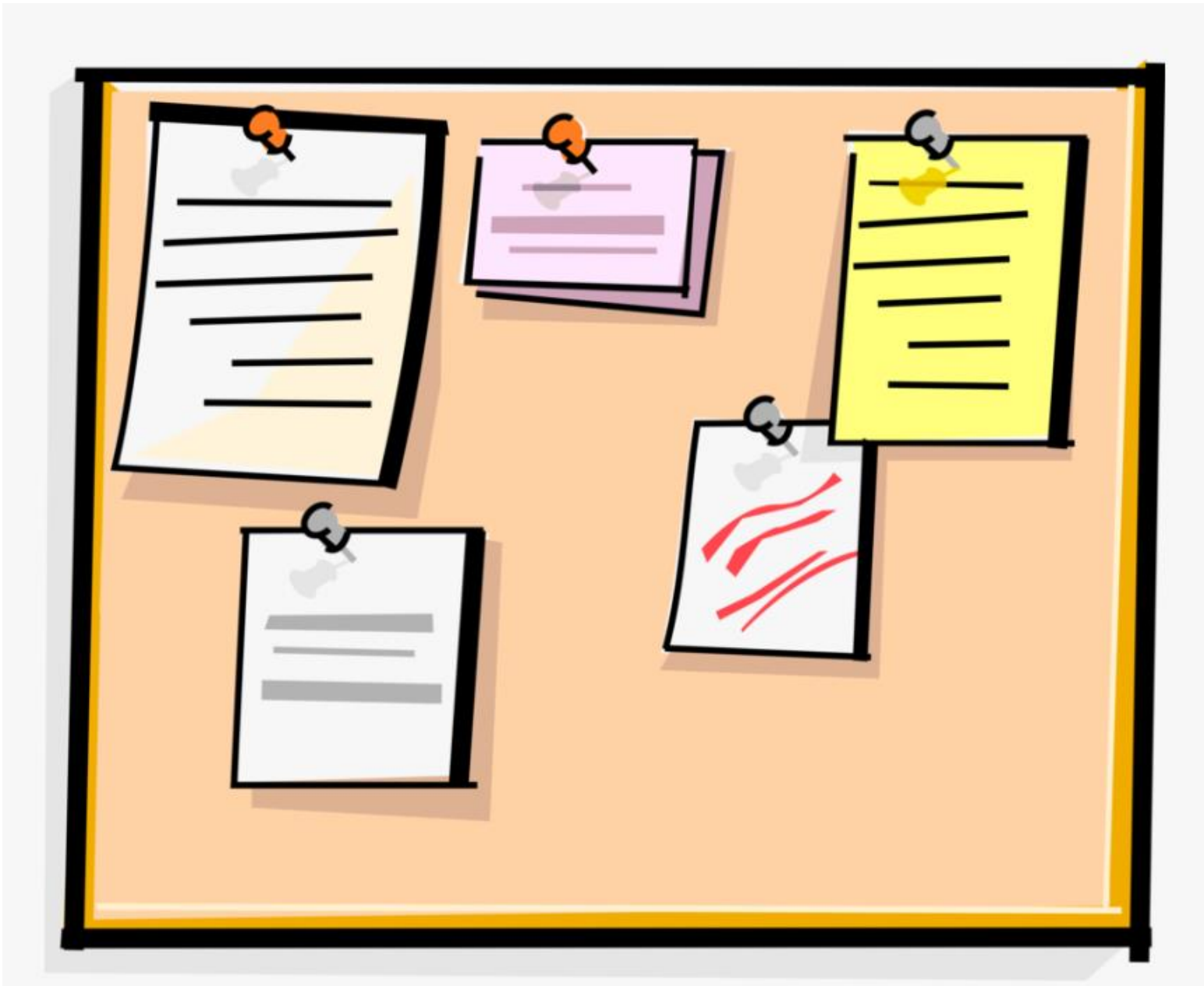


CURRENT AWARENESS BULLETIN

July-September 2018



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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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July – September 2018

ADVANTAGE GENERAL Insurance Company Limited (Formerly United General Insurance Company Limited) v Mark Anthony Francis
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WHETHER INSURER ENTITLED TO DECLARATION – Whether defendant has insurable interest in subject matter of insurance – Whether there was nondisclosure and /or misrepresentation – Whether warranty clause was breached – Whether insurer entitled to avoid policy

ALLIANCE FINANCE Limited v Capital Solutions Limited and Mark Anderson Jones
JMCA 30.11.2017

CIVIL PRACTICE AND PROCEDURE – Application for summary judgment – Debt owed by one party to another – Attempt by debtor to assign debt – Assignment ineffective – Declaration of trust - Trustee refusing to bring claim against his debtors – Beneficiary of the trust bringing claim against third party debtor – Whether there exists any basis for summary judgment – Civil Procedure Rules 2002, part 15, rule 15.2.

