is given
to such topics as the tortious remedies for personal injuries and damage to property,
compensation to relatives, the respective liability of the master and his servant,
problems that arise between neighbouring property-holders, and libel and slander.
Although important statutes exist in this field, and will be studied, the rules of the
law of torts are still primarily common law rules, and the student will therefore be
expected to read a large number of cases. A Casebook is prescribed, but the honours
student certainly will need to go beyond it.
Students may be required to (a) sit for a mid-year test, (b) submit either two exercises each of 1,000 words, or one exercise of 3,000 words. Full details will be given to students at the beginning of the academic year.

BOOKS
(a) Suggested preliminary reading:
Llewellyn, K. N., *The Bramble Bush.* (Oceana, 1951.)

(b) Prescribed casebook:

(c) Statute:
*Wrongs Act (Victoria)* 1958.

(d) Recommended textbooks:

(More detailed advice on the selection of a text or texts to buy will be given at the beginning of the course.)

(e) Recommended for reference:

EXAMINATION
One 3-hour paper for Pass or for Honours respectively. The written work and test described above may be taken into account in assessing a candidate's final result.

274. LEGAL HISTORY

Mrs. E. R. Campbell

A course of two classes per week throughout the year.

SYLLABUS
The aim of this subject is to explore the relationships between a changing society and its legal order. The period of British history 1760 to 1930 will be investigated, the time of the emergence and growth of an industrial society. Some aspects of Australian legal development may also be scrutinized.

Students will be able to specialize in those areas of particular interest to them.

During the year, students will be required to present two class papers, each of approximately 2,000 words in length.

BOOKS
(a) Recommended for preliminary reading:
Fifoot, C. H. S., *Judge and Jurist in the Reign of Queen Victoria.* (Stevens, 1969.)
Abel-Smith, B., and Stevens, B., *Lawyers and the Courts.* (Heinemann, 1967.)
Taylor, P. A. M. (ed.), *The Industrial Revolution in Britain.* (Heath, 1958.)
(b) Recommended for reference:
Detailed reading lists will be supplied at the beginning of the year and throughout the year.

EXAMINATION. One 3-hour paper, which will be a common paper for Pass and Honours. The class papers described above may be taken into account in assessing a candidate's final result.

275. LEGAL PERSONS
Professor H. A. J. Ford and Mr. G. A. Brennan

A course of two classes per week throughout the year.

SYLLABUS
A study of the law relating to unincorporated associations, companies, unit trusts, partnerships and trade unions.

BOOKS
(a) Prescribed textbook:
Cases and Materials on Company Law. (Obtainable from the Law School.)

(b) Prescribed statutes:
Students must obtain their own copies of the:
Companies Act 1961 (Vic.)
Conciliation and Arbitration Act 1904-1965 (Cth.)
Partnership Act 1958 (Vic.)
Trade Unions Act 1958 (Vic.)

(c) Recommended for reference only:
Wallace and Young, Australian Company Law and Practice. (Law Book Co., 1965.)
Kavass, I. I., Australian Supplement to Gower on Modern Company Law. (Law Book Co., 1964.)
Ford, H. A. J., Unincorporated Non-Profit Associations. (O.U.P., 1959.)
Portus, J. H., The Development of Australian Trade Union Law. (M.U.P.)
Cole, V. L., Australian Proprietary Companies (Butterworth, 1970.)

EXAMINATION
One 3-hour paper for Pass or for Honours respectively.

251. LEGAL PROCESS
A course of two classes per week throughout the year.

SYLLABUS
The course provides a general introduction to the study of law. It includes the following:
(1) An elementary analysis of the legal system and the legal process; sources of law, divisions of the law, civil procedure, technical rules of precedent.
(2) Statutory interpretation.
(3) Basic legal concepts, especially the concepts of legal rights and legal personality.

(4) The principles and techniques of the judicial method and of lawyers’ reasoning.

(5) The history of the English Courts of Law and Equity and of the introduction of English law into Australia.

Students will be required to
(a) complete a course of exercises in Legal Writing,
(b) write an essay during the year on an approved topic.

