

# CURRENT AWARENESS BULLETIN

April- June 2009



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## INTRODUCTION

This publication is designed to inform users of acquisitions by the library within the stated period, and will appear quarterly until further notice.

Under **TREATISES, DIGESTS, ETC.**, the classification number for the location of the publication on the shelves, is included to the right of the listing.

Under **LEGISLATION**, the abbreviation “G.S.” means - Jamaica Gazette Supplement Bills and Acts.

Judgments are arranged by country, then listed alphabetically by names of parties, followed by the court and date of decision. Abbreviations for the courts are as follows:

P.C. Privy Council  
C.A. Court of Appeal  
S.C. Supreme Court  
R.C. Revenue Court  
F.C. Full Court

Jamaican judgments have been broadly classified to facilitate the user. Headings are indicated in bold letters appearing after the date of decision for each judgment.

Publications of other Caribbean territories are included as and when received.

**Comments:** As we begin to adapt to the new normal, John Gould asks whether it’s time to adopt a new approach to ethics

**Specialist:** Employment Ian Smith takes a gender at short, precise, but nonetheless important aspects of both common & statutory

**Procedure and Practice:** Standard of Proof **Adrian Keane** considers jurors should be given a fuller & more accurate direction before returning their verdict.

**Inside Court:** Law Digest

**Profession: Expert Witness-** Expert witnesses at a conference with counsel- a practical guide-compiled by Mark Solon.

conversion in the digital age

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## JUDGMENTS

### Jamaica

AUBURN COURT LIMITED and Delbert Perrier v National Commercial Bank Jamaica Ltd. and RBTT Jamaica Limited  
JMCA 18.03.2009

**CIVIL PRACTICE AND PROCEDURE – Application to set aside default costs Order**

BANCROFT, RUDOLPH (by Michael Bancroft under Power of Attorney) and David Parchment (By Errol Bancroft under Power of Attorney) v Leaford Cookhorne and Junior Dixon and Erving Donegal  
JMCA 24.04.2009

**REAL PROPERTY – Ownership of land**

BROWN, DAWKINS and Glen Brown v Annie Lopez  
JMCA 19.05.2009

**REAL PROPERTY – Lease agreement – Exercise of option to purchase property**

BROWN (Kefian) v R.  
JMCA 26.03.2009

**CRIMINAL LAW – Illegal possession of firearm**

CARPENTER, HUBERT George (Also known as George Hubert Carpenter) v Cancer Holdings Ltd. and Sydney Tulloch  
JMCA 15.04.2009

**PERSONAL INJURY – Motor vehicle collision**

CHAMBERS, Alfred v Sarah Brown  
JMCA 20.03.2009

**REAL PROPERTY – Contract – Recession**

CHINTERSINGH, Nolda v Alton Chintersingh  
JMCA 22.05.2009

**FAMILY LAW – Matrimonial property**

COMMISSIONER OF Taxpayer Appeals v Swept Away Resorts Limited  
JMCA 08.05.2009

**REVENUE LAW – Whether interest earned on investment income subject to payment of income tax**

DABDOUB Abraham v Daryl Vaz, Carlton Harris and The Attorney General  
JMCA 13.03.2009

**CONSTITUTIONAL LAW – Judicial review**

DAVY, Jermaine v R  
JMCA 23.03.2009

**CRIMINAL LAW – Murder**

DOUGLAS Janet v R  
JMCA 13.03.2009

**CRIMINAL LAW – Murder**

DRYSDALE ALEXANDER and Winston Clarke v Herman Farquharson and Enrich Gilmore  
Alexander Green (Executors of the estate of Phillip Powell, deceased)  
JMSC 29.01.2009

**CIVIL PRACTICE AND PROCEDURE – Application for relief from sanctions**

FORBES Millicent v The Attorney General of Jamaica  
UKPC. 19.03.2009

**CONSTITUTIONAL LAW – Judicial review**

<THE> GENERAL LEGAL Council v Antonnette Haughton-Cardenas  
UKPC. 12.05.2009

**ATTORNEY-AT-LAW – Professional misconduct**

INTERNATIONAL ASSET Services Ltd. Arnold Foote  
JMSC 28.01.2009

**CONTRACT LAW– Limitation of action**

HARPA SHIPPING and Chartering GMBH & Co. v Europe West-Indie Lijnen B.V. and Forbes  
Manufacturing and marketing Limited  
JMCA 27.03.2009

**CONTRACT LAW - Charterparty**

HIBBERT, Michael v R  
JMCA 22.04.2009

**CRIMINAL LAW – Illegal possession of firearm and shooting with intent**

HOGAN, James v Marian Therese Kelly-Hogan  
JMSC 08.05.2009

**CIVIL PRACTICE PROCEDURE – Application for order to stay proceedings**

HUGH C. HYMAN & Co. (a Firm) and Hugh C. Hyman v Dave Blair  
JMCA 26.03.2009

**CIVIL PRACTICE AND PROCEDURE – Refusal of judge to set aside default judgment**

JAMAICA REDEVELOPMENT Foundation Inc. v Section 45 of the Banking Act and Section 44 of  
the Financial Institutions Act  
JMSC 08.04.2009

**CIVIL PRACTICE AND PROCEDURE – Application for declaratory judgment**

JARRETT, Edris and Joseph Jarrett v Carmen  
JMCA 08.05.2009

**CIVIL PRACTICE AND PROCEDURE – Appeal as to costs and taxation**

LLOYD, Candice v Dwight H.L. Moore  
JMSC 05.02.2009

**CIVIL PRACTICE AND PROCEDURE – Whether claimant entitled to summary judgment on  
the issue of liability against defendant**