ASSETS RECOVERY Agency v The Administrator General of Jamaica (Administrator Ad Litem for the Estate of Yowo Morle) and Hazel Elaine Clarke (discontinued on the 18th of December 2012 and Nomora Morle
JMJC 25.10.2017

CIVIL PRACTICE AND PROCEDURE – Application for relief from sanction – Civil Procedure Rules (CPR) 2002 – Rule 26.8

<THE> ATTORNEY GENERAL v Barrington Irwin
JMCA 12.10.2017

TO STRIKE OUT A NOTICE OF APPEAL-AN INTERLOCUTORY JUDGMENT OR ORDER- “Illegal dismissal, negligence, outstanding monies, assault on the job, civil service pension and pension benefits in regard to former employment and medical board

BLAKE, Daryeon and Vaughn Blake v R
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CRIMINAL LAW-Murder

CAMERON, David v Feron Williams and Dave Birch
JMJC 31.05.2017

ASSESSMENT OF DAMAGES – Approach of court – Whether lump sum award or multiplier applicable

CARICOM INVESTMENTS Limited and Caricom Hotels Limited and Caricom Properties Limited v National Commercial Bank Limited and Rio Blanco Development Limited (in receivership) and Estate of Karl Aird (deceased) (former receiver of Rio Blanco Development Limited)
JMCA 20.12.2017

SALE OF LAND BY RECEIVER UNDER POWERS OF SALE IN DEBENTURE AND MORTGAGE - Registration of Titles Act, S. 125 - Agreement for sale of land - Mutually contingent upon agreement for sale of chattels - Failure to provide duplicate certificates of title although purchaser registered on original certificate - Sections 81 and 82 of Registration of Titles Act - Whether failure to provide duplicates 'encumbers' the remaining 49 titles involved in transaction - Whether remedy available is rescission of the contract - Whether when there are mutually contingent agreements, it would be possible to rescind the one without rescinding the other - Whether the rule in Bain v Fothergill applies - Whether bank mortgagee is 'vendor' by virtue of conduct after 'completion' of sale - Whether there is a breach of warranties contained in agreement for sale - Whether bank may become liable by accepting responsibility to try to secure duplicates - Whether person may become vicariously liable for conduct of another after the

purported agent was not his agent when the act being called into question was done - Whether if there is a breach of implied terms what damages are payable and by whom

CHEN-YOUNG, Paul and Ajax Investments Limited and Domville Limited v Eagle Merchant Bank of Jamaica Limited and Crown Eagle Life Insurance Company Limited

JMCA 01.12.2017

CONSTITUTIONAL LAW-Freezing Order-Cost-Civil procedure rules 2002-functus officio

COLLIE, Charlton v Claudette Crooks-Collie

JMCA 20.12.2017

PROPERTY LAW-Dispute-Property Rights of Spouses

DAVIS, Margarita (Near relation – mother of Andre Davis, deceased) v The Attorney General of Jamaica

JMSC 26.01.2017

DAMAGES – Assessment – Fatal Accident Act – Claim for funeral expenses

Law Reform (Miscellaneous Provisions) Act – Deceased 16 years old – Whether claimant is personal representative of estate of deceased

DODD, Jahmeil v The Attorney General and Detective Sergeant Leroy Falkner/ Faulkner

JMSC 26.06.2017

ASSESSMENT OF DAMAGES – Malicious prosecution – False imprisonment – Judgment on admission

EDWARDS, Vince v R

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GILBERT, Kevin and Romaine Geant v Adani Dixon

JMSC 16.06.2017

ASSESSMENT DAMAGES – personal injury – Road traffic Accident – General damages

GRAY, Lena v Oral Beckford and Edgar Franklyn

JMSC 31.05.2017

ASSESSMENT OF DAMAGES-Personal injury – Loss of Earning

GRAY, Uriel and Kadian Whollery and Rhona Forbes-Bryan and Tamar McLean-Pernell v Kaydian Bell-Gordon

