

SINGAPORE SYMPOSIUM IN LEGAL THEORY

LEGISLATION AS STIPULATION

BY Associate Professor Patrick Emerton
Monash University

31 JANUARY 2017, TUESDAY

5.00PM – 7.00PM (TEA RECEPTION STARTS AT 4.30PM)

LEE SHERIDAN CONFERENCE ROOM, LEVEL 1, EU TONG SEN BUILDING
FACULTY OF LAW, NUS (BUKIT TIMAH CAMPUS)

ABSTRACT

This paper presents a model for understanding the content and legal effect of legislation. The basic idea is that the act of legislating is a species of stipulation. The legal effect of legislation, therefore, includes not just the content of the statute itself, but consequences that can be derived within the scope of the legislative stipulation. In some cases, such derivation is a simple matter of logic and grammar. For instance, if one provision states that “All Xs must satisfy requirement S”, and another provision states that “All Zs count as Xs”, then it follows that Zs must also satisfy requirement S. In other cases, however, this is not so. For instance, orthodox principles of interpretation may require that a fault element be read into a legislatively-stated criminal offence.

Some legal philosophers (eg Dworkin, Greenberg) suggest that, in these more difficult cases, the law is derived by application of principles of political morality. This paper wishes to explore other possibilities. It will identify other resources available, within a stipulation model of legislation, for deriving legal content that was not stated, and in some cases not expressly contemplated, by the law-maker. The paper will also make some observations about adjudicative method that follow from the account, and relate these to Australian judicial practice.

ABOUT THE SPEAKER



Dr Patrick Emerton is an associate professor at the Faculty of Law at the Monash University. His research interests include constitutional, political and human rights theory, international justice, just warfare and terrorism. In 2010 the Federal Law Review awarded him the inaugural Leslie Zines Prize for Excellence in Legal Research. His recent work includes (with Mark Davison) “Rights, Privileges, Legitimate Interests, and Justifiability: Article 20 of TRIPS and Plain Packaging of Tobacco”, and (with Toby Handfield) the entry on humanitarian intervention in the Oxford Handbook of the Ethics of War.

Participation is By Invitation Only

Registration commences at 4.30pm and light refreshments will be served. For more information, please contact Ms Yvonne Lim at lawylhh@nus.edu.sg