# Index

Adjudicative facts, 96 findings in other cases, 116 legislative facts, considered as, 99 legislative facts distinguished, 124 rules of evidence, 131 standards of proof, 132 value-neutral, 131	Auditors' liability legislative facts experience of the law, based on, 114-15 findings in other cases, based on, 116 historical events, based on, 120 Autonomy, 16-23
Advocate candour, duty to court, 51 defence of guilty client, 53 disinterestedness, duty of, 50-2 ethics, 49-50 neutrality, 49 non-accountability, 50 partisanship, 49 frankness, duty of, 50-2	Bland, 20-2 consent to medical treatment, 20 duty of care and, 22, 23 Enlightenment philosophers, 16 human rights and, 16, 17 law embodying fundamental value, 2 life-sustaining treatment, 20-2 Rogers v Whitaker, 19-20, 22 sympathy and, 16, 17 undue influence and, 23
legal history, relevance to, 85-7	Bacon, Sir Francis, 151-2
values, 4-32 <i>see also</i> Values autonomy, 16-23	Begriffshimmel, 93, 94, 126
conflicting, 52-5 dignity, 15, 21, 23-6	Business propositions legislative facts derived from, 102-3
good faith, 26-31 human rights, 14-19 identifying and arguing from, 7-14 individual values conflicting with law, 46-55	Canon law good faith, 223 Law Merchant, influence on, 220 Capitalism, 154-6
Anti-discrimination law foreign precedent, use of, 209	competition law and, 155 environment law and, 155 Carbon tax <i>see</i> Greenhouse gas emissions
human rights protections, 256 sexual harassment, 209	reduction
Antitrust law see Competition law	Carta Mercatoria, 224
Arbitration	"Clearly inappropriate forum" test, 237
Commercial Arbitration Act 2010 (NSW),	Commercial arbitration see Arbitration
international commercial disputes, 235-7 advantages over litigation, 235-6 clauses in multinational contracts, 237 international regime, 235	Commercial law Canon law, 223 Law Merchant see Law Merchant Roman law, 220 unification, 229-30
international standards, 188  New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 235  UNCITRAL Model Law, 189, 235	Common law Australian system, 90 comparative law, 187-8 continuity and coherence, 66, 69, 94 foreign precedent, use of, 207-8

history of see also Legal history mediaeval times, 66-7 statutes replacing, 65-6 wrong turnings, 66, 68 mainstream judicial method, 93-5 policy considerations, 95 values, conforming to, 7, 90, 94 community values, 94-5	compulsory acquisition (s 51(xxxi)), 18, 157, 169 external affairs power (s 51(xxix)), 158 human rights protections, 255, 278 implied freedom of political communication, 208, 255, 278 international law and, 196-9 interpretation, 73-7, 260
Comparative jurisprudence, 187-8, 202 foreign precedent, use of, 202-14	ambiguity, 196 High Court, 74-6 international law, conforming to, 196-9
ACCC powers, 160 barriers to entry, 163, 164 capitalism and, 155 coherence, need for, 166 Concrete Pipes case, 157 conflicts inherent in, 160-3	legal history, 73-7 legislative facts, 97 origins, 72 vague language, 260 Constitutional law foreign precedent, use of, 208-10 history of, 72-6
cost over a period, 163 definition of competition, 159 economic concepts, 155, 162 economic regulation by States, 164 governments obtaining control, 158 infrastructure privatisation, 165, 167 legitimate enterprise, what is, 162 mergers, preventing, 167 objectives, 155 opaque language, 159	Contracts assumption of responsibility, 28 freedom of contract, 28 good faith, 29, 223 merchants Carta Mercatoria, 224 God's penny as earnest, 224 nudum pactum, 222, 223 Roman law, 222-4 Statute of Frauds, 224
price fixing, 168	Cooper v Stuart, 64-5
questions not answered by Act, 163 recent legal history, 157-8	Coordinative authority of law, 37
review, need for, 168	Corpus Iuris Civilis, 218, 221, 223
Telstra privatisation, 165  Trade Practices Act 1974 (Cth) Pt IV, 157,	Cost of litigation legislative facts, 115
