

DE MINIMIS

MONDAY, APRIL 16, 2012

Established 1948; Revived 2012

VOLUME 1, ISSUE 7

DE MINIMIS IN TOUCH WITH GRADUATES!

You've been asking for it, and we've finally been able to get in touch with some graduates. We hope you enjoy the newest section of *De Minimis* which is a collection of interviews with recent graduates (within the past 5 years). These interviews are designed to ask graduates about their experiences in the post-Law School world, and get some answers that are outside the marketing by law firms. The graduates have had different experiences; working in large firms, for CLCs, or the government. And we're still searching for graduates who aren't working in law, so if you know anyone, let us know.

Love Never Dies

The cliché of France as the land of romance and Paris as the city for lovers is a perennial in the global imagination. Yet those who have read the great French novelists, especially Balzac and Zola, or who have tried to negotiate with a Provençal peasant (see Peter Mayle's books) know that tough-minded realism bordering on cynicism is as much a French trait.

Both romance and pragmatism are a fore in a unique French law that makes it possible — and legal — to marry someone who is no longer alive. Every year in France, a few dozen weddings occur between one living partner and one deceased partner, and they can take place years after the bereavement.

Article 171 of the Code Civil permits posthumous marriage as long as there is evidence that the deceased intended to marry his or her fiancé(e) before death parted them. At wedding ceremonies, a photo of the deceased party is typically placed where he or she would normally sit.

The presiding official, usually a mayor, will say "I did" instead of "I do" and the phrase "until death do us part" is not used.

More than 50 per cent of births in France occur out of wedlock, and a posthumous marriage allows children of the union to be legitimised. In a country with strict rules about changing and keeping names, posthumous marriage also allows a new spouse

(usually the bride) to adopt the surname of the deceased spouse. No sooner is the marriage officialised than the living spouse has the status of widow(er) — as well as the pension benefits that this can bring. Officially, the couple are declared married the day before the death of the absent spouse.

Posthumous marriage was introduced into French law in 1915 for the sweethearts of soldiers who died in the trenches during World War I. Under the law, authorisation can come only by presidential decree.

The law was extended to civilians in 1959 after President Charles de Gaulle became aware of the case of a pregnant woman whose fiancé had died alongside more than 400 others after a dam burst in the town of Fréjus.

Recently, many in France have juxtaposed the legality of posthumous (heterosexual) marriage with the illegality of gay marriage. (France did pioneer civil unions for both hetero and gay unions, however, with the advent of the PACS in 1999.)

What do you think — ghoulish or practical, romantic or just bizarre? France is the only Western country to allow posthumous marriages and perhaps, like so much else about a nation that has vexed and perplexed foreigners since at least the time of Julius Caesar, it's best summed up as — simply French.

Bronwen Ewens

Getting to know Kevin Heller

With a collection of undergraduate and postgraduate degrees from the New School for Social Research, Duke, Stanford, and Leiden University, Dr Kevin Heller has been a legal practitioner, worked in Hollywood, and taught in the US, New Zealand, and Australia.

On law school

Kevin had not originally intended to attend law school, however he had always been interested in criminal law and legal theory. He says the impetus came from Stanley Fish, an English and Law professor, who called him into the office and told him, "Kevin, if you like law this much, you should go to law school".

Career

Following law school, Kevin clerked for a judge at the US Court of Appeals in the 9th Circuit, then worked as a criminal defence lawyer for three years in Los Angeles. Although he enjoyed being in court, arguing in front of a judge or jury, he did not enjoy the daily practice of law —

especially the early mornings and the suits — and quit legal practice to work as a writer and producer on various prime time TV shows, including *The Apprentice*.

Hollywood

Kevin says the best part about his time working on TV shows was writing dialogue, and having Sally Field say them on set, thinking "wow, she's won two Academy awards, and she's saying my lines". He describes Sally Field as one of the nicest people he has ever met in the business, and still exchanges emails on their mutual birthday.

Academia

After four years of working in Hollywood, he became a lecturer at the University of Georgia, and states that it was "only matter of time before I became a legal academic". Kevin enjoys both teaching and research, and says that the fun of teaching is the challenge of being able to convey complicated legal concepts into language students will be understand and use.

Most interesting case

Kevin co-ran the defence for the entire pre-trial stage on the Radovan Karadžić case. He thinks that it is "probably the most important trial since World War II, and it was fascinating to work on."

On Melbourne

"To be both vegetarian and a coffee fanatic, this is the best city in the world, and I love footy"

Advice to Students

"My advice to students would be, if they are so inclined, to be entrepreneurial and not assume that the only jobs that they can get with their law degree are the ones that are going to come and knock at their doors because this is a prestigious law school. Law schools exist to funnel people into big firms and there are lots of other things that one should be doing with prestigious law degrees, than working in a big law firm. But it means they have to seek out those opportunities, they won't necessarily come to them."

