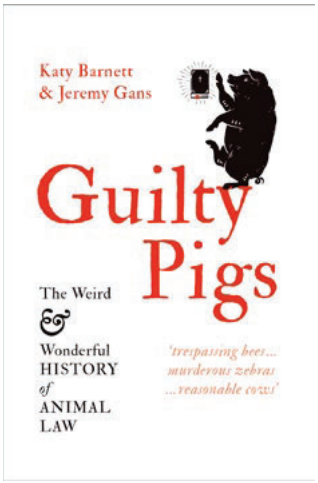
BOOK



Guilty Pigs The Weird & Wonderful History of Animal Law

By Katy Barnett & Jeremy Gans (LaTrobe, 2022)

In 1386, the Tribunal of Falaise, in France, sentenced a criminal defendant to death for murdering a child. Before her execution, the defendant was dressed in new clothes, and to reflect the injuries she had inflicted on the child, her head and legs were wounded. She was then hanged before a crowd.

As the authors of *Guilty Pigs* observe, what is remarkable about this trial is that the defendant was a female pig, tried and found guilty as if she were human. Thus begins Chapter 3 of this fascinating account of the relationship between humans and animals in the law.

The book begins with the life-saving decision of the High Court of Australia in *Isbester v Knox City Council*, which provides the context for a general description of the way in which the relationship between humans and animals gives rise to issues of private law, criminal law, and public law. This chapter sets the tone of the book: the way in which animal law can be a platform for understanding human law from different perspectives.

The book is thereafter divided into chapters describing the six core dimensions of animals in the law: owning, controlling, blaming, understanding, harming and protecting animals. The chapters address such questions as: who owns the cygnets where the owners of the cob and the pen are different (see the *Case of Swans*, 1592); are landowners who spray pesticides liable for the death of foraging bees from neighbouring lands (see *Lenk v Spezia*, 1949; cf. *Bennett v Larsen Co.*, 1984); do cats make useful spies (see the CIA's Acoustic Kitty Project); who owns the copyright in selfies taken by a crested black macaque (see *Naruto v Slater*, 2018)? The stories recounted in the book are each valuable for their quirkiness, mundanity, darkness, or illustration of legal or philosophical concerns.

This is not, and does not pretend to be, a comprehensive analysis of the law relating to animals. It is rather an exploration of animals in the law: the relationship between animals and humans and the manner in which the law responds to the various disputes and controversies to which those relationships give rise. It is explanatory, rather than prescriptive, although the discussion does lend itself to prompting (rather than resolving) broader philosophical questions about human nature and our tendency to anthropomorphise (selectively, it must be said). Perhaps more significantly, the book demonstrates that our understanding of animals and their status in the law is both uncertain and evolving.

The authors are teachers and academics, the one specialising in the law of remedies, the other specialising in criminal justice. Their background shows in two ways. The first is the incredible breadth of research that informs the work. While the book is not footnoted, at the back almost 50 pages describes their sources in a way that not only identifies the source but describes it in a manner that enables the reader to consider whether it might be worth tracking down. These include not just primary or secondary legal resources, but a vast array of geographically and historically diverse non-legal material.

The second is the approachable manner in which the book is written. Apart from the absence of footnotes, the authors take the time to explain concepts and terminology for the legally illiterate. They do so, however, in a way that is not overly distracting or patronising for lawyers. Their passion for making the law accessible is palpable. This is thus a book that is engaging for both lawyers and non-lawyers alike.

Guilty Pigs is a thoroughly enjoyable book that will no doubt leave some readers yearning for more, not because the book is in any way deficient, but because its subject matter is so fascinating.

Reviewed by D F Villa SC

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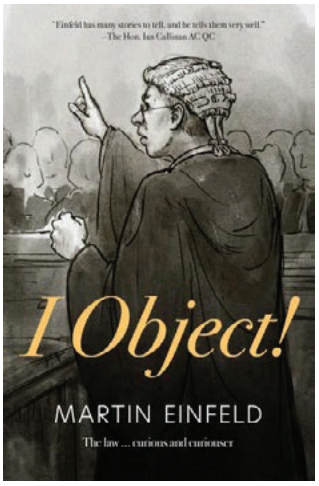

I Object!

