

# CURRENT LEGAL ISSUES

## SEMINAR SERIES 2013



BAR ASSOCIATION  
OF QUEENSLAND



THE UNIVERSITY  
OF QUEENSLAND  
AUSTRALIA

TC Beirne School of Law



Queensland University of Technology  
Faculty of Law

# CURRENT LEGAL ISSUES

## SEMINAR SERIES 2013

*We are pleased to announce the Current Legal Issues Seminar Series for 2013.*

*The series seeks to bring together leading scholars, practitioners and members of the Judiciary in Queensland and from abroad to discuss key issues of contemporary legal significance.*

<b>Seminar 1 Understanding equitable assignment</b>	
<b>Date:</b>	6 June 2013
<b>Co-Presenters:</b>	The Hon Justice Edelman, Supreme Court of Western Australia Dr Steven Elliot, Barrister, England and Wales
<b>Commentator:</b>	Dr Ben Kremer, Barrister, New South Wales
<b>Chair:</b>	The Hon Justice Fraser, Court of Appeal, Supreme Court of Queensland
<b>Abstract:</b>	The assignment of choses in action, particularly debts, has been at the core of commercial activity for centuries. Yet, bizarrely, the courts have never managed to articulate a stable principled understanding of assignments that take effect in equity. Conceptually, there is a strong argument for a particular coherent understanding of the way in which equitable assignment operates, but the courts have resisted this for reasons which are not clear. The seminar will concentrate on a number of recent cases in which the highest courts in Australia and England have confronted the difficulties to which the lack of a stable principle gives rise – especially <i>Barbados Trust Company Ltd v Bank of Zambia</i> [2007] 1 Lloyd's Rep 495 (CA), <i>Roberts v Gill &amp; Co</i> [2011] 1 AC 240, <i>Kapoor v National Westminster Bank plc</i> [2012] 1 All ER 1201 (CA) and <i>Equuscorp Pty Ltd v Haxton</i> [2012] HCA 7; (2012) 286 ALR 12. One area in which the foundations of equitable assignment may be important is in relation to the effect of an anti-assignment clause.

<b>Seminar 2 What exactly is a remedial constructive trust?</b>	
<b>Date:</b>	25 July 2013
<b>Presenter:</b>	Prof Michael Bryan, University of Melbourne
<b>Commentator:</b>	The Hon Justice Jackson, Supreme Court of Queensland
<b>Chair:</b>	Brian O'Donnell QC, Barrister, Queensland
<b>Abstract:</b>	There seems to be both a judicial and academic consensus that Australian equity recognises the existence of the remedial constructive trust. There is less agreement, however, on what it means to describe a constructive trust as a remedy. Are all constructive trusts remedial? How should courts exercise their discretion to impose a constructive trust? What account should be taken of the interests of the defendant's creditors in awarding a constructive trust? This lecture will suggest some answers to these pressing contemporary questions.

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<b>Seminar 3 The Griffith Opinion Books — Annual McPherson Lecture 2013</b>	
<b>Date:</b>	22 August 2013
<b>Presenter:</b>	John McKenna S.C., Barrister, Queensland
<b>Commentator:</b>	Dr Warren Swain, University of Queensland
<b>Chair:</b>	The Hon Paul de Jersey AC, Chief Justice of Queensland
<b>Abstract:</b>	Sir Samuel Griffith (1845-1920) is rightly viewed as the most influential figure in Queensland's legal history. Whilst practising at the bar in Brisbane from age 22 (1867-1893), Griffith pursued a parallel career in parliament, including substantial terms as Premier (1883-1888, 1890-1893). Griffith then took judicial office, serving first as Chief Justice of the Supreme Court of Queensland (1893-1903) and then as the first Chief Justice of the High Court of Australia (1903-1916). Whilst much of documentary record relating to Griffith's life and work has been accessible in public collections, only recently a group of some 245 confidential opinions prepared during Griffith's career at the bar became available for historical research. These opinions, which span almost the whole of Griffith's career at the bar, were held in the Opinion Books kept by the Brisbane firm of Feez Ruthning (now Allens Arthur Robinson) and donated to the Supreme Court Library pursuant to a new legislative scheme for the preservation of historic legal documents. This lecture will provide the first assessment of these documents and their significance in our understanding of Griffith and his era.

