

CURRENT LEGAL ISSUES

2020 SEMINARS



 SUPREME COURT
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AUSTRALIA

2020 Seminar Series

The Bar Association of Queensland, the University of Queensland, Queensland University of Technology and the Supreme Court Library Queensland are pleased to announce the Current Legal Issues Seminar Series for 2020.

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

Date	Presenter	Chair	Commentator
Seminar 1: Religious Freedom, Religious Discrimination and the Role of the Law			
21 May	Professor Carolyn Evans, <i>Vice-Chancellor and President, Griffith University</i>	The Hon. Justice Sarah Derrington, <i>Federal Court of Australia, President, Australian Law Reform Commission</i>	Professor Patrick Parkinson, <i>Dean, TC Beirne School of Law, The University of Queensland</i>
Seminar 2: Common Law Relief from Penalties: When Did it All Begin?			
11 June	Dr Peter Turner, <i>University of Cambridge</i>	The Hon. Justice David Jackson, <i>Supreme Court of Queensland</i>	Professor Warren Swain, <i>University of Auckland</i>
Seminar 3: Forensic Evidence in Criminal Proceedings: The Main Problems with Australian Responses to Forensic Science and Medical Evidence			
20 August	Professor Gary Edmond, <i>University of New South Wales</i>	The Hon. Justice Peter Applegarth, <i>Supreme Court of Queensland</i>	Mr Saul Holt QC, <i>Barrister-at-law</i>
Seminar 4 : Relighting a Lamp of the Constitution? Prorogation in the United Kingdom Courts and its Implications			
12 November	The Rt. Hon. Dame Sian Elias, <i>GNZM QC</i>	The Hon. Catherine Holmes AC, <i>Chief Justice, Supreme Court of Queensland</i>	Professor Cheryl Saunders AO, <i>The University of Melbourne</i>



2020 Seminar Series

21 May - Seminar 1: Religious Freedom, Religious Discrimination and the Role of Law

Presenter	Professor Carolyn Evans, <i>Vice-Chancellor and President, Griffith University</i>
Abstract	Religious freedom and freedom from discrimination on the basis of religion are well-established rights in international law and many jurisdictions have a substantial case-law that examine both of these rights, including the tensions between them. While some limited forms of these rights are protected in the constitution, to date there has been a relatively limited case law in Australia. With the development of statutory bills of rights and increased social tensions between secular and religious Australians, however, the law is increasingly being asked to step into conflicts that involve religion. What can we learn from the Australian case law to date and from other similar jurisdictions that can help Australian courts and legal policy makers with the complex issues that arise in this realm?

11 June - Seminar 2: Common Law Relief from Penalties: When Did it All Begin?

Presenter	Dr Peter Turner, <i>University of Cambridge</i>
Abstract	The beginnings of curial relief from contractual penalties have drawn the attention of counsel and judges in modern litigation on the penalty doctrine. Roots have been traced to the activities of the old Court of Chancery and to the more obscure activities of the common law courts at Westminster - chiefly the King's Bench. The earliness of common law intervention has influenced how appellate courts in Australia and England have stated the penalty doctrine for current times. This talk will consider when common law relief from penalties began, and the bearing those origins have on the pleading and decision of cases today.

20 August - Seminar 3: Forensic Evidence in Criminal Proceedings: The Main Problems with Australian Responses to Forensic Science and Medical Evidence

Presenter	Professor Gary Edmond, <i>University of New South Wales</i>
Abstract	Sensitive to enduring legal commitments and values, but drawing directly upon scientific research and advice, this paper will explain what is required to present, contest and evaluate forensic science and medicine evidence in criminal proceedings. It will identify areas of Australian legal practice that are curiously inconsistent with scientific recommendations and discuss these anomalies. Using examples, the paper will explain why some prevailing legal approaches to forensic science and medicine are misguided and suggest ways in which practice might be improved so that legal uses are more consistent with the recommendations of mainstream scientists.



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12 November - Seminar 4: Relighting a Lamp of the Constitution? Prorogation in the United Kingdom Courts and its Implications

Presenter The Rt. Hon. Dame Sian Elias, *GNZM QC*

Abstract The judgment of the UK Supreme Court in *Miller (No 2)* [2019] UKSC 41 that a prorogation of Parliament in September 2019 under the prerogative power was “unlawful, void and of no effect” is politically and legally controversial. It has led the newly elected government in the United Kingdom to announce a review of the constitutional relationships between the political and judicial branches of government. Eminent legal scholars have variously described the decision itself as either “wholly unjustified by law” or one that has “relit a lamp of the constitution”. The paper examines such claims.

The case is the latest in a line in which the courts in the United Kingdom have sought to explain the principles and values of the British constitution and the role of the courts in protecting them from legislative or executive encroachment. Such cases turn on assessments of what is “constitutional” or “fundamental” in statutes and in common law and are hostile to encroachment by the executive or legislative branches. The reasoning of the courts has been criticised for applying the methods of modern administrative law to matters of high policy. In *Miller (No 2)*, as in the earlier *Miller (No 1)*, the focus is the institutional architecture of the constitution, rather than the more familiar context for constitutional contest of individual freedom and rights. There are differences of opinion as to whether judges in such cases are carrying out their inevitable responsibilities under the rule of law to maintain and explain the constitution or whether they tip over into illegitimate constitution-building.

The changing scope of the political constitution of the United Kingdom post-Brexit and post-devolution and the incongruity of a constitution still based on the “efficient secret” of the near complete fusion of the executive and legislative powers of the state, may lead to a new constitutional settlement in the United Kingdom. If so, *Miller* may come to be seen as a product of a set of circumstances that were “unique”, as the Court in its reasons suggested it was, and the march of common law constitutionalism may subside. If not, *Miller* may point to further judicial development of the United Kingdom constitution.

The paper examines whether *Miller* is properly to be seen as part of what Justice Gummow once described as “the continuing intellectual agonies attending British constitutionalism”, of little relevance to constitutionalism in Australia or other common law jurisdictions with their own unique constitutional histories. It suggests that the reasoning employed by the United Kingdom Supreme Court has implications for the continuing tug in all jurisdictions between the political and the legal (and in particular the concepts of “justiciability” and “parliamentary sovereignty”). It also has implications for the role in constitutional law of substantive values, many derived from antecedent common law in our shared traditions. It questions whether the High Court’s location of sovereignty in the Australian Constitution and the stricter separation of powers under the constitution will accelerate divergence in constitutionalism from jurisdictions such as Canada, the United Kingdom and New Zealand.



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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:

Registration: 5.00pm - 5.15pm.

Seminar: 5.15pm - 6.45pm, followed by refreshments.

Format:

Each seminar will comprise a chair, speaker or co-speaker, and commentator.

The chair will introduce the speakers and commentator. A paper will then be presented by a leading practising or academic lawyer.

Website:

Details of all seminars, papers, and speaker biographies, are available from the CLI series website: <https://law.uq.edu.au/current-legal-issues-seminars>

Venue:

The Banco Court, Queen Elizabeth II Courts of Law, 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, 1.5 CPD points each seminar in the Substantive Law strand.

Participants:

The series in 2020 is a collaboration between the Bar Association of Queensland, University of Queensland, Queensland University of Technology and the Supreme Court Library Queensland.

Registration:

To register online for the seminar, please go to CPD/Events at <https://qldbar.asn.au/cpd-events>

For further information please contact the CPD team.

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