MARAGH Gloria Magdaline v Erich Maragh  
JMSC 09.02.2009

**FAMILY LAW – Maintenance**

MCINTOSH Marcia v Elite Wholesale and Distributors Limited and Devon Nelson  
JMSC 31.03.2009

**TORT LAW - Negligence**

MITCHELL, Errol v R  
JMCA 16.03.2009  
**CRIMINAL LAW - Murder**

MOSSAD SECURITY Company Limited v Jose Cartellone Construcciones Civiles S.A.  
JMCA 17.04.2009  
**CIVIL PRACTICE AND PROCEDURE – Appeal against Order setting aside default judgment**

MORGAN, Janet v Air Jamaica Limited  
JMCA 23.01.2009  
**CIVIL PRACTICE AND PROCEDURE – Application to set aside judgment in default of defence**

NATIONAL COMMERCIAL Bank Jamaica Limited v Olint Corp. Limited  
UKPC. 28.04.2009  
**CONTRACT – Whether provision of banking services to a customer is terminable upon reasonable notice**

NEW FALMOUTH Resorts Limited v Fitzroy Allen et al.  
JMCA 09.04.2009  
**REAL PROPERTY – Claim for recovery of land**

NEW FALMOUTH Resorts Limited v International Hotels Jamaica Limited  
JMCA 20.02.2009  
**REAL PROPERTY – Agreement for sale of land**

PANTON, ESTATE Lascelles Samuel (Represented by Mr. Desmond Panton) v Sun Development Limited  
JMCA 29.05.2009  
**CIVIL PRACTICE AND PROCEDURE – Application to give evidence by video link**

R v The Commissioner of the Taxpayers Audit and Assessment Department/Commissioner of Inland Revenue, Ex parte Andrew Willis  
JMCA 29.01.2009  
**CONSTITUTIONAL LAW – Judicial review**

R v Simms, Bayne  
JMCA 24.04.2009  
**CRIMINAL LAW – Murder**

RAFFINGTON, Elsie v Joseph McIntosh (Agent of Paulina Lindsay and Margaretta Anderson)  
JMCA 24.04.2009  
**REAL PROPERTY – Action for recovery of land**

RAYTON ELECTRIC Commercial Equipment Ltd. v Bank of Nova Scotia  
JMCA 19.03.2009  
**CIVIL PRACTICE AND PROCEDURE – Application to strike out claim**

REID, ELENARD and Shanti Mathtali Abdalla v Nancy Pinchas and Israel Pinchas and Honora Barbara Sampson  
JMCA 27.02.2009  
**CIVIL PRACTICE AND PROCEDURE – Relief from sanction imposed by “unless’ order**  
RICHARDS Walton v Woman Detective Constable and The Attorney General  
JMCA 19.02.2009  
**REAL PROPERTY - Trespass**

Roberts, Everton v R  
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**CRIMINAL LAW – Unlawful wounding**

ROBINSON Lackston)v Daisy Coke, Michael Fennel, Edwin Jones, Pauline Findlay, George Philip (Members of the Public Service Commission) and The Attorney General  
UKPC. 19.03.2009

**CONSTITUTIONAL LAW – Judicial review**

ROXBOROUGH Shantala v Dr Rama Devi Nangaravi, Savanna-La-Mar Public General Hospital, Western Regional Health Authority and The Attorney General of Jamaica  
JMJC 06.03.2009

**CIVIL PRACTICE AND PROCEDURE – Application to strike out statement of case for non-compliance with order for disclosure**

SMITH, ALBERT (Represented by Anita Smith and Trevor Smith by Order of the Court on the 26<sup>th</sup> day of February, 2007) v Hazel Steer  
JMCA 08.05.2009

**REAL PROPERTY – Whether transfer of land by appellant intended to defeat situation of judgment debt**

SMITH, Amybelle v Noel Smith  
JMCA 24.04.2009

**DAMAGES – Malicious destruction of property**

Smith, Edmore v George Cooper  
JMJC 06.05.2009

**CIVIL PRACTICE AND PROCEDURE – Application to restore case to Cause List**

SMITH, Mavis v The Chief Technical Director and The Attorney General of Jamaica  
JMJC 06.03.2009

**TORT LAW – Negligence**

TAPPER Melanie and Winston McKenzie v R.  
JMCA 27.02.2009

**CRIMINAL LAW - Fraud**

UNITED GENERAL Insurance Company Limited v Marilyn Hamilton  
JMCA. 15.05.2009

**CIVIL PRACTICE AND PROCEDURE – Appeal from Order to strike out respondent's statement of case, to strike out certain paragraphs of respondent's particulars of claim or to grant summary judgment to appellant**

WALTERS Errol v National Commercial Bank Jamaica Limited and The Attorney General  
JMJC 03.04.2009

**TORT LAW - Negligence**

WALTERS WINSTON T/A Lakeside Trucking & Construction v Jose Cartellone Construcciones Civiles S.A.  
JMS.C. 20.02.2009

**CIVIL PRACTICE AND PROCEDURE – Freezing order**

WALTERS Winston v Jose Cartellones Construcciones Civiles S.A. (No. 2)  
JMJC 20.02.2009

**CIVIL PRACTICE AND PROCEDURE – Application to discharge Freezing Order**

WATERSPORTS Enterprises Ltd. v Jamaica Grande Limited and Grand Resort Limited and Urban Development Corporation  
JMCA 04.02.2009

**CIVIL PRACTICE AND PROCEDURE – Application to stay of execution of Order**

WEST-HAYLES, Nicole and Abira (a minor, who sues by her mother and next friend, Nicole West-Hayles v Dr. Lennox S. Jacob and Medical Associates Hospital Board of Management  
JMSC 30.01.09