By Martin Einfeld (Brio Books, 2021)

When I started as a pupil barrister in London many years ago, at 4.00pm every day the clerk would ring each person in chambers to announce in which room tea was served that afternoon. It was a nerve-wracking experience for a young barrister, whose prospects of being kept on by the floor at the end of pupillage depended upon making a good impression. The received wisdom was that a pupil at chambers tea should be like a child in the presence of adults in those times: seen and not heard! It was therefore a listening experience, while the young tenants preened themselves over accounts of recent minor successes. Far more interesting were the war stories of the senior members and especially the senior silks.

Martin Einfeld QC is one of those silks with a treasure trove of wonderfully entertaining stories, anecdotes and curios, which he has accumulated over 47 years of practice at the Bar and 33 years as a silk. In *I Object!*, Einfeld has set out many of these in largely bite-sized pieces that can be devoured quickly and with much pleasure.

There are many fabulous stories here, commencing with the rejection by the chief justice, Sir John Kerr, of Einfeld's admission as a barrister (because he needed to be removed from the roll of solicitors first); through his early days under the supervision of many familiar names and taking up chambers as 'a thorn between the roses' of Ken Handley QC and Keith Mason QC; an appearance in the High Court before Barwick CJ when his leader failed to turn up; a court hearing delayed until after the birth of his baby daughter at 6.15pm and concluding at 11.15pm; and hearings at a duty judge's home in Vaucluse, in Papua New Guinea, in Puerto Rico, on circuit, in the High Court and at the Privy Council in London.

Although peppered with the names of the great and the good (and the less great and certainly the less good), Einfeld is not a name dropper. He just has really good stories involving many familiar names across many different areas of law. These include Gough Whitlam, Sir John Kerr, Tom Hughes QC, Ken Handley QC, Kevin Murray QC, Richard

Conti QC, Roddy Meagher QC, Clive Evatt QC, David Yeldham QC and Sir Lawrence Street. Even though many readers will not be familiar with all of the names and personalities, they bring to life Einfeld's career and a life at the Bar over the last 50 years.

In spite of the length and breadth of his career, Einfeld is a modest and self-effacing man. For instance, he recounts the occasion when Justice Denys Needham commented that Einfeld's submissions had left him 'none the wiser, Einfeld responded with FE Smith's great line: 'Perhaps none the wiser, my Lord… but much better informed'. The punchline, however, lies in his Honour's response: 'Touché Mr Einfeld, but I have to say that it loses something in the translation, coming from you and not FE Smith!'.

Einfeld is also generous about his clerks, describing them as one of a barrister's greatest assets.

I have had the privilege of being Einfeld's junior on several occasions. It was always an enjoyable experience, but the preparation was always extensive and detailed, verging on the perfectionist. I read then with a wry smile his acknowledgement to his secretary Tracy McLeod having 'typed and retyped (countless times) the manuscript' and his thanks for her 'patience and indulgence'.

In that vein, I enjoyed the juxtaposition between his reference to Dick Conti QC as 'a prodigious worker, arriving in chambers most mornings before the sun rose' and attributing Ken Handley QC with having taught him 'that no case could be over-prepared', and his description of arriving on the morning of a hearing in the chambers of Roddy Meagher QC only to be told by Meagher QC, apparently without any alarm, that he had not been able to find the brief.

I found Sir Lawrence Street's comment to Einfeld, after his many years of mediations and experiencing the burden placed on ordinary people in bringing claims to court, to be tantalising: 'If I had my time as a judge over again, I would have been much more pro-plaintiff.'

As I did the comment of McHugh J to Einfeld, counselling against the common practice of counsel declining to argue weak points on appeal lest they lessen the force of any stronger points on the basis that judges sometimes did 'pick up and run' with those apparently weak points.

I would have liked more comment and conclusion from Einfeld, informed by his long and fascinating career, but perhaps I will have to wait for his autobiography (or at least a chambers tea!). In the meantime, *I Object!* provides a well of entertaining stories that is important as a written record of life at the Bar over the last 50 years.

