

CURRENT AWARENESS BULLETIN

October – December 2016



COUNCIL OF LEGAL EDUCATION NORMAN
MANLEY LAW SCHOOL LIBRARY

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

October – December 2016

JUDGMENTS

ADVANTAGE GENERAL Insurance Company Limited v Doreen Wright
JMCA 30.05.2016

INSURANCE – Motor vehicle insurance – Liability of insurer to third party – Pursuant to section 18(1) of the Motor Vehicle Insurance (Third Party Risks) Act

BENT, Keisha v The Commissioner of Police
JMCA 17.06.2016

JUDICIAL REVIEW – Dismissal of Applicant – Breach of natural justice – Whether decision disproportionate – The Police Service Regulations, 1961 – Order of Certiorari sought

BRANCH DEVELOPMENTS Limited t/a Iberostar v Industrial Disputes Tribunal and The University and Allied Workers Union
JMCA 13.05.2016

CONTRACT – Employment – Redundancy - Breach of employment contract – Application for appeal against award for general damages – Whether judge applied correct measure of damages

BRYAN, Renay v Sugar and Spice Limited
JMCA 20.06.2016

OCCUPIERS LIABILITY – Slip and fall – Duties of occupier – Duties of visitor

CAMPBELL, Mary v Consolidated Caribbean Investments Limited
JMCA 17.06.2016

DEFENDANT'S APPLICATION FOR SUMMARY JUDGMENT – Realistic prospect of success – plea of non est factum – Carelessness – No independent legal advice – Claimant allegedly semi-literate – Undue influence – Trust and confidence – Abuse of influence – Whether mortgage deed was on a fundamentally different character in terms of payment schedule and interest rate

CLARKE, Selma v Edward Clarke
JMCA 31.03.2016

MATRIMONIAL PROPERTY – Property Right of Spouses Act ss. 2, 6, 7, 9, 13, 14 – Entitlement to family home – The Equal Share Rule – Whether application of the rule unjust – Burden of proof – One party acquiring land on which family home is built before the relationship of marriage – Whether section 7 (PROSA factor exists to rebut the equal share rule

COLLINS, Stephen v R
JMCA 02.05.2016

CRIMINAL LAW- Rape- Appeal against Sentence-Sexual Intercourse with a Child-Leave to appeal

COMMISSIONER OF CUSTOMS and Jamaica Customs Department v Samuel Bailey and Marcia Bailey
JMCA 25.05.2016

CIVIL PROCEDURE AND PRACTICE– Application for leave to appeal – Striking out notice of appeal - Pursuant to rule 1.13(a) of the Court of Appeal Rules 2002, which empowers this court to strike out the whole or part of a notice of appeal or counter-notice – Whether this court has jurisdiction under either the Act or any other Act to entertain an appeal from a decision of the Commissioner

CONSTRUCTION DEVELOPERS Associates Limited v Urban Development Corporation
JMCA 03.06.2017

**SUMMARY JUDGMENT- Whether receiver and debenture holder liable under a continuing contract
–Whether receiver negligent – whether debenture holder vicariously liable – Whether claim has
real prospect of success**

Crump, Derrick v Andrae Bruce
JMCA 06.05.2016

QUANTUM OF DAMAGES- Motor vehicle accident – Liability

DEMERCADO, Tyrone Owen A. v Faye Marie DeMercado
JMCA 13.05.2016

MATRIMONIAL PROPERTY – Division of property

<THE> DIRECTOR OF PUBLIC Prosecutions v Norton Wordworth Hinds and Phillip Fenny Paulwell and
Collin Randolph Campbell and Robert Dixon Pickersgill and Portia Lucretia Simpson-Miller
JMCA 17.06.2017

**JUDICIAL REVIEW – Director of Public Prosecutions filed an application to strike out appeal –
Order for respondents to attend court and give sworn evidence pursuant to the Mutual Assistance
(Criminal Matters) Act – Application to strike out appeal failed – Respondents found not guilty of a
breach of relevant Court of Appeal Rules**

EDWARDS, Sonia and Carol Osbourne and Derrick Beckford and Neville Richards v Stephanie Powell
JMCA 10.06.2016

**ADMINISTRATION OF ESTATES - Letters of administration – Proof of relationship – Interest in
estate of intestate**

EMBDEN, Gretel v Oswin Brooks and Oswin Brooks (Ancillary/Claimant) and Wilton Somers
(Ancillary/Defendant)
JMCA 02.06.2016

**DAMAGES – Motor Vehicle Accident – Breach – Duty of Care – Standard of Care – Whiplash Injury
– Contributory Negligence**

EWEN, Michael v R
JMCA 30.05.2016

**CRIMINAL LAW – Application for leave to appeal against conviction and sentence – Illegal
possession of firearm – Shooting with intent – Applicant convicted and sentenced to 9 years and
10 years imprisonment to run concurrently**

FOSTER, Bryan v Vanguard Security Company Limited
JMCA 08.06.2016

**APPLICATION TO AMEND STATEMENT OF CASE – Rule 20.4 Civil Procedure Rules (CPR) as
Amended 2006 – Guidelines for discretion of the court**

FINZI, Winston and Mahoe Bay Company Limited v JMMB Merchant Bank Limited
JMCA 14.06.2016

**CIVIL PROCEDURE AND PRACTICE-PROCEDURAL APPEAL - Appeal against decision to set
aside judgment**

FLOWERS, George v The Director of Public Prosecutions for and on behalf of the Government of Canada and The Commissioner of Correctional Services and The Attorney General of Jamaica
JMFC 30.06.2016