**CIVIL PRACTICE AND PROCEDURE – Application to strike out case**

WHYTE, Neville v The Attorney General  
JMSC 03.06.09

**CONSTITUTIONAL LAW – Whether claimant’s rights under sections 14 to 24 of the Jamaican Constitution have been contravened**

WILLIAMS, Leroy v Kenneth Enyi  
JMSC 03.04.09

**NEGLIGENCE – Professional negligence – Medical negligence**

WILSON, STEPHEN (By next friend and Guardian Dahlia Wilson) v Medical Associates Ltd. and Dr. Brendan Dunn  
JMSC 18.06.09

**MEDICAL NEGLIGENCE – Application of the doctrine of *res ipsa loquitur***

WILSON, William v Colin Jones and Andrene Watson and Richard Duhaney  
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**CIVIL PRACTICE AND PROCEDURE – Application for summary judgment**

## LEGISLATION

### Barbados

Laws of Barbados annual volumes 2002, 2003, 2005 2008

### Jamaica

#### Acts

7/2009	Appropriation Act
6/2009	Conch (Export Levy) Act

## LAW REPORTS

Criminal Appeal Reports	2009	Vol.1
Criminal Appeal Reports (Sentencing)	2009	Vol.1
Dominion Law Reports	2009	Vol. 301 & 302 4 <sup>th</sup> Series
Jamaica Law Reports	2008	Vol. 35
Law Reports of the Commonwealth	2009	Vol. 3
West Indian Reports	2009	Vol. 73

## TREATISES, DIGESTS ETC.

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Vol. 23(1)	Injunctions, Insurance	KN351.A88

- Bennion on statutory interpretation / F.A.R. Bennion. – 5<sup>th</sup> ed.  
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## SERIALS

### California Western International Law Journal Vol. 39 No. 2 Spring 2009

The unintended revolution: U.S. anti-drug policy and the socialist movement in Bolivia *Will Reisinger*

Compassionate consumerism with the GATT regime: can Belgium's ban on seal product imports be justified under article XX? *Robert Galantucci*

Extraordinary rendition: a challenge to Canadian and United States legal obligations under the convention against torture *Mario Silva*

### Columbia Journal of Law and Social Problems Vol. 42 No. 3 Spring 2009

The gang's all here: Evaluating the need for National Gang Database *Rebecca Rader Brown*

Beyond the border: A comparative look at prison rape in the United States and Canada *Philip Ellenbogen*

Amending no child left behind to prevent school rezoning and resegregation: A response to the Tuscaloosa City School *Jonathan Barron*

"Drive-by Jurisdictional Rulings": the procedural nature of comprehensive-remedial-scheme preclusion in § 1983 claims *Jacob E. Meyer*

### Columbia Journal of Law and Social Problems Vol. 42 No. 4 Summer 2009

Afraid to be myself, even at home: a transgender cause of action under the Fair Housing Act *Daniella Lichtman Esses*

When should interstate compacts require congressional consent? *Matthew Pincus*

Closing the door on positive rights: State court use of the political question doctrine to deny access to educational adequacy claims *Christine M. O'Neill*

State Attorneys General and contingency fee arrangements: an affront to the neutrality doctrine? *Leah Godesky*

### Columbia Law Review Vol. 109 No. 2 March 2009

Civil liability and mandatory disclosure *Merritt B. Fox*

A bargaining power theory of default rules *Omri Ben-Shahar*

### Columbia Law Review Vol. 109 No. 3 April 2009

Contracting for innovation: vertical disintegration and interfirm collaboration *Ronald J. Gilson et al.*

Paradox of presumptions: Seller warranties and reliance waiver in commercial contracts *Kabir Masson*

Equal justice under law: *Post-Booker*, should federal judges be able to depart from the federal sentencing guidelines to remedy disparity between codefendants' sentences?

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**Columbia Law Review Vol. 109 No. 4 May 2009**

An aggregate approach to antitrust: using new data and rulemaking to preserve drug competition

*C. Scott Hemphill*

Revealing choices: using taxpayer choice to target tax enforcement

*Alex Raskolnikov*

**Common Law World Review Vol. 37 No. 4 2008**

Customary land and the language of the common law

*Jennifer Corrin*

CARICOM and its Court of Justice

*Derek O'Brien & S. Foadi*

New Zealand's succession law: subverting reasonable expectations

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**Commonwealth Judicial Journal Vol. 18 No. 1 June 2009**

The child witness

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Lethargy on the bench

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- Enabling or disabling? Increasing involvement of charities in social housing  
*Nicola Glover-Thomas & Warren Barr*
- Rethinking the content of the fiduciary obligation *Rebecca Lee*

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- Know Housing Trust: Porter v Shepherds Bush Housing Association;*  
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Better late than never: the demise of the tolerated trespasser *Stuart Bridge*

**Criminal Law Review Issue 4 2009**

- Joint enterprise *Richard Buxton*
- Criminalising extreme pornography: a lost opportunity  
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- Section 71 and 72 of the Serious Organised Crime and Police Act 2005:  
Whither common law? *David Corker et al.*

**Criminal Law Review Issue 5 2009**

- Bad character evidence and cross-admissibility *Rudi Fortson & David Ormerod*
- Suicide in Switzerland: complicity in England? *Michael Hirst*

**Criminal Law Review Issue 6 2009**

- Serious Crime Act 2007: The Part 2 offences *David Ormerod & Rudi Fortson*
- Hearsay, psychiatric evidence and the interests of justice *Tony Ward*
- The private prosecutor as a Minister of Justice *Richard Buxton*

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- Drink, drugs and law reform: a review of Law Commission Report No. 314  
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- More thoughts about Unlawful and Dangerous Act - manslaughter  
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**Environmental Law Review Vol. 10 Issue 4 2008**

