

THE HON T F BATHURST AC
CHIEF JUSTICE OF NEW SOUTH WALES
OPENING REMARKS – ‘EVENING WITH A JUSTICE’
UNSW LAW SCHOOL
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1. Thank you for your warm welcome. It is a pleasure to be here this evening. While most of our time together tonight will be in a Q&A format – and I would encourage any of you to ask questions, which I shall do my best to answer – I have also been invited to make some brief opening remarks, and perhaps to impart a few words of advice. Hopefully somewhere within the ramblings of an old judge there will be some small pearls of wisdom.
2. You may find this hard to believe, but I went to law school quite a long time ago. I must confess that my studies were a few kilometres to the north-west of here at a rival institution – I ask that you don’t hold it against me.
3. Having said that, my time at law school was relatively, although not entirely, formative of my legal interests. Whether it was due to the qualities of the lecturers or otherwise, I found that I was particularly drawn to contract and commercial law. Perhaps, like me, you have found your niche already. Or maybe you are still developing your interests. If so, don’t despair – you are allowed to find this out over time. Later on, I also came to appreciate the nuances and particular challenges of administrative and public law, even if this was not initially apparent to me.
4. Of course, what was taught at law school in my day is far different to what is taught at the present time, and rightly so. When I was at law school the common law was, by and large, unaffected by statute. Now, statute permeates almost all aspects of the common law, and knowledge of statutory interpretation principles are absolutely critical. Way back when, there was no *Competition and Consumer Act*, no *Contracts Review Act*, no *Administrative Decisions Review Act*, or many, many others which I could spend all evening naming. And Justice Gummow had yet to unveil the mysteries of Chapter III of the Constitution. There was, however, it must be said, corporations

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legislation and an *Income Tax Assessment Act*. The corporations legislation was about a third of the size of the current legislation, while the *Income Tax Assessment Act* was about a tenth of the size of the current two tax tomes.

5. After law school, I would go on to practice for almost forty years, primarily at the Bar, doing work that I loved in areas of law that I found engaging. Undoubtedly, you've all heard the slightly nauseating adage, "do what you love". To that I would say – if you can, it is a great thing to work in a field that you are interested in. Working in law, whether in private practice, at the Bar or elsewhere, can at times be draining and demanding. Having an intellectual and personal interest in the outcome of your toils makes the labour sweeter.
6. You will eventually find out – if you haven't already – that legal practice is markedly different to legal education. For example, it is a rare occasion where you encounter a legal problem in real life which relates neatly to a couple of notable High Court decisions. Knowing how to read a case is more than about trying to find a ratio that you can express in one clear sentence. In fact, the necessity for doing so, at least in the case of High Court decisions, has been lessened by the Court's statement in *Farah Constructions v Say-Dee*¹ that intermediate appellate courts should follow "seriously considered dicta" of the High Court. That's sometimes difficult when four, five or six justices comprising the majority (but writing separately) all have their own seriously considered dicta. In practice, having a detailed knowledge of procedure and facts is fundamental. And common sense will often get you further than a strict legal analysis.
7. Of course, the skills you learn here, of how to think and reason legally, problem solve, and express yourself clearly, will prove vital. However, there is a real human and practical element to law, that can't really be taught, but has to be learnt.
8. If you practise law, regardless of what you do, you will be dealing with real people and issues which affect their lives, often in very serious ways. There are a lot of jokes caricaturing lawyers as dishonest and predatory: for example, what is the difference between a lawyer and a herd of bulls? The lawyer charges more. Despite this, lawyers have the potential to do enormous good. Your law school motto, "Where Law Meets Justice" is cognisant of the fact that there are those on whom the law bears harshly. Lawyers, with our specialised and exclusionary knowledge, have a responsibility to practise law in a way which promotes fairness and accessibility. And not just this, but

¹ *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89; [2007] HCA 22.

we also have the responsibility to advocate for change where the law is deficient. I hope you do all take this to heart and remember it throughout your careers.

9. Although I have been on the Bench for the past decade, most of my legal career (some 70%) was at the Bar. Some of you may know you want to go to the Bar, some may know you do not, and some may be uncertain.
10. As a barrister, you can never really be sure about the path that your career will take. There is a sort of glorious uncertainty and openness to it. When I started at the Bar, I did a wide variety of work. I appeared, often unsuccessfully, in the Local Court and the District Court. I was fortunate to appear with and against people more experienced than I. While this would sometimes “show me up” for what I still had to learn, being willing to learn from those who are better than you at something is always a very valuable lesson.
11. Sometimes the learning experience can be painful. Everyone (including me) makes mistakes, which you will find that judicial officers or your opponents are very quick to pick up on. If you do want to go to the Bar though, don't worry about this, as every barrister has experienced it.
12. One piece of advice I would give you is: don't be afraid to hone your experience in the Local Court. Your mistakes are more likely to go unnoticed and you'll learn more about being a barrister doing that than by sitting and writing submissions as a 3rd or 4th junior.
13. So, there are some brief words of advice. Now onto the more interesting part, the Q&A.