EXTRADITION – Writ of habeas corpus – Meaning of ‘Extradition Offence’ – Principle of dual criminality – Whether conduct test or offence test to be applied – Whether the transmission of HIV virus is capable of amounting to a crime in Jamaica – Whether putting an individual at risk of HIV is capable of amounting to a crime in Jamaica – Infliction of grievous bodily harm – Section 20 and 22 of the Offences Against the Persons Act – sections 5,6,10,11 of Extradition Act – Aggravated Sexual Assault contrary to section 273 of the Criminal Code of Canada

FORBES, Seian and Tamoy Meggie v R
JMCA 10.06.2016

CRIMINAL LAW – Application for leave to appeal conviction and sentence – Application for leave to call witnesses on their appeal – Adduce fresh evidence

FULTON, Sally Ann v Chas E. Ramson Limited
JMFC 27.05.2016

COMPANY LAW – Application to commence derivative action – Section 212 of the Companies Act

GAYLE, Shakeria Asakie v Rouel Honore Gayle
JMFC 27.05.2016

MAINTENANCE OF SPOUSE – Application for interim maintenance order to be cancelled – Application unemployed and earning power Limited – Exercise of discretion of court – Application for Relief from sanctions

GEDDES, Margie v McDonald Millingen
JMCA 20.05.2016

CIVIL PROCEDURE AND PRACTICE - Applicant filed a relisted notice of application seeking several orders which could be viewed as consequential to the main order sought, which was permission to appeal the order made by Morrison J – Application refused stating that he had no jurisdiction to entertain such an application

GORDON, Jhamiellah v Jevon Devere Chevannes
JMFC 12.05.2016

ASSESSMENT OF DAMAGES – personal Injury – Proof of special damages – Self-employed, part-time worker – Whiplash – Mid and lower back -2% permanent partial disability – Loss of earnings – Loss of earning capacity – or handicap on labour market – Method of quantification of damages – Lump sum multiplier/multiplicand

HUSSEY, Percival v Paul Wright
JMFC 27.05.2016

DEFAULT JUDGMENT – Application to set aside Default Judgment – 2nd Application – R. 13(1) (2) (3) of CPR 2002, as amended – Definition – Promissory Note – Sec.83 Bill of Exchange Act – Sec. 35-36, 50 Stamp Duty Act – Enforceability of Instrument – Creation of Hire Purchase Agreement.

JAGAROO, Mavis v Geoffrey Jarrett
JMFC 24.06.2016

DAMAGES – Assessment of Whiplash injury – No permanent disability

<THE> JAMAICA OBSERVER Ltd. v Dennis Chang
JMCA 24.06.2016

DAMAGES – Libel, for – Newspaper article – Quantum of damages – Whether damages inordinately high – Judge erred in finding that the Observer had libeled the respondent

JOHNSON, Annette v ER Farms and Company Limited
JMJC 06.06.2016

EMPLOYER'S LIABILITY – Claimant injured when she stepped on a broken glass bottle – Duty of the defendant to make its premises reasonably safe and to ensure water boots were provided – Assessment of damages – Summary assessment of denied.

JONES, Mark Anderson v Midland Island Poultry Limited and Donovan Hunter and Darmac Poultry Limited and Armc Investment Limited and Wendy McMaster and Raymond McMaster and Adrian Clarke
JMJC 05.05.2016

CIVIL PROCEDURE AND PRACTICE-Discharge of Freezing Order – material non-disclosure – Discharge of Norwich Pharmacal Order – Removal of defendants form claim

KANDEKORE, Lijyasu v COK Sodality Co-operative Credit Union Limited and Deidre Daley and Donnovon Ward
JMCA 06.05.2016

BANKING - Loan by banker to customer – Bank's right to charge interest on default of payment - Appeal against decision to refuse return of motor vehicle

KEANE, Dr. Richard and Karene Keane v Dorothy Vendryes
JMJC 20.06.2016

PURPORTED APPLICATION TO CHALLENGE JURISDICTION OF COURT- default judgment entered as application did not state on its face that rule 9.6 application: nor did it seek a declaration: whether application in fact one challenging the court's jurisdiction: whether default judgment irregularly entered.

KELLY-LASISI v Jimoh Lasisis
JMJC 03.05.2016

MATRIMONIAL PROPERTY – Parties separated – Family home – Marriage of short duration – Family home acquired before marriage by one spouse in the name of that spouse only – Variation of equal share rule – Factors to be considered – the Property (Rights of Spouses) Act

LEWIS, Raymond v Dr. Eva Lewis Fuller and Violet Lewis CCrutchley and Susan Lewis Forbes
JMJC 24.06.2016

ORAL APPLICATION FOR EXTENSION ON TIME – Failure to Lead affidavit evidence when making application to extend time – Opposition to application to extend time – Relevant factors to be considered when extending time to file defence overriding objective – What is just in the circumstances

LOGAN, Pansy v Jean Lorimer and Paula Annette Mitchener and Claudet Andrea Hedman
JMJC 12.05.2016

CONSTRUCTION AGREEMENT – Dwelling house – Breach – Employer or Contractor – Time of the essence – Delay – Variation of work – Escalation costs – Method of valuation – Illegality – Duress – Misrepresentation – Defect liability clause – Damages – Interest

