

Impact of globalization of law and legal services on legal education

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Globalization: Tobacco Plain Packaging Act (Cth) 2011



- › Australia party to World Health Organization's *Framework Convention on Tobacco Control* 2005
- › Art 13: parties “required to implement comprehensive bans on tobacco advertising...”
- › Commonwealth: *Tobacco Plain Packaging Act 2011*, in force after 1 December 2012

- › 1. Constitution s51 (xxxi): is legislation an “acquisition” of property attracting the right to just compensation?
- › 2. Bilateral Investment Treaty: Hong Kong and Australia
 - › Protects IP investments, right to ‘fair and equitable treatment’ and reasonable compensation re deprivation of investments, dispute to be resolved by an international tribunal under ICSID rules (Washington)
- › 3. WTO: TRIPS Council Member complaint against Australia
 - › Impact on developing states as tobacco exporters?
 - › Does health policy justify any breach of IP law?
 - › Does scientific evidence support health benefits of plain packaging?
 - › Is the measure necessary to achieve health outcome/

National and international courts

Philip Morris v Norway September 2011

- › EFTA Court: use of precautionary principle re visual display ban at point of sale

EU Tobacco products Directive

US Court decisions:

- › *Reynolds Tobacco v US Food and Drug Admin*) US District Court : reject rules requiring graphic images on cigarette packs is a breach of the First Amendment

Regulation: used company advertising for government advocacy

BIT: Philip Morris v Uruguay Arbitration

› World Health Organization

› Cancer Council

› WTO

› UNESCO

What does a lawyer need to know?

- › National laws, contracts, constitutional rights, health laws, investment rules, intellectual property protection
- › Applicable treaty obligations, bilateral (BITS) and multilateral (Framework Convention)
- › Comparative laws of other nations:
- › Evolving jurisprudence of international courts and tribunals
- › International organizations: WHO, UNESCO

Aims of legal education and curriculum?

International aims:

- › Prepare our graduates for global practice
- › Increase professional mobility to ensure Australian lawyers can compete in the global environment
- › Assist in export of legal services
- › Facilitate mutual recognition of Australian law degrees internationally and of overseas degrees in Australia
- › Attract high calibre international students
- › Enhance bargaining position in free trade negotiations
- › Ensure cultural sensitivity to ensure Australians can provide legal advice in diverse jurisdictions

Some general points

It ain't broke?

- › Australian legal education standards are world class; give graduates a competitive edge
- › Legal education is more than the professional degrees LL B and JD: LLM, Diplomas, PhD
- › Opportunities beyond traditional practice: government, corporate, business, NGOs international organizations
- › LLB: 21st century arts degree?
- › Priestley XI: applied by admitting authorities with “light hand”: no need for a Bar exam as in US France: best not to tamper with existing structure?

21st Century lawyer?

- › Speaks and practices law in two or more languages
- › Has a practicing certificate in more than one jurisdiction
- › Works in offices in several different cities and countries
- › Is technologically savvy
- › Integrates *pro bono* work in professional life

What is missing? What should be deleted?

- › Torts
- › Contracts
- › Criminal Law and Procedure
- › Federal and State Constitutional law
- › Administrative law
- › Civil procedure
- › Evidence
- › Property law
- › Equity
- › Professional Conduct (trust accounting)
- › Company law

Extend period of professional degree? Or delete some Priestley XI?

- › Private International Law : conflicts?
- › Public international law?
- › Comparative law?
- › Intellectual property?
- › Jurisprudence?

Growing emphasis on “Graduate attributes”

- › Critical analysis
- › Problem solving
- › Advocacy and persuasion
- › Mediation and negotiation skills
- › International literacy: exchange and internship programs
- › Cultural competence: indigenous
- › Ethics and social justice
- › Clinical experiences

Integration of global legal and generic skills :

- ◆ Tokenism: not just ‘add ons’ with some international law and comparative examples
- ◆ Outcomes: should be greater than the sum of its parts
- ◆ what value added in an internationalized curriculum? graduates move comfortably across jurisdictions with global understanding of trans-national and international issues

- › Legal Profession National Law 2010
- › Legal Profession National Rules 2012 Draft
- › National Legal Services Board
- › TEQSA
- › AQF
- › National Accreditation Standards for Australian Law Schools

- › Integration of curriculum
- › Develop interdisciplinary approach and jointly-badged degrees
- › Negotiate exchange agreements and international internships
- › Foster visits by international scholars to encourage exposure to different legal systems