Issue 1
September 2019

TRUMAN BODDEN LAW SCHOOL STUDENT LAW REVIEW

Coursework, case notes, interviews and hints and tips from the students of the Truman Bodden Law School of the Cayman Islands

Truman Bodden Law School

Student Law Review

Issue 1

September 2019

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Introduction to the 2019 TBLS Student Law Review

Michael Bromby

Academic Editor

Welcome to the inaugural edition of the TBLS Student Law Review!

The aim of this publication is to provide incoming LLB1 students with examples of coursework that achieved high marks from Skills 1 & 2 during the 2018/19 year. In addition, we seek to capture and reflect on external speakers and other events that take place during the academic year at TBLS.

A small editorial team of first year students met following the exam period to discuss the format and content. Staff identified appropriate student work and obtained appropriate consent for dissemination. Students then edited the collection and assembled further TBLS library hints and tips that have been chosen as the most useful during their first year of studies.

In future editions, we may include appropriate items from second and third year LLB, LLM and PPC students as indicators of topics covered or strategies for research; interviews or feature biographies of previous TBLS graduates and where they are now. Plus, explore whether this is content that can be made available externally, potentially for schools and wider engagement.

We hope that this is a useful resource and actively encourage submissions for the next edition.

Editorial team: 2019 Edition

Stephanie Ebanks

Stephanie is a part-time student and she has just completed her first year at the Truman Bodden Law School.

Janet James

Janet has recently completed her first year at the Truman Bodden Law School. Her Professional background is in banking and finance. She has over twenty years in her profession and her working experience consisted of Mutual Funds, Hedge Funds, Stock Trading, Trust, Investments, SPV Administration and Retail Banking. Janet holds a Bachelor's Degree in International Finance.

Annette Vaughan

Annette has recently completed her first year at the Truman Bodden Law School. Her professional background is in education. She is a newly retired Elementary School Teacher with thirty-eight years in the profession both in her native Barbados and the Cayman Islands. Annette has served in the capacity of the Primary Years Programme and Library Resources Coordinator and also as teacher-mentor. She holds a Bachelor's Degree in Elementary Education and a Master of Arts degree in Language Arts Education.

Graduation and Awards: 2019

University of Liverpool

Bachelor of Laws (Honours) Degree

Dodds, Alianna

George, Philson

Kape, Romina

Parchment, Cyndi

Roberts, Hadleigh*

Thompson, Oneka*

Zakhari, Monica

* Denotes a First Class Honours Degree

Prizes awarded for this year were:

Daniel Lee

Sweet & Maxwell Law Prize for Best Performance in the First Year Modules

BradJohnston

The University of Liverpool Law Association Prize; & Butterworths Lexis/Nexis Prize for Best Performance in the Second Year Modules

Hadleigh Roberts

Cayman Islands Chamber of Commerce Prize for Best Performance in the Third Year Modules

Hadleigh Roberts

The Tim Shea Memorial Prize for Best Performance over the Honours Degree Programme

Hadleigh Roberts

Dean's Prize of the School of Law and Social Justice, University of Liverpool

Legal Skills 1: Case Note Assessment

Ghita Benlabi

LLB1 (first year full time)

R v Ireland & Burstow (1997)

1 Court

House of Lords

2 Citation

1998] AC 147

3 Judges

Lord Goff of Chieveley, Lord Slynn of Hadley, Lord Steyn, Lord Hope of Craighead, Lord Hutton

4 The Parties involved

Appellants - Robert Matthew Ireland (Ireland); Anthony Christopher Burstow (Burstow) (together the Appellants)

Respondent - Crown

5 Material facts

Ireland was charged under s 47 of the Offences Against the Person Act 1861 (OAPA) for assault causing bodily harm. Ireland harassed 3 women by making silent phone calls during the night and also made phone calls breathing heavily.

Burstow was charged with maliciously inflicting grievous bodily harm under s 20 OAPA. He had harassed a woman whom he was previously in a relationship with by making silent and abusive

phone calls and repeatedly showing up to the victim's home workplace and taking pictures of her.

In both cases the victims have been diagnosed to suffer psychiatric illness as a result of the appellant's acts.

6 Procedural History of the case

R v Ireland[1] - Court of Appeal (Criminal Division) – Irelands appeal was dismissed on the basis that psychiatric injury could amount to bodily harm under s. 47 of the OAPA. Ireland was sentenced to 3 years imprisonment.

R v Burstow[2] - The Crown Court judge held that an offence under s. 20 of the OAPA could be committed where no physical violence had been applied directly or indirectly to the victim. Burstow was sentenced to 3 years imprisonment. The Court of Appeal[3] further dismissed his appeal against his conviction.

7 Issue(s) to be decided

1. Can psychiatric illness, as testified to by to by a psychiatrist, amount to bodily harm under sections 18, 20 and 47 of the OAPA?

2. Does the construction of the word "inflicting" mean there must be an element of physical violence?

8 Ratio

Bodily harm for the purposes of sections 18, 20 and 47 of the Act must be construed as to include psychiatric illness. Furthermore the word "inflict" is not limited to acts of battery and therefore the application of s. 20 is not limited to offences implicating physical violence. If yes does the making of silent phone call capable of constituting assault under s. 47 of the OAPA.

[1] [1997] QB 114
[2] [1996] Crim LR 331
[3] [1997] 1 Cr App Rep 144

9 Analysis of the ratio

Construction to include psychiatric injury

It was considered whether the Appellants were beyond the reach of the OAPA since they were using a telephone line silently to terrify their victims. Lord Steyn in referring to *Hay (or Bourhill) v Young*[4] was of view that the law only recognises physical injury from an actual impact is no longer followed and that where the line has to be drawn is a matter for expert psychiatric evidence. In relying on *R v Chan Fook*,[5] Hobhouse LJ clarifies that the word "bodily" in "actual bodily harm" includes all parts of the body and in so doing includes the nervous system and brain. The injuries sustained amounting to actual bodily harm therefore may include the parts of the body responsible for the victim's mental health. It was confirmed that *Chan*[6] gives a sound interpretation of the law and that bodily harm in sections 18, 20 and 47 of the OAPA must be interpreted to include recognisable psychiatric illness.

Construction of the word "inflict"

In construing the meaning of the word "inflict" for the purposes of the OAPA, "inflict" has to encompass the infliction non-physical harm. As held in *R v Wilson (Clarence)*[7] there can be infliction of grievous bodily harm without the assault element. The word "inflict" therefore encompass non-physical injuries. There is two types of assault that may be charged under s. 47 of the OAPA, when there is an element of physical violence (battery) or when there is an element which makes the victim fear of an imminent application of force upon them. Lord Steyn's point of view is not to enlarge the application of the generally accepted legal meaning of battery in order to encompass a silent call but rather that in making a silent call the Appellants have caused the victims to fear of an imminent application of force. The *Meade's and Belt's Case*[8] concept that words can never suffice to amount to an assault was departed from. In this case the House of Lords held that a thing said is also a thing done. On the question

[4] [1943] AC 92
[5] [1994] 1 WLR 689, at 695 (G-H)
[6] [1994] 1 WLR 689
[7] [1984] AC 242
[8] [1832] 1 Lew CC 184

as to whether silence on a call can amount to assault, it was held that the intention behind the Appellants silent phone call or rather their "silence" is to create fear. The victim is in a state of constant fear, in this case, when receiving silent phone calls, fear the possibility of immediate violence.

10 Disposition

Appeal dismissed - The illness suffered from the victims did amount to bodily harm and the construction of the word inflict does not necessitate the presence of physical violence. Both convictions are upheld.

11 Update

In *R v D*[9] the psychiatric damaged caused went one step further than in *R v Ireland and Burstow*[10] was the victim had committed suicide. The defendant in this case had verbally abused his wife for many years and she ended up committing suicide. In applying *Ireland and Burstow*[11], the Court of Appeal (Criminal Division) held that since it was already established.

