



# TRUMAN BODDEN LAW SCHOOL STUDENT LAW REVIEW

*Issue 2  
September 2020*

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 2**

**September 2020**

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## **Foreword from the Solicitor General**

Reshma Sharma

Solicitor General and Chief Officer, Portfolio of Legal Affairs

As the Solicitor General and Chief Officer of the Portfolio of Legal Affairs (under which the Law School officially sits), I am delighted to offer some words of welcome to this new edition of the Student Law Review.

Over the past few years, I have had the pleasure of being involved in various Law School activities, most recently, sitting as the Moot Court Judge for the finals of the student mooting competition. It is gratifying to see our students – under the mentorship of their lecturers - in the ‘courtroom’, applying both their legal knowledge and advocacy skills on their journey to becoming legal luminaries in the future. This is but one of the Law School’s many excellent initiatives and I applaud the work that it has undertaken on this latest project.

Whilst this Student Law Review is primarily focussed on the first year Legal Skills module, it plays an important role in developing skills that are needed throughout Law School and beyond. Well-trained lawyers will be developed not only from their undergraduate law school experience but also the Professional Practice Course, Articled Clerkships and thereafter, from life-long training acquired as practicing lawyers (indeed, we are often told that this is where the real learning begins). With that in mind, I am pleased to see contributions from Articled Clerks and qualified lawyers as well, all reflecting on their learning paths throughout the various stages of their legal training and careers.

I am not aware of many countries, if any, where the remit of a Solicitor General includes responsibility for a law school. This is one of the unique features of the Portfolio of Legal Affairs. I am therefore very proud to see this publication highlight the work of our students, the Law School’s various events, and the developmental experiences of Articled Clerks and Attorneys-at-Law alike.

For the incoming first year students of 2020, and indeed all TBLS students, I wish you the very best in your studies and hope that the contributions to this Student Law Review will provide

you with stimulating reading which in turn contributes in some meaningful way to not only your core legal studies but more broadly, to your lives.

## **Introduction to the 2020 TBLS Student Law Review**

Michael Bromby

Academic Editor

The aim of this publication is to provide incoming LLB1 students with examples of coursework that achieved high marks from the modules Legal Skills 1 & 2 during the 2019/20 year. In addition, we seek to capture and reflect on external speakers and other events that take place during the academic year at TBLS. This year we feature two recent cases from England & Wales for the case notes section: the grim tale of Berlinah Wallace who sought revenge on an ex-boyfriend with an acid attack as a criminal case, plus the Supreme Court's decision on employment status in Pimlico for as the option for a civil case. As usual, the research task was on a new piece of legislation for this academic year and it reviewed the reasons to criminalise 'upskirting'. The debate outlines and moot skeleton arguments complete the set of assessed work for the first year Legal Skills module – please use these as good examples, they are not intended to replace OSCOLA, which should remain your ultimate reference guide.

Following the success of the pilot 2019 Student Law Review, this year we bring a larger collection of work. New sections include the reflective reviews from some of the Articled Clerks in the Cayman Islands. We hope that this will be of interest to the wider student body and hopefully to the legal profession in the Cayman Islands and a wider body of prospective students and other interested parties.

A small editorial team of first and second year students met following the exam period to discuss the format and content. 2020 was a particularly difficult year due to the Covid-19 pandemic and the lock-down that followed - indeed, there is an article in this year's edition that

reflects on the lock-down from a student perspective. The editorial team met virtually using the Microsoft Teams platform to compile the law review.

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. This entire publication is student generated and student edited, so I am grateful to the contributors and editors alike for their hard work and effort in putting everything together over the summer break.

This year, we are delighted to feature the Hon Deputy Governor Franz Manderson in our Graduate Profile section. We also have a range of reports on TBLS in-house events and external events that students have attended at local law firms.

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

## **Welcome from the Law School Director**

Mitchell Davies

Director of the Truman Bodden Law School

I am pleased to write a welcome to this new and improved edition of the Student Law Review. Many law schools publish law reviews that feature lengthy articles on obscure parts of the law; but the format here at TBLS is more practical with a focus on improving student coursework and reflecting on the various events that take place in the Law School or elsewhere in the legal community of the Cayman Islands.