159 s 45, language of, 159 s 46, object of, 161 US Sherman laws, 161, 166	Cross-border insolvency judicial cooperation, 242 UNCITRAL Model Law, 242
parallel in Australia, 166  Compulsory acquisition Constitution (s 51(xxxi)), 18, 157, 169  Tasmanian Dam case as, 158  Confessions	Cross-border litigation <i>see also</i> International commercial disputes cosmopolitanism, 235, 236 enforcement of foreign judgments, 240-1 foreign law, determining questions of, 243-8
legislative facts gaol confessions, 101 uncorroborated confessions in police custody, 109-10 Constitution	freezing orders and search orders, 241 issues arising, 234-7 judicial cooperation, 241-3 objectives of law of, 248 values of judges, 235, 240
aliens power (s 51(xix)), 72 colonial context, 73	venue disputation, 237-9  Cross-examination sexual assault victims, dignity of, 25

Dangerous escapes	Ethics see also Values
legislative facts	adversarial system, of, 49-50
common experience, based on, 100	greenhouse gas emissions policy, 170
historical events, based on, 121	neutrality, 49
Defamation	non-accountability, 50
legislative facts, 129	partisanship, 49
Dignity, 23-6	Evidence
concept of, 23	adjudicative facts see Adjudicative facts
human right, 15, 21	common law, development of, 91, 93-136
law embodying fundamental value, 2	legislative facts see Legislative facts
legal value, 23-6	corroboration warnings, 106-10
sexual assault victims, 25	confessions in police custody, 109-10
Disinterestedness	legislative facts, 106-10
advocate's duty of, 50-2	mental illness, 108
frankness, combined with, 51-2	police informers, 108-9
	expert opinion see Expert evidence
Dispute resolution	identification see Identification evidence
domain name disputes, 231	legal rules, facts relating to, 98
international see International commercial	legislative facts see Legislative facts
online, 229, 231	scientific see Expert evidence
	social frameworks, 98
Domain names, 230-1	Evolutionary psychology, 12
disputes, 231	Expert evidence
International Corporation for Assigned	admissibility and weight, 90
Names and Numbers (ICANN), 230-1, 232	bias, 144
WIPO online dispute resolution facility,	common law, 90, 91
231	critical testing, need for, 91, 144
	defence experts, difficulty of obtaining,
Economics	143
capitalism, 154-6 competition law and, 155, 157-69	empirical assessment, 91, 142-52
global financial crisis, 154	external knowledge and advice, 137-8, 148 facial mapping, 138-42
law and economics movement, 154	identification evidence, 91
legislative facts derived from proposi-	incriminating expert opinion evidence,
tions, 102-3	142-52
macroeconomics, 154	admissibility standards, 150, 151
Telstra privatisation, 165	burden shifting, 150
Electronic Consumer Dispute Resolution	contextualisation, 149
project (ECODIR), 230, 232	demonstrable reliability, 149
	empirical assessment, need for, 142-52
Emissions trading scheme see Greenhouse	failure to regulate, 151
gas emissions reduction	Innocence Project cases, review of, 142-4
Environment law	jury interpretation, 143
capitalism and, 155	misinterpretation by expert, 142
economic concepts, 155	reliability of method, 146-8
greenhouse gas emissions see Greenhouse	studies on, 145
gas emissions reduction	wrongful conviction, 142, 143
Tasmanian Dam case, 158	photo comparison evidence, 138-42
trans-boundary pollution, 187 Traveston Dam veto, 158	scientific method, reliability of, 146-8 counter-norms, 147
	cultural and philosophical authority, 146
Epistemic authority of law, 37	cantarar and prinosopinear authority, 140

inconsistency with normative expectations, 147	Frankness advocate's duty of, 50-2
publication and peer review, 146 scientific norms, role of, 147	disinterestedness, combined with, 51-2 Gaol confessions
Facial mapping, 138-42	legislative facts, 101
database, lack of, 141	Garnishee order
expert evidence, 138	legal history, 68
image distortion, 140	Global financial crisis, 154, 168
incriminating expert opinion evidence,	