12 Critique

Harassment is a significant social problem and for the good of the society in general it would be detrimental to allow acts causing psychiatric injury to go unpunished or to merely give a "slap on the wrist". The law is in place to avoid encouraging these types of behaviour and therefore the construction of terms such as inflict, as done in this case, should be interpreted in the way which would protect the citizens. Non-fatal offences should not be normalised for the good and protection of people.

[9] [2006] EWCA Crim 1139
[10] [1998] AC 147
[11] ibid

Legal Skills 1: Research Task Formative Assessment

Annette Vaughan

LLB1 (first year full time)

Modern Slavery Act 2015

Though the official abolition of slavery was in 1833, it is still prevalent today in different forms. Modern slavery, as defined in the United Kingdom Slavery Act, is servitude, forced or compulsory labour and human trafficking. The European Convention on Human Rights, in Section 10, Article 4, provides 1. No one shall be held in slavery or servitude. 2 No one shall be required to perform forced or compulsory labour.[1] The Global Slavery Index has established that daily, both adults and children are becoming victims of slavery.[2] Other statistics from 2018 Global Slavery Index revealed that in a 2016 survey, an estimated 40.3 million persons trapped in modern slavery. It indicates that 71% of that number is female.[3] These figures confirm the prevalence of modern slavery and human trafficking at an international level.

Human Trafficking in the United Kingdom

Human trafficking, as it relates to modern slavery, occurs with the distinct aim of involving the victims in various illegal or forced activities. The United Kingdom is not immune to modern slavery. Statistics from the 2018 Global Slavery Index reveal that in 2016, 136,000 people there were living in modern slavery. However, the National Crimes Agency has indicated that the reported number can be much higher. This reduced number can be because some victims have failed to report their case to the authorities. This paper will examine the issue in the United

[1] https://.coe.int/en/wwwweb/conventions.>accessed November 30, 2018
[2] https://www.globalslaveryindex.org> accessed November 26, 2018
[3] Ibid

Kingdom, in particular, trafficking of children, the Modern Slavery Act 2015 and aims to address this problem.

It will also discuss the contributions of Article 4 of the Human Rights Convention on the shaping of the Modern Slavery 2015. Other international agreements and treaties will be considered to show how those legislations have been integral in development of the Act. A case reference will be used to show how this Act has benefited victims. Finally, the paper will evaluate the extent to which elements of part 5 of the Act adequately provide for and support victims of modern slavery.

Modern Slavery Act 2015

The introduction by Parliament of Modern Slavery Act 2015 was intended to both curtail and address modern slavery and its related problems. There was reliance on International Treaties and Agreements in shaping this Act. These included the Nations Universal Declaration on Human Rights, the Human Rights Convention on Modern Slavery, United Nations Convention on The Law of the Sea (1982) and The United Nations Office on Drugs and Crime.

The United Nations Universal Declaration on Human Right has global standards on modern slavery. As such, Article 4 declares that "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."[4] One of the purposes of the Modern Slavery Act is to adhere to the provisions in Article 4 of the United Nations Declaration on Human Rights and protect, support and provide immunity for victims of modern slavery.

The United Nations Office on Drugs and Crime has defined human trafficking as, "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation." "Exploitation shall include, at a minimum, the exploitation or the prostitution of

[4] http://www.un.org/en/universal-declaration-human-rights November 27, 2018

others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."[5] The latter is a growing problem which the United Kingdom seeks to address.

The issue of human trafficking for organ donations and transplants is not as visible as the other forms of human trafficking and is hence less identifiable. The Global Financial Journal estimates that '10% of all organ transplants including lungs, heart and liver, are done through trafficked organs.[6] However, due to the provisions of the Modern Slavery Act 2015, organ traders are now more easily detected. Likewise, the prowess of national intelligence and law enforcement also unmask the trails of organ traders at a steady rate.

The Modern Slavery Act was also influenced by Article 8 of the United Nations Office on Drugs and Crime. Among other requirements, it focuses on the trafficking of persons. It warns against exploitation and in paragraph 3 lists examples including the 'worst forms of child labour.'[7] According to article 3 (d) of the Protocol, 'child' is referred to as any person below the age of 18.[8] The Act aims to protect victims within that age group. The United Nations Universal Declaration on Human Rights in Article 4 declares that "any recruitment of a child for exploitation shall be considered trafficking in persons, even if it does not involve any of the means listed in article 3."[9]

Provisions of Part 5

The purpose of the provisions of part 5 of the Modern Slavery Act is to protect and support victims of modern slavery, including children. Its goal is to prevent trafficking and prosecute

[5] https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html, November 27, 2018

[6] "Transnational Crime and the Developing World," Global Financial Integrity, March 2017, http://www.gfintegrity.org/wp-content/uploads/2017/03/Transnational_Crime-final.pdf

[7] <https://www.unodc.org/documents/humantrafficking/UNODC_Model_Law_on_Trafficking_in_Persons.> accessed November 27, 2018

[8] <https://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons. accessed November 27, 2018

[9] Ibid

offenders. In so doing the Act seeks to adhere to the provisions in Article 4 of the United Nations Declaration on Human Rights and support and provide immunity for victims of modern slavery. According to Roan Epstein and Nick Squires, another purpose of the Act was "to secure justice for the victims of human trafficking."[10]

This provision was tested in the recent case of K R (on the application) v Secretary of State for the Home Department.[11] In this case, the claimants, who were potential victims of human trafficking, sought judicial review of the seekers decision to reduce their weekly cash subsistence payments by 42% from £65 to £37.75. In granting the application, Judge Mostyn stated that the Secretary of State was under a duty to be guided in his decisions by the Modern Slavery Act 2015 Section 49. This decision indicates the Act was fulfilling its intended purpose.

The Act also seeks to raise awareness of the issues related to modern slavery. One such issue is the accumulation of wealth by the perpetrators. The Act made provides for the infiltration of perpetrators. It also allows for the confiscation of property as outlined in Section 11. As in the United Nations Convention on The Law of the Sea (1982), the Modern Slavery Act supports 'hot pursuit' of suspected ship or vessels in United Kingdom waters.

With the provisions of the Act and the cooperation of the stakeholders, the battle to conquer this scourge continues. The offenders are discovering methods of operating at a level where they are not easily detected. For example, Provision 54 of the Act requires a business to report their initiatives in avoiding slavery at their establishments, but as pointed out in the Ernst and Young report, there is an absence of a follow-up or monitoring mechanism to determine its progress or validity.[12] The report suggests providing monitoring support to enable consistent compliance with this provision.

Statistics for July to September 2018 from The National Crime Agency of the United Kingdom also confirm the arduous task ahead for the government. It reports that 1,790 cases of modern

[10] Roan Epstein and Nick Squires, Coventry Law Journal, Legislative Comment Providing immunity for trafficking victims: human trafficking and the Modern Slavery Bill, 2014

[11] <https://westlaw-co-uk.liverpool.idm.oclc.org/maf/wluk/app/document >accessed November 27, 2018

[12] https://www.ey.com/Publication/vwLUAssets/ey-the-uk-modern-slavery-act-2015/$FILE/ey-the-uk-modern-slavery-act-2015.pdf> accessed November 27, 2018

slavery were reported for the 3rd quarter of 2018, which is a 6 per cent increase from the previous quarter.[13] However, it has also reported that the agency was successful in rescuing 136 potential victims. This limited success can attributed in part to the diligence of enforcement personal and the directives of the Modern Slavery Act 2015.