BOOKS
(a) Recommended for preliminary reading:

(b) Prescribed textbooks:
*Campbell, F., and MacDougall, D., Legal Research: Materials and Methods. (Law Book Co., 1967.)
*Cowers, Sir E., The Complete Plain Words. (Pelican, 1963.)

(c) Prescribed statutes:
Students must obtain their own copies of the:
Acts Interpretation Act, 1955. (Victoria.)
Imperial Acts Application Act, 1922.

(d) Recommended for reference:
Weihofen, H., Legal Writing Style. (West Publishing Co., 1961.)
Williams, C., Learning the Law. (7th ed., Stevens, 1963.)
Millson, S. F. C., Historical Foundations of the Common Law. (Buttersworth, 1969.)

EXAMINATION. One 3-hour paper which will be a common paper for Pass and Honours. Written work may be taken into account in assessing a candidate’s final result.

265. MERCANTILE LAW
Mr. M. P. Ellinghaus

A course of two classes per week throughout the year.

SYLLABUS
Mercantile law is concerned with various commercial transactions, as well as with certain agreements between businessmen and private citizens. It is built on the foundation of the law of contracts.

The topics studied may vary from year to year, but will usually be selected from the following: sale of goods, hire-purchase, negotiable instruments, insurance, carriage of goods by land, sea and air, and restrictive trade practices.

BOOKS AND MATERIALS
(a) Recommended for preliminary reading:
(b) Statutes, books, and materials relevant to the topics mentioned above are:


Paton, G. W., *Bailment in the Common Law.* (Stevens, 1952.)


Richardson, J. E., *Introduction to the Australian Trade Practices Act.* (Hicks, Smith & Sons Pty. Ltd., 1967.)


EXAMINATION

One 3-hour paper for Pass or for Honours respectively. A mid-year test may be held; if it is the results obtained may be taken into account in assessing a candidate's final result.

257. PRINCIPLES OF CONTRACT

Mr. S. D. Clark, Mr. M. P. Ellinghaus, Mr. R. C. Kenzie

A course of two classes per week throughout the year, with additional classes as scheduled.

SYLLABUS

The law of contracts is of fundamental importance in most commercial transactions and forms the basis for the study of Mercantile Law, Principles of Equity, Legal Persons, Land Contracts, Securities and Creditors' Rights and Taxation.

Modern developments in the law are largely concerned with reconciling rules made in simpler days when people enjoyed more equal bargaining power and could more realistically negotiate an agreement to their mutual satisfaction, with the complexity of modern business life where many contracts are printed in standard forms and there is a social need to prevent ordinary people being held to bargains, the implications of which they may not have fully understood.

The course is a study in depth of reported cases. Its object is not only to equip students with an understanding of principle, but also to create an awareness of contemporary problems and trends which are now having an impact on the development of doctrine.

The topics to be studied will be chosen from problems confronted in the formation of contracts and the discharge of contractual obligations. Factors affecting the validity and enforceability of contracts and remedies for failure to observe obligations will be considered.

Students may be required to (a) sit for a mid-year test, (b) submit either two exercises each of 1,000 words, or one exercise of 3,000 words. Full details will be given to students at the beginning of the academic year.

BOOKS

(a) Recommended for preliminary reading:


(b) Prescribed casebook:

(c) Recommended for reference:
Cheshire, G. C., and Fifoot, C. H. S., (J. G. Starke and P. F. P. Higgins, eds.),
(22nd ed., O.U.P., 1964.)
Chitty on Contracts. (22nd ed., Sweet & Maxwell, 1961.)
Corbin on Contracts. 8 vols. (West Publishing Co., 1963.)

EXAMINATION

One 3-hour paper for Pass or for Honours respectively. The written work and test
described above may be taken into account in assessing a candidate's final result.

266. PRINCIPLES OF EVIDENCE
Dr. C. L. Pannam

A course of two classes a week throughout the year.