The goal of this law review is to promote higher standards of critical thinking and writing that will assist all students, not just the first years for which this publication is primarily written. I



am particularly impressed with the samples of coursework coming from so many of our first year cohort who are now progressing into their second year. These entries were all graded with either a first-class or upper-second mark.

The student editorial team have worked hard to compile this edition, in unprecedented circumstances that are reflected in the students' reflections on the Covid-19 lockdown in the article in the next section. They have endeavoured to ensure that all entries comply with OSCOLA referencing and follow a general house style in their format. Student Law Reviews are not always perfect, but they showcase a regular portfolio of work, thus honing the skills of the editorial team and providing examples that future students can use as a point of reference.

*Caveat emptor*, whilst these entries show examples of 'good work', current students should read with a critical eye to consider how they would have improved the style, layout, content or critical analysis. Congratulations again to the editorial team and contributors to the 2020 edition.

## Editorial Team: 2020 Edition

Representing the 2019/20 first year cohort, the incoming members of the editorial team.



**Diana DeMercado**

Diana is a full-time student and hails from Cayman Bac. She is a recipient of a Legal Scholarship at Harneys, where she is also employed and gains valuable legal experience in the Dispute Resolution practice group. Diana holds an associates degree from UCCI in business administration. Her hobbies include singing, writing and travelling. It is her long term intention to become involved in politics as she is passionate about the future of the Cayman Islands.



**Patrice Morgan**

Patrice loves dry comedy, swimming in the Caribbean Sea, cello music, the view from a plane, peanut butter cookies and digging deeper into the why of the human experience. Twenty-five years after the seed was planted, she is now pursuing her law degree. A marketer by profession, Patrice enjoys the creativity of advertising, dance performance and quite recently, writing short stories or poems drawn from her life experiences.



**Sharon Roy**

Sharon is currently studying as a second-year full time student at Truman Bodden Law School. She joined us after completing her A levels at Saint Ignatius Catholic School. Sharon enjoys meeting new people, music, arts and photography. Currently the first-year representative for the TBLS Student Law Society, Sharon took a lead in organising events. Unfortunately, the lockdown changed some of these plans!

**Representing the previous 2018/19 cohort, the continuing members of the editorial team.**



**Janet James**

Janet has a professional background in banking and compliance with a bachelor's degree in International Finance. Her over twenty years of working experience in the financial industry consisted of Mutual Funds, Hedge Funds, Stock Trading, Trust, Investment and Special Purpose Vehicles (SPV) Administration. Janet is currently perusing the Bachelor of Law Degree (LLB) at the Truman Bodden Law School and recently completed her second year. She enjoys interior decorating in her spare time.



**Annette Vaughan**

Annette is a full-time student at Truman Bodden Law School Cayman Islands. She has just completed her second year in the LLB Programme and is about to commence her third year. Annette is a teacher by profession and training and has recently retired after just over a total of thirty-eight years of service in her native Barbados and the Cayman Islands. She holds a BSc in Elementary Education and a MA in Language Arts Education. She is married to Bentley Vaughan and enjoys listening to classical and contemporary gospel music, singing, writing, reading, photography, vegetarian cooking, homemaking and travelling.

## **Graduation and Awards: 2020**

### **University of Liverpool**

#### **Bachelor of Laws (Honours) Degree**

Allen, Patri-Gail	Holder-Wellington, Natalie
Anglin, Kattina	Hollness, Regina
Carrazana, Daniella	Johnston, Brad *
Ebanks, April	Powery, Shiann
Ebanks, Davina	Seymour, Deirdre
Ebanks, Nelva*	White, Andy

\* Denotes a First Class Honours Degree

Prizes awarded for this year were:

#### **Jesse McNaughton**

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

#### **Daniel Lee**

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

#### **Brad Johnston**

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

#### **Brad Johnston**

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

#### **Brad Johnston**

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

## **Reflections: Adjusting to Studying During the COVID 19 Lockdown**

TBLS Students

We asked all students, both full-time and part-time from all levels of the LLB to provide us with their reflections of the lock-down that began in late March 2020 and effectively ended face-to-face teaching at the end of week 7. Below are some of their thoughts that were obtained towards the end of the Summer as the Cayman Islands began to relax many of the restrictions that had been in place for over five months.

