

THE FRANCIS FORBES SOCIETY FOR AUSTRALIAN LEGAL HISTORY

ABN 55 099 158 620

2011 AUSTRALIAN LEGAL HISTORY ESSAY COMPETITION: CONDITIONS OF ENTRY AND GUIDELINES

1. **COMPETITION OBJECT:** (a) To promote interest in, and an awareness of, Australian legal history by encouraging students to develop a facility for describing historical events and for recognising their place in broader themes; (b) To provide opportunities for Educators and Students (at several levels) to encounter Australian legal history through development of story-telling skills and exposure to broad themes; concepts underlying the general law; and particular cases of interest; and (c) To recognise excellence in the study of Australian legal history.
2. **THE TASK TO BE PERFORMED BY ESSAYISTS:** Entrants in the Competition are entitled, and required, to address any theme, topic or question on Australian legal history. Essays must be about “Australian legal history”. They can be (but need not be) about the theme, topic and question here nominated by the Society as an appropriate subject matter for an Essay. Any “Australian legal history” subject matter will suffice. Possibilities include development of Australian law (eg, Contract, Tort, Criminal Law, Property Law, Indigenous Law), Australian legal biography and stories about Australian law and society generally (including stories about the development of parliamentary democracy in Australia, tales of Australian bushrangers and stories about Australian lawyers and their families in times of war).

3. **COMPETITION THEME** (Not compulsory): The peace and prosperity of a modern democratic society depends on its members being free to make, and bound to honour, a contract. Part of the function of the law is to lay down principles to help everybody to know when, and how, a contract is made.
4. **ESSAY TOPIC** (Not compulsory): The “will theory” of contract law, giving legal effect to the objective intention (“will”) of parties who make an “agreement” intending it to be legally binding, views a “contract” as a “bargain” between contracting parties in respect of which, at the time the contract was made, there must have been a consensus, a meeting of minds, between the parties. Usually, a contract is made when one party “accepts” an “offer” made by another party. A contract can be made without a formal process of “offer” and “acceptance”: *Brambles Holdings Limited v Bathurst City Council* [2001] NSWCA 61; (2001) 53 NSWLR 153 at [71]–[81]. However, legal analyses often do seek to identify an “offer” which ripens into a “contract” by and upon “acceptance”.
5. **ESSAY QUESTION** (Not compulsory): **Does Australian history offer examples of why the law does not recognise a contractual right to a reward unless a claimant has acted in reliance on the offer of a reward, but insists that anybody who makes an offer to the public must make good on the offer to anybody who does act in reliance upon it?**

Discuss this question by reference to one or more of:

R v Clarke (1927) 43 CLR 227;

Australian Woollen Mills Pty Limited v The Commonwealth (1942) 92 CLR 424 at 456-560; or

Carlill v Carbolic Smoke Ball Company [1893] 1 QB 256.

6. **COMPETITION CATEGORIES AND PRIZES:**

a. The Competition is open to all Students enrolled, at any time during 2011, in an Australian Secondary School or in an “undergraduate” Tertiary Course (defined as a course of study leading to the award of an undergraduate degree by an Australian University or an equivalent course, such as a Legal Practitioners Admission Board Course, approved for the purposes of the Competition by the Society), including a postgraduate practical skills course leading to admission to practice as a lawyer. For those students there are three categories of award; one for Tertiary Students, another for Senior School Students, and a third for Junior School Students.

b. The Competition is not confined to students enrolled in formal study of history or law.

c. **Tertiary Student Category**

Suggested essay length: 2000-4000 words approximately.

Essayist's Prize: \$1,000.00 and a \$1,000.00 Abbey's Book Voucher.

d. **Senior Secondary School Category (Years 11-12 in NSW, and Interstate Equivalents).**

Suggested essay length: 750-2000 words approximately.

School prize (for the School of the Winning Essayist): \$500.00 and a \$500.00 book voucher from Abbeys Bookshop, Sydney.

Essayist's personal prize: \$250 and a \$250.00 Abbey's book voucher.

e. **Junior Secondary Category (NSW Years 7-10 and Interstate Equivalents).**

Suggested essay length: 500-1,000 words approximately.

School prize (for the School of the winning Essayist): \$500.00 and a \$500.00 Abbey's book voucher.

Essayist's personal prize: \$250.00 and a \$250.00 Abbey's book voucher.

h. Each Essayist will receive a Certificate of Acknowledgement acknowledging participation in the Competition. At the discretion of the Society, Merit Certificates may be issued to selected Essayists.