SYLLABUS

This course deals with the general principles of the Law of Evidence, the
manner in which evidential material is presented to the Court, the rules as to what
witnesses may present evidence to the Courts and as to what evidence will be
rejected by the Courts.

The common law system has, during the past three centuries, developed a detailed
set of rules governing the reception of evidence by Courts. These rules were origi-
nally devised with the purpose of ensuring, as far as possible, that evidence which
might have to be evaluated by a jury should be trustworthy. The common law there-
fore developed its rules with a view to providing a guarantee in advance as to the
probable trustworthiness of evidence which might be tendered. Its original rules
have been much modified by statute since the middle of the nineteenth century but
the original structure has remained and (if one assumes the accuracy of its under-
lying assumptions) presents a logical and coherent body of principles.

This course discusses the Law of Evidence as such a body of principles and
concentrates especially on analysing them and exhibiting their interconnection. In
this respect it adopts a different approach to the practical method of dealing with
problems of evidence and proof which is often encountered in the course of actual
court work.

BOOKS

Prescribed textbook:
published in 1971.)

Students are also required to obtain the Evidence Act, 1958.

Prescribed casebook:

Recommended for reference:
Cockle, E., Leading Cases and Statutes on the Law of Evidence. (9th ed., Sweet
and Maxwell, 1957.)
Baker, R. W., The Hearsay Rule. (Pitman, 1950.)

EXAMINATION

One 3-hour paper for Pass or for Honours respectively. A mid-year test may be
held; if it is the results obtained may be taken into account in assessing a candidate's
final result.

258. PRINCIPLES OF PROPERTY AND CONVEYANCING
Mr. R. Sackville

A course of sixty-two classes during the academic year.

SYLLABUS

The course is concerned with an analysis of the basic principles of the law of
property.
This study transcends the traditional boundaries of real and personal property, although for reasons of time and convenience, most topics to be discussed are those usually considered under the rubric of "real property."

The course commences with an inquiry into the meaning of the concept of property and the purposes that are, or ought to be fulfilled by the law of property. There is then a critical analysis of some of the traditional concepts and classifications adopted by the common law in the context of a study of the law of fixtures. After a brief consideration of the impact of the Commonwealth Constitution upon the law of property the following topics are discussed: possession as a proprietary interest in land and goods; some basic concepts such as seisin and title; the fragmentation of proprietary interests, including the doctrines of tenure and estates, an introduction to future interests, the rules relating to concurrent proprietary interests; the development of legal and equitable interests, including a comparative treatment of their nature, extent and sphere of enforceability; the freehold estates in land with emphasis upon the reconciliation of the interests of the holder of the fee simple estate and all the community; the operation of the Settled Land legislation and trusts for sale; the acquisition of proprietary interests, with emphasis upon gifts of choses in possession and the operation of the Limitation of Actions Act in relation to interests in land; commercial transactions involving leasehold interests in land and bailment of goods; private planning in relation to land by means of easements, restrictive covenants, profits; security transactions with emphasis upon mortgages of interests in land; an introduction to the Torrens system of registration of interests in land; some problems relating to the reconciliation of the needs of the community and the desires of the holders of proprietary interests, in particular problems of planning of land resources (for example, zoning).

Students may be required to (a) sit for a mid-year test, (b) submit either two exercises each of 1,000 words, or one exercise of 3,000 words. Full details will be given to students at the beginning of the academic year.

**BOOKS**

(a) Prescribed for preliminary reading:


(b) Prescribed books:


or *Cheshire, G. C., Modern Real Property.* (10th ed., 1967, Butterworth.)

Students must obtain copies of the following Acts which will be used in classes:


(c) Recommended for reference:


**EXAMINATION**

One 3-hour paper for Pass or for Honours respectively. The written work and test described above may be taken into account in assessing a candidate’s final result.

281. PROBLEMS OF PROOF

This subject will not be available in 1971.

285. PROCEDURE

Mr. N. J. Williams

A course of one class per week throughout the year.

**SYLLABUS**

This subject is concerned with the rules applicable in the conduct of civil
actions in the Supreme Court, to a lesser extent with the jurisdiction and practice in Magistrates' Courts, the control of those Courts by the County Court and by the Supreme Court, and with appeals from a judgment of the Supreme Court to the High Court.