Conclusion

According to historical records, Britain was actively involved in the Trans- Atlantic slave trade from the 1600s until its abolition through an Act of Parliament in 1833. The debate continues on the effectiveness of that Act, while others view it as a mere formality. They argue that people are still enslaved as manifested in the various forms of modern slavery. Still, others see progress and are optimistic that with determined effort and cooperation, the eventual effectiveness of the Modern Slavery Act 2015 will be more evident. That envisaged success should be motivation to the other countries and organizations to join the United Kingdom in making asserted efforts to curb the global problem of modern slavery.

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<https://.coe.int/en/wwwweb/conventions.>accessed

[13] <http://www.nationalcrimeagency.gov.uk/news/1424-nca-annual-report >accessed November 27, 2018

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Legal Skills 1: Research Task Summative Assessment

Daniel Lee

LLB1 (first year full time)

Psychoactive Substances Act 2016

In the UK, the law surrounding the misuse of drugs is complex, having evolved through The Medicines Act 1968 (MA), The Misuse of Drugs Act 1971 (MDA), and The Psychoactive Substances Act 2016 (PSA). The MA controls the manufacture and supply of all medicinal drugs, whereas the MDA "provides the legal framework regarding all aspects of the production, possession and supply of controlled drugs."[1] However, the emergence of 'legal highs' created serious problems by circumventing laws. The UK government responded to this ongoing issue by placing a blanket-ban on legal highs through the enactment of the PSA. This paper will discuss the issues the MDA faced with the emergence of these substances and analyse recent law reform in this area and how the PSA intends to address this crucial situation.

The Misuse of Drugs Act 1971

"Where the misuse of a medicinal drug leads to addiction and dangerous or bizarre behaviour, it becomes a 'controlled drug' and falls under the control of the MDA."[2] The MDA also regulates 'controlled drugs' which have no therapeutic properties and are only for recreational use. It creates offences for unlawful supply, intent to supply, importation and exportation, and unlawful production of controlled drugs. Controlled drugs are categorised based on the degree of social harm attributable to each substance when misused, determining the severity of the

[1] Leonard Jason-Lloyd, 'Some Key Elements of Misuse of Drugs Legislation' [2007] 172 Crim Law, 6.
[2] Ibid.

sentence for offences committed in connection with them.[3] Class-A is the most harmful drugs, Class-B is less harmful, and Class-C is the least dangerous.

However, there is the criticism of inconsistency for the rationale of the classifications.[4] For instance, 'magic mushrooms', a Class-A drug is statistically non-addictive, and a lethal dose is approximately equivalent to a person's body-weight in 'magic mushrooms'; between 1993 and 2000 only one person died from taking them.[5] Additionally, political priorities and philosophies often impact the system. Cannabis, for example, was reclassified from Class-B to Class-C under Blair's government and back to Class-B under Brown.[6] The Advisory Council on the Misuse of Drugs (ACMD) was established to advise the government on misused substances. The emergence of legal highs has been the MDA's greatest challenge to date.

New Psychoactive Substances

New psychoactive substances ('NPS') are drugs created to mimic the effects of controlled drugs and can be more potent and dangerous. Problematically, these substances are "concocted so that their chemical structures fall outside the MDA".[7] They also circumvent the MA via packaging warnings stating they are "not for human consumption" with no ingredients or dosage guidance. An NPS is often referred to as a 'legal high' creating the misconception that they are safe for consumption. However, since the chemical structures of these drugs continuously change, and they are unregulated and untested, it is difficult to ascertain their common effects or dangerous dosages.[8] Indeed, these drugs have caused many deaths and widespread reports of consumers requiring emergency treatment.[9] The problem with the MDA was that when classifying new substances, it could take several months for to place them under

[3] Leonard Jason-Lloyd, 'Controlled Drugs' [2000] 150 NLJ 1401.
[4] Jason-Lloyd, 'Some Key Elements of Misuse of Drugs Legislation' (n 1).
[5] Sally Kyd, Tracey Elliott and Mark Walters, *Clarkson and Keating Criminal Law: Text and Materials* (Sweet & Maxwell 2017) 25.
[6] Michael J. Allen, *Criminal Law* (14th Edition, Oxford University Press 2017) 6-7.
[7] Leonard Jason-Lloyd, 'More intervention on legal highs' [2011] 205 Crim Law, 3.
[8] 'New Psychoactive Substances', <https://adf.org.au/drug-facts/new-psychoactive-substances/> accessed 12 January 2019.
[9] Leonard Jason-Lloyd, 'Controls on Legal Highs' [2010] 174(40) CL&J, 614.

the MDA's control. Moreover, "having criminalized a 'legal high', subsequent research may prove the drug was not as dangerous as originally thought".[10] Accordingly, "this process was not sufficiently responsive to the emerging harms posed by NPS."[11]

Temporary Class Drug Orders (TCDO)

The Police Reform and Social Responsibility Act 2011 amended the MDA to provide for temporary class drug orders- TCDO. These orders temporarily classified substances as controlled drugs for a period of up to 12 months. This action gave the ACMD time to research and assess the potential dangers of the drugs and advise on whether they should be controlled under the MDA.[12] The decision to improve and hasten the classification system, and "avoid criminalising young people caught possessing such drugs. The main thrust of these measures is directed towards trafficking offences."[13] After the 12-months, the TCDO either expires, or the drug is brought under permanent control of the MDA. However, although this seemed an effective solution to the NPS problem, because of the inevitable time lag between an NPS coming onto the market and a legislative response, many people could still be at risk.[14]

The Psychoactive Substances Act 2016

"With the unlikelihood of getting ahead of the NPS market, the government concluded that new legislation was needed to build on the existing provisions of the MDA."[15] Hence, the Psychoactive Substances Act 2016 ('PSA'), was enacted. This Act made the sale, production, import and export of psychoactive substances illegal. It also created harsher sentences for offenders. It also provides enforcement mechanisms, including criminal and civil sanctions, like

[10] ibid.
[11] Home Office*, Psychoactive Substances Bill: Fact Sheet: Overview of the Misuse of Drugs Act 1971* (Home Office 2015).
[12] ibid.
[13] Jason-Lloyd, 'More intervention on legal highs' (n 7)
[14] Home Office, *Psychoactive Substances Bill* (n 11).
[15] ibid.

prohibition and premises notices and orders which authorities may utilise to stop prohibited activities from taking place. However, these stop and search powers are also found in the MDA and the PSA's Irish equivalent, the Criminal Justice (Psychoactive Substances) Act 2010. Both Acts have struggled to eliminate drug production, supply and use. Indeed, NPS use in Ireland increased between 2011 and 2014. Therefore, the PSA's enforcement mechanisms might not be as effective as intended.[16] Considering that it was not the Government's intention for the PSA to lead to mass criminalisation of young people, there is no offence for possessing NPS, except in custodial institutions.[17] Importing and exporting NPS is an offence, but some are concerned that importing might include buying NPS from non-UK based websites.[18] This is particularly troubling as some websites list substances as legal highs. As a result, purchasers, believing they are legal, could be committing an offence capable of carrying a seven-year sentence. This issue demonstrates the need for proper public education regarding the PSA.

