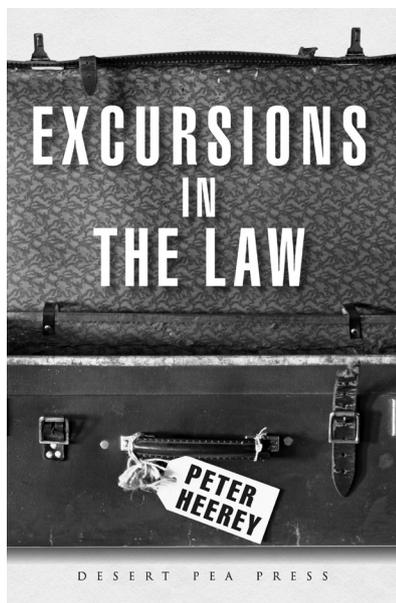


## Excursions in the Law

By Peter Heerey | Desert Pea Press | 2014



The foreword to this book was written by Sir James Gobbo. Sir James was the author's pupil-master when the author moved from his hometown of Hobart to Victoria and joined the Victorian Bar. Sir James remarks that he soon came to enjoy the author's breadth of interests, literary flair and wry sense of humour. Those traits are displayed clearly in this book which contains over 30 of the author's papers and other writings including poems.

True to the word 'excursions' in the title, the subject-matter of the papers, which is divided into five parts, is diverse and extends from Hobart and Victoria to overseas jurisdictions including Vanuatu, Canada, the United States and Ireland.

The first part of the book is entitled 'Tasmanian Stories'. It commences with a paper on the Tasmanian-born Andrew Inglis Clark for whom the author has a great admiration. The author describes him as the having 'laid down the basic structure of our Constitution'. The paper traverses Clark's life and concludes with commentary on the movement (supported by the author), in recent years, to seek to rename the federal

electoral division of Denison, which is named after Sir William Denison, lieutenant-governor of Van Diemen's Land from 1847 to 1855, to Clark. It is a very interesting paper especially for those who either have forgotten or did not ever know of Clark's role in preparing the initial draft of the Constitution.

Clark also appears in the paper which follows which celebrates the 'First Century' of the Supreme Court of Tasmania from 1824 to 1924 and in the first poem in the book which alludes to the apparent broken promise by Alfred Deakin to appoint Clark to the High Court. The paper entitled 'The Orr Case Revisited' is, perhaps, of more interest to the community as a whole. It concerns the *cause célèbre* of Professor Sydney Sparkes Orr who was dismissed from the University of Tasmania in 1955 as a result of the allegation that he had had a sexual relationship with an undergraduate. This part of the book concludes with 'Hobart – A Guide for Innocent Mainlanders'. That takes the reader from Salamanca Place and through Hobart and its surrounds. It ends rather delightfully with the suggestion that 'If your visit to Hobart is in any way employment-related, don't forget to put in for your hardship allowance'.

The second part of the book is 'The Justice Business'. It comprises a broad array of papers. One is a short history of the Victorian Bar which is based on a talk given by the author to the Victorian Bar Readers Course on 26 September 2012. Many matters mentioned are similar to those discussed in the NSW Bar Practice Course. However, two matters the author raises concerning silks are of particular note to those in NSW.

The first concerns the rosette which Victorian silks wear on the back of their gown. It would appear that although there are those in NSW advocating for

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a return to queen's counsel, no-one is suggesting a change to the silk gown so as to include a rosette. The author states that the purpose of the rosette was to prevent powder from the eighteenth century wig staining the back of the gown. Perhaps nostalgia for the concept of powdered wigs was stronger in Melbourne than Sydney following the separation of Victoria from NSW in the nineteenth century. In a subsequent short paper entitled 'Counsel's Baggage' the author sets out the history of the barrister's wig, gown and bag. The second matter concerning silks raised by the author is that although in Sydney 'there has long been a practice' that a silk, when robed, 'should never be seen carrying books or papers', no such practice has applied in Melbourne. The author comments that this is a paradox given that Melbourne is supposed, stereotypically, to be 'stuffy and conservative' while Sydney 'laid back and larrikin'.