Litigation is regulated conflict and the regulation of that conflict is largely embodied in and stems from the rules of procedure known as the Rules of the Supreme Court. The current Rules of the Supreme Court are those made in 1957 although amendments have been made to those rules from time to time since 1957.

The course studies those rules in relation to all the steps necessary to bring a case on for hearing, from the day when a writ is issued, the steps which are taken thereafter e.g. service of the writ of summons, the defendant's entry of appearance thereto, the pleadings exchanged between the parties, the principal forms of interlocutory proceedings e.g. discovery, interrogatories, the rules determining whether a case is to be tried by a Judge alone or by a Judge with a jury, the way in which a judgment may be enforced e.g. by Writ of fieri facias, Writs of possession etc., attachment of debts etc. The course also deals with appeals from a single Judge to the Full Court of the Supreme Court and from the Supreme Court to the High Court.

Lastly, the course examines the jurisdiction, ordinary and special, of Magistrates' Courts and the principal procedural provisions applicable thereto as contained in the Justices Act 1958 and discusses appeals therefrom to the County Court and to the Supreme Court.

BOOKS

Students are required to obtain:


Recommended for reference:

- Williams, N. J., Supreme Court Practice. (Butterworth, 1964, with supplement to 1970.)

EXAMINATION. One 3-hour paper, for Pass only.

287. PROFESSIONAL CONDUCT

Mr. P. U. Rendit

A course of sixteen classes in first and second terms.

SYLLABUS

This subject relates to the rules established by law and custom for the conduct of legal practice in Victoria.

The course includes:

(a) The characteristics of a profession and their application to the legal profession;

(b) The history and organization of the Victorian legal profession;

(c) The sources from which the principles of legal professional conduct are derived.

(d) The duties owed by a practitioner to

(i) the law,
(ii) the Court,
(iii) his client,
(iv) his fellow practitioners.

(e) Special statutory obligations of solicitors under the Legal Profession Practice Act.

BOOKS

Prescribed textbook:


75
**Legal Profession Practice Act. (Vic.)** 1958. As amended. (Reprint [No. 2] [1st May, 1968] incorporates amendments up to and including Act No. 7539 which is the last amending Act at present.)

Auditors (Disclosure of Information) Rules as amended.

Solicitors (Audit and Practising Certificates) Rules as amended.

Solicitors (Professional Conduct and Practice) Rules.

Sharing of Remuneration Rules.

*Note:* that the above rules are set out in Heymanson and Gifford's book and the second supplement to such book brings the Rules up to 1965.

Detailed references to other works will be given by the lecturer.

**EXAMINATION.** One 3-hour paper, for Pass only.

### 260. SECURITIES AND CREDITORS' RIGHTS

Professor Sykes

A course of one class per week throughout the year.

**SYLLABUS**

This is a new course introduced in 1969 and comprises the following: *viz.*—

1. A comprehensive and systematized study of the law relating to securities, (i.e. those interests in property given to a creditor to enable him to secure payment of debts or fulfilment of obligations owed to him). This includes a treatment of both the mortgage and non-mortgage type of security over land and personal property (both tangible chattels and choses in action). It also covers a treatment of the law concerning bills of sale and allied securities over personalty, securities given by companies, and the general problem of priorities between competing interests. Some attention is given to the problems of consumer credit purchase but the topic of hire purchase as such is treated under Mercantile Law.

2. A general study of the methods available for enforcement of a judgment.


**BOOKS**

(a) Prescribed textbooks:

Sykes, E. I., *The Law of Securities.* (Law Book Co., 1962.) [The lecturer will indicate what portions of this book may be omitted.]


(b) Statutes:

Students must obtain copies of the following Acts which will be used in class:—


*Companies Act* (Victoria) 1961.

*Bankruptcy Act* (Commonwealth) 1966.

(c) Recommended for reference:


McDonald, Henry and Meek., *Australian Bankruptcy Law and Practice.* (3rd ed., Law Book Co., 1953.)