The PSA excludes legitimate substances such as food, alcohol and nicotine. However, its exclusions are somewhat controversial. For example, as a food, nutmeg is exempt from the PSA, unless explicitly sold for its psychoactive qualities. This challenge could be problematic in practice, as it could be difficult to prove someone's intention in such scenarios. It appears the aim behind the blanket-ban is to demonstrate that NPS use is unacceptable and action is being taken.[19] However, the PSA is criticised for being ambiguous and lacking legal certainty. The ACMD expressed concern regarding the omission of the word 'novel' in the definition of psychoactive substances as it is almost impossible to list all possible, desirable exemptions.[20] Therefore, the scope of the PSA is more extensive than originally intended as it

[16] Nicholas Burgess, 'The Lost Symbol: A Semiotic Analysis of the Psychoactive Substances Act 2016' [2017] ASLR 7, 109-120.
[17] Home Office, *Review of the Psychoactive Substances Act 2016* (Home Office 2018).
[18] 'A simple (ish) guide to the Psychoactive Substances Act' <http://www.drugwise.org.uk/wp-content/uploads/Psychoactive-SubstancesAct.pdf> accessed January 12 2019.
[19] Burgess, 'The Lost Symbol' (n 16).
[20] Advisory Council on the Misuse of Drugs, 'ACMD Letter to the Home Secretary on the Psychoactive Substances Bill' (2015).

also includes, “a multitude of legitimate substances, with no guidance on how to distinguish the legal from the illicit.”[21]

Moreover, evidence indicates that disrupting the supply market by closing head shops often leads to market displacement.[22] Furthermore, the PSA has not eliminated the supply of NPS as there have been hundreds of seizures and offences since its enactment. Although open retailing of NPS has ceased, they continue to be sold, just less visibly.[23] It seems it has not deterred people from using NPS. The restriction has only made the drugs harder to obtain. However, it now allows criminal organisations to supply the demand for NPS more freely. This breach leaves the Government unable to control NPS any better than…'conventional’ recreational drugs under the MDA.”[24] Arguably, it has even led some to turn back to conventional recreational drugs, as there is no difference in price or availability.[25]

Conclusion

Evidence suggests that the more rapidly new controls are put in place, the higher the rate of NPS coming onto the market and, sometimes, the more significant their potency.[26] Consequently, many countries are rethinking their drug policies and legislation, testing radical approaches such as the decriminalization of all drugs in Portugal or the legalized regulation of cannabis in Uruguay. Unfortunately, where other countries have questioned the merits of prohibition, the UK chose to widen the ban on drugs.[27] Despite the UK making multiple attempts to remedy the situation, NPSs are not going away; therefore, it may be time to consider other approaches. And, as an global problem, nations should focus on “sharing

[21] Burgess, ‘The Lost Symbol’ (n 16).
[22] ACMD, ‘ACMD Letter to the Home Secretary’ (n 20).
[23] Home Office, *Review of the PSA 2016* (n 17).
[24] Burgess, ‘The Lost Symbol’ (n 16).
[25] Home Office, *Review of the PSA 2016* (n 17).
[26] Home Office, *Psychoactive Substances Bill* (n 11).
[27] Burgess, ‘The Lost Symbol’ (n 16).

information and best practices, using collective knowledge to develop common strategies…as part of an effective action plan."[28]

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Legal Skills 2: Debate Resolution (Supporting)

Janelle Martinez-Suckoo

LLB1 (first year full time)

OUTLINE DEBATE ARGUMENT SUPPORTING THE RESOLUTION

'This House believes that the concept of trial by jury, in the modern world, has been eroded to the point that jury trials should be abolished. Members of the judiciary are capable of arriving at a verdict that it is fair and reliable in all civil and criminal matters.' In relation to this statement we submit the following in support that:

1) The jury are not always competent

a) It is possible for any person who is on the electoral roll to serve on a jury according to s.321 of the Criminal Justice Act 2003.[1] While this almost seems necessary, as it is a true reflection of a society, it does not come without its difficulties.

b) While jurors may be keen on following directions, they may have a difficult time attempting to understand said directions as seen in the case *Scholfield*[2] where a member of the jury confessed that they didn't understand terminology used in the facts of the case presented to them; however, still convicted the accused.

c) A report was conducted by Professor Cheryl Thomas which found that, "Over half of the jurors at Winchester, perceived the judge's directions as easy to understand; however, only a minority fully understood the directions in terms used by the judge."[3]

[1] Criminal Justice Act 2003
[2] *Scholfield* [1993] Crim L Rev 217.
[3] Rona Epstein, 'Are Juries Fair?' [2011] CL & J, 195-196

2) Internet access and social media negatively influence the modern jury system

a) Strict rules exist against jurors using social media to influence their decisions based on the judge's directions as seen in *Attorney General v Dallas*[4] where a juror conducted internet searches, and discovered previous rape convictions of the defendant and shared this information with other jurors.

b) Social media negatively impacts the modern jury system as seen in *Attorney General v Davey and Beard*5[5], where a juror had conducted internet searches on the defendant, shared the information with other jurors, and it was later found that he had made an explicit post on Facebook entailing information on the conviction of the defendant.

c) In the case *R v Jackson*[6] the judges agreed that, "It's unreasonable to require anyone not to have any means of accessing the internet in their home." It can be said that the jury's incompetence coincides with internet usage as seen in the Vicky Pryce case 2013 where the jury inquired, "Whether they could take into account evidence that was not provided to them in court."[7]

3) Juries take into account inadmissible factors

a) It is essential for juries to look at cases from an independent standpoint in order to ensure the right decision is being made. Unfortunately this is not always possible as seen in *Thompson*[8] where a juror admitted to a member of the public that the jury initially wanted to acquit the case, but were persuaded to convict after finding a list of previous convictions of the defendant.

[4] *Attorney General v Dallas* [2012] EWHC 156
[5] *Attorney General v Davey and Beard* [2013] EWHC 2317
[6] *R v Jackson* (2013) 177 JP 147, [2012] EWCA Crim 2602
[7] *R v Pryce and Huhne* [2013]
[8] *Thompson* (1961) 46 Cr App R 72.

b) It essential to consider elements of prejudice that will occur within the jury system which can be seen in the cases *Mizra*[9] and *Gregory v UK*[10] where both judges were made aware of a racial element within the jury, and the jury was re-directed to put any prejudice thoughts to the back of their minds; Needless to say, both defendants were convicted.

Conclusion

"There are obvious disadvantages of this system, thus making it an unattractive alternative."[11] While modernisation and developments in technology are major factors, it can be said that there have been fewer improvements than difficulties within the English jury system.

[9] *Mirza (Shabbir Ali)* [2004] UKHL 2; 1 AC 1118.
[10] *Gregory v U.K* (1997) 25 EHRR 577.
[11] Paul Fitzpatrick, The British jury: An argument for the reconstruction of the little parliament [2010] Cambridge Student Law Review

Legal Skills 2: Debate Resolution (Opposing)

Janet James

LLB1 (first year full time)

'This House believes that the concept of trial by jury, in the modern world, has been eroded to the point that jury trials should be abolished. Members of the judiciary are capable of arriving at a verdict that it is fair and reliable in all civil and criminal matters.'

In opposing the above resolution, we submit the following: -

1. **The important role that jury's play in the Civil and Criminal process:**

Despite the perception of bias and bigotry, the jury system can still deliver justice!

It is a fact that the Jury system has been in existence for hundreds of years and has worked more often than not!

Jury nullification is a concept where members of a trial jury find a defendant not guilty if they do not support a government's law, do not believe it is constitutional or humane, or do not support a possible punishment for breaking the law. This may happen in both civil and criminal trials. In a criminal trial, a jury nullifies by acquitting a defendant.

2. **Empirical evidence of trial by jury in the modern world:**

Peter Thornton asserts that the modern jury is 'undoubtedly a different creature from the jury of 1954'.[1] The qualification and eligibility for jury service, set for many years in the early

[1] Peter Thornton, 'Trial by Jury 50 years of change' [2004] CLR, 684

nineteenth century, was modernized in *The Criminal Justice Act 1972* by the abolition of the property qualification, and by the reforms of *The Juries Act 1974*[2] with, amongst other things.

With response to the modern world and external influences we can look at the internet as the most widely used modern source of information, and we argue the fact that before the internet was the possibility of people talking to each other about the case, there was telegram and the phone.

3. **The social effects of trial by Judge alone in civil and criminal matters**

The abolition of jury trial in favour of trial by judge alone could result in demised public confidence towards the criminal justice system being irrevocably eroded.