The papers in the second part of the book include the author's response to the article by Dyson Heydon in the *Law Quarterly Review* entitled 'Threats to Judicial Independence: the Enemy Within' in which Heydon criticises off-bench discussions by appellate judges of the case before them. The author, who spent 19 years on the Federal Court, comments that since judges on superior courts exercising appellate jurisdiction 'have typically been successful in a career of two decades or so in a highly competitive, and sometimes combative,

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profession', they are 'unlikely to be shrinking violets, susceptible to seduction by suave glittering phrases or guileful blandishments, or being pushed into decision'. In a subsequent paper in the book entitled 'Judges at Work', the author comments on aspects of judgment writing. In addition, one of the author's poems included in the book is entitled 'Judgment Writing'.

Other papers in the second part of the book include the author's contrary argument to the debate in 2009 on the possible introduction of an Australian Charter of Rights and a paper on Sir Owen Dixon which is itself a review of the biography of Dixon by Philip Ayres.

In the third part of the book ('In Other Lands'), the author travels overseas. The first paper concerns the author's participation in one of the last Australian appeals to the Privy Council. The Author remarks, quite causally, that standing in the sunshine on an autumn morning in London outside the Dorchester Hotel while waiting for a cab 'a pleasing distraction is provided by the departure of the Sultan of Brunei in a powder blue Rolls coupe' with an entourage of bodyguards. The author comments that seeing this and trying to be 'as objective as one can', the thought 'crosses one's mind that ... there is much to be said for the retention of appeals to the Privy Council. Later in the paper, he describes the history of the Privy Council as 'that of the British Empire itself' using the advice in *Srimati Bibhabati Devi v Kumar Ramendra Narayan Roy* [1946] AC 508 as an example. The author describes the facts of *Srimati* as evoking 'a world of adventure and romance reminiscent of Kipling at his best'.

This part of the book also discusses the author's time as an acting judge in Vanuatu in 1992 and some impressions of Canada and, in particular, the position of Quebec in the federation, written in 1996–1997 when the author spent five months at McGill University in Montreal. Five papers have the United States as their theme. The subject of the papers are: aspects of the southern United States, including segregation, which paper followed a period of four weeks in 1993 which the author spent in Birmingham, Alabama teaching a course on comparative constitutional law in the Cumberland School of Law; a review of the fourth of a five volume series on Lyndon Johnson by Robert A Caro; a paper on Antonin Scalia based on a 2009 biography of Scalia by Joan Biskupic; a short piece on Abraham Lincoln following the 2005 book by Doris Kearns Goodwin entitled *Team of Rivals: The Political Genius of Abraham Lincoln*; and a paper entitled 'How Judges Think' on Richard Posner.

There then follows a paper on the author's experience of a dinner, in October 2001, at the home of the Irish Bar in Dublin, the King's Inn. He notes that on a coffee table was the latest issue of the *Australian Law Journal* which had reproduced the author's poem 'Judgment Writing' referred to above. The author states that he was able to give the first performance of that poem in Ireland 'or indeed in the Northern Hemisphere'. Part three concludes with a paper on the Dreyfus affair by reference to Robert Harris' novel *An Officer and a Spy*.

Part four of the book contains five papers under the heading 'Law and Literature'. They include a pithily-written analysis of *The Merchant of Venice* by reference to various issues of trade practices and a more lengthy paper on *Louth v Diprose*

(1992) 175 CLR 621. That paper refers to the lower-court proceedings and to various issues arising from the *Louth v Diprose* litigation including what the author terms 'litigation storytelling' and issues of 'gender, class and structural power'. Storytelling also is the subject of another paper in this part entitled 'Storytelling, Postmodernism and the Law'.

The paper 'Aesthetics, Culture, and the Whole Damn Thing' is adapted from an address by the author to the International Conference of the Law & Literature Association of Australia in 2002. It contains various anecdotes including humorous moments in court. One such example concerns the maxim *in pari delicto potior est condition defendentis*. The author states the example is sourced from the west of Ireland, where the plaintiff is pursuing a particularly dubious claim, and is as follows:

Judge: Mr Houlihan, is your client aware of the maxim *in pari delicto potior est condition defendentis*?

Counsel: My Lord, in the bogs of Connemara they speak of little else.

The final part of the book concludes with four short pieces written by a person whom the author describes in the introduction to the book as 'my mysterious friend Publius who writes an occasional column for the Commercial Bar Association newsletter'. Whether Publius is a friend of Bullfry is anyone's guess.

Peter Heerey is to be commended for a book which contains a collection of papers and other writings on such a variety of topics.

**Reviewed by Daniel Klineberg**