**EXAMINATION.** One 3-hour paper for Pass and Honours respectively.

### 277. TAXATION

Professor H. A. J. Ford and Dr. C. L. Pannam

A course of two classes per week throughout the year.
SYLLABUS

In this course a study is made of the law relating to Income Tax, Estate and Probate Duty, Gift Duty and Stamp Duty. Particular attention is given to Income Tax and Estate and Probate Duty. The legislation imposing these taxes is extremely detailed and complicated. Emphasis will be placed on the principles underlying and embodied in the legislation rather than its detailed operation. The need to keep in mind the evidence of these various taxes when planning a client's affairs will also be stressed.

BOOKS

Prescribed casebook:

Recommended for reference:
Hannan, J.P., Principles of Income Taxation. (Law Book Co.) O.P.

Further references will be given by the lecturer.

EXAMINATION

One 3-hour paper, for Pass or for Honours respectively.

NON-LAW SUBJECTS

Attention is directed to the requirement in the regulation that these subjects must be selected so that they form a group of two comprising a course of study in a single discipline.

The subjects may be chosen from courses for any other degree or diploma. Because of the imposition of subject quotas in some courses, the students' choice is limited usually to Arts and Commerce (for details see Arts and Commerce handbooks) or to Criminology, in which Criminology A and Criminology B will be approved. For details students should consult the Criminology handbook.

FRANK PINKERTON SCHOLARSHIP

Candidates must be graduates in law of this University or barristers and solicitors of the Supreme Court of Victoria, in either case of not more than ten years' standing. Where the candidate possesses both qualifications, time will run from the qualification first secured.

Each candidate must submit a subject pertaining to the law of Real and Personal Property, on which he proposes to undertake research.

The nature of the subject will be considered, as well as the ability of the candidate, in making the award.

The emoluments of the scholarship will be the net income of the endowment during the preceding year. The award will be made in the first instance for one year, but may be renewed for two further years.

The candidate will work under a supervisor nominated by the Faculty and the scholarship may be terminated at any time if the scholar does not discharge his duties to the satisfaction of the supervisor.

Applications should be addressed to the Registrar.
CHAPTER 8

SCHOLARSHIPS, BURSARIES, PRIZES AND FINANCIAL ASSISTANCE

Financial Assistance

Although it is the student's own responsibility to arrange the finance needed to support him through the University, some financial assistance is available.

Of the general scholarships offered for the whole period of a course the majority are awarded by the Commonwealth Government and the Victorian Education Department. A smaller number of other scholarships is also awarded at the commencement of University study and others are open to competition in later years of a course. In addition, annual exhibitions and prizes are awarded in a number of subjects.

The University awards annually a limited number of bursaries, usually of $100 a year, and students may also apply for loans from the Students' Loan Fund. Bursaries and loans are not normally offered in the First Year of a course.

Commonwealth University Scholarships

(a) **Open Entrance Scholarships**—Awarded on the basis of results in the best three subjects (excluding English Expression) at the Higher School Certificate examination in four or more subjects. However, an adjustment is made in respect of additional subjects taken and account is taken of whether a student is repeating the examination. Applicants up to 30 years of age.

(b) **Later Year Scholarships**—Awarded to undergraduates on results obtained in the equivalent of at least one year of full-time study in an approved University course. Applicants up to 30 years of age.

(c) **Mature Age Scholarships**—Awarded either on results obtained in the Higher School Certificate examination or, if the applicant has already commenced an approved university course, on his academic record in the course. In the latter case he should have completed the equivalent of at least one full-time year of the University course. Applicants over 30 and under 40 years of age. Only a small number of awards are made each year.

**Benefits:** All compulsory fees. Full-time students may be granted a living allowance subject to a means test.

**Applications:** Applications close on 30th September each year.

All enquiries should be addressed to:

The Regional Director,
Department of Education and Science,
99 Queen Street,
Melbourne, Vic. 3000.

