CRIMINAL LAWYERS ASSOCIATION
NORTHERN TERRITORY

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In Search of Extraterritorial Jurisdiction:
Following the Yellow Brick Road

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Examples of Jurisdictional Problems

1. Competition laws

2. Internet cases:
   - Pornography
   - Fraud – *R v Governor of Brixton Prison; ex p Levin* [1997] AC 741
   - Other offences

3. Money laundering & Corruption

4. Conspiracy

5. Common crimes committed by and against nationals abroad
   - *Crimes (Child Sex Tourism) Amendment Act 1999*
   - *C C Amendment (Offences Against Australians) Act 2002*
In Search of a Theme

6 Why does it matter?
- Clarity of law, including for benefit of business community
- Facilitates global regulation of certain conduct
- Need to adapt to technology and modern business practices
- Reduce prospect of avoiding prosecution

7 Foundations – Jurisdiction recognised in international law
- Territorial principle
- Nationality principle
- Passive personality principle
- Protective principle
- Universality principle
In Search of a Theme

8 Civil law states:
- Nationality principle
- Effects doctrine [developing]

9 United States:
- Effects doctrine
- Protective principle

10 Australia:
- One situs of crime
- Presumption against extraterritorial effect
- What are the underlying principles?
The United States Approach

11 Instances of US prescriptive jurisdiction

12 Conduct that has or is intended to have substantial effect within the US

*Restatement [Third] Foreign Relations Law*, ss 402, 403
Reasonableness: *Antitrust Enforcement Guidelines* 1995
*United States v Davis* 905 F 2d 245 (9th Cir 1990)
*United States v Yousef* 327 F 3d 76 (2nd Cir 2005)
*Sherman Act*
*Clayton Act*
*Hartford Fire Insurance Co v California* 113 S Ct 2891 (1993)
*US v Nippon Paper Industries Co Ltd* 109 F 3d 1 (1st Cir 1997)
The Australian Approach

13 Presumption against extraterritorial effect

14 Adherence to traditional analysis

15 The decision in *Lipohar v R* (1999) 200 CLR 485
   - ‘Real connection’ – intended victim in South Australia
   - Jurisdiction because overt acts in Australia [*DPP v Doot*]
   - Conspiracy not exception to territorial requirement
   - ‘Real link’ – can arise from variety of factors

14 Legislation:
   - *Trade Practices Act*: s 5 – ‘carrying on business in Australia’
   - *Cybercrime Act* 2001 – ‘result’ occurring in Australia [s 16.4 CC]
   - Money laundering – s 400.15 *Criminal Code*
   - *Security Legislation Amendment (Terrorism) Act* 2002
THANK YOU