[2] Juries Act 1974, s 1(a) and s 12 (4)

Legal Skills 2: Summative Moot

Academic session 2018/19

Facts and Procedural Outline

Rich Gibson, a superstar and tennis fan places advertisements in the National Daily Press concerning Wimbledon tennis tickets for the last Sunday of the tournament. He is advertising his box for the Sunday as he is unable to attend. He is organising and performing at a huge open air concert in Hyde Park, campaigning for measures to combat climate change.

The advertisements read:

> 'Rich Gibson is proud to be headlining the "Cool It" Festival in Hyde Park. All tickets bought from the record company's offices will be at 25% discount. The first customer through the doors tomorrow morning will also receive, absolutely free, the use of Rich Gibson's private box at Wimbledon on Sunday.'

Ferdinand rushes to the record company with his sleeping bag, and stays outside until Friday morning. Shortly before the company offices are due to open, the manager tells Ferdinand that the first customer will, in fact, receive £40 worth of music vouchers. However, Ferdinand, ignores this and, on entering the offices as the first customer, demands the use of the box at Wimbledon on Sunday.

Lower Court Decision

Judge Parrott in the County Court held that no contract was formed:

(i) In respect of the advertisement relating to the use of the box, this was an invitation to treat (*Partridge v Crittenden* applied).

(ii) If in fact the advertisement was an offer then Ferdinand's acceptance was not complete and therefore no contract was formed (*Errington v Errington* applied).

Instructions

Ferdinand has decided to appeal to the Court of Appeal.

Senior Counsel should take point (i) and Junior Counsel should take point (ii).

Structure of the Moot

1st speaker – Senior Counsel for Appellant	10mins
1st speaker – Junior Counsel for Appellant	10mins
2nd speaker – Senior Counsel for Respondent	10mins
2nd speaker – Junior Counsel for Respondent	10mins

Skeleton Outline (1000 words)

Each team MUST construct and submit a skeleton argument and a list of authorities prior to the moot. The skeleton outline must be no more than 1000 words in length. Each team member should contribute 500 words and each team member's contribution will need to be clearly separated/distinguished, which is individually assessed along with each student's performance.

Legal Skills 2: Skeleton Argument for the Senior Appellant

Kathy Gonzalez

LLB1 (first year full time)

IN THE SUPREME COURT

BETWEEN

FERDINAND

APPELLANT

-v-

GIBSON

RESPONDENT

<u>GROUND OF APPEAL - SENIOR APPELLANT</u>

In respect of the advertisement relating to the use of the box, this was an offer (Partridge v Crittenden) applied.

SUBMISSIONS - SENIOR APPELLANT

- **FUNDAMENTAL DIFFERENCE BETWEEN OFFER AND INVITATION TO TREAT**

For an offer to be accepted there must be an offer to begin with, that is, where a term to form a contract is made by one party and accepted by another. Whereas in an invitation to treat, one

party is making a statement with no intention for it to become binding when the other party communicates its assent to the terms of the invitation. In the instant case, there was an offer and it was not an invitation to treat. (*Harvey v Facey [1893] AC 552*, authorities bundle tab 1)

- **MAKING AN OFFER**

Where advertisements resulting in the intention to form a contract between two or more parties is generally seen as an invitation to treat and not an offer, the distinction between these two cases show that in reality, where there are promises for actions to be performed, this is satisfied by the definition of an offer. (*Partridge v Crittenden* [1968] 2 All ER 421*,* authorities bundle tab 2 and *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256, authorities bundle tab 3 at pages 262, 268, 273-274)

- **WHAT IS IN AN OFFER**

In communicating an offer, where it is 'clear, definite, and explicit', you must contend that acceptance must be conveyed in the same way. An offer also shows the expression of willingness to form a contract on specified terms, with the intention of being binding once the terms are met. In the instant case, there were clear terms, that being, what to do to accept the offer, and what they would be accepting. (*Lefkowitz v Great Minneapolis Surplus Store, Inc.* [1958] 86 NW 2d 289 authorities bundle tab 4 and *Storer v Manchester City Council* [1974] 1 WLR 1403, authorities bundle tab 5 at page 1408)

- **REVOKING AN OFFER**

Should an offer be withdrawn, reasonable steps must be taken to ensure that it is done in a similar or more efficient method to which it was made. In the instant case, none of this was done. Once the appellant had commenced the performance of acceptance, the terms were then changed. (*Shuey v US* [1875] 92 US 73*,* authorities bundle tab 6 at pages 76-77)

Legal Skills 2: Skeleton Argument for the Junior Appellant

Joeniel Bent

LLB1 (first year full time)

CAYMAN ISLANDS

BEFORE THE COURT OF APPEAL OF TRUMAN BODDEN LAW SCHOOL

CIVIL SIDE

CAUSE NO. 4 OF 2019

APPELLANT

FERDINAND

V

RESPONDENT

RECORD COMPANY & RICH GIBSON

Appellants Submissions

a. Parrott J erred in deciding that the appellant's acceptance would be incomplete if the advertisement was an offer. Had the lower court read the advertisement as a whole, it would have found that there had been two possible trade opportunities provided in the advertisement; the first being the opportunity to purchase tickets at a discount, if bought through the record company; the second being the chance at earning the use of Rich Gibson's private box upon being the first customer, on a specific day. On the second provision of the advertisement, in stating that the "**first customer** through the doors **tomorrow**" [emphasis mine] would have been awarded this additional benefit, the advertisement amounted to

a **unilateral offer** acceptable by performance, similar to that of ***Carlill*** [1]. The appellant was in fact the **first customer** of **the day**, a required act imposed directly on any potential buyer by the Respondent's and therefore provided acceptance.

b. In applying ***Errington v Errington and Woods***[2] the lower court negatived its own decision. The applied case clearly indicated that there had been a unilateral offer made, which had then been accepted by part performance resulting in a collateral contract being formed between the parties. In the matter at hand, any indication in any form to the record company or to Rich Gibson of intention to be the first customer could not be acceptance as there was an implied requirement, as per the advertisement, that one actually be the first customer, on a specific day. Similarly, in *Errington*, simply agreeing to pay the installments could not amount to acceptance of the offer, it required specific performance, i.e. actual and consistent payment of all installments on the property. In both scenarios, performance was required to form the contract. It is also worth noting that in *Errington*, there was no dispute with regards to actual ownership of the property. It had always remained the father's property. The relevant issue was the appellant's rights as it related to occupancy of the property. There had been ongoing performance of the requirements of the offer and therefore a contract had been formed between them. This case has a similar issue in this regard, whereas the Appellant's compliance with the requirements of the advertisement would not grant him ownership of the private box, it would only allow him to occupy it for the period indicated, as a privilege. This case was rightly applied, but to the wrong end.

Authorities

1 Carlill v Carbolic Smoke Ball Co. [1892] EWCA Civ 1; [1893] 1 QB 256
2 [1952] 1 KB 290

Legal Skills 2: Skeleton Argument for the Senior Respondent

Tiffany Titus

LLB1 (first year full time)

IN THE MOOT COURT OF APPEAL

Ferdinand

(Appellant)

-V-

Rich Gibson

(Respondent)

SENIOR RESPONDENT

Authorities

1. *Carlil v Carbolic Smokeball Company* [1893] 1 QB 256
2. *Harvey v Facey* [1893] AC 552
3. *Partridge v Crittenden* [1968] 1 WLR 1204
4. *Scammell & Nephew Ltd v Ouston* [1941] AC 251

Ground of response: (i) The advertisement, in respect of relating to the box, was an invitation to treat and it therefore could not be accepted by Ferdinand. Additionally, the advertisement lacked clarity and certainty and thus could not be an offer to buy the box.