MCLEAN, Dalton v Steve Cespedes
JMCA 13.05.2016

NEGLIGENCE – Motor vehicle accident - Application for extension of time for filing the notice and grounds of appeal – That the notice and grounds of appeal be served within seven days of the date of the order - That the time be extended for the filing of skeleton arguments and the record of appeal – Whether it is just and fair for the court to grant an order for the extension of time since the failure to file an appeal within the time allotted was – Whether there was no undue prejudice to the respondent if extension was granted – Whether There were several bases on which the learned trial judge erred in her findings of fact and arriving in her judgment in respect of the person at fault, that is, whose negligence caused the accident

MCPHERSON, Humphrey Lee v The General Legal Council
JMCA 09.06.2016

DISCIPLINARY PROCEEDINGS – Legal profession – Professional misconduct – Sanctions imposed pursuant to The Legal Profession Act Section 12 (4) – Attorney to pay to the complainant’s estate the sum of \$1,820,000.00 with interest at the rate of 6% from February 2004 the date of the statement of account sent by the attorney to the complainant until payment - Attorney be struck from the Roll of Attorneys-at-law entitled to practice in Jamaica

MAYNE, Zavia v Radhika Sankar Rothery and Nandcare Pharmacy Limited
JMCA 13.05.2016

APPLICATION FOR SUMMARY JUDGMENT – reasonable prospect of the defendants successfully defending the claim – proper defendant to the proceedings – automatic annual increase in rent – security deposit

MILLER, Delores Elizabeth v The Assets Recovery Agency
JMCA 09.05.2016

CRIMINAL LAW – Orders of the court – Confiscation order - Order dismissing this appeal and affirming the civil recovery order made against the appellant - Application by the respondent, pursuant to rule 17.1(1)(c) of the Civil Procedure Rules (the CPR), for the detention and custody of cash - Cash was found wrapped in newspaper and foil and placed amongst frozen meats in the freezer compartment of a refrigerator during a search of a property occupied by the Appellant - Cash was seized under section 75 of the Proceeds of Crime Act and a first continued detention order of the cash by virtue of section 76 was in effect

MORGAN, Lori v Prime Sports Jamaica Limited (Coral Cliff Entertainment)
JMCA 24.06.2016

UNLESS ORDER – Claimant in breach of order – Whether Judge has jurisdiction to vary unless Order – No application made for leave to appeal to judge varying unless order – Whether leave to appeal ought to be granted.

MORRELL, Harry v Jamaica Public Service Company Limited
JMCA 16.05.2016

CONTRACT – Under-registration of electricity consumption – disconnection of electricity claimant commencing action against defendant for breach of contract and defamation – Claimant suffering loss resulting from rewiring of premises – Claimant contending defendant’s breach of duty caused loss – Whether claimant entitled to damages for physical inconvenience and mental distress – Whether defendant entitled to payment for under-registration consumption – Assessment of damages

MOUNT ZION Apostolic Church of Jamaica Limited and Mount Zion Apostolic Church Incorporation v Joycelyn Cash and Novia Duhaney

JMCA 30.06.2016

SECURITY FOR COSTS – Two claimants – One claimant incorporated in the U.S.A.

NATIONAL COMMERCIAL Bank Jamaica Ltd. v The Industrial Disputes Tribunal and Peter Jennings
JMCA 06.05.2016

EMPLOYMENT LAW – Termination of employment unjustified – Court ordered employee to be reinstated or be paid compensation for particular period – Permission to apply for judicial review of a decision of the Industrial Disputes Tribunal denied

PATTERSON, Ranique v Sharon Allen
JMCA 30.05.2016

INTERLOCUTORY INJUNCTION- Hearing of an application for an interim injunction- Order of a penal notice- Said premises- Interim injunction pending hearing

PETROS, Sam v George Murray and Karin Murray
JMCC 19.05.2016

CONTRACT – Tomlin Order – Variation – Terms of Variation – Whether Variation an Enforceable Agreement – Whether Terms include “Close of Business” – Whether Conditional Contract-Specific Performance

RICHARDS, Natasha and Phillip Richards v Errol Brown and The Attorney General
JMSC 14.03.2016

CONSTITUTIONAL LAW – Fundamental rights and freedoms – Fair trial – Proceedings considered as a whole when determining issue of fairness – Applicants had opportunities to be heard – Setting aside default judgment denied for claim involving unspecified damages - Constitutionality of the Civil Procedure Rule 12.13 – Article 6 of the European Convention on Human Rights – Rule 12.13 of the Civil Procedure Rules 2002 as amended is unconstitutional, null and void and struck out of the Civil Procedure Rules – Ordered and declared that Applicants are entitled to participate actively in assessment of damages

ROYAL CARIBBEAN Cruises Limited and Falmouth Jamaica Land Company Ltd. v Access to Information Appeal Tribunal and Port Authority of Jamaica (1st interested party) and Jamaica Environment Trust (2nd interested party)
JMCA 24.06.2016

APPLICATION FOR LEAVE TO APPEAL – Denied – Filing of claim outside the period – Court of Appeal Rules 2002 1.8(9)

RURAL TRANSIT Association Limited v Jamaica Urban Transit Company Limited and The Commissioner of Police and the Attorney General

JMFC 17.06.2016

DECLARATIONS - Constitutional Redress Sections 13(3) g & (h) of Charter of Fundamental Rights and Freedoms – Right to equality before the law – Right to equitable and humane treatment by any public authority – Sections 21 & 22 of the Constabulary Force Act – Section 58 of the Road Traffic Act – The Kingston Metropolitan Transport Region Act – Alternative/adequate of redress availability – Permanent injunction

SAMUELS, ADOLPHY DeCordova and Eugennie Adassa Samuels and Courtney Livingston Samuels and Loraine Vinette Samuels v Clough Long & Co.