142	Globalisation, 185, 216, 234, 249
problems with, 139-41	Good faith, 26-31
standardisation, lack of, 139-40	Canon law, 223
analytical techniques, 140	contracts, 28-9 international relations, 187
obtaining images, 139	legal value, 26-31
recruiting expert opinions, 139	questions to be settled, 27
Foreign judgments	Roman law, 223
enforcement of, 240-1	Greenhouse gas emissions reduction
"real and substantial connection" test, 241	cap-and-trade systems, 171-2, 173
reciprocity, 240	carbon tariff on imported goods, 175
values, application of, 240	carbon tax, 171
Foreign law	ETS compared, 172
determining questions of, 243-8	other countries, 175
conflicting expert evidence, 244	who gets paid, 174
Supreme Court rules, 245, 248	who pays, 174
European Convention on Information on	emissions intensive trade-exposed
Foreign Law 1969, 247	industries (EITEs), 174
question of fact, 243	emissions trading scheme (ETS), 171-2
US federal courts determining State law,	carbon tax compared, 172
247	Howard Government policy, 171-2
Foreign precedent	permits, 171
anti-discrimination law, 209	setting price, 171
arbitrary selectivity, danger of, 211	who gets paid, 174
authority, 204, 212	who pays, 174
choice of law rule, 205	global endeavour, 175-76
common law, 207-8, 212	government paying for, 175 high emissions in Australia, 170
constitutional law, 208-10	international law impacting on Australiar
domestic law, influence on, 202-14	law, 185
Australian view, 210-11	long-term global goal, 170
localising influences, 212 Lord Reed's criteria, 203-7, 213	market-based solutions, 173, 174, 176
UK view, 203-7	policy tools, 170-6
US view, 202-3	regulatory approach, 172-3
empirical fact, 205	ABARE criticism of, 173
human rights law, 207	ETS compared, 172, 173
purposes for use of, 204-7	performance standard, 172
source of ideas, 206	Productivity Commission criticism of,
UK as "foreign power", 210	173
Forfeiture of deposit	technology standard, 172
legal history, 66-7	who pays, 174
	regulatory responses, 170
Forum non conveniens, 237	renewable energy target (RET), 177
see also Venue disputation	taxes, 171, 172, 173

Habeas corpus	debate about, 186, 252, 276
Halliday's study of, 86-7	other options, 263
legal history, 86	rejection of, 263
High Court	autonomy, 16-23
foreign precedent, use of, 204	bottom up model, 259
international thought, decisions influenced by, 189	Brennan Committee report, 252, 253, 256, 261-6, 276, 279
interpretation of Constitution, 74-6	government response, 283
values, promoting, 6-7	recommendations, 252, 262-6, 276-7
	submissions to, 256, 265
History	British Rights, 257-8, 259
law and, 58-88	common law protection, 15-16
legal see Legal history	comparative law, 207
legislative facts based on, 120-1	compatibility statements, 272-3, 284, 286
what is, 61	cultural life, participation in, 269
Human rights	culture of rights, 261
ACT Human Rights Act, 265, 272, 278	dignity, 15, 21 23-6
Acts Interpretation Act 1901 (Cth)	domestic context, 260
recommended amendments, 263, 277, 279-83	Draft Covenant on Human Rights 1950, 253
Administrative Decisions (Judicial Review)	education, 270-2
Act 1977 (Cth)	English Bill of Rights, 257
recommended amendments, 263, 277	equal opportunity laws, 212
Australia	foreign precedent, 207, 208
administrative law, 256	freedom of contract, 268
Budget, 273	freedom of political communication, 208,
common law, 256	255, 278
compatibility of legislation, 272-3, 284,	freedom of religion, 255, 278, 282
286	freedom of speech, 16, 282
Constitution, 255, 278	French Declaration of the Rights of Man,
"dialogue model" Act, 276, 284	252, 259, 261
feudal origins, 257	"fundamental" common law rights, 15
government spending to implement, 267	history of, 258-9
Human Rights Framework, 260-6, 272	holiday pay, 261
impact of international law on, 185, 196, 252	Human Rights Framework, 260-72, 283-7 defects in, 283-7
inadequacy of current system, 277-9	seven core treaties, 263-72, 283
