

CURRENT AWARENESS BULLETIN

October-December 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.

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ATTORNEY GENERAL and District Cons. Thomas and District Cons. Burke v Sherly Dacres
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BP v RP
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BAILEY, Ronique v R
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CRIMINAL LAW – Application against conviction for murder

CLARKE, William E. v Bank of Nova Scotia Jamaica Limited
JMCA. 02.10.2009

EMPLOYMENT – Retirement plan – Whether parties bound by agreement to submit to arbitration dispute with regard to retirement plan

CROSSFIELD, Anthony v R
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CIVIL PROCEDURE AND PRACTICE – Application to set aside judgment and relief from sanctions

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CIVIL PROCEDURE AND PRACTICE– Application for order for conditional leave to appeal to Her Majesty in Council

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LAWRENCE, RUTH (Estate represented by Albert Binger) and Albert Binger v Alcoa Minerals of Jamaica

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29/2009	Clarence Fitzroy Bryant College (Amendment) Act
21/2009	Firearms (Amendment) Act
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LAW REPORTS

Cayman Islands Law Reports	2008
Criminal Appeal Reports	Vol. 2 2009
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Dominion Law Reports	Vol. 306, 307 2009 4 th series
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Atkin's Court Forms. 2 nd ed.	2009
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"The Trust Factor" hits Southern California airwaves

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Civil legal aid can yield a decent profit – but size matters *Adam Makepeace*

By the book

Peter Williamson discusses the challenges facing his successor *Peter Williamson*

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Courts and information technology: a predictably uneasy relationship
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Beyond black ink: from Langdell to Oyez project – the voice of the past
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Pardon the interruption: an empirical analysis of Supreme Court Justices' behavior during oral arguments
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The constitutionalization of the European Union: Comparative perspective
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Places worth saving: a legal guide to the protection of historic cemeteries in Louisiana and recommendations for additional protection
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Professionalism's triple E query: Is legal academia enhancing, eluding, or evading professionalism?
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Risky retirement business: how ESOPs harm workers they are supposed to help
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The international Boundary Commission, treaty interpretation, and the president's removal power
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Before the verdict and beyond the verdict: the CSI infection within modern criminal jury trials
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Contract formation and the entrenchment of power
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The ethics of Blawging: a genre analysis
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New Law Journal Vol. 159 No. 7385 September 18, 2009

Comment

Roger Smith on corporations, cuts & contradictions

Employment: *John McMullen* sheds light on recent TUPE conundrums

Family: *Geraldine Morris* warns family lawyers to tread carefully around the CPR

Personal injury/ Negligence: *Robert Weir* examines what makes a place of work unsafe

Property/ Family: After separation, how do judges justify how the co-owned home is divided? Asks *Rowena Meager*

Public/ Human rights: *Seamus Burns* commends the move towards greater transparency in assisted suicide cases

Wills & Probate: Cohabitation rules: sometimes OK, says *Michael Tringham*

Professional negligence: *Levicom* underlines the pivotal role of causation in professional negligence cases, says *Simone Love*

New Law Journal **Vol. 159 No. 7387** **October 2, 2009**

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James O'Connell predicts the rise & rise of paralegals

Employment: *Ian Sadler & William Childs* examines the right to legal representation at disciplinary proceedings

Family: *Jacqueline Renton* reports on the human rights' approach to non-consensual marriage

Negligence/ Employment: *Kenneth Warner* considers who's liable for the acts of subcontractors

Property: *Nick Knappman* explains the art of correcting mistakes by construction

Public: Compromise agreements can sometimes go too far, says *Nicholas Dobson*

Wills & probate: *Frances Ratcliffe* counts up executors' costs after *Raymond Saul v Holde*

New Law Journal **Vol. 159 No. 7388** **October 9, 2009**

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Is the Heyday ruling an amber light for the forced retirement exemption? *Charles Pigott* thinks so

Negligence/ Employment: *Ian Smith* hits the discrimination jackpot

Family: *David Burrows* questions the fairness of the tribunal system

Personal injury: *Philip Mead* explains how Rome II has changed the legal landscape

Public: *Ed Mitchell* provides an update on flawed decision making & the protection of vulnerable adults

Commercial: *Paul Bugden* examines the many barriers to reclaiming costs

New Law Journal **Vol. 159 No. 7389** **October 16, 2009**

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Roger Smith takes stock of some supreme changes & pledges

Employment: *Pereda* is causing major concerns for employers, says *Ben Collins*

Family: *Claire O'Flinn* considers the thorny issue of family relocation

Personal injury: Should *Tomlinson* play a part in employer liability cases? *Nave Nayer* investigates

