

## OCCASIONAL ADDRESS

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Delivered at the UTS graduation ceremony  
for graduates from the Faculty of Law  
Great Hall, City campus, Monday 12 May 2008, 10.30am

Chancellor, Vice-Chancellor, Faculty Deans, colleagues, families and friends,  
and most importantly graduates.

I also acknowledge the people of the ancient lands on which this great  
institution has been built.

Thank you for the opportunity to speak at your law graduation ceremony. I am  
very fond of this place having studied business part-time and full-time for the  
five years ending 1976.

The first thing you should know about me is that I am a banker and accountant,  
not a lawyer. So when I asked my research assistant, who is a lawyer, what I  
should say today, she said “not much. But if you must say something, at least  
keep it short, relevant and interesting.”

While I’m no lawyer you must be good at finance having chosen a degree which  
has one of the fastest payback periods for HECS.

Successive generations of Australians have built both the concept of the law  
and the capability to teach it to you. Given the fundamental importance of the  
rule of law to any nation, you have now been placed in a position of trust by  
your community. No doubt you recall from lectures the situations in which  
trustees can find themselves, most of which can be handled better if they are  
themselves trusted people.

How are you going to deal with the challenge? I’ll bet your family, friends and  
teachers here today — your greatest supporters — would like to know. I’ll also  
bet you would like the short memorable answer because this is your party day  
— not your lecture day.

What about three key thoughts — why the law is important, what makes a good  
lawyer and how to conduct yourself.

First the importance of the law.

Even though I am not a lawyer I think the greatest invention was the magna carta. The magna carta is a document of 1215 that limited the King's absolute power and forced him to accept the rule of law. The universal principles have been progressively interpreted to embrace all citizens. It is accepted as the foundational step in the emergence of democratic power in England and subsequently more widely across the world, including the US. It was essentially a document that created freedom.

We take it for granted that freedom is a good thing for us as individuals. But what we don't always think about is what it contributes to us as a social group.

The interplay of freedom and the law is a phenomenon that has been observed by many. David Hume, in his eighteenth century Treatise of Human Nature, drew attention to the three fundamental laws of nature: stability of possession; its transference by consent; and the enforcement of promises.

As Hume himself wrote, "[i]t is on the strict observance of those three laws, that the peace and security of human society entirely depend; nor is there any possibility of establishing a good correspondence among men, where these are neglected."

If people are free and their freedom is protected by the rule of law, they will innovate — even more so under Hume's framework. Innovation, accompanied by investment and a continuous change and improvement process produces wealth. In turn, wealth helps fund the protection of freedom.

This is the power of the system in which you have just become a trustee.

How do you handle this role — what makes a good lawyer?

Let me talk about common law versus statute law. I am a fan of common law, probably because of my business background in which contract law is so important. Contract law allows the dynamic development of innovation without legislators having to second-guess what will be invented next.

I am reminded of cases such as *Carlill v Carbolic Smoke Ball Company*; *West v Sydney City Council*; *Hobbs v London South Western Railway*, , in which we invariably got carried away the amusing facts but and to be reminded by our teachers of the relevant point of law.

But in the case of *Pharmaceutical Society of Great Britain v Boots Cash Chemists*, I first understood the way in which precedent helps adapt to innovation because *Boots Cash Chemists* was a very early adopter of a store

checkout, rather than over-the-counter service; and the case was about the legal location of the point of sale under the new layout.

Today, more and more statutes are being legislated with more and more pages in each statute. A recent analysis of the average annual output of successive Prime Ministers showed a steeply rising trend with the last Prime Minister reaching 6,000 pages per annum. Because of the sheer volume of statute law that exists today there is a lot of time devoted to reading and interpreting these statutes — all graduates here today know will know what I mean.

Because of all this reading, lawyers can also become lost in thinking “Am I a good lawyer because I am a fast reader?” I’ve already said that law is one of the great disciplines and professions and it ensures a system and society with freedoms and principles. Of course then, lawyers are more than mere readers of statute law.

An emphasis on statute law means that lawyers are not always as well utilised as they could be. Work which centres on the reading of rules is not as engaging as the analysis of common law cases, which involves testing the law and advising clients of the law within a developing system of innovation and continuous change.

What this means is that you need to find a balance between the things you have to do, and the things you do to add value to the law and your client.

This leads me to my final point, which is where the things you have to do may not always align with the things you want to do.

What I mean by this is that sometimes there is a legal ‘out’ but not a moral ‘out’.

If we have this system which I’ve referred to earlier, then the law is like the engine room. Lawyers ensure that society operates in accordance with a set of accepted principles and within a known set of rules. This facilitating role means that lawyers have the capacity to do a lot of good in the system. It also means that society is dependent on the standard of integrity in your profession. But the line between right and wrong, or legal and moral, is not always as clear as we’d like it to be.

Those who have gone before us have developed systems that allow a small percentage of the population to govern the future design of our society. About 16% of people in Australia attain a bachelor degree and less than 3% attain postgraduate qualifications. Your forbears have done this because they want you to carry the torch. But the torch must be carried with the right values.

In any situation where you don't know the best way, choose the path that conforms with the rule of law and what is right. If still in doubt, base your decision on the protection of your reputation and integrity. Ultimately, that's all you will have.