Joint Parliamentary Committee, 263, 267, 273, 283	Human Rights (Parliamentary Scrutiny) Bill 2010, 274
judicial role, 275-83	international instruments, 13, 15, 252, 260
list of rights, 263	263-72
opposition to reform in, 276	drafting committees, 261
protections, 255-8	seven core treaties, 263-72, 283
public perceptions of, 264, 265	shortcomings, 260-2
seven core treaties, 263-72	vague language, 260, 269
statutory interpretation, 253, 256-7, 263	international law, 185, 196
violations in, 278	Australian isolation from, 200, 212
Australian Bill of Rights	Australian law, impact on, 185, 196, 252
Brennan Committee report, 252, 253, 256,	Australian violation of, 278
261-6	case law, 207, 208, 212
consequence of lack of, 200	

Joint Parliamentary Committee on, 263, 267, 273, 283 compatibility statements for, 272-3, 284, 286 operation of, 273, 283, 285 judicial role, 275-87 Magna Carta, 257, 258	expert literature, based on, 119 findings in other cases, based on, 116 miscarriages of justice, 112 photo comparison evidence, 138-42 photographic, 112 "rogues' gallery" effect, 114 studies on expert evidence, 145
property rights, 268	Institutional duties, 47-55
protection of, 15	conflicting, 52-5
right to life, 269	disinterestedness, 50-2
seven core treaties, 263-72, 283	ethics of adversarial system, 49-50
barristers' awareness of, 264	neutrality, 49
issues involving, 266-72	non-accountability, 50
language of, 265	partisanship, 49
measuring legislation against, 266	frankness, 50-2
positive and negative rights, 267	individual values conflicting with law,
repetition in, 267	46-55
shared parenting, 270	moral duties distinguished, 46-8
shortcomings, 260-2	Instrumental value, 36
sport, participation in, 270	law as source of, 36-41
statutory interpretation, 253, 256-7	coordinative authority, 37
Acts Interpretation Act 1901 (Cth) amend-	epistemic authority, 37
ments, 263, 277, 279-83	just institutional system, 38
conflicting rights, 282	rule of law, internal value, 39-41
consistency with human rights, 280, 281	self-respect, fostering, 37
"fundamental" rights, 282	Insularity of Australian law, 199-200
judiciary, role of, 279-83	
legality principle, 280 rebuttable presumptions, 256	International commerce, 216-17
sympathy, 16, 17	adaptation to digital age, 216
Teoh case, 13, 193, 194, 253	certainty, need for, 216
Toonen case, 185	disputes see International commercial
top down model, 259	disputes Law Merchant <i>see</i> Law Merchant
tortured, right not to be, 17	values, 234
Universal Declaration of Human Rights,	
259	International commercial disputes
universalist and particularist approaches, 18	alternative dispute resolution, 217, 229, 230
US Declaration of Independence, 259, 261	arbitration, 235-7
values, 16-17, 19-23	advantages over litigation, 235-6
Victorian Charter, 254, 265, 270, 272, 278	clauses in multinational contracts, 237
Identification evidence	international regime, 235
bias of expert, 144	international standards, 188
dangers of, 111-14	New York Convention on the
displacement effect, 113	Recognition and Enforcement of Foreign
dock identification, 113	Arbitral Awards, 235
facial mapping, 138-42	UNCITRAL Model Law, 189, 235
incriminating expert opinion evidence,	cosmopolitanism, 235, 236, 240, 241, 242
142-52	cross-border issues, 234-7
lay persons identifying strangers, 145	Electronic Consumer Dispute Resolution project (ECODIR), 230, 232
legislative facts, 111-14, 116, 119	foreign judgments, enforcement of, 240-1
experience of the law, based on, 111-14	101e1611 Juaginerius, emoreement 01, 240-1