Property/ Landlord & tenant: What happens to lease renewal when the landlord is in administration? *Malcolm Dowden* reports

Wills & probate: *Michael Tringham* provides an update on family intrigue, delusion & greed

Wills & probate: *Emily Campbell* highlights potential pitfalls in processing inheritance claims

New Law Journal **Vol. 159 No. 7390** **October 23, 2009**

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Graham Reid applauds Lord Hunt virtuoso (legal) performance

Employment: *Ian Smith* celebrates the highs & lows of recent tribunal decisions

Personal injury: *Richard Scorer* examines a hidden epidemic suffered by British soldiers

Family: *Toby Atkinson* explores the rights & remedies available to cohabitants on relationship breakdown

Property: *Joseph Ollech* recounts some recent developments in the world of virtual assignments & alienation clauses

Public/ Human rights: *Robert Latham* reports on disclosure, cross-examination & equality

Competition: Should the smallest boy in the park give up his ball to the biggest? Asks *Dr. Russell Richardson & Dr. Richard Burnley*

Commercial: Are the advertising operations of internet search engines in the balance? *Nick Rose & Louisa Albertini* reports

New Law Journal **Vol. 159 No. 7391** **October 30, 2009**

Comment

Frank Maher considers how to avoid a repeat of this year's PII fiasco

Employment: *Heather Platt* provides an update on stress related case law

Employment: *Elliott Gold* discusses the scenario of dismissal resulting from a request by a third party

Family: *Dorothea Gartland* analyses the concept of significant harm

Personal injury: *Tony Walton* charts the milestones on the road to fixing fees

Property: While seeing into the future is not yet expected of property lawyers, advising as to future risks is, says *James Naylor*

Public/ Human rights: What happens when migrants can't pay for treatment? Asks *Adam Hundt*

Commercial: *Peter Vines* Liechtenstein: the centre of (tax) universe

New Law Journal **Vol. 159 No. 7392** **November 6, 2009**

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Roger Smith on MoJ failing & the future direction of legal aid policy

Employment: Employment vetting law has been rewritten says *Timothy Pitt-Payne*

Family: *Sarah Whitten & Jamie Wilson* consider the pros & cons of litigating in the public eye

Personal injury: *Andrew Morgan* on the rethinking of success fees in asbestos claims

Property: *Andrew Francis* explains how to clear off troublesome covenants

New Law Journal **Vol. 159 No. 7393** **November 13, 2009**

Comment

Hard times? Yes. But the legal aid landscape is far from bleak. Says *Carolyn Regan*

Employment: *Chris Bryden & Michael Salter* consider the complexities of sham employment terms & the true nature of the contractual relationship

Family: Paying close attention to child support legislation can pay dividends. *Katherine Walker* explains why

Personal injury: *Nina Unthank* reports on costs against interested parties

Property: Common intention is vital when supporting arguments based on construction, says *Nick Knapman*

New Law Journal **Vol. 159 No. 7394** **November 20, 2009**

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Richard Chapman explains why Jackson LJ's proposals for costs reforms must succeed

Dominic Regan predicts what will be in Jackson LJ's final report

Employment: *Ian Smith* notches up a century at the coalface

Family: *Jonathan Herring* reports on intestacy law reform

Personal injury: A commonsense approach is plain obvious, says *Dan McCauley*

New Law Journal **Vol. 159 No. 7395** **November 27, 2009**

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Roger Smith reflects on a Bar success, budgetary pressure & striking lawyers

Property/ Housing: *Annette Cafferkey* provides an update on housing, public law & human rights

Public: *R(L)* demonstrates justifiable interference with Article 8 rights, says *Nicholas Dobson*

Wills and Probate: *Paul Hewitt, Paola Fudakowska & Adam Cloherty* examine rectification & statutory wills

Wills & Probate: *Michael Tringham* predicts the future for inheritance law

Commercial: Companies are bracing themselves for greater exposure to both litigation & regulatory proceedings say *Antony Corsi & Kirill Vahonin*

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Action stations

Practitioners must ensure their client holds the right to sue and should act quickly if the limitation expiry date is near, say *Antony Smith* and *Marc Jones*

Picture perfect

The Coroners and Justice Bill will clarify the uncertainty surrounding the law on illegal images of children, says *Mauree Johnson*

Well disposed

Charities looking to sell land must comply with several statutory obligations before entering into a contract, says *Jane Lonergan*