ALUMNI INTERVIEWS: COULD THIS BE YOU IN 5 YEARS?

Michael Gomm

De Minimis reporter Emma Henderson meets former Melbourne University law student Michael Gomm to find out about life at Allens. While Emma Shortt interviewed alumni Katia Sanderson.

Michael Gomm is a junior lawyer at Allens Arthur Robinson. He started his graduate year at Allens in 2009. While at the University of Melbourne, Michael studied a Bachelor of Arts/Law and took a half year break before his final year to travel. Michael graduated in the middle of 2008 and spent six months travelling and interning at the International Criminal Tribunal for the Former Yugoslavia before starting at Allens. He found the internship to be an “unbelievable experience” and maintains his interest in international law in his work at Allens.

Can you tell us about what you do at Allens?

“I began my rotation in commercial litigation, then moved to energy and resources for a year and have since settled in commercial litigation. I chose litigation as it was one of the hot spots in the firm and I enjoy being part of the international business obligation group as this has been an interest since uni.”

“Something good about my working life at Allens is that it’s quite varied. You never really know what’s going to come across your desk.”

Do you get opportunities to pursue your areas of interest or do you have to take what comes your way?

“There’s no simple answer. There are times where something needs to be done and you’re the person who has the ability or the time to do it so you have to. However, I’ve found people have been quite encouraging when you say ‘I’m really interested in this, I’d like to do more’. People are generally really receptive to that. People always enjoy having someone come up to them and saying ‘I really like the sort of work that you’re doing can I help you with that?’”

What’s been a career highlight?

“I’m working on a matter at the moment that is progressing through the High Court and we had a hearing a couple of weeks ago. Getting to go up to Canberra and experience all of that was really exciting and an absolute highlight and it was a privilege to be a part of it.”

“There are career highlights that are more personal, really little things. Like being in a mediation and knowing where the right document is when people need it, a really insignificant thing but you feel like you played your part in the team. As a junior lawyer

Profile

Name: Katia Sanderson

“Firm”: Consumer Action Law Centre (CALC)

Graduating Year: 2010

Degree: JD

Prior to studying law Katia had worked as a social worker with Ardoch Youth Foundation, coordinating a project that supported schools in Melbourne’s West. The drive to study law came from a desire to induce “more systemic change”.

After completing her degree, Katia

you are constantly feeling your way. You’re learning all the time and when you feel like your starting to get the hang of something that is a real sense of achievement.”

Why did you choose Allens?

“I chose Allens because I thought I would be challenged. I wanted to go to a firm where I would learn a lot and where I would feel a little out of my comfort zone, not in a social sense but in a professional sense. I got that feeling at Allen’s they expect a lot, they expect your best effort every time and its something I was drawn to. It was how I identified that I could become a better lawyer. That’s not to say there aren’t other ways you can do it. It is a certain type of practice at Allens you don’t get high volume, small matters ... it’s not a place where you are churning out files ... matters are quite big, massive really, you can get really absorbed into them. The example is the High Court one, this matter was going when I started as a grad in 2009 and it had been going long before I started and it’s still going now. That’s how I thought I wanted to learn.”

What are the challenging aspects of your job?

“ Definitely the unpredictability. As a junior lawyer, especially, you don’t see things coming. You plan ahead and then something comes across your desk and completely throws out your timing for everything you’ve been doing. It can be quite intense when you have multiple things needing to be done. But that’s when things get really interesting. That’s when the adrenaline starts flowing. It’s a double edged sword, you’re working longer hours, but from what I’ve found it kind of grabs you and you get really immersed in it.”

Who are the sort of people Allen’s want?

“They look for people who are diligent, interested, interesting. I’m always keen to find someone I’d like to work with.”

Any tips for the interview process?

“Be yourself. I always figured that if I was somebody that I wasn’t, if I was misleading about who I was, and they hired that person I’m going to have to be that person once I got the job. I always figured the people interviewing know about the firm in a way that I don’t, so if they don’t think I’m right for them then they’re probably right and it’s probably a good thing that I haven’t gone further.

There are different firms for different people.”

Katia Sanderson

snagged a graduate position at Corrs Chambers Westgarth in the first round of applications immediately following the Global Financial Crisis (GFC).

The best things about working for a large firm include the “exposure to smart people who are exceptional at what they do” and the “tremendous amount of oversight, particularly in drafting correspondence and memoranda of advice”. Katia did three rotations at Corrs, spending five months in each of the firm’s Litigation, Workplace Relations and Corporate Advisory practice groups, where

she was exposed to commercial legal practice in an informative way.