JMCA 13.05.2016

REAL PROPERTY – Agreement for sale – Abuse of process – Bill of costs struck out – Default costs certificate and writ of seizure and sale set aside with costs to appellants

STEPHENSON, HEADLEY and Helene Stephenson v TMB Resorts International Limited

JMSC31.05.2016

APPLICATION TO MODIFY RESTRICTIVE COVENANT - Whether modification injures the persons entitled to the benefit of the restriction - Whether modification changes the character of the neighbourhood -Whether the existence of the covenant impedes reasonable use of the land

STRACHAN, Dwayne v R

JMCA CRIM 13.05.2016

CRIMINAL LAW- Tenant's quiet enjoyment- Rent Restriction Act- Summary conviction- Imprisonment- Alternative Sentencing Options

SUNSWEPT JAMAICA Company Limited v The Registrar of Titles and Angela Clarke-Morales

JMSC 15.06.2016

APPLICATION TO STRIKE OUT – Whether no reasonable ground for bringing claim – Registration of Titles Act – Duty of Registrar – Whether Caveat renewed – Whether Registrar’s reasons valid – Procedure – Whether permission to issue summons to Registrar required – Whether procedural error can be corrected

TABANNAH, EVERTON and Worrell Latchman v The Independent Commission of Investigations
JMSC 23.06.2016

JUDICIAL REVIEW -Application for judicial review – Interim relief – Sections 17, 23, 24 and 28 of the Independence Commission of Investigation Act

THOMPSON, STEVE and Errol Ali (Discontinued) v Guiles Hall
JMSC 22.06.2016

NEGLIGENCE – Collision at intersection of main road and minor road – Minibus turning from main road onto minor road – Motorcycle travelling on main road in opposite direction – Motor cycle not wearing helmet – Duty of drivers – Whether minibus driver responsible for accident – Contributory negligence

THOMPSON-REID, Consie v Lodian Reid and Hope Lawrence and Inez Davy and Renatus Davy and Delroy Davy
JMSC 31.05.2016

NOTICE OF APPLICATION FOR RELIEF FROM SANCTIONS - Applicant substituted an Amended Notice of application for court orders

TOWNSEND, Collie v Sandra Graffine
JMCA 24.06.2016

INDUCING BREACH OF CONTRACT -Principle of res. Separate awards of damages for the trespass. Notice of objection -Magistrate - Appellant claimed against the respondent for damages for inducing breach of contract and/or specific performance

UNIVERSITY OF TECHNOLOGY Jamaica v Colin Davis and Sharon Hall
JMCA 03.06.2016

EMPLOYMENT LAW – Breach of contract – Bond agreement

VENUS Investments Ltd. and Christopher Jason Chinn v Paula Rampassard and Bulie Samuel Rampassard
JMSC 01.06.2016

LAND – Sale of land – Registration of Titles Act – Fraud –Summary judgment – Whether real prospect of success – Agreement for Sale – Vendor registration on Title based on forged instrument – Purchaser unaware of fraud – Whether Purchaser entitle to be registered – Co-owner whose signature was forged to register vendor on Title seeking to reverse registration

WALKER, Rennon v Deputy Superintendent Leon Clunis and Attorney General
JMSC 27.05.2016

MALICIOUS PROSECUTION – Police Officer – Evidence in witness statement of reasonable and probable cause in respect of an offence – Alternative offence charge on instructions of Director of Public Prosecution – Effect of instructions of the Director of Public Prosecutions

WARD, Lorenzo v Palm Rose Commodity Limited
JMSC 17.06.2017

NEGLIGENCE – Factories Act – Injury to finger

WESTON-PARCHMENT, Helen (Administratrix, estate Headley Weston) v Pete Weston
JMSC 24.06.2016

APPLICATION TO STRIKE OUT DEFENDANT’S STATEMENT OF CASE – Defence Allegedly disclosing no reasonable grounds for defending the claim – Non-compliance with court order – Failure to attend mediation – Rules 74.9(1) and 74.14(6) of Civil Procedure Rules (C.P.R.) – Striking out Rule 26.3(1)(c) of CPR – Overriding objective – Neglect of counsel – Adverse possession.

WIGGAN, Brian v Ajas Limited

JMCA 10.06.2016

(Considered by the Court on paper pursuant to rule 2.4 of the Court of Appeal Rules 2002)

PROCEDURAL APPEAL – Application to set aside judgment – Termination of employment – Redundancy – Redundancy payments not made at rates contracted for unionized employees - Breach of contract

WILLIAMS, Patrick v R

JMCA 24.06.2016

CRIMINAL LAW – Corruption – Bribery – Police officer convicted and sentenced to 12 months imprisonment by Resident Magistrate – Pursuant to Section 14(1)(a) of the Corruption Prevention Act – Appeal against conviction and sentence affirmed

WILLIAMS, Warren and The Commissioner of the Independent Commission of Investigations v The Director of Public Prosecutions

JMSC 09.06.2016

JUDICIAL REVIEW – Private prosecution – Director of Public Prosecutions decision to terminate prosecution by offering no evidence and not by *nolle prosequi* – Whether method of discontinuance in breach of constitution – Whether decision to terminate amenable to judicial review

WRIGHT, Ricardo v R

JMCA 06.05.2016

CRIMINAL LAW – Offence of larceny from person - Conviction – Sentenced to a term of 4 months imprisonment at hard labour – Appeal against conviction and sentence – Whether evidence insufficient to warrant a conviction