JMSC 05.05.2017

NEGLIGENCE – Road traffic accident – Judgment on admission – Assessment of damages – whiplash injury

HAMILTON, Andrew and Dorothy Hamilton and Andre Hamilton and Andrew Hamilton Construction Limited and Janet Ramsay v The Assets recovery Agency

JMCA 20.12.2017

CIVIL PRACTICE AND PROCEDURE- Abuse of Process – striking out claim on grounds of abuse of process – discharging restraint order on the ground of abuse of process

HAMILTON, Marilyn v United General Insurance Company and United General Insurance Company Limited v Marilyn Hamilton

JMCA 10.11.2017

EMPLOYMENT LAW - Whether claimant introduced pirated software into defendant's environment - Whether the claimant was wrongfully dismissed - Whether Addis v Gramophone precludes award for breach of trust and confidence - Loss of advantage on labour market-stigmatization - Claim for anxiety and depression - Whether failure to mitigate reasonable - What constitutes reasonable notice to terminate - Entitlement under pension scheme - Whether employee entitled to employer's contribution upon termination of contract - Defamation

HAYE, Joyce v Vincent Williams and Jermaine Griffiths
JMJC 09.06.2017

ASSESSMENT OF DAMAGES – Personal injury – Road traffic accident – Judgment in default – Application to amend particulars of claim

HAYLES, Clevebert v Gloria May McFarlane
JMJC 24.03.2017

ADVERSE POSSESSION – Whether defendant's title to part of her land was extinguished – Whether there were sufficient unequivocal acts of ownership by the claimant – Registration of Titles Act

IMPERIAL SUITES Hotel Limited v Leroy Johnson
JMJC 08.12.2017

APPLICATION FOR COURT TO DISCONTINUE PART-heard application to strike out defence and enter summary judgment, commenced in absence of lead counsel for the defence who was ill – Client's constitutional right to be represented by attorney of choice – Whether breach of right to fair hearing and equality before the law – Whether inappropriate material relies on in affidavit in absence of lead defence counsel – Whether irremediable prejudice suffered by defendant – Court's ongoing role to filter evidence into admissible and inadmissible categories – Duty of court to exercise discretion judicially in relation to application for an adjournment – Overriding objective – Whether matter should commence *de novodefore* a different tribunal

IN THE ESTATE OF THE DECEASED, Intestate and in the administration of estate under THE INTESTATE PROPERTY CHARGES ACT AND THE ADMINISTRATOR GENERAL'S ACT and in the matter of an application for court's opinion, advice or direction under section 39 of the Administrator General's Act
JMCC31.07.2017

TRUSTS – trust for sale – Application by Administrator General for directions regarding the sale of trust property – Duty of Administrator General – Independent valuation of trust property commissioned by Administrator General – Valuation partially dependent on company's audited financial statements – Whether there is actual or apparent bias or conflict of interest in the manner in which the audit was conducted to affect the reliability of the valuation – Section 39, 40, 43 and 44 of the Administrator General's Act

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JEBMED SRL v Capitalease SPA owners of M/V Trading Fabrizia and X/O Shipping A/S and Ligabue SPA
JMCA 20.12.2017

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KNIGHT-DALEY, Andrea Theresa v Raymond Leanord Daley
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BREACH OF CONTRACT – Application to strike out statement of claim – Whether the court has jurisdiction to hear matter – Insurance policy – Applicability of arbitration clause

MATTISON, Shereen v Couples Resort Ltd.
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PERSONAL INJURY – Wet kitchen floor at hotel, waitress falls – Assessment of damages

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MCLEGGAN, Ervin v Daphne Scarlett and The Registrar of Titles
JMJC 09.06.2017

FRAUD – Definition of fraud – Burden and standard of proof – Registered title – Effect of ss. 70 and 161 of The Registration of Titles Act – Effect of ss. 164 – 168 of the Registration of Titles Act – Whether 2nd defendant is exempted from liability by virtue of s. 160 of the Registration of Titles Act – Nee to prove fraud on the part of the present registered proprietor if claim is to be proven