Katia decided to direct her legal career back into the Community Legal sector after completing the graduate program at Corrs. It was a choice made in light of the original reason for pursuing a law degree, and the CALC role came along at the perfect time. The fit with CALC was also perfect, with CALC focussing on assisting and advocating for low income or otherwise vulnerable consumers . These objects, Katia says, was consistent with the “values I care about”. *(continued next page)*

The best things about working at a CLC for Katia are “the interplay of policy and casework”, which arises from the close interaction of the 7 solicitors and the 7 employees that focus on policy and campaigns work. An extra benefit is the organisation's commitment to helping their employees achieve the right work-life balance.

Although the graduate year at Corrs was a positive experience for Katia and invaluable from a skills development point of view, Katia stresses that there are many very good alternatives to the traditional Clerkship route. She says that she has watched fellow JD graduates take up exciting opportunities outside commercial practice, including:

1. placements arranged through the

- College of Law or Leo Cussens
2. the Victoria Legal Aid “New Lawyer’s Program”
3. legal research assistant roles
4. judge's associateships
5. paid and unpaid international internships, including at the UNHCR in Kuala Lumpur and the International Criminal Tribunals;
6. volunteering, then working at a CLC

A “mutiny” of sorts

Katia agreed that achieving a comfortable work-life balance could be more difficult in big commercial firms, particularly in transaction-focussed practice groups (surprise, surprise). However, she suggested that law graduates may benefit from “unionising” or acting

collectively to ensure that any concerns they have about their rights in the workplace are heard. The source of the rights for law graduates (and only law graduates, not associates) is the award conditions that apply to graduates and include conditions such as minimum leave requirements for Practical Legal Training exam preparation. She says what may prevent graduates from doing this is the fierce competition for positions with major firms and the perception that there are countless other high-achievers ready to take your place. But she asks, what group of young workers is better able to understand, articulate and demand respect for their rights than young lawyers? Katia was pleased to learn that this point to be the subject of an upcoming article in *De Minimis*. Watch this space!

Negotiating with Jesus

The Liturgical Week: A Fisher and Uryan Analysis

The Law School staff are all well and good, but when school's out we're left largely to our own devices. Last week, the Easter Bunny and Hot Cross Buns suggested a more liturgical set of Dispute Resolution materials, namely how Jesus would go in a negotiation.

The clang of iron shackles cuts across a sweltering Roman afternoon. The hot wind blows sand into an air of anticipation as a crowd gathers to witness a rare sparring ...

Pilate: *Art thou the King of the Jews?*

Jesus: *Sayest thou this thing of thyself, or did others tell it thee of me?*

Pilate: *Am I a Jew?*

The tender arts of deflection and obfuscation waltz lightly, no side willing to engage. A veiled threat flows:

Jesus: *My kingdom is not of this world: if [it were], then would my servants fight.*

Brandishing his Best Alternative To a Negotiated Agreement (BATNA) for all to see, Jesus draws attention to the immense power disparity between the two: on the one side, Roman bureaucrat Pontius Pilate, ground down by the ceaseless toil of public office, and an insatiable constituency; on the other, Jesus Christ QC, personal representative of the Creator of the Universe.

Banisher of tax collectors (without arbitration), defender of the poor against the mighty (without conciliation), and partly responsible for that ultimate spectre of adversarialism, Judgment Day itself; Jesus is The Master of Aggressive Negotiation.

Pilate should have seen the odds stacked against him, and he should have considered alternatives to positional negotiation. Fisher and Ury's “Negotiation Jujitsu”, for example, would have helped to break the cycle of reactive scuffling. Instead, his backbone remains taut:

Pilate: *Art thou a King then?*

Jesus: *Thou sayest that I am a King.*

Pilate attempts to bring Jesus' Worst Alternative To a Negotiated Agreement (WATNA) into relief:

Pilate: *Knowest thou not that I have power to crucify thee, and have power to release thee?*

Again, his form fits poorly to the fuss. Threats don't work with Jesus.

Jesus: *Thou couldest have no power against me, except it were given thee from above...*

Jesus' *coup de grace* is a classic positional negotiation tool: the “reference to higher authority.” Pilate concludes the proceedings in failure, his confidence shaken and his reputation in tatters.

Fisher and Ury argue that responding positionally to tactics such as Jesus' results in “a vicious cycle of attack and defense, and [a waste of] a lot of time and energy in useless pushing and pulling.” This point is particularly salient to the case here, as Jesus is indeed Master of All Time and (one assumes) Energy: positional negotiation plays right into His Holy hands.

Pilate needed to adopt an interest-based approach. Not doing so cost him his preferred outcome, and any semblance of a respectable legacy. Practitioners and students of negotiation would do well to learn from his failings.

