

LAW GRADUATION ADDRESS

University of Sydney

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Chancellor, faculty, graduates, parents and friends.

I offer first my congratulations to those about to graduate. Today is a memorable occasion. You have the real sense of achievement that follows from hard work, determination and personal application. You have also vindicated the faith and support of your families and support teams. It is a day of glad celebration.

As you plan your next ascent up the rapids of life, it is important to think about making your professional careers as interesting as, or more interesting than, your days at this great University.

One popular stereotype of lawyers is that they merely interpret and apply rules and document transactions and that they lack creativity. That stereotype is false and misleading. Indeed, it is the opposite of my experience. The truth is that many lawyers have fulfilling lives because they design and build things of value for others.

The most obvious example of lawyers who design and build are those lawyers who, as politicians, bring about new statutory regimes or reshape old ones. Lawyers in this class are not nearly as prevalent as some would like. Equally, they are too prevalent for the taste of others. The more prominent examples include Sir Garfield Barwick, who as Attorney-General of the Commonwealth, master-minded new trade practices legislation in 1965 before his later career as Chief Justice of the High Court. Don Dunstan is another example. Many remember Don Dunstan for his pink hot pants and a cookery book. I remember him as the Premier and Attorney General of South Australia in the mid 1960s who championed a revolution in consumer protection laws, a revolution later copied in NSW and other States after the Dunstan experiment had made it safe for them to do so.

Perhaps few of you want to be politicians. Fortunately, creative work is an essential feature of the day to day work of solicitors and barristers. Barristers constantly need to generate arguments and present them artistically and persuasively. Solicitors have other prime skills but, contrary to some malicious rumours, there is much art in what they do.

Solicitors face creative challenges in most areas of their work. Mergers and acquisitions and takeover battles are among the most visible construction sites. Less visible is the vast array of work that has to be done fashioning solutions that do justice to the interests of clients within the legal framework. The problems and their solutions are infinitely various. The popular image of lawyers as passive recyclers of precedents is largely myth, not reality. And what may seem to some as mundane and boring tasks can and should be interesting if approached in a constructive frame of mind. For example, due diligence inquiries and the discovery process in litigation have a reputation for tedium but not for those who seize the opportunity to work out smarter and faster practical solutions.

Nonetheless, the modern law firm has come under increasing attack, partly because long hours and relentless pressures to bill may sap the vitality out of people and prevent or damage family and other relationships. It is also the case that women are severely under-represented at partnership level in Australian law firms. This lamentable fact compares unfavorably with the position in more enlightened places, including Brazil and Argentina, where women and men typically are evenly represented at partnership level. These problems are being addressed by the better law firms, albeit to a limited extent. Creative solutions are required otherwise your generation will revolt and do other things.

There are many other careers open to you, including positions in government or universities. Hundreds of my students and colleagues have pursued those options. They have had productive and interesting lives. The same is also true of many novelists, playwrights, musicians and broadcasters who have come to the decision that law is their second or third love or, in a moment of darkness (if not insanity), their pet hate. Whatever the field you choose, there is of course always room at the top.

I am reluctant to offer advice. However, I do have two concluding observations.

The first is that in law, as elsewhere, criticism is much easier than finding a better way. Many legal books and papers criticise the work of legislators, judges and academic commentators but all too few come up with cogent alternative solutions. Criticism alone is often idle and the sign of a lesser mind. Constructing better solutions requires intellect, imagination and the art of exploring possibilities. Great lawyers have always gone about their work in that way.

Finally, it is possible to take creativity in law to the extreme of unethical conduct or even crime. There will always be lawyers for whom the delights of practice are not enough and whose flair for creativity is exceptional. One example is that of Tennyson Turner, an

Adelaide lawyer who created a new university in the late 1970s. He called it Boston University. Unfortunately, the only connection with Boston was the location of the university's headquarters and campus on Boston Island, a remote and unpopulated part of South Australia near Port Lincoln. Sadly, Tennyson's talent for business development was never harnessed by the University of Adelaide or the University of Sydney.

I wish you all good fortune and happiness in your careers.

Brent Fisse