### **Kattina Anglin**

LLB3 (third year full-time)

Transitioning from a classroom setting that allowed focus and interaction to study at home amidst all the distractions (TV, radio etc.) was a little difficult for me. The response and adjustment by the academic team to online studies were impressive especially considering the challenges associated with an overburdened internet system. The encouragement by the lecturers to contact them and the assistance provided was commendable. Whenever I reached out to them my lecturers spent the time with me that was necessary for me to receive the help I needed.

### **Julie Campbell**

LLB2 (fourth year part-time)

The COVID-19 quarantine may have been a bit different for me compared to most students. As a HR Consultant at the Health City Cayman Islands Hospital where the first case was confirmed, we were the first to self-isolate at our respective homes for a two-week period. For the safety

and well-being of my fellow students and staff, I alerted the Director and my lecturers that, out of caution, I would not attend scheduled tutorials or classes the following week. Therefore, my quarantine started one week before everyone else.

As a social and interpersonal learner, I thrive on a classroom atmosphere. As a student over 50, I tend only to learn computer applications necessary for me to complete my work tasks. Zoom meetings and discussion boards are not my preferred way to communicate or learn. However, ever open to change and adaptability, I was able to switch to allow my continued learning. I usually listen several times to the recordings, so this aspect of online learning I was comfortable with.

The COVID quarantine, although I never stopped working, has shown me that "you can teach an old dog new tricks or in this case new computer applications." The negative for me was trying to remember what day it was and what lecture we were on. As an extremely organized person, this was frustrating. While the online learning was more convenient for me, I miss the classroom experience and energy from my classmates.

As the President of the Student Society we had anticipated a semester that would bring together the legal community and our students. However, it has given us the time to step back, evaluate and plan so that we can execute next year.

### **Colleen Cummings**

LLB2 (second year full-time)

The 'shelter in place' and curfew orders issued by our Government during the COVID-19 outbreak forced me to explore and utilize new online resources for ongoing learning and research tasks. Access to the TBLS library was restricted and lecturers moved to electronic learning sessions. While this came with some initial anxiety, it is now a welcomed change and I look forward to the final year of the LLB with a refined aptitude for online learning and research.

**Deidre Seymour**

LLB3 (fifth year part-time)

I found the process of learning at TBLS during the Covid pandemic to be less than what I expected. The lecturers, I believe took advantage of the situation and offered less support than if there had been face to face contact. Some lecturers were extremely silent which left you wondering. The librarian Victor did an excellent job! Thanks!

**Jewel Ebanks**

LLB2 (second year full-time)

As we all know the COVID 19 pandemic affected the educational systems worldwide. I honestly did not find the online classes as interesting as they were in person. Interaction with my classmates and lecturers is what I missed most. I find that those interactions make the lectures way more engaging and interesting and I could concentrate. In a nutshell I think my achievement level was impacted significantly by the pandemic. As we travel the road to recovery, I look forward to returning to the classroom setting with much excitement.

**Janet James**

LLB2 (second year full-time)

Having no experience with pandemics, it was difficult for me to think in terms of what could be the worst-case scenario with COVID-19.

All schools closed, all business closed, I barely left the house because of something called "shelter in place." I had to stay away from people because of something called "social distancing."

I was not ready for online classes... however; ready or not my greatest learning fear was now in place. Downloading zoom, understand how to work it was the first challenge. Then trying to record the class for future review of the lecture. The recording was so muffled I was not able to hear it. Left with no choice, I started accepting the situation and everything became so much easier. I suddenly started to realize how great it was to be at home and how much more time I had; I was not stuck in traffic for hours. I would roll out of my bed and go straight to school I was actually accomplishing so much more, I loved it!

What made it even greater was the amazing support I received from most of my lecturers; most of them went beyond the call of duty to ensure that we all received as much help as possible.

COVID-19 has thought me to embrace change with an open mind.

### **Tiffany Titus**

LLB2 (second year full-time)

The new teaching methods, as a result of Covid-19, have been a challenge for me. While I prefer face to face learning, I do appreciate the efforts by the lecturers to ensure that we were equipped with the necessary materials for the alternative assessments.

