

## Obituary

### Harold Hyam Glass

Harold Glass, who became one of Australia's most distinguished lawyers, was born in Sydney in 1918, the son of a lawyer S.B. Glass, a man of literary and historical tastes. He was educated at Sydney High School, where he excelled in languages and was a prominent debater. At Sydney University he took an Arts Degree, majoring in French and German. He served in the Royal Australian Navy from 1942 to 1946.

Returning to Sydney, he took his Bachelor of Laws degree, was articled to Mr. Ray Tobias, of Lieberman & Tobias, for two years and was admitted to the New South Wales Bar in 1948, where he practised until his appointment to the Bench on the New South Wales Supreme Court in 1973. During his time at the bar he built up an enormous practice, specialising mainly in common law negligence cases, although in his last five years he applied his talents to equity, commercial law, constitutional law and maritime and admiralty cases. He took silk in 1962, and was President of the New South Wales Bar Association in 1973. He was appointed a Judge of Appeal in 1974, and he retired in 1987.

As befitted a man of his education and culture, he also did some important academic work. He lectured in contracts and torts at the University of Sydney soon after he graduated. Later he lectured at that University in procedure, and after he retired he became a visiting professor at the University of New South Wales. He was the co-author of The Liability of Employers, one of the few really first rate Australian legal treatises, and the editor of the valuable Essays on Evidence. In addition, he contributed articles to the leading legal journals.

He had many interests outside the law. One was the Navy, which he rejoined as a Commander Special Branch, ARNR as a member of the Reserve Legal Panel in 1966, being promoted

to Captain Special Branch in 1963. He was appointed to the office of Judge Advocate-General with the rank of Rear Admiral in 1978 and was promoted to Rear Admiral in 1980, shortly before he was placed on the retired list. He continued to serve as the Judge Advocate-General for the Navy until 1983. He was Australia's leading counsel at the Board of Enquiry at Subic Bay into the collision between the Frank E. Evans and the HMAS Melbourne.

He was a remarkable linguist. He read both Latin and ancient Greek. He read and spoke Hebrew, Yiddish, German, Italian and French. He delighted in the nuances and minutiae of each of them. He also loved music, particularly vocal music. He was immensely well read in English literature and contemporary politics and sociology. He was a keen student of Jewish affairs and an ardent supporter of Israel. He was an inveterate traveller.

As a lawyer his chief gifts were, perhaps, a keenly analytical mind married to a great power of brief lucid exposition, often couched in witty terms and always in elegant ones. His judgments on all aspects of the law of negligence will always be hallowed, as will his discussions of such subjects as what constitutes a prima facie case, the difference between a question of law and a question of fact and similar topics.

He had many personal friends both in the law (for example, Sir John Kerr, Mr. Justice McHugh, Mr. Justice Samuels) and outside the law (for example, the politician John Wheeldon and the poet James Maccauley). He was a most social and amusing companion, a brilliant raconteur and an accomplished conversationalist. He will be missed.

Our sympathies are extended to his wife, Irma and sons, Arthur and Jonathon - to whom he was profoundly devoted. □

## Surrogate Motherhood

The NSW Law Reform Commission's Report on Surrogate Motherhood was tabled on 2 March 1989 by the Attorney General, the Honourable J.R.A. Dowd, LLB MP. This is the final report in the Commission's reference on Artificial Conception. Two previous reports dealt with the topics of Human Artificial Insemination and In Vitro Fertilisation.

In its report the Commission takes the view that surrogacy should be discouraged by all practicable means available to the law. The principal reason given by the Commission for its opposition to surrogacy is that it is not in the interests of the community or the children created by its use for surrogacy to become a widely used method of overcoming fertility. For the same reason, the Commission also recommends that IVF surrogacy be prohibited.

Other major recommendations in this, the Commission's sixtieth law reform report, are:

. The welfare of the child should be the paramount consideration. The Commission recommends that, as in all matters of custody and guardianship, the interests of the child should prevail over those of everyone else.

. Commercial surrogacy should be prohibited. The Commission defines commercial surrogacy to extend to the activities of all who "pay, receive, offer or solicit any reward for participation in or facilitation of a surrogacy arrangement". The prohibition is designed to prevent all surrogacy

arrangements in which money changes hands and to impose criminal sanctions on anyone who pays or receives money to assist the parties in coming to an arrangement or carrying it out.

. Criminal sanctions should be imposed on anyone who knowingly assists the parties to organise or carry out a surrogacy arrangement. This prohibition would extend to anyone (including a lawyer or doctor) who knowingly assists the parties, but not the surrogate mother, her partner or the commissioning couple themselves.

. No legal effect should be given to surrogacy agreements. They should be void and unenforceable. The Commission hopes that by denying legal recognition to the agreements, people may be discouraged from entering into them. The parties should not be able to rely on an agreement to ensure transfer of the custody of the child or payment of any sums promised under it, even expenses.

. The surrogate mother should be legislatively presumed to be the legal mother of the child.

. Adoption should not be automatically available to those who commission a child through surrogacy. The Commission's view is that an adoption order should only be made when the interests of the child demand it.

Copies of the report, Surrogate Motherhood, are available from the NSW Law Reform Commission, Level 12, ADC House, 189 Kent Street, Sydney. Telephone (02) 228.7213. □