International commercial disputes (cont) common principles, 187 foreign law, determining questions of, comparative law, 182, 187-8, 202 cross-border commonality, 182-3 243-8 forum non conveniens, 237 democracy deficits, 186 judicial cooperation, 217, 241-3 foreign precedent, use of, 202-14 judicial globalisation, 249 human rights see Human rights Law Merchant, 231, 232, 236 increase in treaty making, 185 interconnectivity of national and interna-"more appropriate forum" test, 237 objectives of law, 248 tional legal systems, 185 online disputes, 229 law-making by international institutions, parochialism, 234, 235, 237, 242 190-1 proper law of contract, 239 osmotic relationship with national law, Trade Practices Act 1974 (Cth), 239 187 values of judges, 235, 240 public debate about role of, 185 venue disputation, 237-9 statutory interpretation, 194-5 Teoh case, 13, 193, 194, 253 Washington Convention on the Settlement of Investment Disputes, 236 trans-boundary pollution, 187 treaties enacted in Australia, 185, 192-3 International Corporation for Assigned areas regulated by, 192 Names and Numbers (ICANN), 230-1, implementation by legislation, 193 legitimate expectations, 193 International Covenant on Civil and Political multilateral treaties, 192 Rights (ICCPR), 189, 190, 196, 198, 253, ratification, 192, 193 259, 263, 264, 268, 269, 270 statutory interpretation, 194-5 International Covenant on Economic Social treaty-making, 190-1 and Cultural Rights (ICESCR), 253, 259, values, 13, 186, 196 263, 264, 268, 269, 270 International thought International custom Australian law, use in, 184-201 Australian law, in, 195-6 cross-border commonality, 182-3 High Court decisions influenced by, 189 International Institute for the Unification of international custom, 195-6 Private Law (UNIDROIT), 229-30, 232 international disputes, 183 International law international law see International law Australian law, impact on, 184-214 legal education, 182 anxiety about loss of sovereignty, 186 legal isolation of Australia, 199-200 case law, 202-14 racial equality, 189 Constitution, 196-9 standards, 188 dualist theory, 192 Internet High Court decisions, 189 domain names, 230-1 insularity, risk of, 199-200 Electronic Consumer Dispute Resolution international standards, 188 project (ECODIR), 230, 232 monist theory, 192 online dispute resolution, 229 precedent, 202-14 principles governing, 191-2 Intrinsic value, 36 "soft law", 186, 188-9 law as source of, 36, 41-3 values, 234 non-voluntary nature, 42 breach of international rule, 188 politico-legal system, 41 commercial arbitration, 188 significance of law, 42 commercial law, 232 Judicial cooperation Law Merchant see Law Merchant cross-border insolvency, 242 unification, 229-30 international commercial disputes, 241-3 common law systems, 187, 191

UNCITRAL Model Law on Cross-Border Insolvency, 242 universalism vs territorialism, 242 Judicial globalisation, 249	general history, relationship with, 80-2 Imperial statutes, 63, 73 interpretation of Constitution, 74-7 judges, relevance to, 85-7 land law, 65
Judicial method advocates influencing application of, 94 Begriffshimmel, 93, 94, 126 legislative facts see Legislative facts mainstream, 93-5	law schools teaching, 82-5  Mabo (No 2), 59, 65  mediaeval law, 66-7  money had and received, 70-2  19th century reformers, 68
Law Merchant, 216, 219 class of people, personal to, 219, 226, 231 common law rules derived from, 219 customary law, 220 development of, 225-7 dispute resolution, 231, 232, 236 domestic law, incorporation into, 227-9 English law, part of, 227-9 equity, spirit of, 220 future of, 231-3 information technology, effect, 229 international character, 219, 226 Italian cities, influence of, 227 maritime and commercial law, 219 mediaeval times, 219 online disputes, 229 Roman law, influence of, 220-5 summary nature of jurisdiction, 220 21st century, in, 229-31	penalties, 70 precedent see Precedent reasons for study of, 59-60 remote past, 66-7 Roman law, 218 societies, 79 statute law, 62-3 torts, 67, 69 transformations in study of, 78-80 utility of, 59, 63-4 what is history, 61 Legal professional privilege legislative facts based on, 102 Legal system, 34 interconnectivity of national and international systems, 185 intrinsic value, 41-3 normative system, 34