### **Annette Vaughan**

LLB2 (second year full-time)

The year 2020 will remain the most memorable time of my life in terms of its challenges and changes. It has forced me to embrace the changes and face those challenges. One major change and challenge was adjusting and adapting to a new instructional platform namely Zoom. Having successfully navigated through the 'fog' of uncertainty associated with manipulating this platform, I was able to remain steady and focused. I took advantage of this unique experience



by organising each day under daily tasks in order to accomplish set goals. The minutiae of the daily tasks and my commitment to each never slackened during that time.

I have a huge sense of gratitude to the lecturers and librarians for being so accommodating during the transitional period and for the time they have committed to making such as 'seamless' as possible. This attitude fueled my diligence and quest for excellence. Despite all this, I eagerly anticipate being back in the classroom environment among my colleagues and lecturers.

### **Ernie Jacques**

LLB1 (first year part-time)

The initial start of law school was an exciting event to say the least; it gives you a feeling of importance. The lecturers are awesome, always willing to go the extra mile to assist you with any issue you may be having.

The school did a superb job transitioning to an online platform making the process seamless and safe. The moot exam was conducted with precision and perfection, kudos to Mr Bromby and the team at TBLIS. Our other final exams were administered in the most professional way.

My advice to incoming students is to pay close attention to the lectures and make as many notes as one can, go home listen to the lectures a second time even if you think you understood everything that was said, for part time students like myself, try to figure out all that's happening in your usual day as you're going to have to rob some time for other things to put into studying. Make nothing stop you from reading everything you are told to read and then some more, form great relationships with your lecturers and your fellow students, you'll need them all to get through this journey. Good luck to you all on your journey to achieving your law degree.

## **Patrice Morgan**

LLB1 (first year part-time)

One of my favourite Jim Carrey movies is *Lemony Snicket's A Series of Unfortunate Events* for many reasons: Violet Baudelaire's unstoppable resolve to see the best in any situation and her ability to make the finest meal out of things collected from the kitchen drawers is the kind of character that I aspire to be. Before COVID19 shut down the school, the country and the world, courses at the Truman Bodden Law school were happily humming along, until the corona virus made us sit up and take notice as the rate of spread skyrocketed. Late February, early March, the Government advised that we were discussing the strategies that would be put in place, but by mid-March, COVID19 upended the daily schedule we had become accustomed to.

Like Violet, the delays and postponements were dealt with as if they were a normal course of business matter. The Director, Faculty and staff kept us informed and even managed a joke or two to lighten the mood. The communications advising of the changes came in quickly and frequently. Classes and tutorials quickly shifted to online platforms and Zoom calls became the norm.

Honestly, while I enjoyed Zoom sessions and listening to lectures online, I missed the in-class sessions for the banter with fellow students, the challenge of answering Michael Bromby's open ended questions which put the fear of God in me (did I know the right answer? – sweats profusely as answer is attempted). I missed Scott Atkins' dry jokes to lighten the heaviness of Contract law.

After the first six weeks of lockdowns and curfews, I was ready to run screaming into the streets, because I could not stand looking at the walls. I found it challenging to stay motivated on the readings and I found the online assessments more stressful.

But in the end, our professors prepared us, guided us and encouraged us above and beyond the additional work required to instruct us. They were all superstars as they channeled Violet's finest characteristics in their own unique ways.

## **Nardia Henry**

LLB1 (first year part-time)

I believed the law school had a smooth transition to online learning when COVID-19 restrictions were put in place and in-class instruction ceased. For me, it was not much of a disruption in my learning process; it actually facilitated my flow of learning. As a part-time student who worked and studied, online learning gave me more flexibility. At the point when we transitioned, we were basically at the latter part of our course, so I didn't really miss the personal connection at that time. Taking our assessments online was a good option for me as it eliminated the pressure that is normally associated with typical exam settings.

I found the Law program to be very challenging as this is a totally new field of study for me. However it gave me great joy and satisfaction when I overcame each new challenge step by step. It takes great dedication and real hard work, lots of research and reading, however the knowledge base that you gain is superb. Overall, it also lifted my confidence. The support that lecturers and staff provided was tremendous, they were always accessible. Though they hold you to a high standard of work, this helped us to develop as better students of law. My group members were very supportive and without my part time buddies I couldn't have made it thus far.

