

THE FRANCIS FORBES SOCIETY FOR
AUSTRALIAN LEGAL HISTORY

ABN 55 099 158 620

**2010 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; and (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.
2. **COMPETITION THEME:** An important function of the law in any society is to reconcile tensions between self interest and altruism and between personal responsibility and a need to be mindful of the welfare of the community.
3. **ESSAY TOPIC:** How moral imperatives of altruism (regard for others as a principle of action) and autonomy (personal freedom and self government) play out in the law, using as illustrations: (a) the concept of an actionable “wrong” (what lawyers call a “tort”) in the “law of negligence” applied in civil proceedings between litigants asserting rights as individuals; (b) the criminal law, when the State seeks redress in court proceeding brought against an individual in the name of the public; and (c) the provision of a public apology for a “collective wrong” by a parliament speaking in the name of the State and as a representative of its citizens.

ESSAY QUESTION: Can Australian history teach us anything about the role of altruism and personal responsibility in the law?

Discuss this question by reference to one or more of the following:

- a. **The Civil Law of Negligence:** the idea (found in the law of negligence as applied by courts exercising civil jurisdiction) that one person might owe to another person a “duty of care”, a breach of which entitles the other person to an award of damages (compensation) in proceedings that he or she might institute against the negligent party, contrasting:
 - i. the famous formula of Lord Atkin in *Donoghue v Stevenson* [1932] AC 562 at 580 (“the Snail in the Ginger Beer Bottle case”), for determining whether a “duty of care” is owed by one person to another in the law of negligence; and
 - ii. the determination of the High Court of Australia (in *Cole v South Tweed Heads Rugby League Football Club Limited* [2004] HCA 29; 217 CLR 469 at [9]-[18] and [129]-[132] and *CAL No. 14 Pty Limited v Motor Accidents Insurance Board and Scott* [2009] HCA 47 at [49] and [52]-[57]) that publicans owe no general duty of care to patrons in relation to the amount of alcohol served and the consequences of its service, save in exceptional cases; and/or
- b. **The Criminal Law of Homicide:** the idea that, outside war, no person is entitled to save his or her own life by killing another, an issue debated in *The Queen v Dudley and Stephens* (1884) 14 QBD 273 (and 560) at 286-288, where a court held that “necessity is no defence to a charge of murder” and, accordingly, shipwrecked sailors bound for Australia were not entitled to cannibalise their cabin boy to survive; and/or
- c. **Cases Involving “Collective Wrongs”:** the plight of “the Stolen Generations” and “the Forgotten Generations” to whom Australia’s Parliament delivered formal apologies on 13 February 2008 and 16 November 2009 respectively.

4. **COMPETITION CATEGORIES AND PRIZES:**

- a. The Competition is open to all Students enrolled, at any time during 2010, 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). 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.
5. **ESSAY SUBMISSION DEADLINE:** 5.00 pm on Monday, 15 November 2010. 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.
6. **ESSAY WINNERS ANNOUNCEMENT:** **Australia Day (26 January) 2011.** The announcement will be made on the web site of the Forbes Society (www.forbessociety.org.au)
7. **CONDITIONS OF ENTRY**
- a. 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.
 - b. The Society reserves a right (without obligation) to accept Essays received after the Essay Submission Deadline and before the announcement of prizes.
 - c. 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.
 - d. 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].

- e. 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.

8. **RESEARCH HINTS AND BACKGROUND INFORMATION**

- a. All Essays should address the “Essay Topic” and the “Essay Question”, and be written with the “Competition Theme” and the “Competition Object” in mind.
- b. Each Essay should be typed. Handwritten Essays will be accepted, but typed Essays are preferred.
- c. There is no “word limit” as such. The “suggested Essay length” indicators for each Competition Category are for guidance only.
- d. 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).
- e. So far as possible, Essayists should avoid use of quotations, particularly lengthy quotations and quotations of secondary (as distinct from primary) material.
- f. 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.

- g. The “Competition Outline” offers guidance about the degrees of difficulty of particular aspects of the Essay Question. It also contains recommendations about approaches that might be adopted to accommodate the different levels of maturity of Essayists.
- h. 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. Judgements 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.

9. **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,
174 Phillip Street,
SYDNEY, NSW, 2000.
www.nswbar.asn.au
Tel: (02) 9232 4055
Contact: Chris Winslow,
Publications Manager.

The Law Society of New South Wales,
ACN 000 000 699,
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SYDNEY, NSW, 2000.
www.lawsociety.com.au
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Contact: Michael Tidball.

**Division of Law,
Macquarie University,**
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www.law.mq.edu.au
Contact: Professor Andrew Buck,
Tel: (02) 9850 7087.

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State Records NSW,
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KINGSWOOD, NSW, 2747.
Sydney Records Centre:
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The Rocks,
SYDNEY, NSW, 2000.
www.records.nsw.gov.au
Contact: Christine Yeats,
Manager, Public Access.
Tel: (02) 8247 8617.

**The State Library of New South
Wales,**
Macquarie Street,
SYDNEY, NSW, 2000.
www.sl.nsw.gov.au
Contact: Kay Payne,
State Library Foundation.
Tel: (02) 9273 1593.

**The Legal Affairs Section,
*The Australian Newspaper***

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