**Gowrie Scholarship Trust Fund**

In addition to postgraduate research travelling scholarships and secondary school scholarships, four or five University entrance scholarships, of the value $150 p.a. and tenable for the normal period of a University course, are awarded by the trustees. Open only to members of the Australian Armed Forces (or their descendants) who served overseas in the war of 1939/45. Applications for all Scholarships are due on 30 November each year. Further particulars may be obtained from the Secretary, The Gowrie Scholarship Trust Fund, P.O. E.S. St. James, Sydney, N.S.W. 2001.

**Students' Loan Fund**

Loans up to $500 may be made to students pursuing courses satisfactorily. A guarantor able and willing to guarantee the repayment of the loan must be provided.
Enquiries from:
Accounts Branch,
University of Melbourne,
Parkville, Vic. 3052.

Provided that the borrower's work is satisfactory, the loan is free of interest during his course. Thereafter interest is chargeable at the rate of 4½ per cent. for five years, and at 5 per cent on any balance unpaid after that period.

Further information may be obtained from the Accountant's office.

Supreme Court Prize and Exhibitions

1. The following annual prize to be known as the Supreme Court Prize:
   To the candidate selected by the Faculty of Law as being the best student completing the final year of the course for the degree of bachelor of Laws with honours—$362.

2. The following exhibitions to be known as Supreme Court Exhibitions to be awarded annually:
   (a) To the candidate recommended by the examiners and placed first among all candidates in each of the subjects Equity, Mercantile Law and Principles of Evidence, $30.00.
   (b) To the candidate recommended by the examiners and placed first among all candidates in the subject Land Contracts, $10.00.

General Motors-Holden's Pty. Limited Exhibitions

The following exhibitions to be known as General Motors-Holden's Pty. Limited Exhibitions to be awarded annually:

1. To the candidate recommended by the examiners and placed first among all candidates in each of the subjects Constitutional Law and Taxation, $30.00.
2. To the candidate recommended by the examiners and placed first among all candidates in the subject Land Contracts, $20.00.

Anna Brennan Memorial Prize

The Anna Brennan Memorial Prize of $50 is offered by the Legal Women's Association of Victoria to the woman placed highest in the final honour class list in Laws. If no woman is placed in such class list, then the prize shall be awarded to the woman with the best record throughout the course for the degree of bachelor of Laws, as recommended by the Dean of the faculty of Law.

Postgraduate Studies

Grants from Research Funds

Allocation

Grants from the general research fund are made by the Professorial Board on the advice of its Standing Research Committee and the heads of the departments concerned.

Research Awards

The University of Melbourne grants to students a limited number of research awards from its own resources. Where an award is made, scholars are expected to devote their whole time to research except for such tutoring and demonstrating work as is approved by the head of the appropriate department. Awards are made for one year, but may be renewed for additional yearly periods.

Research grants are awarded to selected graduates of Bachelor standing.

Research scholarships known as Williams Scholarships are awarded to selected candidates of Master standing who have shown marked ability for research and who are undertaking further research training, as Ph.D. candidates. Research scholarships may be renewed annually for a period not exceeding three years.

Emoluments of Awards

For students proceeding to a Master's degree the value of a research grant is $1,600 p.a. plus compulsory fees. The value of research scholarships varies from $1,800 to $1,950 per annum (plus annual compulsory fees).
Research Fellowships

The University of Melbourne has established five research fellowships, not more than two of which may be senior fellowships. The senior fellowships have the status and salary of a senior lecturer and a fellowship the status and salary of a lecturer. Fellowships may be held for one, two, but not more than three years. Travelling allowance is made for a fellow appointed from overseas. Fellowships will be advertised as they become vacant.

Travelling Research Scholarships

Two travelling research scholarships* are offered in two years out of every three to enable a graduate who shows first-rate capacity for research to undertake approved work at an overseas university, or other suitable institution. The value of the scholarship, which is normally awarded for three years, is $2,500 per annum.

Research Report

All persons conducting research in the University, whether under research awards or otherwise, are required to submit, by the end of February in each year, reports on their research during the preceding twelve months to the heads of their departments, together with a list of their research publications during the period. Heads of departments also submit departmental research reports, which are published in the annual University of Melbourne Research Report.