Reviewed by Anthony Cheshire SC

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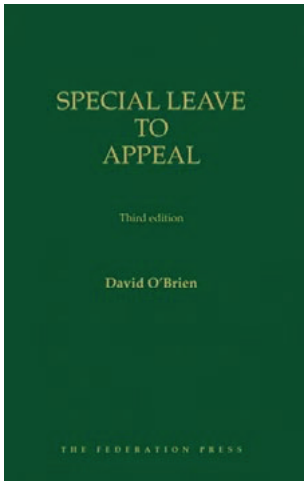

Special Leave to Appeal

By David O'Brien (3rd edition, Federation Press, 2022)

This is the third edition of a work that deals with niche subject matter, but subject matter that is immensely important. As Pincus J observed in the forward to the first edition, for many litigants in Australia the 'last nail in the coffin' is the news that the High Court of Australia has refused special leave to appeal.

At that time of the first edition, most matters were disposed of following a brief oral hearing, although some were disposed of on the papers. Now, however, the tables have turned.

At that time of the first edition, most matters were disposed of following a brief oral hearing, although some were disposed of on the papers. Now, however, the tables have turned. In 2021 for example, 254 applications were dealt with on the papers (of these, there were grants of special leave in only one case), and only 98 applications proceeded to an oral hearing (of which there were grants in only 26 cases). This change in the practice of the High Court necessitates greater attention be given to the written Application for Special Leave.

Central to the grant (or refusal) of special leave is determining whether the proposed appeal is sufficiently 'special'. While s 35A of the *Judiciary Act 1903* (Cth) specifies *some* criteria to be applied by the court, the list is neither exhaustive nor comprehensive. This work collects together the various authorities that help to explain the features of a case that facilitate the advocate in persuading a panel of the court that special leave ought to be granted, and the features of a case that militate against such a grant.

It begins with a chapter entitled 'First Principles' containing matters that are largely of historical interest, but which are nonetheless of practical importance if only to explain the jurisdictional basis for the course adopted in earlier cases. It then has separate chapters that address the criteria as they apply in civil cases, and in criminal cases. A useful chapter entitled 'Civil Procedure' then follows, although it should be noted that many of the matters referred to in this chapter will be relevant to criminal appeals as well. A smaller, more narrowly confined chapter entitled 'Criminal Procedure' addresses questions of bail, a stay or surrender and extradition orders, and a prisoner's attendance.

Given the predominance of special leave applications being determined on the papers, perhaps the most significant chapter of this revised edition is the last, entitled 'Persuasive Submissions'. This is an expanded version of the chapter from previous editions, although it must be said that considerably more can be written on the subject, particularly with respect to written submissions. There remains a need for an Australian work dedicated to the subject matter (mirroring the writings in an American context by Bryan Garner, and in particular his collaboration with the late Antonin Scalia). This chapter is not such a work, but it does helpfully extract passages from a number of articles by Kenneth Hayne, Dyson Heydon and David Jackson which themselves warrant a close and comprehensive reading.

Overall, this is an extremely useful book for both the frequent flyer and the occasional tourist in the special leave lists.

Reviewed by D F Villa SC

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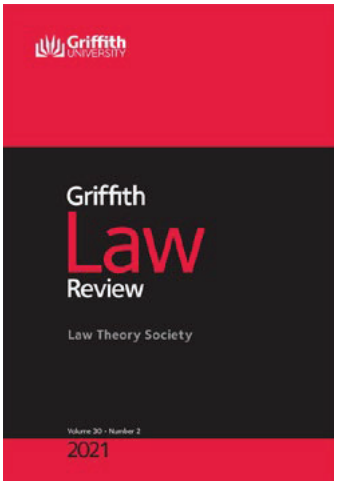


Linguistic Diversity as a Challenge for Legal Policy

Edited by Dr Laura Smith-Khan and Dr Alexandra Grey

Griffith Law Review, Volume 30, Issue 1 (2021)

Griffith Law Review (GLR) has just published a thematic issue on 'Linguistic diversity as a challenge for legal policy'. As guest editors of the issue, we believe that this is an important topic for legal practitioners and law makers, as they may be unaware of the myriad ways linguistic minorities may be unfairly disadvantaged within legal systems, effectively undermined in their equal access to justice and full enjoyment of their rights.