Submissions:

1. The advertisement in the National Daily Press was merely an invitation to treat and thus the company is not bound to sell Rich Gibson's box to Ferdinand.
2. Applying ***Partridge v Crittenden***, the advertisement was not an offer because Ferdinand first had to make an offer to buy tickets to the 'Cool It' festival. Therefore, the responsibility was on Ferdinand to make an offer, whether it be purchasing one or more tickets.
3. ***Carlil v Carbolic Smokeball Company*** cannot be applied in the current case. According the ratio of that case, i.e. ***Carlil***, the contractual relationship between the two instances were separate, however in the current case, there is only one contractual relationship, i.e. that the purchase of the tickets and the price of Rich Gibson's box is one contract.
4. As the advertisement was vague, specifically pertaining to the price, it distinguishes the current case from ***Carlil*** and thus the advertisement cannot be considered an offer.
5. In the case of ***Harvey v Facey***, it was held that a mere statement of what price is acceptable does not make that statement an offer. Thus, the advertisement carried no implied contract to sell to Ferdinand just because the lowest price for Rich Gibson's box was given.
6. Additionally, the terms pertaining to the price were too vague to be considered an offer as per ***Scammell & Nephew Ltd v Ouston***. The words must precisely state that the price given, is the actual price for the item, for there to be an offer. Thus, because the advertisement never said how much tickets the first customer must purchase in order to receive the box, the advertisement could not constitute an offer.

In conclusion, for the above reasons, I submit that Judge Parrott in the County Court was correct in deciding that the advertisement in the National Daily Press, was indeed an invitation to treat and not an offer. Thus, Rich Gibson is not bound to give Ferdinand his box as there was no contract formed.

Legal Skills 2: Skeleton Argument for the Junior Respondent

Tishanna Higgins

LLB1 (first year full time)

BETWEEN:

Ferdinand (the appellant)

- v –

Rich Gibson (the respondent)

Background:

Mr. Rich Gibson advertised his private box at Wimbledon on Sunday as he is unable to attend due to a contract at Hyde Park which he will be performing at. In the advertisement, he advertises the sale for those tickets at 25% from the records company office and also announces his private box for the first customer. However, the following morning the appellant, Ferdinand was told that the first customer would actually receive 40 euros worth of music vouchers. Which lead to a dispute if in fact a contract was formed.

At first instance, Parrot J did uphold the claim, finding the advertisement was an invitation to treat and therefore no contract was formed. On behalf of Mr. Gibson, we ask the court to dismiss this appeal on the basis that the learned judge's decision was correct for the reason he gave.

Junior Respondent Submissions:

Change of terms

The agent, Store manager changed the terms before the appellant could enter the store and it was up to the appellant to engage and consider the new offer. This voids the initial offer.

Consideration and Acceptance

As a part of creating a contract part of the criteria is "good" consideration. Good consideration must be given to be legally bound in completing the act as seen in *Errington v Errington and Woods*, 'the father's promise was a unilateral contract - a promise of the house in return for their act of paying the instalments.' In *Soulsbury v Soulsbury* however, it was ruled that in this instance there was a unilateral contract.

Acceptance is covered under section 35(1)(a) of the *Sales of Goods Act 1979* that when the buyer notifies to the seller that he has accepted the offer and in this instance Ferdinand did not do so. Acceptance and consideration are synonymous to one another.

Termination/Rescission/Revocation of the offer

There is an implied waiver of the communication requirement in the case of unilateral contracts. In *Barry v Davies* it was held that the seller can reverse its decision to sell before the fall of the 'hammer' or final date, bell etc. This was completed via the agent, store manager at the store before the first customer could walk through the door.

The only way that the appellant in this instance could claim that the invitation to treat was legally binding and be rewarded is if the *promissory estoppel* doctrine was implemented. Promissory estoppel as identified by Jill Poole, is when the offeree is injured or suffers a resulting loss and in this instance the offeree did not suffer. In *Errington v Errington and Woods,* Denning LJ stated,

"It could not be revoked by him "the father" once the couple entered on performance of the act, but it would cease to bind him if they it incomplete and unperformed. They have acted on the promise and neither the father nor his widow, his successor in title, can eject them in disregard of it."

This paragraph by Denning LJ identifies that the only way promissory estoppel can be used is if the act hadn't started and was revoked.

Authorities:

Partridge v Crittenden (1968)

Carlill v The Carbolic Smoke Ball Company (1893)

Grainger and Sons v Gough (1896)

Draft Common Frame of Reference (DCFR), 2009

Harris v Nickerson (1893

Companies Act 2006

Poole, Jill. Textbook on Contract Law 13th edn. 2016.

Poole, Jill. Casebook on Contract Law 13th edn. 2016

Edwin Peel, Treitel on The Law of Contract 14th edn. 2015

Errington v Errington and Woods [1952] 1 KB 290

Sales of Goods Act 1979

Soulsbury v Soulsbury [2007] EWCA Civ 969

Barry v Davies Barry v Davies (t/a Heathcote Ball & Co) [2000] 1 WLR 1962

Debates and Moots

Michael Bromby

LAW836 Legal Skills 2 Module Coordinator

The student debates and moots in the Legal Skills 2 module were well prepared and of a very high standard. The seminars were used for two formative debates and two formative moots before the final summative exercises were filmed and graded.

The debate outlines and the skeleton arguments in this edition of the Student Law Review are only one part of the students' contributions. For both activities, the written submissions were graded but the bulk of the marks related to the oral performance of the student.

For example, the moot mark comprised 20% written submissions, 35% legal knowledge (arising from both the written and oral submissions), 25% presentation skills and 20% on handling questions from the judge.

The student examples in this edition illustrate the different ways in which students might adopt a particular style, argument and approach to the moot problem. Some of the moot skeleton arguments are accompanied with a short video clip of the actual submissions that were recorded and graded.

You will find further hints and tips under the TBLS Mooting section of the VITAL module for TBLS and also more details in the LAW836 module itself for first year students.

Library and Research

Victor Villarin

TBLS Assistant Librarian

The TBLS library sends regular emails detailing hints and tips for law students.

Here are a couple of examples:

Tip of the Week #1

Bodleian Law Library advises that referencing work properly is essential to avoid plagiarism. Always use the ***Oxford Standard for the Citation of Legal Authorities (OSCOLA), 4th ed.*** to cite primary materials such as cases and legislations as well as simple secondary sources. Cardiff University developed a fun and interactive tutorial to using ***OSCOLA*** called ***Citing the Law*** and it can be accessed by clicking the link below:

https://xerte.cardiff.ac.uk/play_6716

The tutorial will show you how to:

- cite cases and legislation, i.e. the 'primary' sources of law, in the accepted way
- refer to 'secondary' sources such as books, journals and government reports in your work, and
- write a bibliography

using the Oxford Standard for Citation of Legal Authorities (OSCOLA), fourth edition.

Tip of the Week #2

The type of ***brackets*** used around the date in a citation indicates the importance of the date when finding the case.

Square brackets show that the ***date is essential*** to finding the report. Some law report series publish more than one volume per year. For example:

- **[**1968**]** 2 All ER 541 = Volume 2 of the 1968 All England Law Reports, page 541

As there is a volume 2 of the All England Law Reports each year, you need the date in order to find the correct volume 2. Some report series don't have volume numbers at all, in which case the year is the only clue as to which volume you need and will therefore be in square brackets.

Round brackets indicate that the ***date is less important*** when tracking down the case and that the volume is required to locate the case report. For example:

- **(**1976**)** 62 Cr App R 262 = Volume 62 of the Criminal Appeal Reports, page 262

The Criminal Appeal Reports publish one volume each year, numbered consecutively, so the year is less crucial when locating the case report as the correct volume can be identified from the volume number alone.