Mode of Application

Applications for research awards and grants must be made on a form designed for the purpose (and available at the office of the Dean of Graduate Studies). Applications must be lodged with the Secretary for Graduate Studies before 19 December. In general, research awards are made as from 1 March.

Further information may be obtained from the Secretary for Graduate Studies.

Summary of Awards

In some cases Law students compete for awards with students of other faculties. This fact is indicated by an asterisk being placed beside the title of the award. Values of awards as shown are approximate only.

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<tr>
<th>Field</th>
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<th>Calendar Reference or Information Source</th>
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<tr>
<td>Unrestricted</td>
<td>*Senior Government Scholarship $80 p.a.</td>
<td>Secretary, Education Department, Treasury Place, Melbourne, Vic. 3002</td>
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<tr>
<td></td>
<td>*Free Places Tuition Fees</td>
<td>Secretary, Education Department, Treasury Place, Melbourne, Vic. 3002</td>
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<tr>
<td></td>
<td>*N.U.A.U.S.</td>
<td>R.6.97</td>
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<td></td>
<td>*Dick Bursaries $100</td>
<td>Accounts Department R.6.54</td>
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<tr>
<td></td>
<td>*Moran Bursaries $180 p.a.</td>
<td>Accounts Department R.6.49</td>
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<tr>
<td></td>
<td>*Rest Home Bursary $100 p.a.</td>
<td>Accounts Department R.6.34</td>
</tr>
<tr>
<td></td>
<td>*Edwin Nonus Smith Scholarship $100 p.a.</td>
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<td>*War Bursaries Tuition Fees</td>
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* The Aitchison Travelling Scholarship and the Myer Scholarship which are together worth $2,500 are also available for research abroad. The combined scholarship is also offered for three years but only in two out of every three years.
<table>
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<tr>
<th>Field</th>
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<td>Ahepa Bursary $230</td>
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<td>Lucy Knapp Bursaries (3) Approx. $105</td>
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<td>Saltau-Price Scholarship</td>
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<td>Schutt Scholarship</td>
<td>Fees and living allowance</td>
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<td>Law</td>
<td>Chrisp Bursary $176 p.a.</td>
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**UNDERGRADUATE**

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<td>Marion Boothby Exhibition $30</td>
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<td>Rosemary Merlo Prize $18</td>
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<td>Robert Craig Exhibition $60</td>
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<td>Constitutional History</td>
<td>Jessie Leggatt Scholarship $30</td>
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<td>Legal Persons</td>
<td>John Madden Exhibition $50</td>
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<tr>
<td>Comparative Law</td>
<td>Harrison Moore Exhibition $30</td>
<td>Awarded on examination results</td>
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<td>J. R. Maguire Exhibition $80</td>
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<td>Sir George Turner Exhibition $50</td>
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<tr>
<td>English</td>
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<td>John Madden Exhibition $50</td>
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<tr>
<td>Legal History</td>
<td>Dwight’s Prize $50</td>
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<td>Principles of Property</td>
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<td>Conflict of Laws</td>
<td>Jenks Exhibition $30</td>
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<tr>
<td>International Law</td>
<td>Bailey Exhibition $30</td>
<td>Awarded on examination results</td>
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<tr>
<td>The Law of Torts</td>
<td>J. R. Macquarie Exhibition $80</td>
<td>R.6.89</td>
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81
<table>
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<td>*Aitchison Travelling Scholarship</td>
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<td>*Baillieu Research Scholarship</td>
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<td>*Bartlett Research Scholarships</td>
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<tr>
<td>*British Council Travel Grants</td>
<td>Tourist return sea passage</td>
<td>See “Announcements” Registrar’s Office</td>
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<td>*Cawrie Research Travelling Scholarships</td>
<td>£720 stg.</td>
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<td>*Rhodes Scholarship</td>
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<td>*Sir Arthur Sims Travelling Scholarship</td>
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<td>Outhwaite Scholarship</td>
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<td>*Wyselaskie Scholarship</td>
<td>R.6.7 The Registrar</td>
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SUMMARY OF FEES FOR UNIVERSITY COURSES

Where possible, fees should be paid into a branch of the National Bank of Australasia. There is a branch of this bank in the University grounds. A special pay-in slip is issued by the bank and this should accompany enrolment or entry form.