LEGISLATION

Commonwealth of Dominica

Acts

4/2016	2016/2017 Appropriation Act
2/2016	Money Laundering (Prevention) (Amendment) Act
1/2016	Plan of Arrangement (BAICO and CLICO) Act
3/2016	Proceeds of Crime (Amendment) Act

Jamaica

Acts

12/22016	Appropriation Act
22/2016	Betting, Gaming and Lotteries (Amendment) Act
15/2016	Financial Administration and Audit (Amendment) Act
16/2016	Financial Services Commission (Amendment) Act
21/2016	Income Tax (Amendment) Act
14/2016	Interpretation (Amendment) Act
23/2016	Jamaica Racing Commission (Amendment) Act
13/2016	Jury (Amendment) Act
20/2016	Law Reform (Miscellaneous Amendment) (Restorative Justice) Act
14/2016	Law Revision (Amendment) Act
18/2016	National Insurance (Amendment) Act
19/2016	Proceeds of Crime (Amendment) Act

St. Christopher and Nevis

Acts

10/2016	Administration of Small Estates (Amendment) Act
8/2016	BAICO (Plan of Arrangement) Act
2/2016	Income Tax (Amendment) Act
3/2016	Licences on Businesses and Occupation (Amendment) Act

LAW REPORTS

New Zealand Law Reports	2015 Vols. 1 & 3
<The> West Indian Reports	Vol. 88

TREATISES, DIGESTS ETC.

Atkin's Court Forms. 2nd ed. 2016 Issue

Vol. 1	Accounts, Administrative Court
Vol. 2	Administration of Estates
Vol. 11(2)	Consumer Credit
Vol. 19(4)	Elections, Evidence

<The> Digest. 2016 4th Reissue

Vol. 48 (1&2)	Trusts
Vol. 45 (1)	Specific Performance, Stamp Taxes, Statutes
Vol. 45(2)	Statutes

<The> Encyclopaedia of Forms and Precedents. 2016 Reissue 5th ed.

Vol. 7(2)	Commercial Contracts and other Documents
Vol. 41(2)	Environment
Vol. 41(3)	Town and Country Planning
Vol. 41(4)	Town and Country Planning (Part 2)
Vol. 42(1)	Wills and Administration

SERIALS

ABA Journal Vol. 102 No. 8 August 2016

President's Message

Paulette Brown winds down a year of meeting members, giving back, and advancing diversity and inclusion

Opening Statements

Otto Frank is posthumously named co-author of daughter Anne's Diary to extend copyright, benefit foundation

Leslie A. Gordon

Alan Dershowitz's accumulation of Judaica reflects his passion for faith, collecting and clutter

Margaret Littman

Oklahoma ballot measure pits interests of farmers and ranchers against those of animal welfare advocates

Arin Greenwood

Ten questions for the civil rights lawyer who is working to ensure that all voters will have access to the ballot box

Jenny B. Davis

Docket

NATIONAL PULSE: Confusion about and lack of uniformity in the rules of the road for bicyclists lead to clashes

Ellen Rooney Martin

NATIONAL PULSE: Websites and apps for sharing crime and safety data have become outlets for racial profiling

Jason Tashea

SUPREME COURT REPORT: Race-based peremptory juror strikes in a capital murder case are unconstitutional

Mark Walsh

Practice

STORYTELLING: The Broadway smash *Hamilton* teaches lawyers about framing a story

Philip N. Meyer

ETHICS: New Jersey committee says lawyers may advertise superlative rankings that have been verified

David L. Hudson Jr.

MINDFULNESS: Contemplative practices help equip lawyers to address racism and other ongoing issues

Rhonda V. Magee

Business of Law

LAW PRACTICE: Opposing counsel become mutual admirers, eventually decide to merge firms

Julianne Hill

NEW PRACTICE: Prof. and students at IP law clinic open affordable law firm catering to startups and small businesses

Stephanie Francis Ward

TECHNOLOGY: Tech training helps lawyers get up to speed to meet client expectations

Jason Kraus

CYBERSECURITY: Experts advise new tactics to fight data breaches

Jason Tashea

Your ABA

Outgoing President Paulette Brown has addressed breaking events while maintaining her focus on key initiatives

James Podgers

Annual meeting in San Francisco features a trimmed CLE lineup, tiered pricing and a high-profile keynote speaker

Lotelei Laird

Esther Lardent, a key figure in the pro bono legal services movement, is remembered as inspiring others to do good

Terry Carter

Treasury Department rule on bank account disclosure incorporates ABA confidentiality proposals

Rhonda McMillion

The feds disqualify the ABA and others from a loan forgiveness program

Stephanie Francis Ward

Precedents

Flawed naval intelligence in 1964 leads to increased, prolonged U.S. involvement in Vietnam

Allen Pusey

President's Message

Linda Klein's year will focus on ABA members, veterans, voting and childhood education

Linda Klein

Opening Statements

Enterprising college students are booking their dorm rooms on Airbnb

Judy Sutton Taylor

What does copyright law have to say about pictures, videos and ideas that run rampant on the internet?

Lorelei Laird

Autism awareness is being rolled out for judges and others in Pennsylvania's courts

Leslie A. Gordon

Emeritus attorneys are filling the legal aid gap in Ohio and other states.