The issue sought to address 'language-related concerns in legal contexts and to analyse them in ways informed by *both* linguistic and legal scholarship.' As researchers with expertise across linguistics and law, we are aware of both the value and need for research to identify and address language-related concerns. Our editorial stresses the importance of examining how our legal system recognises, conceptualises, and accommodates linguistic diversity. It also notes the potential for language-focussed issues to be incorporated more systematically within law school core teaching.

A member of our Law and Linguistics Interdisciplinary Researchers' Network, former Federal Court justice, the Hon Peter Gray AM, reflected during an earlier collaboration that our work could be conceptualised across the three branches of the state to make it accessible to our fellow legal practitioners. We took up this suggestion in the thematic issue, with articles on the use of language by the courts, legislature and executive. The first section of these peer-reviewed articles explores language and policies governing the judiciary and courts.

First, Alex Bowen, a PhD candidate and legal practitioner with extensive experience in the Northern Territory (NT), explores the language of police cautions, in 'Explaining the Right to Silence under *Anunga*'. He linguistically analyses NT police caution transcripts, alongside a critical examination of historic and current common law, legislative, and policy-based controls. He concludes that notwithstanding changes over the last 40 years, inequality remains, and he identifies a number of possible improvements.

Drawing on a wealth of practical experience as a senior manager for the Aboriginal Interpreter Service, criminal lawyer, law lecturer, and now CEO of Aboriginal Resource and Development Services, Ben Grimes examines the different rules and models for providing translation and interpreting services across Australian courts. This includes reflecting on his own contributions to the successful NT model of publicly funded 'duty interpreters'.

Also exploring interpreting but this time from the interpreters' perspective is Dr Jinhyun Cho, a senior lecturer in Macquarie University's Translation and Interpreting program. Drawing on research that is part of her latest book, she shares findings from interviews with Australian court interpreters. Based on this data, Cho argues that misguided institutional beliefs about language and about interpreters still negatively affect interpreters' participation in court processes. In particular, she identifies three key problematic assumptions: that a person's accent can be used to evaluate their English language proficiency; that each language has one standard version without room for variety; and that people from minority backgrounds should be able to effectively use the national language of their country of origin when participating in court. When explored in relation to the power dynamics of court, these assumptions are found to undermine the participation of not only interpreters themselves but also witnesses and defendants. An apt example is that of Italian language interpreters who report emotional witnesses shifting from standard Italian into, for example, Sicilian or Calabrian dialect, without other court participants appreciating the difficulties this creates for interpreters who are not proficient in these dialects. She concludes that there remains room to improve the way lawyers and judges interact with courtroom interpreters, especially in terms of briefing/preparation, for the benefit of the administration of justice.

Cho argues that misguided institutional beliefs about language and about interpreters still negatively affect interpreters' participation in court processes.

The next section of the thematic issue explores rules governing executive or administrative processes. Dr Smith-Khan examines registration rules for registered migration agents. More specifically, she explores the requirements for newly registering agents to prove their English language proficiency, contained within recent legislative instruments. Taking up concerns expressed by the federal Parliamentary Joint Committee on Human Rights', and drawing on linguistic scholarship, I challenge the immigration minister's justifications for creating different proof requirements based on country of origin.

Next, Dr Alexandra Grey, and Dr Alyssa Severin, a linguist at Macquarie University, share a 2019–20 audit of legislation and policy affecting NSW government public communications in languages other than English (LOTEs). They find significant gaps in these frameworks, which mean that public LOTE communications are not systematically planned for or quality tested. (Grey and Severin have also published a follow-up article analysing the NSW Government's LOTE practices in a subsequent GLR issue.) Their findings are particularly pertinent in light of widely reported 2020–21 shortcomings of NSW and other Australian governments communicating in LOTE about COVID-19.