## Legal Skills 1: Case Note Assessment

Andrel Harris

LLB1 (first year full-time)

### **Pimlico Plumbers Ltd v Smith**

**Citation:** [2018] UKSC 29

**Court:** Supreme Court

**Judges:** Lady Hale President, Lord Wilson, Lord Hughes, Lady Black, Lord Lloyd-Jones

**Appellant** - Pimlico Plumbers Ltd

**Respondent** - Mr Gary Smith

### **Material Facts**

Between August 2005 and April 2011 Pimlico Plumbers Ltd (Pimlico), the appellant, and Mr Gary Smith, the respondent, had a contractual agreement for Smith to provide his services to Pimlico's clients. Upon termination of the agreement in 2011, Smith filed proceedings against Pimlico claiming unfair dismissal under the Employment Rights Act 1996 (the Act) and sought compensation for the remuneration of arrears as well as unlawful wage deductions of health insurance and pension.

Pimlico argued that Smith was not their employee. Instead, he was an independent worker, whose services they contracted; and the relationship was strictly that of a customer or client-based arrangement.

### **Procedural History**

*Pimlico Plumbers Ltd v Smith*<sup>1</sup>

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<sup>1</sup> [2018] UKSC 29 (SC)

**August 2011:** Employment Tribunal (Tribunal) held that the contractual agreement between Smith and Pimlico, was such that Smith could not be viewed as an employee of Pimlico. However, the tribunal found that Smith did meet the definition of a "worker" as defined by section 230(3)(b) of the Act and was to be categorized as a limb (b) worker. Therefore, he was entitled to the benefits he sought, as stated above.

**November 2014:** Pimlico appealed the decision to the Employment Appeal Tribunal, who dismissed the appeal. Subsequent appeals in February 2017, before the Court of Appeal and the UK Supreme Court in June 2018 also resulted in dismissals.

### **Issues to be decided**

1. The Supreme Court was tasked with deciding whether the tribunal had erred in law, by concluding Smith was a worker of Pimlico.
2. Whether the relationship between Smith and Pimlico was of a customer or client nature.
3. Whether the tribunal's reasoning was inadequate and should be set aside.

### **Ratio**

‘There was an umbrella contract between Mr Smith and Pimlico. It is, therefore, unnecessary to consider the relevance to limb (b) status of a finding that contractual obligations subsisted only during assignments.’<sup>2</sup>

Analysis of the ratio:

1. Smith met the definition of a limb (b) worker, based on an “umbrella contract.”

The degree to which Smith was required to "personally perform" his work or his services for Pimlico, was a strong determining factor for the Supreme Court when arriving at their ruling on whether he ought to be considered a worker. In their judgment, Lady Hale noted, “Mr Smith's contracts with Pimlico, including the manual, gave him no express right to

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<sup>2</sup> Pimlico Plumbers v Smith [2018] UKSC 29 (SC) [41]

appoint a substitute to do his work.”<sup>3</sup> While referencing the Industrial Relations Act 1971, she also noted that, the modern worker, limb (b), is defined as, "under any other contract... whereby he undertakes to perform personally any work or services for another party to the contract who is not a professional client of his ...."<sup>4</sup> While the contract between Smith and Pimlico gave some scope of substitution, it was limited to operatives approved by Pimlico. This degree of personal performance served as a "strong mitigating" factor that allowed the Supreme court to conclude that the Employment Tribunal and the successive courts, had not erred in their decisions to view Smith as a limb (b) worker of Pimlico, and thereby dismiss Pimlico's appeal.

## 2. Customer or client-based relationship

The "tight control" over several aspects of how, when, and what jobs were to be conducted by Smith were terms set out in his contract with Pimlico. The contract also required Smith to wear Pimlico's branded uniform, and ID and to use a company branded van. Pimlico also controlled if, when and the amount of money Smith would be paid for a job. Ultimately this contractual agreement created a substantial degree of subordination between Smith and Pimlico, with Smith being the subordinate party. In reference to one of its previous decisions, in *Haswani v Jivraj*<sup>5</sup> the Supreme Court noted that not all workers needed to be in a subordinate position:

While the concept of subordination might assist in distinguishing workers from other self-employed people, the Court of Appeal, in that case, had been wrong to regard it as a universal characteristic of workers.<sup>6</sup>

Although Smith presented himself as self-employed for the purposes of tax and VAT, the contractual agreement was clear proof of him being in a subordinate position to Pimlico, and therefore the notion of a customer or client-base relationship was faulty.