MINOTT, Robert v South East Regional Health Authority and Attorney General of Jamaica
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CLAIM FOR DAMAGES FOR NEGLIGENCE – Claim for handicap on the labour market – Claim for loss of future earnings – Multiplied/multiplicand approach – Lump sum approach – Distinction between a claim for loss of future earnings and a loss of earning capacity – Handicap on the labour market – General damages for pain and suffering and loss of amenities Claimant was a welder – Claimant’s leg was amputated due to the crown’s negligence – loss of earning up until date of trial to be treated as an item of special damages – Loss of earnings expected after trial to be treated as an item of general damages

MOORE, Balvine v Marlon D’Aguilar and Kalonji Gamel D’Aguilar
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NEGLIGENCE – Motor vehicle accident – Liability – Credibility of parties

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MOUNT ZION Apostolic Church of Jamaica Limited v Joycelyn Cash and Novia Duhaney
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SECURITY FOR COSTS – Two claimants – One claimant incorporated in the U.S.A.

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COMMUNITY LETTERS OUT TERMS OF LOAN AGREEMENTS BETWEEN THE CLAIMANT AND THE 1ST DEFENDANT – 3rd defendant’s guarantee agreement with the claimant – Whether summary judgment should be awarded to the claimant – Whether the 3rd defendant’s defence is one which has a realistic prospect of success – variation of initial loan agreement – Circumstances in which guarantor will be discharged from guarantee agreement – Whether guarantee agreement was a continuing security – Whether guarantee agreement is applicable as between the claimant and the 3rd defendant

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JUDICIAL REVIEW – Certiorari – Minister’s referral to Industrial Disputes Tribunal – Whether *ultra vires* – Labour Relations and Industrial Disputes (Amendment) Act

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PALMYRA PROPERTIES Limited (In receivership) and Sanctuary Systems Limited (In receivership) and Kenneth Tomlinson v Jade Overseas Holdings Limited
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INTERLOCUTORY INJUNCTION - course like to cause the least irremediable prejudice - Need for court to engage in assessment of strength of parties cases - Case involving mainly construction of agreement/written instruments/points of law - Whether court can feel high degree of assurance that at trial would appeal injunction rightly granted - Whether claimant guilty of delay - Securities - Fixed or floating charge - Debenture - Restrictive clauses in debenture - Priority of charges - Whether management agreement void as maintenance of champerty - Whether management agreement constitutes sale or disposal of assets in the ordinary course of business - Whether prior written or other consent of debenture holder required for assignment under management agreement - Whether entry into management agreement triggered automatic crystallisation of floating charges into fixed charges.

PAYMASTER (JAMAICA) Limited and another v Grace Kennedy Remittance Services Limited (Jamaica) and Paymaster (Jamaica) Limited v Grace Kennedy Remittance Services Limited and another (Jamaica)
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INTERIM INJUNCTION – essence of claim is to be declared spouse, evidence of being single not provided; factual dispute as to whether deceased and applicant were ‘living together’ up to his death as if in law they were man and wife; although not physically ‘living together’; Whether serious issue to be tried; Whether damages adequate remedy; preservation of status quo

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Extradition: *George Hepburne Scott* reports on the changes facing Britain’s post-Brexit extradition relationship with the EU

Private prosecutions: Is it time to adopt a private prosecutions policy? *Matt Bosworth* investigates

GDPR *Patrick Wheeler & Mette Marie Sutton* report on the chaos that could be coming

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Brexit: *David Greene* advises us to prepare for the worst & hope for the best

Family: *David Burrows* laments the harmful complexities of the child support system

Product liability: Is it time for a consumer revolution? *Sarah Moore* investigates

Wills & probate: *Kathryn Purkis* discusses rights of retention & equitable liens

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Steve Hynes shares his insights on the tendering process for legal advice telephone services

Public: *Nicholas Dobson* reports on paying the price for the wrongfulness of non-disclosure

Family: *Camilla Fusco* addresses the confusion surrounding the fate of UK family law post-Brexit

Banking: *PAG v RBS*: A case that’s not just for swaps lawyers, according to *Emma Davies*

Noise: The spotlight has turned onto legal obligations to protect musicians at work: *Jonathan Clarke* talks to *Susan Ghaiwal*

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Jon Robins laments the state of the criminal justice system

Employment: *Ian Smith* tackles variation, termination & compensation

Damages: Child claimants as well as adults should be able to recover damages for 'lost years' says *David Regan*

Immigration: *Duncan Bain* fears the hostile environment for the Windrush generation has wider repercussions