<b>Seminar 4 The challenge of principled gap-filling – A study of implied terms in a comparative context</b>	
<b>Date:</b>	12 September 2013
<b>Presenter:</b>	The Hon Justice Andrew Phang Boon Leong, Judge of Appeal, Supreme Court of Singapore
<b>Commentator:</b>	Prof John Carter, Sydney University
<b>Chair:</b>	Walter Sofronoff QC SG, Barrister, Queensland
<b>Abstract:</b>	<p>There has been a veritable wealth of literature on implied terms – ranging from doctoral theses to book chapters, articles and (more recently) a book. Perhaps the simplest explanation for such interest is that it is extremely important topic with at least two important functions – one substantive, the other theoretical.</p> <p>This seminar examines the topic of implied terms from both perspectives. The focus, however, is on the former (viz, the substantive function), and centres on the function of gap-filling. In addition to exploring the relevant historical aspects (especially from a personal perspective), the seminar will also examine the substantive function of implied terms in a comparative common law context. Although English law necessarily constitutes the starting-point in many instances, this seminar will also point to the fact that not all English developments have always been embraced as a matter of course. In Singapore, for example, the leading Privy Council decision of Attorney-General of Belize v Belize Telecom Ltd (which, whilst not, strictly speaking, an English decision appears nevertheless to represent the current English position in relation to terms implied “in fact”) has not been followed.</p> <p>The seminar also examines briefly a second (and inherently theoretical) function which is indirect in nature – whether (despite the present legal position) a quite different form of the implied term could nevertheless be utilised as a rationale to justify a distinct and separate legal doctrine, viz, the doctrine of frustration. This second function is in contrast to the first function of the implied term (as constituting a legal doctrine in and of itself).</p>

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## SEMINAR SERIES 2013

<b>Seminar 5 An update on legislative reforms in the last 18 months in Queensland criminal law</b>	
<b>Date:</b>	31 October 2013
<b>Presenter:</b>	Anthony Moynihan S.C., Director of Public Prosecutions, Queensland
<b>Commentator:</b>	Jeff Hunter S.C., Barrister, Queensland
<b>Chair:</b>	His Honour Judge Anthony Rafter S.C., District Court of Queensland
<b>Abstract:</b>	This seminar will summarise recent reforms including the Criminal Law (Two Strikes Child Sex Offenders) Amendment Act 2012, the Criminal Law Amendment Act 2012, the Weapons And Other Legislation Amendment Act 2012, the Criminal Law (False Evidence Before Parliament) Amendment Act 2012, the Penalties and Sentences and Other Legislation Amendment Act 2012, the Youth Justice (Bootcamp Orders) and Other Legislation Amendment Act 2012, the Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offenders Confiscation Order) Amendment Bill 2012 and the Case Management in Complex Criminal Trials practice direction. There will also be commentary on some of the practical implications of the reforms.

### **Aims:**

The series seeks to bring together leading scholars, practitioners and members of the Judiciary in Queensland and from abroad, with a view to:

- providing a forum for the critical analysis and discussion of current legal issues;
- bringing to bear upon those issues the different perspectives offered by leading members of the Academy, the profession and the Judiciary;
- forging stronger links between academic and practising lawyers in Queensland.

### **Time:**

5.00pm - 6.30pm followed by refreshments.

### **Format:**

Each seminar will comprise a chairman, speaker, and commentator. The chairman will introduce the speaker and commentator. A paper will then be presented by a leading practising or academic lawyer, and will be subject to a brief, expert commentary. Both the lecture and a short introduction to each seminar participant will be available in advance on <http://www.law.uq.edu.au/current-legal-issues-series>, a website hosted by the University of Queensland.

### **Venue:**

The Banco Court, Supreme Court of Queensland, Queen Elizabeth II Courts of Law Complex, 415 George Street, Brisbane. Seminars will be followed by a drinks reception in the foyer.

### **CPD:**

The series is accredited for CPD purposes by the Queensland Bar Association, and reciprocal recognition normally exists between the bar Associations of Qld, NSW and Victoria.

### **Participants:**

The series in 2013 is collaboration between the TC Beirne Law School at the University of Queensland, the Queensland Bar Association Queensland, and the Queensland University of Technology Law School.

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### REGISTRATION FORM

Surname: \_\_\_\_\_ Given Name: \_\_\_\_\_

Email: \_\_\_\_\_ Organisation: \_\_\_\_\_

Please tick the session/s you will attend.

SEMINAR 1:  
**Understanding equitable assignment**  
6 June 2013

I will also attend the post seminar function

SEMINAR 2:  
**What exactly is a remedial constructive trust?**  
25 July 2013

I will also attend the post seminar function

SEMINAR 3:  
**The Griffith Opinion Books — Annual McPherson Lecture 2013**  
22 August 2013

I will also attend the post seminar function

SEMINAR 4 :  
**The challenge of principled gap-filling — A study of implied terms in a comparative context**  
12 September 2013

I will also attend the post seminar function

SEMINAR 5:  
**An update on legislative reforms in the last 18 months in Queensland criminal law**  
31 October 2013

I will also attend the post seminar function

I will attend via regional teleconference. Phone number: \_\_\_\_\_

Please advise if you do not want your details circulated for promotional materials.

**Registration for any seminar should be in writing by post or email to:**

**Ms Hollie Spencer, Legal Education, Bar Association of Queensland,  
Ground Floor, Inns of Court, 107 North Quay, Brisbane Qld 4000**

**Email: cpd@qldbar.asn.au Phone: 07 3238 5109 Fax: 07 3236 1180**

**Please identify the seminar(s) you wish to attend, together with your full name,  
email address, position and professional contact details.**