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<sup>3</sup> *Ibid* [24]

<sup>4</sup> *Pimlico* (n 2) [10]

<sup>5</sup> [2011] UKSC 40 (SC)

<sup>6</sup> *Pimlico* (n 2) [14]

### 3. Potential inadequacies in the Tribunal's decision

The Supreme Court found that Pimlico's claims of the tribunal's decisions as being inadequate and confusing, held little weight. Lady Hale stated that Pimlico places a contract, "cast in highly confusing terms, and now complains that the tribunal's interpretation of them was highly confused."<sup>7</sup> The judges concluded that this argument, at its best, lacked substance.

#### **Disposition**

Appeal dismissed, and Smith's claims could be heard before the tribunal.

#### **Update**

In December 2018, in *Uber BV v Aslam*,<sup>8</sup> the Court of Appeal ruled that an Uber driver is to be considered as a worker, and not as an independent contractor. Although this decision came from a lower court, it helped to make the Supreme Court's decision more binding and serves to strengthen *Pimlico Plumbers v Smith*<sup>9</sup> as the leading authority on these types of employment matters.

#### **Critique**

By ruling in favour of Smith, the Supreme Court helped to clarify the difference between contracted freelancers and 'workers'. Additionally, it helped to protect the rights of workers in the gig/or project economy. However, the Supreme Court's decision could have also clarified other areas of 'worker' based agreements such as the issue of liability, and who ought to be held responsible if something goes wrong during a project, whether it be the worker or the entity which contracted him.

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<sup>7</sup> *Pimlico* (n 2) [27]

<sup>8</sup> [2018] EWCA Civ 2748 (CA)

<sup>9</sup> *Pimlico* (n 1)

## **Legal Skills 1: Case Note Assessment**

Diana DeMercado

LLB1 (first year full-time)

**Case:** R v Wallace

**Court:** Court of Appeal (Criminal Division)

**Citation:** [2018] EWCA Crim 690

**Judges:** Lady Justice Sharp DBE, Mr Justice Spencer, and Mrs Justice Carr

### **The Parties Involved:**

Appellant – Crown

Respondent – Berlinah Wallace

### **Material Facts**

The defendant poured sulphuric acid over her ex-boyfriend after he left her and began seeing another woman. The victim suffered horrific injuries such as blindness and paralysis resulting in amputations. After being informed that his condition was permanent, the victim then travelled to Belgium where he applied to be euthanised and the doctors lawfully ended his life.

The defendant was charged with applying a corrosive fluid with intent contrary to the Offences Against the Person Act 1861 and murder after the victim died.

### **Procedural History of the case**

Crown Court – Two count indictment for murder and applying a corrosive substance with intent. The defence made a submission of no case to answer arguing that euthanasia broke the chain of causation. The murder charge was withdrawn, and the defendant was acquitted. The prosecution appealed.



## Issues to be decided

1. Were the defendant's actions of throwing the acid a significant contribution to the victim's death?
2. Were the actions of the doctors and the victim a novus actus interveniens which broke the chain of causation?

## Ratio

The victim's death, his request for doctors, and the act of euthanasia itself carried out in accordance with his wishes, were not discrete acts or events independent of the defendant's conduct. Nor were they voluntary, if by this it is meant they were a product of the sort of free and unfettered volition presupposed by the novus actus rule. Instead they were a direct response to the inflicted injuries and to the circumstances created by them for which the defendant was responsible. On a commonsense view, the defendant's conduct either merely set the stage for the victim's death, or it was instrumental in bringing it about, we consider the jury could properly answer that question in the prosecution's favour.<sup>1</sup>

## Analysis of the ratio

### Classifying the initial act as a significant contribution

The court recognized that it could not be questioned whether the defendant satisfied the 'but for' test of factual causation if it could be established that the defendant was a legal cause as well. The court referenced a line of authority such as *R v Smith*<sup>2</sup> and *R v Maybin*<sup>3</sup> which confirmed that the defendant only needed to have contributed significantly to the death of the victim yet need not be substantial or the sole cause. The courts considered that to address the causation issues in the case, it was pertinent to examine the proximity of events. This approach showed that given the unusual facts of the case, you cannot look at the sequence of events in

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<sup>1</sup> *R v Wallace* [2018] EWCA Crim 690 14.