Fees for University courses may be paid either terminally or for the whole year. Fees for the whole year or for first term are paid when enrolments are lodged (i.e. in January). Fees for second term are paid when re-enrolments for second term are lodged (i.e. by the end of first term). Fees for third term are paid by the week before the end of second term.

In addition to the fees given below, students are required to pay the following fees:

(a) An annual Registration Fee of $27, which is reduced to $16 for part-time students and to $8 for external students.
(b) A Union Entrance Fee of $15, paid by every new student enrolled for lectures.
(c) An annual Union Fee of $25.20, which is reduced to $12.60 for part-time students and students in the fifth and sixth years of the Medical course.
(d) An annual Students’ Representative Council Fee of $6.00 paid by all students except those enrolled for external studies.
(e) An annual Sports Fee of $10.50, which is reduced to $4.50 for part-time students.
(f) An annual Library Fee of $9, which is reduced to $1.50 for part-time students.

DIPLOMA COURSES

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<tr>
<th></th>
<th>Education</th>
<th>Journalism</th>
<th>Diploma in Music Concert Diploma in Music</th>
<th>Physical Education</th>
<th>Public Administration</th>
<th>Social Studies</th>
<th>Town and Regional Planning</th>
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<td>First Year</td>
<td>$300.00</td>
<td>$285.00</td>
<td>$345.00</td>
<td>$312.00</td>
<td>$336.00</td>
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<td>$312.00</td>
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<td>Third Year</td>
<td>$345.00</td>
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<td>Fourth Year</td>
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<td>$312.00</td>
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<td>$486.00*</td>
<td>$1,035.00</td>
<td>$624.00</td>
<td>$672.00</td>
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* A Library and Publication fee of $6.30 is paid for each year of enrolment in the Education course.
* Not divided into years.

N.B. FEES: As all fees are under review at the time of publication, with the object of simplifying the fee system, it is the responsibility of students to consult departmental notice boards on enrolment in 1971 to determine whether or not they are required to pay any special fees for notes, apparatus, and the like.
<table>
<thead>
<tr>
<th>Year</th>
<th>Agricultural Science</th>
<th>Applied Science</th>
<th>Architecture</th>
<th>Arts</th>
<th>Building</th>
<th>Commerce</th>
<th>Dental Science</th>
<th>Education</th>
<th>Science (Education)</th>
<th>Engineering, Surveying</th>
<th>Law</th>
<th>Medicine</th>
<th>Music</th>
<th>Science</th>
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<td>$1500.00</td>
<td>$1725.00</td>
<td>$1560.88</td>
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<td>$444.00</td>
<td>$1440.00</td>
<td>$1500.00</td>
<td>$263.10</td>
<td>$263.10</td>
<td>$1332.00</td>
<td>$1332.00</td>
<td>$1380.00</td>
<td>$1335.00</td>
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* Also accommodation fees while in residence at Mt. Derrimut field station, $525
* Includes College of Pharmacy Fee of $4 and Hospital Entrance fee of $63.00, each being paid to the appropriate institution
* includes Clinical fees, etc., $44.10
* Includes Clinical fees, etc., $223.90
* Includes Clinical fees, etc., $64.10
* If a student includes Psychology I or part I of a Science subject for which laboratory work is required, an extra $36 is paid
* Honours course in Psychology.
* Honours Degree.
* * A Publication Fee of $3 p.a. is paid for each year of enrolment in Law
* Honours Degree.
* A Library and Publication fee of $6.30 is paid for each year of enrolment in the Education course, for the Fourth Year of the School Music course, and for the Third Year of the Science (Education) course
* Also accommodation fees while in residence at Werribee Veterinary Clinical Centre, $525