Leading the way

Firms should embrace the LDP model and recognise the benefits of bringing in non-lawyer professionals with the right skills to manage a business, says *Viv Williams*

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Constructive criticism

Helen Grimberg examines the evolving approach to construction-related fatalities

Keeping secrets

The courts are beginning to recognise when it is appropriate for media secrets to be revealed, says *Duncan Lamont*

A tangled web

Web users should be cautious before relying on statements appearing on internet sites, says *Richard Osborne*

Birth of a salesman

Partners must be prepared to take on a more managerial role and focus on bringing new work for their firms to succeed after the downturn, says *Laura Clarke*

Adding value

Valuers instructed in cases of agency termination should consider how the operation of the agency affects the valuation, say *Stephen Sidkin* and *Sophie Albinson*

Playing by the rules

Charities must ensure that any political activity they get involved in facilitates the work they do, says *James Kilby*

Late for an important date

Jean-Yves Gilg reports on how solicitors are struggling to find affordable indemnity cover

Solicitors Journal Vol. 153 No. 37 October 6, 2009**More ways than one**

Public benefit obligations can be achieved through cooperation, argues *Kenneth Dibble*

Unfinished business

The guidance on assisted suicide leaves many questions unanswered, says *Penny Lewis*

Well trained

Firms withdrawing training contracts must act fairly, says *Gemma Sowerby*

Tracing the faultline

David Marshall reviews how the courts determine causation in stress at work claims

Missing the point

Vast improvements must be made to the points based system, says *Abis Mahood*

Up to scratch

New schemes will help solicitors keep up to date with funding options, says *Paul Howcroft*

Solicitors Journal Vol. 153 No. 38 October 13, 2009**Finding time**

The draft regulations to make blacklisting of trade unionists unlawful must be amended, argues *Bronwyn McKenna*

Working it out

What is so wrong with the current training contract that the SRA wants to replace it with a new 'work-based learning' scheme? *Jean-Yves Gilg* reports

One vision

A firm's brand is much more than its logo and slogan; it goes to the heart of its values, vision, and people, says *Dianne Bown-Wilson*

Taking the long view

Even where their tenants are experiencing financial difficulties, landlords are usually still better off long term negotiating an agreement to continue the tenancy, says *Peter Bourke*

A fragile start

The FDAC has already made a difference to the lives of many troubled families but its success is still to be tested, *Jonathan Goodliffe* reports

Life in crime

Removing the restrictions on judges' sentencing powers would give drug addicts more chances to undertake rehabilitation, says *Lucy Corrin*

Update: costs

Simon Gibbs considers the new RTA claims process, the extension of fixed fees, defective CFAs and costs capping orders

Update: employment

Sue Ashtiany reviews cases on falling ill during annual leave and the right to legal representation

Solicitors Journal Vol. 153 No. 39 October 20, 2009**The right direction?**

The recent case of the young woman who refused treatment after fatally poisoning herself should be regarded as a sign of respect for patients' autonomy, says *Seamus Burns*

Just not cricket

HMRC's new tactic to combat fraud unfairly leaves target companies unable to challenge the assessment at the Tax Tribunal, says *Geraint Jones QC* and *Marc Glover*

At your disposal

On top of their main statutory obligations when selling land, charities must be aware of a whole host of other possible constraints, says *Jane Lonergan*

Overlapping interference

For all the differences between trespass and nuisance, the courts appear ready to accept the possibility of overlap, says *Mark Pawlowski*

Be my witness

DJ Paul Mildred discusses the latest amendments to the Civil Procedure Rules

Solicitors Journal Vol. 153 No. 40 October 27, 2009**Clean up your act**

Solicitors should remember that they are expected to act and advise in the best interests of their clients, says *David Bywater*

A tighter grip

The Policing and Crime Bill 2008 is likely to bring back greater control on licensed premises, says *Jeremy Phillips*

If the cap fits

Applications for costs capping orders could end up being as expensive and protracted as the case itself, says *Andrew Butler*

Wide of the mark

The Fraud Act 2006 wrongly exposes writers of untruthful or negligent references to possible criminal prosecution, argues *Chris Monaghan*

Fitting the bill

Law firms should adopt an electronic billing format to provide clients with efficiency and consistency, says *Damian Blackburn*

No half measures

Proposals to modernize the Scottish civil justice system and improve access to justice are long overdue, says *Robin Macpherson*

Preparing the way

Proposals applying to low-value RTA claims will fundamentally alter injury litigation and firms will need to adopt, says *Alistair Kinley*

Status anxiety

Many mental health patients may have missed out on tribunals hearings they were entitled to, says *David Hewitt*