7. **ESSAY SUBMISSION DEADLINE:** 5.00 pm on Monday, 12 December 2011. Essays should be submitted by email (preferably) or by post. They may be delivered by hand. Essays submitted by email should be sent to secretary@forbessociety.org.au Essays submitted by post should be addressed to The Secretary, The Francis Society for Australian Legal History, C/- NSW Bar Association, Lower Ground Floor, Selborne Chambers, 174 Phillip Street, Sydney, NSW, 2000. Essays submitted by hand should be delivered to that address.
8. **ESSAY WINNERS ANNOUNCEMENT:** **Australia Day (26 January) 2012.** The announcement will be made on the web site of the Forbes Society (www.forbessociety.org.au)
9. **CONDITIONS OF ENTRY**
- a. The Society is the sole judge of whether an Essay satisfies the requirement that it be about “Australian legal history”.
 - b. Each Essayist must certify that his or her Essay is his or her own original work, and that certification must be countersigned by a lecturer, tutor or teacher at his or her educational institution.
 - c. The Society reserves a right (without obligation) to accept Essays received after the Essay Submission Deadline and before the announcement of prizes.
 - d. The Society reserves a right: (i) not to make any award if, in the opinion of the Council of the Society, no essay merits an award; and (ii) to award more than one prize in any Category (including prizes of lesser value for meritorious essays other than a winning essay) if the Council thinks fit.
 - e. The Society reserves a right to publish, or to cause to be published as it sees fit, any Essay submitted and for that purpose to edit any Essay. [The Society anticipates that some essays will be published on its web site, and might be published or extracted in a law journal or newspaper, but does not bind itself or anybody else to publish anything].
 - f. The decision of the Council of the Society is final on all questions relating to the Competition, including those relating to the conduct and outcome of the Competition, publication of Essays and editorial work.

10. RESEARCH HINTS AND BACKGROUND INFORMATION

- a. To be eligible for entry into the Competition, and the award of a prize, an essay must address a theme, topic or question relating to Australian legal history. An essayist is free to choose any theme, topic or question, provided that it relates to Australian legal history.
- b. Essayists are invited (but not obliged) to address the “Essay Topic” and the “Essay Question”, and to write with the “Competition Theme” and the “Competition Object” in mind.
- c. For those essayists who choose to address the nominated theme, topic and question, the key to research is probably to choose an historical example of a case in which an offer of a reward has been made in circumstances giving rise to controversy.

The facts of *R v Clarke* (1927) 40 CLR 227 provide an example of the problems that can arise when a person at risk of prosecution co-operates with authorities in the hope of obtaining some personal advantage other than simply a reward publicly offered. In his book *Ned Kelly's Last Days: Setting the Record Straight on the Death of an Outlaw* (Allen & Unwin, Sydney, 2005) at pages 33, 64 and 68-69, the late Professor Alex Castles referred to endemic problems of “police corruption” where the authorities themselves might lay claim to an advertised reward simply for performance of their duties in the apprehension of a suspect. That possibility haunts stories of Ned Kelly, and the murder by the Kelly Gang of the police informant, Aaron Sherritt¹.

The *Carbolic Smoke Ball Case* [1893] 1 QB 256 is one of the most famous cases in the Common Law World, not limited to England or Australia. It is the basic case about “advertisements” and contract law.

The first part of the nominated Essay Question relates to the law stated in *R v Clarke*. The second part relates to the *Carbolic Smoke Ball Case*. The *Australian Woollen Mills Case* brings both sides of the equation together, emphasising the character of a contract as a “bargain” between contracting parties.

¹ See also JH Phillips, *The Trial of Ned Kelly* (Law Book Co, Sydney, 1987), pp. 16 and 36.

- d. A copy of each of *R v Clarke*, the *Carbolic Smoke Ball Case* and the *Australian Woollen Mills Case* is attached to these Guidelines, together with an extract from HR Curlewis, *The Mirror of Justice* (Law Book Co, Sydney, 1906), pages 233-239, which provides a snapshot of a barrister's explanation of "the [Australian] law of advertisement" between the time of the *Carbolic Smoke Ball Case* and later Australian cases (particularly *R v Clarke* and the *Australian Woollen Mills Case*) that settled Australian contract law.
- e. Each Essay should be typed. Handwritten Essays will be accepted, but typed Essays are preferred.
- f. There is no "word limit" as such. The "suggested Essay length" indicators for each Competition Category are for guidance only.
- g. Each Essay should include a short bibliography of the main books or other sources consulted by the Essayist in preparation of the Essay, and an acknowledgment of assistance received (eg, from teachers).
- h. So far as possible, Essayists should avoid use of quotations, particularly lengthy quotations and quotations of secondary (as distinct from primary) material.
- i. Any "Background Notes" published on the Society's website are offered primarily as aids to the staff of educational institutions, and others supervising students, who may be unfamiliar with the historical or legal issues they canvass or the availability of writings with a "legal history" flavour. They are not intended to constrain any Essayist's approach to the Topic or any expression of opinion. They should not be read as "model essays" designed to be copied. Their object is to make available to all participants in the Competition information which might be inaccessible to some, and to serve as an encouragement to everybody to consider the desirability of consulting primary sources such as may be found in Law Reports and Hansard records of Parliamentary Debates.
- j. One of the lessons to be learned from an examination of issues that arise in the context of the Essay Questions is the importance of basing any opinion upon particular facts. Judgments can vary significantly depending upon the facts identified for opinion. That is why a useful aid to clarifying thoughts is a "Chronology" which lays bare the sequence of facts thought to be relevant to any question stated for opinion.

11. **ACKNOWLEDGEMENT OF SUPPORT:** The Francis Forbes Society for Australian Legal History acknowledges the support for this School Essay Competition it has received from the following institutions:

The New South Wales Bar Association,
ABN 18 526 414 014,
Basement, Selborne Chambers,
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www.nswbar.asn.au
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Contact: Professor Andrew Buck,
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Contact: Christine Yeats,
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**The Legal Affairs Section,
The Australian Newspaper**

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