- Revising IPPC: incremental change rather than a radical overhaul  
of EU Industrial Missions Policy *Andrew Farmer*

- The Russian Regime for subsoil use, Energy and Environmental Policy in the High North *Kristoffer Svendsen*
- Legislation and policy visions, strategies and realisation *William Howatrh*
- Industrial Law Journal Vol. 38 No. 1 March 2009**
- Class wars? Religion and (in)equality in the workplace *Aileen McColgan*
- Part one of the Employment Act 2008: 'better' dispute resolution *Astrid Sanders*
- Industrial Law journal Vol. 38 No. 2 June 2009**
- Rethinking victimisation *Claire Kilpatrick*
- The ECJ and labour law: a 2008 retrospective *Claire Kilpatrick*
- International Review of the Red Cross Vol. 90 No. 872 December 2008**
- The civilization of armed conflict: trends and implications *Andreas Wenger*
- The past as prologue: the development of the 'direct participation' exception to civilian immunity *Emily Camins*
- Chained to cannons or wearing targets on their T-shirts: human shields in international humanitarian law *Stephanie Bouchie de Belle*
- Mission impossible? Bringing charges for the crime of attacking civilians or civilian objects before international criminal tribunals *Carolyn Wuerzner*
- The equal application of the laws of war: a principle under pressure *Adam Roberts*
- Can *jus ad bellum* override *jus in bello*? Reaffirming the separation of the two bodies on law *Jasmine Moussa*
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- Rescuing small businesses: designing an "efficient" legal regime *Gerard McCormack*
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- Journal of Business Law Issue 5 2009**
- Regulation, self-regulation or co-regulation? *Eva Hiipkes*
- Challenging the "golden goodbye" *Lawrence West Q.C.*

- Company voluntary arrangements and rescue: a new hope  
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- Journal of Planning & Environment Law Issue 4 2009**
- Judicial review under the Planning Act 2008 *James Maurici*
- Case Law Reports**  
South Cambridgeshire DC v Secretary of State for communities and Local Government,  
Brown and Brown
- R (on the application of Littlewood) v Bassetlaw DC
- Finn-Kelcey v Milton Keynes Council and MK Windfarms Ltd.
- Journal of Planning & Environment Law Issue 5 2009**
- Raissi: the interpretation of planning policy *Daniel Kolinsky*
- Is planning permission needed to put a horse in a field *Alec Samuels*
- Case Law reports**  
Brent LBC v (1) Secretary of State for Communities and Local Government (2) Ashia  
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- The Environment Agency v Thorn International UK Ltd.
- Bedford BC v (1) The Secretary of State for Communities and Local Government (2)  
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- Journal of Planning & Environment Law Issue 6 2009**
- Recent developments in planning case law *John Pugh-Smith*
- Community infrastructure levy: can it feed the infrastructure Cuckoo?  
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Ashwell Property Group Plc and Ashwell (Barton Road) Ltd. v Cambridge City Council
- R (on the application of Boggis and Easton Bavents Conservation) v Natural England
- Transport for London v Spirerose Ltd. (In Administration)
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- The recovery of disturbance and other compensation for tenancies  
with short terms or early determination clauses *Barry Denyer-Green*
- Capacity versus output (and other energy policy issues) in UK wind  
farm planning *William Norris Q.C.*
- The Climate Change Act 2008: something to be proud of after all?  
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**Case law Reports**

R (on the application of Gardner) v Harrogate BC (Mr. and Mrs. Atkinson)

Downs v Secretary of State for the Environment, Food and Rural Affairs

R (on the application of Berwood Holmes Ltd.) v Bromley LBC

**Law Quarterly Review****Vol. 125****April 2009**

"Trust and confidence"

*Prof. Maurizio Lupoi*

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Laws and constitutional conventions

Regulating trusts of the home: private law and social policy

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Simplifying claims to traceable proceeds

*Prof. Lionel Smith***Law Society Gazette****April 2, 2009**

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Mortgage lenders reassure panel firms

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Public get a raw deal in civil courts, says ADJ chief

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Town hall lawyers must shed 'cautious' attitude

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'Early completion' plans could hit solicitors hard	<i>Catherine Baksi</i>
<b>Law Society Gazette</b>	<b>May 21, 2009</b>
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**Loyola Law Review Vol. 55 No. 1 Spring 2009**

Change in the European Civil Law Systems: Infiltration of the Anglo-American case law system of precedent into the civil law system

*Allen Shoenberger*

Emerging limitations of the Uniformed Services Employment and Reemployment Act

*Konrad S. Lee et al.*

Loneliness and the law: solitude, Action, and power and literature

*Marc L. Roark*

Accounting for well costs and well cost adjustments in Louisiana

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**Loyola University Chicago Law Journal Vol. 40 No. 3 Spring 2009**

“Neutral” principles: rethinking the legal history of Civil Rights, 1934 – 1964

*Anders Walker*

Optimal federalism across institutions: theory and applications from environment and health care policies

*Dale B. Thompson*

Using salience and influence to narrow the tax gap

*Susan Cleary Morse*

Plugging leaks: the necessity of distinguishing whistleblowers and wrongdoers in the free flow of Information Act

*Michelle C. Gabriel*

The consumer debt crisis and the reinforcement of class position

*Lois R. Lupica*

The fragile armistice: the legal, economic, and policy implications of trading in a competitor’s stock

*Karl T. Muth*

Vindicating the rights of people living with AIDS under the Alien Tort Claims Act

*Margaret B. Kwoka*

From here to Beijing: public/private overlaps in trade and their effects on U.S. laws

*Elizabeth Trujillo*

**Loyola University Chicago Law Journal Vol. 40 No. 4 Summer 2009**

Vagrants in Volvos: ending pretextual traffic stops and consent searches of vehicles in Illinois