Law schools internationalisation of legal education, 182 legal history teaching in, 82-5 number in Australia, 82	Legislative facts, 96-122 adjudicative facts considered as, 99 adjudicative facts distinguished, 124 agreement of parties as to, 133
Lawyers - see Advocate	American instances of reliance on, 125 appellate courts, 97
Legal history adjudication system, 61-2 advocates, relevance to, 85-7 Australian, 64-6, 85 Beaudesert Shire Council v Smith, 68 colonial viewpoint, 79 common law mediaeval times, 66-7 statutes replacing, 65-6 wrong turnings, 66, 68 complexity, 66	assumptions, 129 binding decisions, 122 formal submission that decision need not be followed, 122 caution in relation to, 124-7 common experience, derived from, 100-6 building on and buying property, 103 business propositions, 102-3 condition of premises, 100 dangerous escapes, 100 disappointment about breach of
constitutional law, 72-6 context, 66 continuity of common law, 66, 69 <i>Cooper v Stuart</i> , 64-5 decrease in study of, 58-9, 82-5 English, 85	contract, 104 economic propositions, 102 footpaths, condition of, 100 gaol confessions, 101 legal professional privilege, 102 modern mobility, 102

Legislative facts (cont)	Merchants
common experience, derived from (cont)	contracts
problems, 105-6	Carta Mercatoria, 224
psychiatric illness, 101	God's penny as earnest, 224
reliance, 101	nudum pactum, 222, 223
slow trials, effect of, 104	Roman law, 222-4
stress, 101	Statute of Frauds, 224
water course variations, 101	guilds, 225, 227
common law development, 96-8, 133-4	Law Merchant see Law Merchant
constitutional construction, 97	
constitutional validity of enactments, 97	Miscarriage of justice identification evidence, 112
critics of legislative fact analysis, 134-5	
definition, 96	legal history, 68
doubtfulness, 129-31	Money had and received
exercise of legislative will, 124-7	legal history, 70-2
experience of the law, derived from, 106-116	"More appropriate forum" test, 237
auditors' liability in negligence, 114	Native title
corroboration warnings, 106-10	international thought, influence of, 189
cost of litigation, 115	legal history, 59, 65
identification evidence, 111-14	Mabo (No 2), 59, 65
Longman warning, 110-11	Natural justice
findings in other cases, 116-17	fairness as moral value, 2, 40
freedom of courts to inquire into, 126	Negligence
historical events, based on, 120-1	auditors' liability, 114
judges' own expertise or experience, 91,	legislative facts, 114-15, 116
96, 106, 128	foreign precedent, use of, 211
judges' private inquiries, 127-8	Neutrality principle, 49
judicial conscience, 126	
negative appeal to, 96	Non-accountability principle, 50
official documents, based on, 117-18	Official documents
parties, role of, 127-9, 133	legislative facts based on, 117-18
problem of relying on, 124	Oppression
sources, 98-122	penalties, legal history, 70
common experience, 100-6 experience of the law, 106-116	Overseas case law see Foreign precedent
expert literature, 118-20	
findings in other cases, 116-17	Partisanship principle, 49
historical events and conditions, 120-1	Penalties
official documents, 117-18	legal history, 70
subjectivity, 131-3	Philosophical morality, 10-12
trial, whether can be dealt with at, 122-3	autonomy, 16
Mabo (No 2), 59, 65, 189	Enlightenment philosophers, 16
Maritime law	Pleading amendments
Law Merchant see Law Merchant	legal history, 68
Lex Rhodia de Iactu, 222	Police informers
Roman law, 221-2	uncorroborated evidence, warning about,
York-Antwerp Rules, 222	108-9
	Politics
Medical negligence	intrinsic value of politico-legal system, 41
autonomy principle, 19-20 Rogers v Whitaker, 19-20, 22	values, 13-14
10,010 0 1 1111111101, 17-20, 22	

Precedent	Statute law
adherence to doctrine of, 6, 8	comparative law, 207
adjudication process, operating in, 62	legal history, use of, 62-3
