

Queensland University
of Technology

LAW JOURNAL

1992

Volume Number 8

QUEENSLAND UNIVERSITY OF TECHNOLOGY

LAW JOURNAL

Vol 8

1992

EDITORS

Professor D.E. Fisher, M.A. LL.B. Ph.D. Edinburgh, Solicitor (Scotland)

Professor C.D. Gilbert, B.A. LL.B.(Hons) LL.M. Qld, D.Jur. York,
Barrister and Solicitor (ACT), Solicitor (Qld) (Clayton Utz Professor of
Commercial Law)

H.M. Endre, LL.B. Grad.Dip.Legal Prac. Adel., Solicitor and Barrister (SA),
Solicitor (NSW)

STUDENT EDITORS

R. Baumfield

T.M. Bazeley

D.K. Beikoff

S.L. Bland

S.J. Brandon

H. Callianiotis

D.R. Lester

J.C. Lilienstein

R.A. Megson

B.A. Meredith

P.A. Roberts

Contributions to *The Queensland University of Technology Law Journal* on any topic of legal interest are welcomed. Any person intending to contribute is requested to notify the Editors before submitting a manuscript.

Editorial communications should be addressed to:

*The Editor
QUT Law Journal
Faculty of Law
Queensland University of Technology
GPO Box 2434
Brisbane Q 4001
Australia
Telephone: (07) 864 2707*

Advertising space is available in the Journal. Intending advertisers should contact the Business Manager, at the above address and telephone number.

The current subscription to the Journal is \$15 per issue. Intending subscribers should contact the Business Manager, or if in North America:

*Wm W Gaunt & Sons Inc
3011 Gulf Drive
Holmes Beach
Florida, USA 34217-2199*

This issue may be cited as
1992 8 Q.U.T.L.J.
ISSN 1032-6693

© Queensland University of Technology Law Journal, 1992

Typeset and printed by QUT Publications

LAW

Faculty of Law, Gardens Point Campus

Dean: Professor D.G. Gardiner, BA LLB(Hons) *Syd.*, Barrister

Associate Dean: Professor M. Cope, BA LLB *Qld*, Barrister

Law Library

Law Librarian: T.C.M. Hutchinson, BA LLB *Qld*, DipLib *NSW*, GDLegalPrac *QIT*

Assistant Law Librarian: E. Jensen, BA LLB(Hons) *Qld*, GDLegalPrac *QIT*, GDLibSc *QUT*

Research Studies

Acting Director: S.G. Corones, BCom LLB PhD *Qld*, LLM *Lond.*, Solicitor (Qld, England and Wales)

Postgraduate Studies

Acting Director: A.E. Wallace, LLB(Hons) *Qld*, LLM *Monash*, Solicitor

Centre for Commercial and Property Law

Professor W.D. Duncan: LLB *Qld*, LLM *Lond.*, Solicitor (Feez Ruthning Professor of Property Law)

Professor C.D. Gilbert: BA LLB(Hons) LLM *Qld*, DJur *York*, Barrister and Solicitor (ACT), Solicitor (Qld) (Clayton Utz Professor of Commercial Law)

Law School

Professor: D.E. Fisher, MA LLB PhD *Edin.*, Solicitor (Scotland)

Principal Lecturer: C.A.C. MacDonald, BA LLB *Qld*, LLM *Lond.*, Solicitor

Senior Lecturers:

G.R. Clarke, BA LLM *Qld*, LLB(Hons) *QIT*, Barrister

I. Davies, LLB(Hons) GDLegalPrac *QIT*, LLM *Qld*, Solicitor

G.A. Egert, BA LLM *Qld*, Barrister

G.E. Fisher, BA(Hons) LLB(Hons) *Qld*, BCL(Hons) *Oxf.*

W. Lane, LLB *Syd.*, LLM *Melb.*, Solicitor (NSW)

P. MacFarlane, BA *Flin.*, BLegS *Macq.*, LLM *Syd.*, Barrister

A.L.W. Mason, LLM *Qld*, Solicitor

R.J. Sibley, CertEng LLM *Qld*, Barrister (Qld, HCA)

P.V. Tahmindjis, BA LLB *Syd.*, LLM *Lond.*, Barrister (NSW)

I.A. Wilson, LLM *Melb.*, Barrister and Solicitor (Vic), Barrister (Qld)

Lecturers:

D.A. Butler, LLB(Hons) *QIT*, Solicitor

S.A. Christensen, LLB(Hons) *QIT*, Solicitor

T.L.C. Cockburn, BCom LLB(Hons) *Qld*, Solicitor (Qld, ACT)

S.E. Colbran, BCom(Hons) LLB(Hons) *Qld*, LLM(Hons) *QUT*, Solicitor

C.A. Crawford, BA LLB *Qld*, AALIA

L. de Plevitz, BA *NSW*, LLB(Hons) *QUT*, Solicitor

N. Dixon, BA LLB(Hons) *ANU*, Solicitor

A.M. Duetz, LLB(Hons) *QIT*, Solicitor

A. Edwards, LLB(Hons) GDLegalPrac *QUT*, BSocWk *Qld*

H.M. Endre, LLB GDLegalPrac *Adel.*, Barrister and Solicitor (SA), Solicitor (NSW), Barrister (Qld, England and Wales)

S.C. Fisher, LLB(Hons) *NSWIT* LLM *QUT*, Barrister and Solicitor (ACT), Solicitor (NSW, Qld)