Arin Greenwood

Ten questions for the Virginia lawyer who helped revive Sweet Briar College

Jenny B. Davis

Docket

NATIONAL PULSE: How big data can improve the jury system

Leslie A. Gordon

NATIONAL PULSE: An innovative program in New York provides public defenders for people facing deportation

Lorelei Laird

SUPREME COURT REPORT: The justices are divided over whether outstanding warrants discovered during illegal stops justify searches

Mark Walsh

Practice

STORYTELLING: Clowning around is frowned upon in the courtroom, but comedy can be a useful litigation tool

Philip N. Meyer

ETHICS: New Mexico Supreme Court urges judges to be discreet when using social media

David L. Hudson Jr.

WORD: How using checklists can improve your writing

Bryan A. Garner

Business of Law

LEGAL EDUCATION: Program helps pros teach students how they can be the lawyers they want to be

Stephanie Francis Ward

CONTINUING LEGAL EDUCATION: Law firms are putting entertainment into lawyer education programs

Richard Acello

TECHNOLOGY: Does learning to code make you a better lawyer?

Jason Krause

CORPORATE LAW: The Association of Corporate Counsel honors company and law firm efforts to increase value

Richard Acello

Your ABA

New ABA President Linda Klein is using what she learned in visits with lawyers around the country to chart her policy initiatives

Terry Carter

Issues papers seeking feedback on how legal services are regulated prompt lots of comments but little consensus

Victor Li

The ABA responds to Department of Education panel's threat to suspend its role accrediting law schools

Stephanie Francis Ward

Dennis Archer receives ABA Medal to honor a career having impact far beyond his home state of Michigan

Martha Middleton

The internment of Japanese-Americans during WWII offers a cautionary message for current political debates

Rhonda McMillion

Precedents

The Warren commission delivers its report

Allen Pusey

ABA Journal Vol. 102 No. 10 October 2016

President's Message

Lawyers have to be at the forefront in encouraging all citizens to vote

Linda Klein

Opening Statements

New documentary sheds light on the challenges female lawyers have faced over the decades

Arin Greenwood

Two law professors create 4th Amendment lawn postings and bumper stickers

Leslie A. Gordon

Women in Law Hackathon strives to close the gender gap among women in the legal profession and beyond

Liane Jackson

Tips for how employers can lower the risk of playing Pokémon Go at work

Cristin Wilson

Ten questions for the lawyer who went from the White House to the NSA, then back to Washington, DC

Jenny B. Davis

Docket

NATIONAL PULSE: A lawsuit against Dave & Buster's challenges cutting employees' hours to avoid giving them health insurance benefits

Theresa Defino

NATIONAL PULSE: New York "textalyzer" bill might let police learn whether drivers in crashes were texting behind the wheel

Jason Tashea

SUPREME COURT REPORT: Justices consider death penalty case in which expert testifies that being black is a predictor of violent behavior

Mark Walsh

Practice

ETHICS: Two lawsuits that seek to loosen bar admission rules in federal district courts are dismissed

David L. Hudson

WORDS: Celebrating the significance and eloquence of Justice Robert Jackson

Bryan A. Garner

Business of Law

PROFILE: Litigator James Muehlberger's book documents the service of Kansas' Frontier Guards

Stephanie Francis Ward

ASSOCIATES: Law firm COO helps more than 150 new lawyers with their student loan debt

G.M. Filisko

LEGAL SERVICES: New York City law firm helps social workers stay up to date through law-focused continuing education classes

Stephanie Francis Ward

MEDIA RELATIONS: Law professor provides tips for how lawyers can handle journalists

Julie Sobowale

Your ABA/Annual Meeting Report

The House of Delegates passes an anti-bias amendment to model Rule 8.4

Lorelei Laird & James Podgers

The Commission on the future of Legal Services aims to close the access-to-justice gap in America

Victor Li & James Podgers

College campuses must balance victims' rights and due process when handling sexual assaults

L.L.

The NAACP's Sherrilyn Ifill discusses why lawyers must step up to the plate in the cop-shootings crisis

Terry Carter

'Internet of things' panel discusses security and liability issues from internet-connect devices

L.L.

Legal fact and fiction: Creators of TV shows about the law break down the blurring lines

J.P.

Two speakers share stories about how they lost family members in police confrontations

L.L.

Precedents

Looking back at the stock market crash of 1929 that shook the nation

Allen Pusey

Columbia Journal of Law and Social Problems**Vol. 49 No. 4 Summer 2016**

Implementing and defending the Indian Child Welfare Act through revised state requirements

Caroline M. Turner

Justice Corps: Helping pro se litigants bridge a divide

Evan G. Zuckerman

Using the Martha Act to bring fraudulent practices in dark pool promotion to light: An analysis of the Martin Act's applicability to misrepresentations regarding the operations of dark pools

Brooke Sgambati

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The ICRC in the First World War: Unwavering belief in the power of law?