comparative jurisprudence, 187-8, 202-14	Statute of Frauds, 224
consistency and coherence of decision-	•
making, 2, 6	Statutory interpretation
continuity in legal doctrine, 62	ambiguity, 194, 196, 281
foreign see Foreign precedent	Constitution, 74-7
Prescriptive operation of law, 34	High Court, 74-6
	international law, conforming to, 196-9
Psychiatric illness	legal history, 73-7
legislative facts, 101, 106	legislative facts, 97
common experience, based on, 101	human rights, protection of, 256-7, 263
expert literature, based on, 118, 119	Acts Interpretation Act 1901 (Cth) amend
Reliance	ments, 263, 277, 279-83
legislative facts, 101	conflicting rights, 282
Rogers v Whitaker, 19-20, 22	consistency with, 280, 281
	"fundamental" rights, 282
Roman law, 218	judiciary, role of, 279-83
class of people, laws personal to, 226	legality principle, 280
commercial law, 221	rebuttable presumptions, 256
contracts, 222-4	international law, reference to, 194-5
Corpus Iuris Civilis, 218, 221, 223	legality principle, 194
ius civile, 218, 219	treaties, 194
ius gentium, 218, 219	Telstra privatisation, 165
ius naturale, 218, 219	•
Law Merchant, influence on, 220-5	Teoh case, 13, 193, 194, 253
Lex Rhodia de Iactu, 222	Torts
maritime law, 221-2	legal history
nudum pactum, 222, 223	intentional acts causing harm, 69
Pax Romana, 218, 221	vicarious liability, 67
sources of private law, 218	Trade Practices Act 1974 (Cth) see
Rule of law, 39	Competition law
internal values, 39-41	Treaties see International law
Self-respect, law fostering, 37	
Sexual assault victims	Unconscionable conduct
corroboration warning, 107	penalties, legal history, 70
cross-examination and dignity, 25	Undue influence
Social value	autonomy and, 23
	United Nations Commission on
instrumental value, 36-41	International Trade Law (UNCITRAL)
intrinsic value, 36, 41-3 law as source of, 33-44	Model Law on Cross-Border Insolvency,
coordinative authority, 37	242
	Model Law on International Commercial
epistemic authority, 37 instrumental value, 36-41	Arbitration, 189, 235
intrinsic value, 36, 41-3	unification of international trade law, 229
	232
non-voluntary nature, 42 rule of law, internal values, 39-41	Values
self-respect, fostering, 37	advocates, 4-32
significance of law, 42	conflicting, 33, 44-55
social dependence, 43-4	identifying and arguing from, 7-14
unconditional value, 35-6	autonomy, 2, 16-23
anconditional value, oo o	autonomy, 2, 10 20

values (cont)	inner morality of law, 39
common law conforming to, 7, 90, 94	interpretative practice of law, 44-6
community values, 10, 94	judges, 5
consistency of decision-making, 2, 6	law as source of social value see Social
defence of guilty client, 53	value
dignity, 2, 15, 21, 23-6	law embodying systemic values, 2
equality of parties, 2	legal reasoning, place in, 2-3
ethical obligations of advocates, 44-6	literature on, 5-7
fairness, 2, 40	morality and justice, 6
foreign judgments, enforcement of, 240	personal responsibility, 7
good faith, 26-31	precedent, adherence to, 6, 8
High Court promoting, 6-7	rule of law, internal values, 39-41
human rights, 14-19	Venue disputation
identifying and arguing from, 7-14 contemporary community standards, 10 credible external view, 13 economics, 13 evolutionary psychology, 12	"clearly inappropriate forum" test, 237 forum non conveniens, 237 international commercial disputes, 237-9 "more appropriate forum" test, 237 proper law of contract, 239
historical approach, 9-10	Vicarious liability
internal argument, 8-9 international conventions, 13	legal history, 67
philosophical thinking, 10-12	legislative facts, 130
politics, 13-14	Water rights
individual values, law conflicting with,	legal history, 65, 68
33, 44-55	•
institutional duties, 47-55	WIPO online dispute resolution facility, 231 232
interpretative practice of law, 44-6	
legal duties, 46	WTO Agreement, 190, 201
moral duties, 46	Australia-Apples case, 191