Commercial: *Charlotte Hill* reports on oil leaks, anchor defendants & duty of care

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Claire Green predicts a rocky start for the new electronic bill of costs

Employment: *Charles Pigott* examines when the countdown to dismissal officially starts

Family: *David Burrows* provides an update on the property rights of unmarried parents

Property: *Mark Sefton QC & Cecily Crampin* on the covenant complications caused by Airbnb

Pensions: *Nicholas Hill & Gus Baker* on the major mis-selling scandal underway

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Aaron Nelson on the safety net that may be waiting below the Brexit cliff edge

Family: *Lucy Clark* provides some practical insight into the temporary relocation of a child

GDPR: *Rollits LLP* on GDPR day: where do we go from here?

Crime: *David Corker* on the still lackluster attempts to tackle 'dirty money'

Property: *Joe Ollech* reports on flooding & flood management

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Patrick Allen pays tribute to the *Unison* judgment & what it means for small claims

Family: How will the loss of the EU Charter impact children? *David Burrows* investigates

Property: Section 84: a tool to overcome the covenant problem, says *Andrew Francis*

Regulatory: *John Gould* asks: is it time for a change in the standard of proof required by the SDT?

GDPR: *Alison Padfield QC* looks at cyber insurance through the new lens of the GDPR

Public: *Nicholas Dobson* on striking the balance between freedom of information and commercial interests

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Roger Smith recommends a wider audit in bringing the courts into the 21st century

Employment: *Ian Smith* tackles 'no oral variations' clause, zero-hour contracts & worker status

Public/Human rights: The scope for claims brought against the police is broadening, says *Dijen Basu QC*

Duty of care: If a roadside tree endangers motorists, is the landlord liable? *Catherine Grubb* investigates

Commercial/ Property: *Donald Lambert & Andrea Nicholls* on the value of the no oral modification clause

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Brice Dickson reflects on the recent challenge to Northern Ireland's abortion law

Commercial: Clarity on contracts? *Clifford Darton, Sally Anne Blackmore & Samantha Dawkins* take stock of *Rock*

Family: *Simon Blain* on *Owens v Owens*: how far will the Supreme Court go?

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COVERSTORY: *Alex Samuels* shares his reflections on the Jeremy Thorpe case

Financial services: *Michel Reznik* explains why the Financial Services Tribunal makes sense

Property: *Mark Pawlowski* asks whether we should abolish the formal requirement of a deed for leases

Crime: *Michael Zander QC* distils current Law Commission proposals for a major reform of search warrant law

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David Greene explains why a 'no deal' Brexit is more than a Marmite outcome

Speakers' corner

How legal aid practitioners can stay ahead of the game, by *Steve Hynes*

Law in the Headlines

Time to bury the coroners' service model? *Veronica Cowan* explains the possibilities

Crime: What have we learned from DPAs? *Oliver Cooke & Dan Hyde* investigate

Wills & probate: An update from the courts by *Henrietta Mason, Harriet Gibson & Chris Williams*

Charities: Automatic disqualification rules are on the horizon for charity senior management, reports *Beth Walsh*

Public: A cautionary tale of council misconduct, by *Nicholas Dobson*

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Jon Robins shines the spotlight on collapsed trials & disclosure failings

Employment: *Ian Smith* explains why *Pimlico Plumbers* wasn't all it was cracked up to be

Property/ Fraud: Victims of imposter fraud: *Gary Blaker QC & Chris de Beneducci* assess the facts

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A lesson on the dangers of self-representation, by *Dominic Regan*

Property: What will litigation look like under the new Electronic Communications Code? *Stephanie Tozer & Toby Boncey*

Employment: *Chris Pawlowska* asks whether we will ever have an answer on vicarious liability

Contract: *Sophia Purkis & Leigh Callaway* explore the implications of *MWB v Rock*

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For richer, for poorer: how can the gap between City earning & legal aid funding be justified, asks *Geoffrey Bindman QC*

Financial services: Pt 3 of *Michel Raznik's* series on the need for a Financial Services Tribunal

Wills & probate: A sure sign: What is expected of witnesses to a will? *Amy Proferes* explains

Wills & probate: *Constance McDonnell* describes the surprising effect of a marriage upon a will

Brexit: *Charles Pigott* charts the progression of the European Union (Withdrawal) Act 2018