*Timothy P. O’Neill*

Tort law and journalism ethics

*Richard T. Karcher*

Using article IV of the Illinois constitution to attack legislation passed by the General Assembly

*Michael J. Kasper*

Confronting testimonial hearsay: Understanding the Confrontational Clause

*Judge Daniel B. Shanes*

Better Civil Practice in dissolution of marriage litigation

*Sanjay T. Tailor*

Discerning the validity of arbitration agreements containing heightened judicial review clauses after *Hall Street Associates, LLC v Mattel, Inc.*

*Jeremy L. Zell*

**New Law Journal      Vol. 159 No. 7363      April 3, 2009**

**Comment/Cover story:**

Does Google's "Streetview" compromise stretch the boundaries of privacy?  
*John Cooper* reports

**Employment:** Tribunals should not stray beyond their core remit. *Chris Bryden & Michael Salter* explain why

**Family:** *Geraldine Morris* on calls for a major transformation of divorce laws

**PI:** *Deborah Edwards* reports on limitation and constructive knowledge in industrial disease claims

**Property:** Damages or injunctions? *Willie Manners & Jonathan Pratt* report

**Public:** *Paul Harris & Alasdair Mackenzie* discuss fresh claims & foreign cases

**New Law Journal      Vol. 159 Nos. 7364/7365      April 10 & 17, 2009**

**Comment**

*Roger Smith* reports on a mixed response to the proposition of extending human rights

**Employment:** Just reward & employee brilliance: getting the right fit  
*Christopher de Mauny* reports

*Cristian Ley* welcomes the biggest political U-turn since the poll tax

**Family:** *Finola Moss* asks whether the Adoption Act 2002 is a step too far

**Personal injury:** *Roger Harris* on finding the right balance between state-funded care and damages

**Property:** Investing in bricks and mortar together? Get it in writing says *Mark Warwick*

**Public/ Judicial review:** *David Lock* discusses the use and abuse of interim remedies in Administrative Court actions

**Wills & probate:** *Michael Tringham* recounts how a £3m estate dispute racked up £400,000 in costs

**New Law Journal      Vol. 159 No. 7366      April 24, 2009**

**Comment:**

*Tina Campbell* welcomes the regulator's U-turn on conflicts & confidentiality

**Employment:** *Ian Smith* outlines a host of changes which came into force on April 6

**Family:** *Ratcliffe* should be compulsory reading for all family practitioners, *David Burrows* explains why

**Personal injury/ Employment** *Keith Patten* reflects on an employer's duty of care; obvious risks, & the duty to warn

**Property:** *John Summers & Elizabeth Fitzgerald* consider the impact of *Ofulue*

HIPs – will they finally provide benefits? Asks *Peter Ambrose*

*Rowena Meager* examines inheritance & proprietary estoppel

**Public/ Community care:** *Ed Mitchell* reviews recent cases on funding, transparency & closure

**New Law Journal**      **Vol.159 No. 7367**      **May 1, 2009**

**Comment**

A post-Budget lament by *Peter Vaines*

**Employment:** Is promoting faith in the workplace a no-go area? *Charles Pigott* reports

**Family:** Declining assets are unlikely to pass the *Barder* test, says *Catherine Costley*

**Personal injury:** *Richard Scorer* reviews the reverse impact of *Rome II*

**Public/Landlord & tenant** *Mitchell* underlines the court's reluctance to impose a common law duty of care, says *Kenneth Warner*

**Public:** Procurement challenges are on the increase. *Rob Hann* explains why

**New Law Journal**      **Vol. 159 No. 7368**      **May 8, 2009**

**Comment**

Will the Pirate Bay deter illegal file sharing? *Tracey Stretton & Mark Surguy* report

**Discrimination:** The new concept of indirect disability discrimination is set to cause confusion, say *Naomi Fienstein & Helena Davies*

**Employment:** Expect a more robust approach to harassment cases, says *Elliot Gold*

**Family:** Part 3: Do child support committal applications breach human rights? *David Burrows* reports

**Personal injury:** *Nicholas Bevan & Andrew Stinchcombe* trace the road ahead for pleural plaque compensation

**Landlord & tenant:** *Rajeev Nayyar* finds the recession leaves landlords with fewer choices

In rental default cases landlords are often caught in the middle, say *Cameron Lawes & Mark Sefton*

**Public** part two: *Ed Mitchell* provides an update on fair access, mental capacity & welfare reform

**New Law Journal**      **Vol. 159 No. 7369**      **May 15, 2009**

**Comment**

Can Lord Justice Jackson crack the costs problem? *Michael Zander QC* reports

**Employment:** *Ian Smith* tramps across some difficult terrain in search of clarity & simplicity

**Family:** *Sarah Whitten* assesses how divorce settlements could change in the tough economic climate

**Personal injury:** *Helen Wolstenholme* reports on genuine accidents & deliberate contempt

**Public:** Are Northern Rock shares not worth a truffle? Ask *Paul Dacam & Harriet Dedman*

**Public/Planning:** The Community Infrastructure Levy & other animals, by *Romola Parish*

**Wills & probate:** *Michael Tringham* unravels the world of contentious probate

**New Law Journal**      **Vol. 159 No. 7370**      **May 22, 2009**

**Comment**

*Jennifer James* contemplates Lord Justice Jackson's legacy...