Theme Week

Michael Bromby

Theme Week Coordinator

For the first time, TBLS piloted a "Theme Week" on the topic of medical law in the academic year 2018/19 during semester 1. The purpose of a theme week was to introduce a legal topic that was not offered as an elective at that time, that drew on many of the existing modules taught on the LLB across all levels. The aim was to introduce students to interesting topics that build upon the core modules of the law degree and illustrate the broad application of legal principles to new or developing areas of law. The benefits included a new perspective on current modules, a reflection on past modules taken and a taster of modules yet to come! Additionally, it brought together all law students from all levels in one place, cross-fertilising ideas and discussion amongst the TBLS law students in three extra sessions held during teaching week 7 (Mon 5 – Fri 9 November 2018) of the first semester.

Programme

Level	Session 1	Session 2	Session 3
LLB1	Criminal	Contract	
LLB2	Tort		Commercial
LLB3		EU	IP

Session 1: Medical negligence, malregimen and systems of no-fault liability

This session drew on the core modules of **criminal** and **tort** to evaluate criminal and civil liability for a wide range of medical and healthcare practitioners. Examples were taken from the *Shipman* case, the role and responsibilities of the General Medical Council in regulating the medical profession and the controversial US *Tarasoff* duty to warn. No fault liability systems, such as those present in New Zealand and Scandinavia, were discussed as alternatives to adversarial litigation.

Session 2: Consent to medical research trials and tissue donations

This session built on the core modules of **contract** and **EU** to explore the contractual basis of clinical research trials with healthy volunteers and with patients who may or may not benefit from new drugs being trialled. Focus was placed on the EU's clinical trials directive and on medical tourism within the EU in order to assess patient autonomy, choice, aspects of coercion and expectations from a number of perspectives.

Session 3: Commercial medical interests

Medical industries, research and development depend on a full range, of intellectual property rights, but the most important bases for their commercial business models are patents and related rights, trademarks and trade secrets. This session focussed on the way in which intellectual property rights and the medical industry protect and advance treatment methods for patients.

Each two-hour lecture formed part of the core syllabus and teaching for both modules and so required the attendance of all students taking the module. Students in the other year group were strongly encouraged to attend in order to maximise the benefit of the lectures that they must attend.

Additionally, other modules which were not part of the three main theme week events offered a medical or healthcare focus, where possible, which was integrated into the normal teaching pattern for these modules.

Legal Skills: Judicial reasoning, legislative drafting and in relation to physician assisted suicide and mercy killings. Discussion of whether the UK will ever legislate in this area.

Principles of Evidence: The role and responsibilities of expert witnesses highlighting the *Clark*, *Patel* and *Cannings* cases where wrongful convictions arose in part from erroneous expert witnesses and problematic statistical evidence.

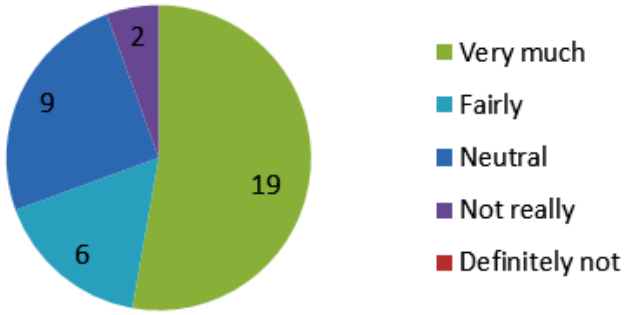
Employment Law: Focus given to terms and conditions of employment in relation to medical health, illness, duty to pay wages, and whether employers can request or require treatment for employees.

Wills & Succession: Mental capacity, particularly in relation to pre-operative patients and those with terminal diagnoses.

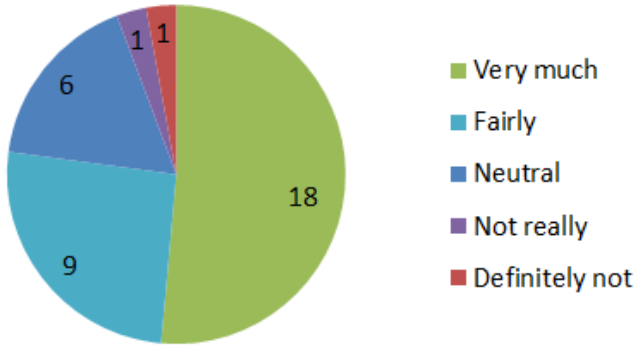
Student Feedback

Theme Week was largely well received, especially so by first years who appreciated a taster of future modules and second years who saw existing modules in a better connected format. Students were asked to provide feedback on the sessions, some of the responses are detailed below:

How useful is the concept of a theme week (i.e. a topic that is not offered as an elective module)?



How interesting or engaging was this year's choice of medical law?



Free Comment boxes asking how well the theme week relates to current modules tended to acknowledge the fit with tort and criminal law. Several commented on the depth and focus that was interesting to explore in more detail. Overall, positive comments arose when students recognised the connectivity between modules and negative comments arose predominantly from the small number who preferred not to see theme week run again (4) or didn't see a fit with their anticipated career pathway.

Future Developments

It is proposed that a second theme week takes place on a different topic, and suggestions are welcome for future themes in subsequent academic years. Topics under consideration include: maritime, environmental, sport, cybersecurities, media & communications and consumer rights. An external speaker from a local law firm may be appropriate for future consideration as well as broadening out the audience to local practitioners.

TBLS Events: Sir John Goldring

Annette Vaughan

Educational and informative presentations were made during the year by distinguished and experienced legal professionals. Sir John Goldring was among the presenters. Goldring received an appointment in 2016, as the President of the Cayman Islands Court of Appeal. In January of the following year, he was selected by the United Kingdom to be the Coroner for the Hillsborough disaster.

Sir John concisely related how he presided over the inquest to determine the circumstances surrounding the untimely and unfortunate death of ninety-six (96) men, women and children. He related that they were crushed on April 15, 1989, as a result of overcrowding during a Football Association (FA) Challenge semi-final match between Liverpool and Nottingham Forest.

The Coroner himself made the presentation which in itself was unique. As a result, the students welcomed the rare opportunity of getting first-hand perspectives on judicial matters, procedures and challenges. For example, Sir John expressed the high demands and expectations required of the jury in their lay and inexperience capacity. He also recounted the extreme stress that the hearing placed on survivors and the families of victims. He also reflected on the difficult decisions that he was required to make in his capacity as Coroner.

The presentation was very significant in that it synchronised with the Legal Skills syllabus. It brought clarity and amplification to the roles and responsibility of the jury and judiciary and the functions of the court. All are encouraged to attend a similar presentation should it reoccur. It would no doubt prove to be very meaningful.

Alumni Profile: Erin Panton

Truman Bodden Law School 2011-2014

PPC/LPC Location & Dates: University of Law (London) 2014-2015

Current Employment: Associate at Walkers Law Firm

Erin was born and raised in the Cayman Islands and attended Cayman Prep and High School. Erin began attending Truman Bodden Law School in 2011 and completed her LL.B with Upper Second Class Honours in 2014 (top of the class for years 1 & 2, and top Caymanian in year 3). Erin then completed the Legal Practice Course at the University of Law in London (Bloomsbury) with Distinction in 2015, and began her articles of clerkship with Walkers in March 2016.

Erin completed her articles in September 2017 and is now an associate in the Investment Funds group of the Walkers Cayman Islands office. Specialising in both hedge and private equity fund structures, Erin has experience in providing advice to various different types of fund structures, from the structuring and formation stage to the end of life and winding down stage. Erin also regularly provides advice in relation to, and assists with, ongoing maintenance for fund structures, in addition to providing general corporate and regulatory advice.

Erin humbly took time out to answer a few questions for our first law review for TBLS.