Tender moments

Further clarification on the procurement rules is needed, says *Pavlos Eleftheriadis*

Comfort zone

Practitioners recognize that workable solutions must be found for the funding and delivery of elderly care; the question is how. *Jenny Ramage* reports

Once bitten, twice shy

Litigants in costs disputes can now force defendants to disclose further details about third-party funding, says *Nick Gillies*

Know your limits

When attempting to reach a settlement in a claim for unfair dismissal, practitioners must not overlook the effective date of termination, says *Mark Conway*

Making a move

Claimants in sports disputes still have greater chances of success if they bring challenges relying on European law, says *Katherine Apps*

Up to the challenge

Solicitors must ensure they take precautions to protect themselves from claims challenging the validity of wills, says *Deborah Cain*

All the small things

Improving communication with your clients is a simple and inexpensive way to increase the amount of business they do with you, says *Dianne Bown-Wilson*

Concentrating the mind

The role of the mental health tribunals is changing, but how will they balance patients' right with public risk, asks *Keith Wilding*

Life in crime

The Serious organized Crime and Police Act wrongly evaluates minor offences committed by protestors to serious criminal actions, says *Benjamin Newton*

Update: family

Lynne Passmore considers mediation, collaborative law, pre-nuptial agreements and divorce cases involving a change in income and the issue of domicile

Update: clinical negligence

Jock Mackenzie reviews cases involving doctors' breach of duty, including allegations of misdiagnosis and evidential matters

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No guarantees

Disclaiming a lease does not extinguish the rights of third parties such as guarantors or former tenants, warns *Julian Sidoli del Ceno*

Bring your own

Calling in a separate expert may often be in the best interests of your client, argues *Cathering Carter Shaw*

Made to order

The family courts have recently been grappling with the role of grandparents and the rise in shared residence orders. *Noel Arnold* reports

Rolling credits

Voluntary arrangements give insolvent firms the opportunity to continue trading and pay off their debts, says *Joanne Wright*

In the loop

Is there a duty on property professionals to remind clients of the advice they have previously given, asks *Stephen Boyd*

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Fearful symmetry

Decisions about withdrawing life-sustaining treatment for children are better reached by consensus, says *Seamus Burns*

Come together

The Law Commission's proposals to reform the law of misfeasance should not be ignored, says *Orla Scanlan*

Passing the check point

Are the new enhanced CRB checks on educational institutions really a step too far, asks *Yvonne Spencer*

A complex scenario

Judges should address costs issues by managing the behaviour of parties, says *Graham Huntley*

Steps in the wrong direction

The complexity of the government's proposals to reform the employer debt regime may create yet further problems, says *James Clifford*

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Going off course

The Supreme Court should clarify the law on limitation, says *Alexandra Anderson*

On the safe side

Employers who ensure they implement the correct procedures are unlikely to be found liable for workplace accidents, says *Dan McCauley*

The quiet revolution

Equitable doctrines are increasingly finding favour with courts adjudication over cohabitation disputes, says *Tom Farley-Hills*

No distractions

The new Financial Services Division of the Cayman Islands Grand Court will further enhance its reputation, says *Hector Robinson*

Trends: housing

2009 was the year of surprises for housing lawyers, says *Giles Peaker*

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Overdrawn but not over

Andrew Head examines the impact of the bank charges ruling on the thousands of cases that were stayed pending its outcome

A driving force

The Force Marriage Act 2007 has had a successful start but its progress will continue to be closely monitored, says *Louise McCallum*

Aiming high

Those wanting to bring mental health claims must now prove that their case has a real chance of success, says *David Hewitt*

Supreme craftsmanship

In his first interview, Lord Hope talks to *Jean-Yves Gilg* about how the new court has already started developing its own ways

Taking part

Part 36 offers should be carefully considered, particularly when the client's credibility is at stake, say *Robert Webb* and *Karen Rose*

In the name of duty

The courts are unlikely to find practitioners liable for faults which are not related to the job they are retained to do, says *Sophie Brake*

Time for a change

Change represents opportunity, but only if it is handled correctly, says *Dianne Bown-Wilson*

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Tenure buyouts: employment death taxes and the curious obesity of "wages"

Bobby L. Dexter

The *Harry Potter* lexicon and the world of fandom: Fan fiction, outsider works, and copyright

Aaron Schwabach

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The Dudley Stokes petition on freedom of expression to the Inter-American Commission on Human Rights

Response of the Government of Jamaica to the Dudley Stokes Petition on freedom of expression to the Inter-American Commission on Human Rights

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