The issue's third section presents two articles that focus on parliamentary law-making processes. First, Julian R Murphy, who is a PhD candidate at Melbourne Law School and Victorian barrister, considers the increasing presence of Indigenous-language text in Australian legislation. In response to concerns about

how courts should interpret such texts, he proposes that existing Australian jurisprudence on interpreting multilingual international treaties could provide useful precedents. He persuasively draws on a legislative case study to demonstrate how this could work.

Finally, historian Dr Imran Ahmed, currently based at the National University of Singapore's Institute of South Asia studies, shifts our focus to another legal context impacted by British colonialism: Pakistan. Mapping constitution-making and political debates from Pakistan's creation to present time, he demonstrates how language policy and religious identity are closely intertwined, and politicised, in nation-building and constitutional law.

Along with these peer-reviewed articles, we were lucky to have a non-traditional piece included in GLR's 'Open Space' section. This is a reproduction of a public lecture given by Bill Mitchell OAM, principal solicitor, Townsville Community Law, at James Cook University (JCU) to celebrate the new *Human Rights Act 2019* (Qld). In this fascinating speech, he explores another intersection of linguist diversity and law, reflecting on how speech pathologists effectively protect and promote human rights through their work. Mitchell explains that communications rights are a 'gateway' to many other human rights.

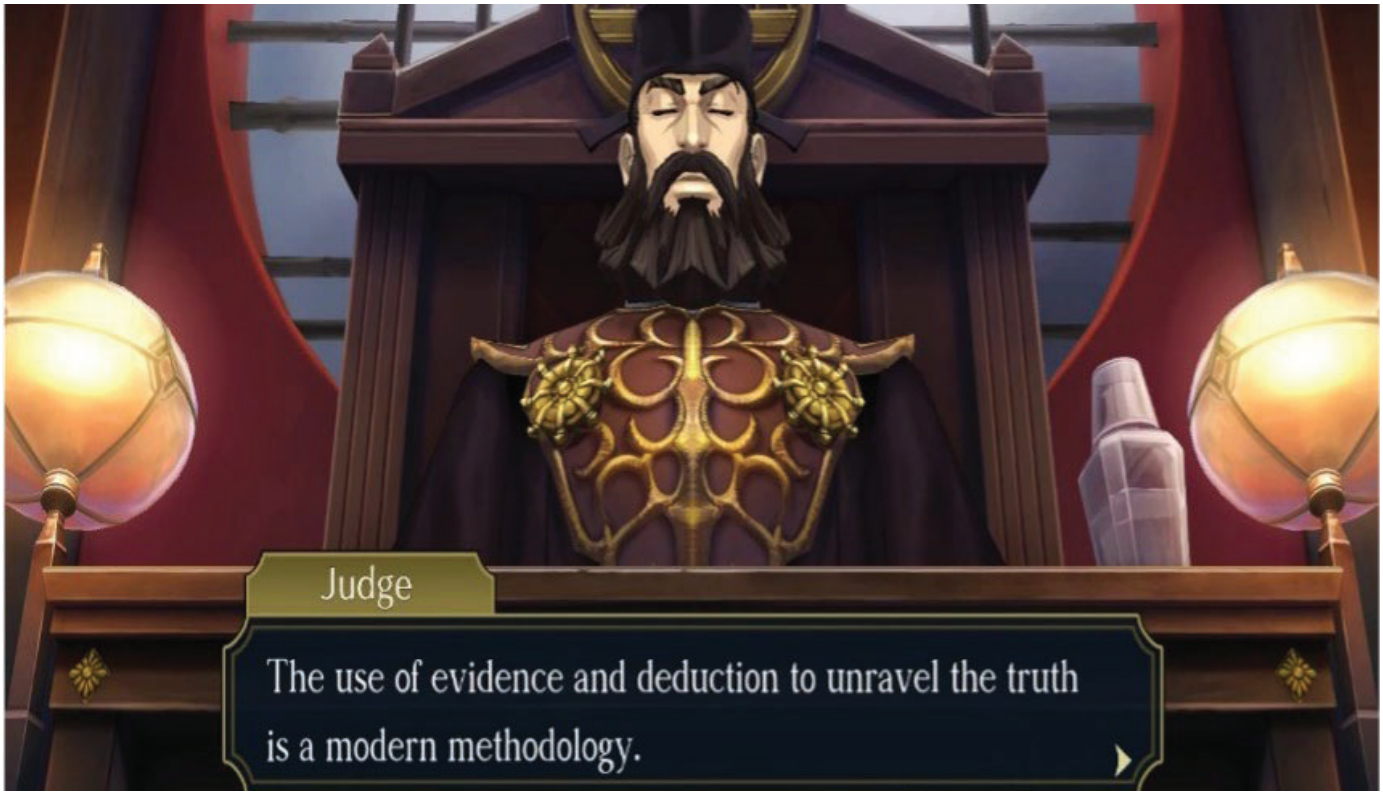
The thematic issue finishes with reviews of two new academic books. Ana Bruzon, a PhD candidate at Macquarie University, reviews Janny HC Leung's book, *Shallow Equality and Symbolic Jurisprudence in Multilingual Legal Orders* (OUP, 2019). Leung's extensive work spans legal policy across all branches of the state, across the globe. Gareth Lloyd, a speech pathology lecturer and law student at JCU, reviews the prominent Australian academic, Georgina Heydon's, book, *Researching Forensic Linguistics: Approaches and Applications* (Routledge, 2019), which provides an excellent introduction to methods for examining language in legal settings, particularly in criminal law processes.