The aim is to help students in their own law school journey. Below are a few questions we asked Erin. We thought this could be a source of inspiration for current students and reminisce on past TBLS Alumni and how far they have come. Erin is a perfect example.

What made you want to pursue a Law Degree?

Initially, it started out as a challenge for myself. I never thought I had what it takes to study law or become a lawyer, but I decided to at least give it a try anyway. As it turns out, I did have what it takes, and did better than I ever thought I would have. As years went by, I continued to surprise myself and learned that it is actually possible to do anything you want to do, as long as you put your mind to it.

Why did you choose to earn your LLB at the Truman Bodden Law School?

TBLS is an excellent school and always has been. Many of my family members attended TBLS before I did, all of whom turned out to be very successful people, so I knew that I would receive quality education there. On top of that, I had the added benefit of being able to stay at home and be near my family, and save some money.

What were the benefits of attending TBLS and what were the challenges?

A couple of the greatest advantages of attending TBLS are that (i) the class sizes are small and (ii) you are afforded much more face time with lecturers that you wouldn't otherwise get at big universities. Because of these advantages, it is much more likely that students will excel in their studies, given that the lecturers are generally always available to them to answer questions, discuss any issues and review and particular areas of concern for them.

As far as challenges go, there aren't really any worth mentioning on the educational side of things, beyond the usual challenges that come with law school generally. The only one I would note is that, because TBLS is a smaller school, there is generally less opportunity to study a wide variety of courses beyond the required foundational subjects. Having said that, I do not feel that this has hindered my career in any way.

How did the Law school prepare you in entering your professional career?

Whilst I may not use a fair amount of the material I learned at law school on a day to day basis, law school did prepare me for the work load I now have, and was essential in helping me develop my critical thinking skills. In addition, the various pieces of coursework helped inform

my understanding as to the most efficient and effective ways to research particular points of law – something that is still important for me to be able to do today, as even now we may on occasion receive questions from clients that may require more in-depth research in order to answer.

You were the first judicial clerk; being the first candidate can you briefly share your experience?

The judicial clerkship was a great experience. It gave me the opportunity to see the court from the inside and most importantly to understand the court and registry processes which take place on a day to day basis. I was also able to meet and get to know a lot of the court and registry staff and, moreover, I was afforded the rare opportunity to be able to spend a lot of one-on-one time with the different judges and magistrates and have meaningful conversations with them. Most are generally not afforded these experiences, so I would recommend that every article clerk apply for this short-term position, even if they do not intend to be a litigator or practice an area of law that requires court appearances.

Do you have any tips to pass on to the new incoming law students?

My tips would be to:

- use the instructors – meet with them regularly, they are there to help you. Always provide skeleton outlines for coursework for their review.
- take lectures and tutorials seriously – the majority of the information that you'll need to know to answer exam questions or coursework questions will be given to you during these sessions.
- form study groups – not just for exams, but for preparation of tutorials as well.
- get involved in extracurricular activities and the Cayman legal community in general – e.g. mooting, TBLS student society, CILPA.

External Events: Walkers Seminar

Janet James

From my perspective:

The advantage of attending seminars, training and workshops, getting involved with extracurricular group activities provided me with:

- Expert Knowledge;
- Networking;
- Renewed Motivation; and
- Understanding the practicality of what I am learning at Law School.

During my first year in Law School I joined The Cayman Islands Legal Practitioners Association (CILPA) and attended various seminars which were sponsored by different Law Firms in Cayman. I also attended seminars, training and workshops sponsored by TBLS. The topics were very interesting and provided great insight to the practical application for what I am currently studying. It offered a variety of possibilities for internship and some guidance to the area of Law that I feel might fit a career path in this profession.

Among the numerous seminars, that I attended the one that impressed me the most was "Protecting Against Privilege Waivers" this seminar explained that "the privilege only protects legal advice". It explained that in order to invoke the attorney-client privilege, the proponent must establish a communication between attorney and client in which legal advice was sought or rendered, and which was intended to be and was, in fact kept confidential. While both communications from the client to the attorney and from attorney to a client are protected, the

privilege protects only the fact that information was communicated and does not preclude disclosure of the underlying facts conveyed in those communications.

In summary - a client can never protect facts simply by incorporating them into a communication with their attorney.

It is obvious to me that these skills are important to know and understand going into the legal arena and the sooner, I understand them the more they will help equip me for a successful career in Law.

I would encourage our first year students to attend as many seminars, training and workshops as possible.

External Events: Alternative Dispute Resolution

Stephanie Ebanks

The importance of extra-curricular seminars

The element I always try to keep whether it's in my personal life, at work or law school, is looking out for progress.

In my first year of Law school I have learned to think along the lines of a spectrum of grey. Improve yourself by learning about different topics aside from what you are taught. That in law school is attending external lectures, such as the seminar presented this year by Malcolm Mackillop. Malcolm Mackillop is a name partner at Shields O'Donnell Mackillop.

This year he talked with the law school about Alternative Dispute Resolution (ADR) and establishing the skill for the Best Alternative to a Negotiated Agreement (BATNA). Traditionally, people think of lawyers standing before a judge and arguing a point back and forth, and ultimately the judge will reach a resolution. However, the re-found way of settling disputes by a way of Mediation and arbitration allows the parties to negotiate and reach a resolution that will benefit both parties. This alternative is the most used deal settlement which successfully sets for mutual gain. In this seminar we got to hear cases Mr. Mackillop won as a result of having a strong BATNA, in which he gave us the opportunity to put this into practice.

Negotiation is a strong skill to have, whether it is used in a personal setting or professional setting. No matter what career you choose to pursue, whether it be in the legal industry or not, having that skill will come into practice and knowing how to do it well is an ultimate win.

Successful skills in negotiation

The four point of reference Mr. Mackillop taught us were:

- **People**: Understand the person you are dealing with and rather than attacking the person, you always attack the problem. An example from his personal experience that he used: was an employment scenario in which rather than attacking the person, he first apologised for the ordeal. This set the tone of the negotiation.
- **Interest**: Distinguish the motivation of each party. What is each party hoping to gain.
- **Option**: Think about generating a variety of possibilities, come up with a range of solutions that will benefit all parties.
- **Criteria**: Have an objective standard. Insist on fairness. E.g.: look at the value of the offer and set a fair amount for that serving.

Before you start negotiations you look at the criteria's set above and formulate a plan. Look at the facts of the case, and come up with how you would start the conversation and also have an explanation behind your interest and options.

However, despite the flexibility, cost sufficiency that can be provided by mediation and arbitration, it is important to be aware that you will not always get the outcome you want. That is where your BATNA comes into play; it is a guarantee safeguard for your client.

An example Mr. Mackillop used to distinguish this is the following scenario:

A Company decides to let go of an employer and set to compensate the employer a sum of 5 million and a bonus of 3 million, which equals to the total of 8 million. There are two objectives you can use: 1) you can file a lawsuit and create a case based on the facts. This could entail a breach of contract, proving the company was incorrect for letting the employee go. However, this can ultimately lead to court which will accumulate extra expenses, time, and no guarantee outcome in the favour of either party. Or 2) take the deal if you are able to get a new job, as it would be senseless to take the matter to court in which you may lose and end up with little to nothing.

In this case if you are taking the route of filing a lawsuit, there is a grander systematic method you would have to follow, the greatest is looking for precedents and ensuring your lawsuit has strong arguments. Needless to say, this example shows the choices you have and narrowing down a BATNA.

Learning Outcome:

Mr. Mackillop attentiveness to our practice runs and giving constructive feedback surely will help in building the skill of negotiation and public speaking.

The activities gave us the opportunity to excel the skill of working in a team, and find common grounds with the opponents; it also drove us to think fast and question our decision.

While the above doesn't even cover half the series of lectures, hopefully it will attract some interest to attend external seminars and just build a strong overall knowledge on topical issues.

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