

Remarks on the occasion of celebrating Professor Barbara McDonald's contribution to the
University of Sydney Law School

Chau Chak Wing Museum

University of Sydney

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Barbara taught contract, equity and, especially, tort – subjects which are at the heart of any law school's teaching – for many years. That by itself is not so uncommon. However, her teaching and her research also engaged directly with statute, and in particular law reform. Law reform comes in two broad categories: sensible and foolish. Some sensible measures (including those she wrote) were not made law. Some foolish measures (including those she criticised) were made law. None of that is her fault. However, she deserves all credit for the sensible measures that have been enacted in part because of her support, and for all of the foolish measures which were not enacted in part because of her criticism. And her writings thereafter have been very valuable – within the limits of the judicial function they have helped courts to avoid the worst aspects of the foolish measures which have been enacted, and to achieve the benefits of the sensible measures that have been enacted. What all this represents is a very talented lawyer who threw herself completely into all aspects of her field.

Three times in the last five years I've taught an intensive masters course on statute and tort law with Barbara – the two of us leading a discussion, never quite sure what each other is about to say, and learning from the spontaneity of the interaction. It's a little like two hosts of a radio show riffing off one another, and David Rolfe, fully embedded as he is in the media, likens us to Kyle and Jackie O (I understand that I am Kyle and Barbara is Ms O – I am not sure of what he is drawing upon in making the resemblance). One of the unique aspects of teaching that course is hearing Barbara's account of arranging a conference, in Parliament House, on the Civil Liability Bill, while it was passing through the chambers, so that the politicians could see and hear from experts on what the government was proposing to enact. It was memorable to hear Barbara's description of the striking lack of awareness, in the so-called insurance crisis of 2001, of the changes that were being made by those charged with making them. Listening to Barbara on the passage of the Civil Liability legislation must have been like listening to Professor Glanville Williams on joint liability¹ or Professor David Benjafield from this university on the Supreme Court Act.² Not all of the students appreciate the quality of the classes they are attending, but the very best do. Of course, one of Barbara's talents is to extract from the very best students their very best.

Time and time again I have seen how Barbara spends time getting to know students and young academics, in a way that was once much more common than it seems to be now. I've seen this personally in the way she has produced edited collections with junior colleagues, including on Sir Anthony Mason's contribution to the law.³ And I've been the direct beneficiary of it. Around 6 years ago, Barbara provided me with one of the easiest decisions I have had to make as a judge. I receive many applications to work as my tipstaff. One had done an Honours thesis on mental injury

1 Cf G Williams, *Joint Obligations* (Butterworth & Co, 1949) and *Joint Torts and Contributory Negligence* (Stevens & Sons, 1951).

2 Benjafield could “truly be said to be the architect of the scheme”: NSW Law Reform Commission, *Report on Supreme Court Procedure*, tabled in Parliament 9 September 1969, para 19.

3 B McDonald, B Chen, J Gordon, *Dynamic and Principled: The Influence of Sir Anthony Mason* (Federation Press, 2022).

in Warsaw Convention cases, with splendid understanding of the law in about five jurisdictions, the meaning of *lésion corporelle* in the French authentic text of the unamended Warsaw Convention, the difficulties of federal jurisdiction in Australia, and the interaction with the Civil Liability legislation. He proved to be an outstanding tipstaff, who went on to do a BCL at Oxford, where last year he taught as a tutor at Brasenose (the college of Hart and Stallybrass and Barry Nicholas) before going to the Bar in London. John-Patrick could have chosen from any number of supervisors for his Honours thesis. Not by accident did he choose Barbara.

There is also a network of outstanding scholars in their field, thinly spread around the world. Barbara seems to know all of them. And when they are in town, she makes time to see them, and to give them opportunities to meet others. Once again, I personally have been a beneficiary. Indeed, some have attended informal round table discussions within the Supreme Court with judges and academics from most universities in this city, which have been a great success.

It's impossible to capture all of the essence of Barbara in 5 minutes, but may I conclude with a portrait of one of her (and my) teachers, John Lehane. The inimitable Roddy Meagher, some of whose bequests can be seen downstairs in this building, said of John:⁴

If you tried to describe Richard Strauss' music you would stress the brilliance of his orchestration, if it was Sibelius you would stress the austerity of his bleak Nordic melodies, but if it was Mozart all you could say was, accurately but dully, that his music was wonderful. In a way, one has a similar problem talking of John Lehane. He did not utter any famous statements, he never got violently angry, he never got drunk, he did nothing outrageous, he was not colourful yet he was one of the greatest lawyers and one of the nicest men any of us will ever meet.

4 R Meagher and S Fieldhouse, *Portraits on Yellow Paper* (Central Queensland University Press, 2004), p 52.

In much the same way, Barbara is one of the greatest lawyers, and one of the nicest people, any of us will ever meet. I am deeply honoured to be able to speak to you tonight in her honour.