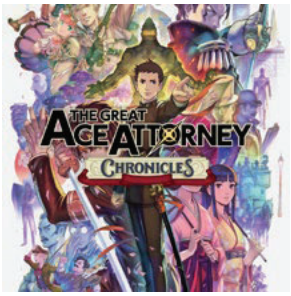
We are excited and proud to have edited this thematic issue for GLR, the very first in the journal's history to focus exclusively on the justice implications of linguistic diversity. Bringing together early career researchers and practitioners with expertise across a broad range of disciplines, topics and methodologies, we hope to demonstrate the enormous scope there is for interdisciplinary research to make valuable contributions to legal policy reform and improved legal practices.

This GLR thematic issue is accessible via most Australian University library sites. Links to free copies of many of the included works are found at www.languageonthemove.com/linguistic-diversity-as-a-challenge-for-legal-policy or contact the editors directly about access: laura.smith-khan@uts.edu.au; alexandra.grey@uts.edu.au

Overview by Dr Laura Smith-Khan and Dr Alexandra Grey, chancellor's postdoctoral research fellows in the Faculty of Law at the University of Technology, Sydney. As guest editors of the GLR thematic issue, they provide an overview rather than a review of this collection.

GAME





The Great Ace Attorney Chronicles

Switch/ PS4/PC

At the time of writing, playing the *Great Ace Attorney Chronicles* cannot be used to accrue professional development points for barristers.

Looking to the future however, it offers insights into how such a game might one day be a useful training tool for developing trial advocacy skills or preparing witnesses to give evidence in court.

A game might effectively convey to potential witnesses how a case can be lost by telling a lie, or that their credit score may be negatively affected by avoiding questions under cross-examination. It could improve upon the current practice of counsel delivering a well-rehearsed speech in chambers about the importance of telling the truth, of carefully listening to each question and only answering the question asked, etcetera, then watching in dismay from the Bar table as that advice is plainly ignored or totally forgotten in the witness box.

And it may not be as fanciful as it first sounds, given the trend in judicial appreciation of video games, which increased by one upon the swearing-in to the Federal Court of Australia of Justice Nye Perram. At his Honour's swearing-in ceremony, speaking on behalf of the Australian Bar Association, Anna Katzmann SC observed that his Honour 'was the first judicial officer, federal or state, known to have a Sony Play Station' and '*Grand Theft Auto* is reputed to be your Honour's favourite video game'.

The Great Ace Attorney Chronicles transports virtual advocacy to another realm. Set alternately in Meiji-era Japan and Victorian London, you play the role of Ryunosuke Narahudo, a student at Yumei University. In the first act, he reluctantly represents himself as the accused in a murder trial. His McKenzie friend is Kazuma Asogi, a law student whose talent is so stellar that he has qualified to practise without even having graduated.