***All dialogue: [1611] KJB (Gospel: John) chs 18, 19 (per amicus curiae Pontius Pilate, Jesus Christ QC).*

Doug Porteous

PROCRASTINATION

This week we procrastinated instead of finding activities for your procrastination, but we didn't procrastinate on putting some stuff online at mumdeminimis.com. Look forward to a quiz and sudoku in print next week! In the meantime, use this tiny amount of space to practice your signature:



L IS FOR...

List-making

On the Saturday before last, I made a list. It contained all the things I needed to complete during the Easter break. Yesterday I made another list. It contained all the things I'd failed to complete during the Easter break.

Those lists are identical.

My law-student life is indexed by these sorts of lists. They serve as reminders of my repeated failures, like the "participation certificates" from high school chess-club that still line the inner sides of my bedroom cupboard doors.

Every semester I make grand plans for the break, and every break I avoid study by watching all the music videos released in the preceding 3 months (the video for 'Call Me Maybe' is actually like a 3 minute lolfest, omg step asyd Avril Lavigne cuz Carley Rae is lyk the hottest bitch from Canadia ryt now).

If we assume that any list is aspirational and that nothing on the list will actually get done (which applies to all of mine, including that list of evidence I was meant to destroy before my impending manslaughter trial this week), then the only function of

the list is to remind us of our laziness. It's like how tattoos of anything serve as a constant reminder of being a douche. Which would make a tattoo of a list a doubly potent reminder of lazy-douche-ness.

Imagine if Jesus had written a bucket list before Easter Friday: he would have returned on the Sunday to a stone tablet iPad-equivalent with three reminders, only one of which he'd actually done: "ensure my legacy is recorded in one unifying text rather than three conflicting ones, check the results of Mary's pregnancy test, and check where the fish are in the Sea of Galilee so I can look cool and Jesus-like when I tell the boys where to cast their nets."

The solution? Don't make lists! You'll still fail at doing stuff, but you'll do so in relatively short-term, ignorant bliss!

I guess the other solution is that you write lists and actually do the stuff... but then you have to do the stuff...

So I stand by my initial suggestion. From here on in you only need this list:

1. Never make or read lists other than those permitted under list item 2
2. This list
3. Buy milk and bread.

Charles Hopkins recently launched a blog entitled 'textsfromJulianAssange', but it got pulled down by governments of every developed nation.

THIS WEEK IN LEGAL HISTORY

April 19, 1967 - The Beatles sign 10-year Partnership Deed

On April 19, 1967, The Beatles - John, Paul, George and Ringo - signed a partnership deed agreement to continue the group for a further 10 years. Prior to this time, the Fab Four had been partners-at-will, meaning their agreement could be terminated whenever they wanted. The bandmates decided to take the plunge and entered not only into formal legal partnership with each other, but also with Apple Corps Ltd, a company who bought into the partnership (at a whopping £800,000) with an 80% interest in the

partnership profits and a right to manage the business side of the partnership.

Unfortunately, Apple mismanaged profits and began to lose money rapidly. In early 1969, John Lennon had apparently begun telling friends that if things were going to continue this way, the Beatles would be broke within six months. By 1970, obvious tensions had arisen between the bandmates, particularly as to the financial state of their band and the tactics employed by their relatively new band manager, Allen Klein, whom Paul McCartney disliked. This would eventually

lead Paul to file an action against his bandmates and manager for breach of agreement, and seek a declaration of dissolution of partnership. In his writ, he asked the High Court of Justice, Chancery Division, for appointment of a receiver to take control of all property and interests in which the Beatles were involved, as well as an account of the band's financial position.

For more details of the lawsuit and a legal analysis of his counsel's arguments, head to

<http://abbeyrd.best.vwh.net/paullawsuit.html>.

Annie Zheng

ASK AGONY AUNT

Dear Agony Aunts,

I had planned on catching up on my readings during the break but haven't actually managed to do any schoolwork due to social commitments. I keep remembering my lecturers tell me that I really need to have notes ready by the end of the break and now I'm worried that I'm too far behind. What do I do?

Social Butterfly

Dear Social Butterfly,

When one starts postgraduate study, one usually suffers from the delusion that THIS time, it will be different. Thoughts such as 'I'll be organised'; 'I'm going to do my readings ahead of time'; 'I'm going to revise my notes every week' run rampant in the lead up to the semester... and lasts about as long as your lecturer takes to introduce themselves in the first class of the semester.

Having said this, why are you asking what you should do? Are you looking for

looking for some magical solution? Auntie Ethel hopes you have packed in 2 months worth of fun into the break. Because you just need to suck it up, do the work, and you will likely be singing along with the Youtube clip of Marshall: "Studying law, on a Friday night... being a lawyer had better be awesome!"

Auntie Ethel

Ps. Try setting small goals to complete, it's easier to attack a task in multiple small steps than a cumbersome large step.