**Employment:** *Dr. John McMullen* on restructuring, downsizing & workforce lay-offs

**Family/Child law:** *Mark Jarman* assesses the impact of The Hague Convention & NIIR on public law proceedings

**Personal injury:** *Robert Weir* on how common sense prevailed after a playground incident

*Richard Scorer* believes Rome II is imprecise and does not provide sufficient certainty

**Property:** *Malcolm Dowden* asks whether the signature of property documents is more than a mere formality

**Public:** Damages claims against public authorities remain an uphill battle, says *Daniel Saul*

*Nicholas Dobson* reports on a case of favouritism in a local authority decision

**New Law Journal**      **Vol. 159 No. 7372**      **June 5, 2009**

**Comment**

*Tony Guise* says representation is as important as reputation

**Employment** *Bruce Gardiner & Ming Yee Shiu* continue their guide to enforcing resisting covenants

**Family:** *David Burrows* turns the spotlight on child support proceedings in the magistrates' courts

**Personal injury:** *Stephen O'Doherty* searches for the missing link in damages cases

**Public/Trespass:** *Dr. Nicholas Dodson* treads carefully on the issue of trespass, standards & public interest

**Public/Human rights:** *Susan Nash* examines a variety of recent human rights cases

**Immigration:** Employers are appealing against civil penalties for employing illegal workers. *Mark Tempest* reports

**Public Law      April 2009**

Settlement in judicial review proceedings	<i>Varda Bondy &amp; Maurice Sunkin</i>
Judicial review of non-statutory executive powers after <i>Bancoult</i> : a unified anxious model	<i>Margit Cohn</i>
Judging the judges under the Human Rights Act: deference, disillusionment and the “war on terror”	<i>Aileen Kavanagh</i>
A defence of concurring speeches	<i>James Lee</i>
Regulation revisited	<i>Anthony Ogus</i>
The impact of the Human Rights Act on the House of Lords	<i>Sangeeta Shah &amp; Thomas Poole</i>

**Solicitors Journal      Vol. 153 No. 11      March 24, 2009**

**Not just an empty shell**

The Register of Mergers provides a perfect solution in principle to charities that have merged to continue receiving future gifts made to their predecessors – or does it, asks *Donald Taylor*

**The silk route**

There is pressure to but few women are applying for silk and more can be done to increase diversity, says *Kate Thirlwall Q.C.*

**Dangerous minds**

The ‘directing mind’ defence has escape liability large companies will need to consider the relevant statute, says *Thom Dyke*

**I will survive**

Survivorship clauses have outlived their usefulness and they could now make the inheritance tax position substantially worse, says *Malcolm Finney*

**Update: commercial**

*Sara Partington* considers liability for conversion, the dangers of including an arbitration clause in standard terms and conditions, vexatious litigants and the risks of incurring interest on invoices

**Update: housing**

*Rebecca Cattermole* reviews recent developments on anti-social behaviour and the latest rulings on housing allocation schemes, homelessness tolerated trespassers

**Solicitors Journal      Vol. 153 No. 12      March 31, 2009**

**Interview**

*David Oldham* talks to *Jean-Yves Gilg* about why he believes the civil justice system is being eroded

**Starting a collection?**

*Lawrence Milner* reminds all businesses, including law firms, to take data protection compliance seriously

**Environmental**

*Gordon Wignall* on compensation, remedies and costs in environmental private nuisance proceedings

**Making the most of medication**

*Gary Webber* shares his tips on how, as representative of a party at a mediation, you can help the mediator help the client

**Unequal practice**

Ignoring training contract applications from overseas could amount to discrimination, says *Charles Wunn-Evans*

**Update: local government**

*Justin Bates* discusses the strained relations between local authorities and government over the move towards unitary authorities

**Update: family (children)**

*Noel Arnold* reviews the findings of Lord Laming's latest report on England's child protection system

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**Opinion**

The ideas behind the SRA's proposals for mandatory re-accreditation for advocates are discriminatory and worthless, says *Tim Lawson-Cruttenden*

**Unleashed**

*Russell Conway's* bounced cheque – is a grovelling letter from the bank manager enough?

**The promised land**

The House of Lords' ruling in *Thorner* provides a welcome return to orthodoxy in proprietary estoppel, says *Mark Pawlowski*

**A prejudiced rehearsal?**

*Keith Wilding* welcomes a more flexible approach taken to welfare benefit fraud prosecution under the new tribunals rules

**Pay to play**

All solicitors should pay for the cost of the regulator, including those working in central government, argues *Geoff Wild*

**European briefing**

*Paul Stanley* considers whether the compulsory retirement age ruling is compatible with UK regulations, the binding force of unpublished rules and the right to indemnity under the Commercial Agents Directive

**Update: competition**

*Lesley Davey* reviews the European Commission's policy on abuse of dominant position, block exemptions, the application of State aid rules in the context of the economic crisis, and the OFT's new leniency guidance

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**Opinion**

The latest best value tendering consultation is an ill-conceived cost cutting exercise, says *Robin Murray*

**The lines are drawn, but where?**

Should juries have the right to decide what is criminal, asks *Tan Ikram*

**A quest for the truth**

The current proposals for the reform of the inquests system undermine the principle of holding the state to public account, says *Anand Doobay*

**A valuable point**

Protection for vulnerable adults is under increased scrutiny, but what exactly does 'vulnerable' mean, asks *David Hewitt*

**Trends: healthcare**

With healthcare being one of the fastest-moving sectors around, what are law firms doing to keep up, asks *Jenny Ramage*

**Life in crime**

Three years on, *Lucy Corrin* questions whether the sentencing provisions in the Criminal Justice Act reforms have achieved their aim

**Update: planning**

*Gregory Jones* and *Thomas Cross* discuss environmental impact assessments and the implementation of the Planning Act

**Update: sports**

*Katherine Apps* and *Adam Solomon* review competition law and sporting bodies, sports arbitration and the anti-doping rules