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Slater and Gordon pins hope on UK

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MoJ decides against rise in threshold for CA cases

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New legal firms set to top 1,000 this year

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'Rustic' MoJ forecasting blamed for cash shortfall *Monidipa Fouzder*

Retreat welcomed on scrapping AML 'consent' defence *Max Walters*

'Change or get left behind': The young bar is debt-ridden and stressed out while senior barristers are nervously contemplating digital justice *Max Walters*

Commercial Property: Is partitioning 'part of the premises?' *Susanne Gill*

Civil Justice: Coming to terms with fixed costs *Richard Allen*

Family Law: The courts face a crisis *Jo Edwards*

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SRA to warn public over 'solicitor fraud' threat *Max Walters*

Law Society excellence awards winners unveiled *Gazette Reporter*

Row brews over holiday illness claims *John Hyde*

Advice desert looms as minister stalls on LASPO *Monidipa Fouzder*

Retainers warning as judge rejects negligence claim *John Hyde*

Criminal damage: with the withdrawal of three African countries, is the future of the International Criminal Court in doubt? *Eduardo Reyes*

Justice is being redefined: Our guiding principle will be not what is moral, but what can be automated *Jonathan Goldsmith*

Who's to judge? We need a more diverse judiciary. So why aren't solicitors, women and BAME candidates reaching the senior ranks? *Grania Langdon-Down*

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JCJ: Crisis in courts is 'unprecedented' *John Hyde*

Snooping bill still a threat to privilege, say lawyers *Michael Cross*

MP to 'pave way for India liberalization' *John Hyde*

Law firm director rebuked over social media gloating *John Hyde*

Consumer panel lambasts 'ineffective' client letters *Max Walters*

Use of old client signatures leads to £7,000 fine *John Hyde*

Wills and probate: Using correct terminology *Lesley King*

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Doomsday scenario facing PI lawyers *John Hyde*

Interpret CEO bullish over performance target *Monidipa Fouzder*

Judges' battle on pension rights dilution goes on *Monidipa Fouzder*

Where the buck stops: If you are ready to quit a career in private practice to take on in-house role, be prepared to 'own' your advice, counsels *Andrew Lewis*

Immigration: Crass methodologies for hard Brexit *Laura Devine*

Conveyancing: Taxing obligations *Sean Randall*

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Lord Bach calls for 'inspector' of justice *Monidipa Fouzder*

Society sounds alarm over fast-track asylum appeals *Monidipa Fouzder*

Three guilty of bogus legal aid claims *Martin Charlesworth*

Court of Appeal upholds verdict despite rule breach *Monidipa Fouzder*

Excalibur ruling: funders liable for indemnity costs *Rachel Rothwell*

Litigation funding: *Excalibur* went against third-party funders on important costs issues... *Rachel Rothwell*

Arbitration: Service of notice *Masood Ahmed*

New Law Journal Vol. 166 No. 7710 August 5, 2016

Comment

Peter Thompson QC shares his reflections on Brexit & some lessons from history

Employment: *James Marson & Kathy Ferris* examine the approach of the court to mistreatment on grounds of nationality & immigration status

Property: *Caoimhe McKearney & Alexander Bastin* welcome clarity on the "unreasonable" test for costs award in the Property Tribunal

Human Rights: *Neil Parpworth* takes stock of where we are in relation to human rights reform

Wills & probate

Rawdon Crozier reflects on mixed messages & disclaimer by contact

Alyson Coulson looks at the current IHT & probate situation & whether Brexit will have any effect

New Law Journal Vol. 166 No. 7711 August 12, 2016

Comment

Dominic Regan tackles misrepresentation, fraud & injustice

Family: How generously are needs interpreted in big money cases, asks *Matilda Kay*

Constitutional: In the first of an occasional series, *Michael Zander* QC reviews the House of Lords' debate on Brexit

EU: Why have the dynamics of the Hinkley Point C negotiation changed since the EU referendum, asks *Tim Mallock*

Commercial

Donny Surtani & Nick Chapman examine the increasing predictability of jurisdiction in EU tort cases & the impact of *Universal Music International Holding BV v Schilling*

New Law Journal **Vol. 166 No. 7712** **September 2, 2016**

Comment

Philip Evans & Ton Coke-Smyth discuss the importance of applying the rule of law to the military

Employment: Following the EU referendum, *Ian Smith* advises employment lawyers to keep calm & carry on

Banking: *Simon Duncan* follows the latest drama surrounding swaps mis-selling in *Hockin and Others v RBS plc*

Personal injury: *Nicholas Bevan* reviews the implications of automated motor technology on road safety & legal practice

New Law Journal **Vol. 166 No. 7713** **September 9, 2016**

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Dominic Regan looks to the future of civil litigation

Risk: What does Brexit mean for law firm risk? *Frank Maher*

Family: *Wyatt v Vince* illustrates the growing trend towards openness of family proceedings, says *Sarah Hughes*

Employment: *John McMullen* shares his thoughts on TUPE & Brexit

Employment: *Charles Pigott* studies the application of the ACAS Code of Practice to non-disciplinary dismissals

New Law Journal **Vol. 166 No. 7714** **September 16, 2016**

Comment

Kathleen Shields reports on the law Commission's 13th Programme

Family: *Jonathan Herring* reflects on the "unfair laws surrounding cohabitation

Internet of things: Smart cities need smart laws, says *Malcolm Dowden*

Data privacy: *Jayne Rothman* examines the impact of a new set of compliance obligations

New Law Journal **Vol. 166 No. 7715** **September 23, 2016**

Comment

Jon Robins review the Lord Chancellor's first outing before the House of Commons' Justice Committee

Elizabeth Slattery & Jo Broadbent discuss potential models for UK employment law post-Brexit

Peter Breakey heralds a small but welcome extension to the scope of protection for whistleblowers

Family: *Margaret Hatwood* explores the assessment of needs by the court to provide a sufficient standard of living

Property: *Abigail Jackson* discusses discretion in suspending a possession order

Wills & probate: *Paola Fudakowska & Henrietta Mason* analyse solicitors' duty in estate matters

Charities: *John Cooper QC* discusses the growing number of criminal cases concerning animal welfare

New Law Journal **Vol. 166 No. 7716** **September 30, 2016**

Comment

The MoJ could learn some lessons from Canada & the US when considering the future of legal services, says *Roger Smith*