W.E. Harris, LLB(Hons) *QIT*, Solicitor

S.M. Jackson, LLB(Hons) *QIT*, LLM *Qld*, Solicitor

A.I. MacAdam, BCom LLB(Hons) *Qld*, Barrister
 R.M. Macdonald, BA LLB(Hons) *Qld*, GDLegalPrac *QIT*, LLM *QUT*, Solicitor
 G.I. Mackenzie, LLB *QIT*, LLM *QUT*, Solicitor
 F.A. Martin, LLB(Hons) *UTS*, LLM *Syd.*, Solicitor (NSW)
 D. McGill, BA LLB(Hons) LLM *Qld*, Barrister
 F.D. McGlone, BA DipEd LLB *Syd.*, Barrister (NSW)
 G.E. Nisbet, BASocWk *Qld*, LLB(Hons) *QIT*, LLM *QUT*, Solicitor
 J.R. Pyke, BSc LLM *Syd.*, LLB *NSW*, Barrister (NSW)
 M.M. Quirey, BA LLB(Hons) LLM *Qld*, Solicitor
 M.M.J. Ridley, BA LLB(Hons) *Qld*, GDLegalPrac GDLibSc *QUT*, Solicitor
 S.M. Rigney, BA LLB *Qld*, GDLegalPrac *QIT*, LLM *QUT*, Solicitor
 D.J. Robinson, LLB(Hons) GDLegalPrac *QIT*, LLM *QUT*, Solicitor
 N.J. Rogers, LLB(Hons) *QIT*, Solicitor
 C.A. Rowell, LLB DipT *QIT*, Solicitor
 M.J. Shirley, BA LLB(Hons) *Qld*, GDLegalPrac *QUT*, Solicitor
 P.L. Tan, LLB(Hons) *Malaya*, LLB(Hons) *QUT*, Advocate and Solicitor (Malaya)
 Barrister (NSW) Barrister and Solicitor (ACT) Solicitor (Qld)
 L.A. Taylor, BA LLB(Hons) *Qld*, LLM *Qld*, Solicitor
 S. Traves, LLB(Hons) *QUT*
 E.A. Webb, BA *Griff*, DipEd *Qld*, LLB(Hons) *QUT*
 L.M. Willmott, BCom LLB *Qld*, LLM *Camb.*, Solicitor
 L.G. Wiseman, LLB(Hons) GDLegalPrac *QIT*, LLM *Lond.*, Solicitor

Legal Practice

Director: Associate Professor J.K. de Groot, BA LLB *Qld*, Solicitor

Senior Lecturer: A.J. Chay, LLM *Qld*, Solicitor

Lecturers:

K.F. Maxwell, LLB GDLegalPrac *QIT*, LLM *QUT*, Solicitor

J. Pastellas, BA LLB LLM *Qld*, GDLegalPrac *QIT*, Solicitor

Faculty of Law, Kelvin Grove Campus

Justice Studies

Director: Associate Professor S.D. Petrie, BEd(Hons) *Leeds*, PhD *Qld*

Deputy Director: G.J. Dean, MSW *Qld*

Senior Lecturer: G. Christie, DipT DipEd MA MEd *Aberd.*

Lecturers:

A.N. Chantler, BSc *Qld*, GDTeach *Kelvin Grove*

S.M. Currie, BA LLB *Qld*, Barrister and Solicitor (ACT), Solicitor

C. Imlah, BA *UNE*, GDAbStudies *S.Aust.CAE*

C.J. Lennings, BA(Hons) MPsych *Syd.*

B.J. Mason, BA LLB(Hons) *ANU*, MPhil(Crim) *Camb.*, Barrister and Solicitor (ACT),
Solicitor (NSW)

S. McCulloch, DipT BA(Hons) MAppPsych *Qld*

M.A. Salidu, BA LLB *Qld*

C.S. Thorne, BA *Qld*, DipEdAdmin(Grad) MEd *Griff.*

B.O. Wigan, BA *James Cook*, DipOHSM DipMan *USA*

Faculty of Law, Kedron Park Campus

Court and Parliamentary Reporting

Course Coordinator: C.M. Hindmarsh, BA(SecStudies) *Canb.CAE*, MIPS

Lecturers:

H. Cain, ADCourt & Parliamentary Reporting *Bris.CAE*, RPR

T.A. Laing, DipCourt Reporting *NAIT*

QUEENSLAND UNIVERSITY OF TECHNOLOGY

LAW JOURNAL

Vol 8

1992

TABLE OF CONTENTS

ARTICLES

The Direct Effect of Secondary Legislation in European Community Law	<i>Simon Fisher</i>	1
Unconscionable and Misleading Conduct: How the Trade Practices Act is Used and the Duty to Advise	<i>Warren Pengilley</i>	35
Gentlemen and Players: Application of the Trade Practices Act to Government Bodies, Including Those Corporatised or Privatised	<i>Alan Tonking</i>	75
“9 Lords of the Universe”: A Re-examination of the Role of the Supreme Court of the United States as an Instrument of Judicial Review Within the Context of a Democratic Framework	<i>Peter Burge</i>	89
Law Language and Culture: Hermeneutic Preliminaries	<i>Peter Condliffe</i>	105
SOUTH PACIFIC LAW SECTION		
Taming the Robber Barons? The Reform of Forestry Legislation in Papua New Guinea	<i>David Mossop</i>	113
Abrogation of the Rights of Customary Land Owners by the Forest Resources and Timber Utilisation Act	<i>J.C. Corrin</i>	131
The Ownership of Minerals and Petroleum in Papua New Guinea: A Comment	<i>R.S. O’Regan QC</i>	141
The Dispute Between Nauru and Australia Over Rehabilitation: A Test Case for Economic Self-Determination	<i>M. Rafiqul Islam</i>	147
CASE NOTE		
Reflections on Malsons’ Case	<i>Adam Thatcher</i>	161