**Solicitors Journal      Vol. 153 No. 15      April 21, 2009**

**Photo opportunity**

Demonstrating is a lawful activity, but if the police are allowed to take and retain photographs of demonstrators, are they not being treated as criminals, asks *Paul Harris*

**Wound up**

With stress at work claims on the rise, practitioners need to consider the preparatory work required to win them, says *David Marshall*

**The alternative view**

Alternative business structures are just as relevant to high street firms and sole practitioners as they are to larger practices. *Viv Williams* explores the options

**View from the bench**

Some of the most significant provisions of the TCA have been delayed, says *Monty Trent*

**Regional focus: East Midlands**

Firms in the East Midlands are taking a realistic approach to the recession. *Jean-Yves Gilg* reports

**Update: defamation and privacy**

*Rod Dadak* reviews cases on harassment, libel and contempt of court

**Update: tax**

*Jason Collins and Michael Blackwell discuss the new tax appeal system*

**Solicitors Journal**      **Vol. 153 No. 16**      **April 28, 2009**

**A sealed deal**

Can spouses re-open financial settlements in difficult economic times, asks *Sarah Whitten*

**Upsetting the apple cart**

What will happen if *Eeles* principles are applied in future cases, asks *Helen Niebuhr*

**Child's play**

The law has come full circle in reacting against the 'cotton wool' culture, explains *Kris Lines*

**A quandary of quarries**

The re-working of quarries could affect many home buyer clients, says *Laura Clarke*

**Proceeding with care**

*Jennette Newman* considers the changing scope of cost recovery and its implications for insurers

**Take a photo and be damned?**

*Barbara Hewson* discusses an important new ruling on privacy

**Solicitors Journal**      **Vol. 153 No. 17**      **May 5, 2009**

**An end to estimates?**

The current system of costs estimates is not providing clients with the certainty they need, and is likely to become tougher, warns *Howard Dean*

**The right to be kept alive**

*Seamus Burns* discusses two recent cases that illustrate the role of the courts in determining when doctors should allow children to die

**Trends: education**

Practitioners are frustrated that it is becoming harder for children and parents to access legal advice in education disputes, as *Jenny Ramage* discovers

**Pay fair**

In-house and local government lawyers should pay a minimal practicing certificate fee, says *Tony Guise*

**Unleashed**

*Russell Conway* wonders if it's time to update his firm's disaster strategy

**European briefing**

*Paul Stanley* reviews a recent decision on limitation periods and the duty to mitigate damages

**Update: pensions**

*Alan Fowler* discusses recent developments on Personal Accounts and provides an update on overseas schemes



**Update: consumer**

*Laurie Heizler* considers the risks that online advertisers take with personal data and the privacy implications of 'behavioural advertising'

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**To be fair**

Should banks really be running the risk of defending the overdraft charges claim this far, asks *Fiona Blakeborough*

**No minor matter**

*Kerry Bretherton* discusses the difficulties landlords can face when trying to evict minors

**Special agent**

*Nick Hurley* considers the effects of a new European directive on agency workers

**Blowing their cover**

*Peter Tyldesley* is looking forward to the Law Commission's much-needed proposals for the reform of insurance contract law

**The thin edge of a thicker wedge**

*Anthony Riem* reviews how victims of fraud can recover assets using trusts and secure search and freezing orders

**Keeping it in the family**

Family investment companies are a viable alternative to trusts, says *Deborah Clark*

**Softly goes**

Developing soft skills should be a greater priority for lawyers, says *Geoff Wild*

**Life in crime**

The House of Lords has confirmed 'fugitives' could not rely on the state's shortfalls to avoid extradition, but will this not open the door to unfair delays, asks *Ben Newton*

**Update: personal tax and trusts**

*David Bird* considers written agreements, the main provisions of the Perpetuities and Accumulation Bill, the new tax tribunal system, and the highlights of the Budget

**Solicitors Journal**      **Vol. 153 No. 19**      **May 19, 2009**

**Access denied**

Public bodies carrying out investigations into serious incidents should take steps to ensure that those affected are involved in the process, says *Oliver Donald*

**I want to break free**

Both tenants and landlords may look to gain an advantage from their break rights, but practitioners must consider certain factors when acting for either side, says *Natasha Dunn*

**A rich man's world?**

The offshore world has a reputation of being only for the wealthy, but many jurisdictions offer 'ordinary' people opportunities, say *Dawn Tindall* and *Jonathan Carter*

**Going public**

Publishers and parents alike should take particular care before releasing details of a child's private life to avert potentially damaging consequences, says *Barbara Hewson*

**View from the bench**

*DJ Julie Exton* considers how the opening of the family courts to the media is likely to work in practice

**Regional focus**

*Jean-Yves Gilg* reports on the pace of change in the *Welsh* legal services market

**Update: health and safety**

*Zahra Nanji* reflects on the implications of the first charge under the Corporate Manslaughter Act 2007 on health and safety prosecutions

**Update: professional negligence**

*Spike Charlwood* and *Alice Nash* review cases on rectification and contribution

**Solicitors Journal**      **Vol. 153 No. 20**      **May 26, 2009**

**A clearer future**

*Stephen Hazelton* joins the debate on the *Ecles* judgment

**The new age of innocence**

*Sean Hodgson's* case has huge implications for the use of DNA evidence, says *Julian Young*

**Leaving it to chance**

Claimants in 'loss of a chance' cases must prove negligence, say *Richard Harrison* and *Liz Wild*

**Treat me right**

Treating clients fairly will become increasingly relevant to lawyers, says *Ben Hardiman*

**Breaking into a SWOT**

A SWOT analysis can help firms to pursue opportunities, says *Dianne Bown-Wilson*

**Trivial pursuit**

Employees' environmental concerns should not be disregarded as trivial, says *Daniel Tivadar*