Employment: *Ian Smith* tackles matters of procedure

Family: *David Burrows* reports on the admittance of expert evidence in civil & family proceedings

Personal injury: Can IICSA renew its sense of purpose under its new chair, asks *Richard Scorer*

Property: The UK legal system must adapt to mitigate the impact of flooding, says *Patrick Gleave & Ashley Groombridge*

Inheritance: *Kathryn Purkis* provides a comparative view of family provision in the British Isles

New Law Journal **Vol. 166 No. 7717** **October 7, 2016**

Comment

The long-awaited ruling of the Hillborough inquests shows that justice is worth fighting for, says *Jon Robins*

Family: Cohabiting couples cannot rely on protection from "common law marriage", says *Sarah Greer*

Public: MPs must exercise caution when lobbying in regard to quasi-judicial functions, says *Neil Parpworth*

EU: *Trevor Tayleur* discusses Brexit & the loss of rights

Commercial: An unexpected European decision is bad news for Spanish holiday homeowners, says *León Fernando Del Canto*

New Law Journal **Vol. 166 No. 7718** **October 14, 2016**

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Abolishing renewal hearings may tackle the appeals backlog, but at what price? *Richard Langley* reports

Employment: Gender equality on the railways is still some way down the tracks, says *Charles Pigott*

Family: *Geraldine Morris* considers when applications within financial remedy proceedings should be heard separately

Property: *Katrina Mather* considers oral variation of licence

Property: *Philip Sissons & Joseph Ollech* study costs recovery in long residential lease disputes

Constitutional: Does triggering Art 50 require a prior Act of Parliament, asks *Michael Zander QC*

New Law Journal **Vol. 166 No. 7719** **October 21, 2016**

Comment

Amnesty International's report shines an unforgiving light on the impact of LASPO, says *Jon Robins*

Employment: *Ian Smith* rounds up the latest employment news

Family: *Kate Molan* reviews helpful new guidance to protect the anonymity of children in the family courts

Property: *Philip Sissons & Joseph Ollech* study costs recovery in long residential lease disputes

Public: *Nicholas Dobson* considers proportionality surrounding eviction from private lettings

Public: How can the "conscious uncoupling" of the EU & UK legal systems be achieved, ask *Charles Brasted & Andrew Eaton*

Commercial

Post panama Papers & pre-Brexit: how can we encourage corporate lawyers to behave with integrity, asks *Dr. Tony Harvey*

New Law Journal **Vol. 166 No. 7720** **October 28, 2016**

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Alcoholism & depression can be a legal combination within the profession, *Jonathan Goodliffe* reports

Employment: *John McMullen* examines the conditions of TUPE

Personal injury: *Sophie Horsfall* follows the Supreme Court ruling on the applicable law in motor insurance accident claims against the UK compensation body

Constitutional: *Michael Zander QC* considers the oral arguments in the Art 50 court case

Wills & probate: *Clare Kelly* provides a round-up of recent contentious probate case law

Commercial: *Peter Vaines* discusses taxation of non-doms after April 2017

New Law Journal **Vol. 166 No. 7721** **November 4, 2016**

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Geoffrey Bindman QC shares his reflections on crowdfunding as a route to access to justice

Personal injury: *Helen Bell* examines the overlap between personal injury & employment law claims from a practical perspective

Public: The Scottish “named person” service is unlawful, says *Nicholas Dobson*

Commercial

Flight delays & missed connections with non-EC carriers: *Mark Walker* reports

Tortious claims against parent companies examined by *Bill Davies*

New Law Journal **Vol. 166 No. 7722** **November 11, 2016**

Comment

The Lord chancellor’s response to the attack on judicial independence has not found favour with the legal profession, notes *Jon Robins*

Employment: Uber drivers have been ruled to be “workers” not self-employed contractors: *Hester Jewitt* reports

Family: *David Burrows* reports on clarity, fairness & the judgment summons procedure

New Law Journal **Vol. 166 No 7723** **November 18, 2016**

Comment

Roger Smith reports on the rise & rise of digital technology

Employment: *Ian Smith* examines the recent cases that have been driving employment law

Property: *Tamsin Cox & Julia Petrenko* examine a useful authority for freeholders of residential buildings in relation to Airbnb

Constitutional: Article 50: an incorrect concession? *Nicholas Strauss QC* proposes an alternative line of attack

Wills & probate: *Paola Fudakowska & Henrietta Mason* report on recent wills & probate disputes

Competition: *Christopher Hutton & Aniko Adam* examine the implications of Brexit for UK competition law

New Law Journal **Vol. 166 No. 7724** **November 25, 2016**

Comment

We have a duty to defend & debate judicial independence & the rule of law, as *Chantal-Aimée Doerries QC* explains

Property: Advising on break provisions in a lease is no easy matter, says *John Clargo*

Constitutional: *Michael Zander QC* continues his reviews of the House of Lords’ debate on Brexit

Contract: *Andrew Burns QC & Ishaani Shrivastava* examine the implication & construction of contract terms

Banking litigation: *Simon Duncan* examines the Global Restructuring Group & insolvency set-off

Commercial

Fraud: A fresh legal paradigm has emerged in which criminal, regulatory & civil liabilities elide, says *Robin Barclay*

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- Is sex-selective abortion against the law? *Kate Greasley*
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- Commercial agency and the duty to act in good faith

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- Defining “State” for the purpose of the International Criminal Court: The problem ahead after the Palestine decision *Hyeyoung Lee*