With uncanny verisimilitude, the opponent is a seasoned advocate who shakes Ryunosuke's already teetering confidence with perfectly timed quips and technical objections made during cross-examination. Comebacks from the courageous Kazuma help to restore his backbone.

In the second act, Kazuma is a passenger on board a ship that is steaming for Britain where he is to take up a scholarship and continue his law studies. Ryunosuke is a stow-away in his cabin. Kazuma's sudden and shocking death initiates a detective story that Ryonosuke must solve, assisted by the percipient, Herlock Sholmes.

In the third act, upon arrival in England, Ryunosuke makes his introductions with Lord Chief Justice Mael Stronghart. The name, like that of a Dickens character, is obviously intended to convey a satirical message.

Ryunosuke's first advocacy task is to persuade the chief justice to permit him to study law in Kazuma's place and qualify as a barrister in London. Otherwise, without a student visa he will be returned to Japan on the first available ship.

Rather oddly, the chief justice is persuaded to allow it, on condition that Ryunosuke successfully defends a man charged with murder whose trial starts that very day. For mysterious reasons (those unrelated to money), the accused is unable to retain experienced counsel to act for him.

Throughout the course of the trial there is a sense of achievement whenever the correct forensic decision is made, in selecting evidence to tender which is relevant to your case, or in pressing witnesses on inconsistencies in their testimony.

On a critical note, the sheer quantity of narration can sometimes detract from the thrill of the chase. Whenever an incorrect forensic decision is made a strike is recorded against you and the preceding scene repeats, giving you another chance at presenting relevant evidence or asking a crucial question in cross-examination of a witness. However, such repetition can seem like unnecessary delay. Also, the absence of an option to view the entire scene's dialogue at a single glance drags out the play, sentence by sentence. Selecting auto-play robs you of any interactive gaming features.

Gamers familiar with Ace Attorney Adventures would no doubt find this to be a delightful addition to the series produced by Capcom. Murder mystery lovers who are avid gamers would also find satisfaction in unravelling all the clues that point to the cause of Kazuma's death. But casual gamers are likely to struggle with the level of commitment required to finish.

And non-gamers interested only in developing advocacy skills need not apply.

Reviewed by Sean O'Brien

The Ace Attorney Game Series

By Capcom Co.

In 2001 Capcom released the *Ace Attorney* series on Game Boy Advance in Japan. The series proved to be popular enough to be ported onto the Nintendo DS. Ported onto iOS in 2013, the game allowed for a whole new group of gamers to play on their portable devices (including me).

The game is broken up into a series of episodes (the first three of which are free to download on iOS). The introduction to every episode shows snippets of the crime you'll be solving. You progress through the story by speaking to witnesses and investigators, searching for clues and evidence and culmination is in a trial running for a few days in court before a single judge.

During the trial phase you will be required to 'press' witnesses you suspect of holding back, and to present evidence and clues you've gathered in order to find holes and expose the lies in their testimony. Be warned though, presenting the wrong evidence to the wrong witness (or even at the wrong time) can result in a 'penalty' as well as some mild judicial bullying.

The game is essentially text-based requiring you only to tap little arrows to advance dialogue. When investigating different scenes, you drag around a little target that will turn red once you hover over something that can be checked.

For me the best part was the characters. Many may already be familiar with the main protagonist of the original series, Phoenix Wright, having been sent iterations of memes by waggish friends:

As you progress through the game you will be introduced to a number of other characters, including, but not limited to:

Maya Fey (occasional co-counsel, occasional client), with the ability to channel spirits who provide useful clues and

Apollo Justice (protégé who receives a series of his own, when Phoenix Wright becomes disbarred and accused of murder) has the ability to detect when witnesses are withholding evidence through the use of his magical bangle.

The climax of every episode is the trial where you face the main antagonist: that being the prosecutor, usually the very snappily-dressed Miles Edgeworth.

My personal favourite is the ferocious yet perpetually surprised judge, whose behaviour, I'm sure, has no basis in reality.

The *Ace Attorney* series is fun, silly and most importantly the first three episodes are free on the Apple app store. I recommend trying it, at least in order to look knowledgable in front of your meme-circulating friends.

Reviewed by Kavita Balendra