**Driving a hard bargain**

Plea bargaining could radically alter current Attitudes, says *Steven Francis*

**Rush hour**

Employers must consult before making employees redundant, says *Cara Eriksson*

**Civil conduct**

Don't dismiss the Jackson Report as yet another review, says *Andrew Parker*

**Update: agriculture**

*James Falkner* and *Amanda Tagg* review recent cases involving agricultural estates

**Update: wills and probate**

*Helen Bryant* explains the new Inheritance Tax Account Form IHT 400

**Solicitors Journal**      **Vol. 153 No. 21**      **June 2, 2009**

**Model behaviour**

*Tim Lawson-Cruttenden* argues that solicitors could give bankers a lesson or two in protecting clients' funds

**Stepping up**

The new HIPs regulations give solicitors the opportunity to take charge of the process and improve on relationships with clients and estate agents, says *Chris Myers*

**Better than cure**

Serious Crime Prevention Orders may be a necessary tool but they raise deep concerns for civil liberties, says *Andrew Picken*

**Trends: wealth management**

More changes to the government's rules on tax and trusts mean private client practitioners have to up their game if they want to stay on top, says *Jenny Ramage*

**Unleashed**

*Russell Conway* shares his views on the 60<sup>th</sup> anniversary of legal aid celebrations

**Regulatory watch**

Accepting referrals from claims management companies can be dangerous, warns *Tony Guise*

**European briefing**

*Paul Stanley* discusses the surprise decision by the European Court of Justice relating to the ownership and operation of pharmacies

**Update: environment**

*Michael Woods* reviews the new hazardous waste obligations and the Carbon Reduction Commitment scheme

**Update: social welfare law**

*Hannah Graves* and *Chris Ellis* consider the new mental capacity provisions and entitlement to Job Seekers Allowance

**Solicitors Journal**      **Vol. 153 No. 22**      **June 9, 2009**

**For better or for worse**

Lord Justice Jackson's preliminary report could be potentially detrimental to defendants, say *Rachel Moore* and *Scott Nightingale*

**Larke still ascending**

Solicitors should be more forthcoming when faced with a '*Larke v Nugus*' letter challenging a will, says *Mike Parker*

**Out of site, out of mind**

Websites offering user-generated content should behave responsibly in relation to copyright infringement, says *Dawn Osborne*

**An unreasonable demand?**

The court will only allow statutory demands to be set aside under specific circumstances, says *Verona Cocks*

**SIPP your way through the recession**

*Mike Fosberry* explores the benefits of group self-invested pension plans for solicitors

**Taking cover**

Solicitors should put in early and properly presented applications to their indemnity insurance provider, says *Jean-Yves Gilg*

**There's no arguing**

Mediation is now seen as a realistic alternative to litigation but it remains surrounded by misunderstandings, says *Matthew Greenberg*

**Life in crime**

*David Rhodes* examines a decision by the Court of Appeal to reject a judgment of the European Court of Human Rights on the admissibility of hearsay evidence

**Update: crime**

*Ian Harris* and *Christopher Gutteridge* review recent decisions on claims for the return of property and costs orders in criminal cases

**Update: local government**

*Hustin Bates* revisits two cases concerning the Boundary Committee's actions when it advised on the move towards unitary authorities

**Solicitors Journal**      **Vol. 153 No. 23**      **June 16, 2009**

**Slippery slope**

The House of Lords has restricted the scope of strict liability for defective work equipment but employers could still be liable for negligence, particularly when employees use vehicles for work purposes, says *Susan Dearman*

**No uncertain terms**

As the OFT tightens the regulatory noose on estate agents, *Mark Lucas* warns practitioners that with increasing scope for consumer to challenge contract terms, businesses must ensure that they are not open to claims of unfairness

**Balancing act**

When making an application for third party disclosure, practitioners must make a case which ensures that the order sought is not a fishing expedition and does not affect third party rights, says *Masood Ahmed*

**Setting the scope**

Practitioners should remain prepared to challenge some of HMRC's assumptions in respect of inheritance tax as the agency is increasing disclosure requirements and seeking clarification on related issues, says *Paul Nellist*

**View from the bench**

Solicitors should think carefully before instructing medical experts, says *DJ David Oldham*

**Regional focus**

East Anglia firms are reviewing their strategies and exploring new avenues to prosperity, says *Jean-Yves Gilg*

**Update: commercial**

*Sara Partington* discusses unfair bank charges, bailiffs' enforcement powers, the duty of care of directors and 'service by Facebook'

**Update: costs**

*Simon Gibbs* considers the potential impact of the Jackson review on the costs industry and disclosure requirements

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**Putting out fire with gasoline**

The Court of Appeal's decision against Michael Napier has left solicitors accused of misconduct with little protection from unjustified negative publicity, says *Michelle Garlick*

**Placing the blame**

When are partners in a firm personally liable for their own negligence and when is it the firm's responsibility, asks *Mark Blackett-Ord*

**In the know**

*Sue Boyall* discusses the new environmental responsibilities of purchasers of property and advises on how to address potential risks

**Moving into management**

*Damian Blackburn* explains how project management techniques can be applied to legal transactions, and how they can benefit lawyer and client alike

**Closing the deal**

Insider dealing is known as a difficult offence to prosecute but, with the right evidence, the FSA is beginning to get results, says *David McClusley*

**The big bad Woolf?**

The Woolf reform improved the litigation system but also caused costs to increase; so is it now time for further reform, asks *Gavin Foggo*

**Update: residential property**

*Janet Armstrong-Fox* discusses recent cases on acceptance of a surrender of a lease and signing contracts on behalf of a client

**Update: clinical negligence**

*Dr. Jock Mackenzie* considers causation where there are several possible causes of injury, and the importance of timings to causation