<sup>2</sup> [1959] 2 QB 35 (AC)

<sup>3</sup> [2012] 2 SCR 30 29 (SCC)

isolation to establish a legally causative link. As Lady Justice (LJ) Sharp emphasised, “the connection between the inflicted injuries and death was a direct and discernable one”.<sup>4</sup> Applying the decision in *R v Dear*,<sup>5</sup> the court found that seeking death as a result of dreadful injuries does not prohibit a jury from finding whether the defendant’s actions were a significant cause of death because in this case it was part of a sequence of events initiated by the defendant.

#### Defining the “voluntary” acts of the doctors and the victim

It was discussed whether the victim’s and doctors’ actions broke the chain of causation; such that their actions were free, deliberate, and informed, ultimately releasing the defendant of being a legal cause of the victim’s death as held in *R v Kennedy*.<sup>6</sup> *Kennedy* was distinguished on the basis that it was not a case where the victim’s actions were a response to horrific injuries created by the defendant. LJ Sharp was of the view that the victim had made a choice that he would not have made otherwise due to the terrible circumstance he was in; therefore, it could not be described as voluntary. Further, his actions were not divisible from that of the doctors. In referring to the decision in *Pagget*,<sup>7</sup> LJ Sharp held that the actions of the doctors could not operate as a novus actus interveniens as there is a distinction between voluntary for the purposes of Belgium law, and for the purposes of causation. The doctors were simply following the law and the victim’s wishes, therefore an act done in execution of legal duty cannot be regarded as voluntary.

#### **Disposition**

Appeal allowed and a retrial ordered. Held that the trial judge erred to withdraw the murder charge without leading the jury as to whether the defendant’s actions had contributed significantly to the victim’s death.

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<sup>4</sup> *Wallace* (n 1) 14

<sup>5</sup> [1996] Crim LR 595 (AC)

<sup>6</sup> [2007] 1 AC 827 (HL)

<sup>7</sup> [1983] 76 CR APP R 279 (AC)

## **Update**

At the retrial, the jury acquitted the defendant of murder but was convicted of throwing a corrosive substance with intent. She was given a life sentence with a minimum term of twelve years.

## **Critique**

According to Hart and Honoré, intervention by a third party will constitute as a *novus actus interveniens* (intervening act) where there is a free, deliberate, and informed act.<sup>8</sup> This case challenges the long-standing rule because it reveals that the court can make a connection between the initial act and a prohibited result carried out by an intervening party. This however makes it questionable as to how far the scope of liability will extend in different circumstances pertaining to a *novus actus interveniens*.

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<sup>8</sup> H L A Hart and Tony Honoré, *Causation in the Law* (2nd edn, OUP 1995)

## **Legal Skills 1: Research Task Assessment**

Sharon Roy

LLB1 (first year full-time)

### **Upskirting – The Voyeurism (Offences) Act 2019**

The Sexual Offences Act 2003 was a monumental piece of legislation that represented the most radical overhaul of the law in relation to sexual offences in England and Wales.<sup>1</sup> However, this legislation was severely lacking as it did not consider issues such as that of upskirting. Upskirting is a non-consensual act of maliciously taking a picture or video from under a women's skirt. Unlike Scotland which had criminalised upskirting in 2010, England and Wales were still unwary of this behavior and its implications upon the victims because the practice has become more common due to technological advances. However, in 2017 Gina Martin, who became a victim to this act, campaigned to bring awareness to this issue in order to compel the government to address the possible gray area in the law and to criminalise upskirting. After severe political pressure the Voyeurism (Offences) Act 2019 was introduced as a Private Members Bill by MP Wera Hobhouse. But the genesis of this provision was quickly ended when MP Christopher Chope objected which killed the bill and prevented it from proceeding any further.<sup>2</sup> However, the bill was later revived by the government who helped the Bill pass the stages within the parliamentary process quickly causing it to receive Royal Assent on 12 February 2019. VOA 2019 revised the Sexual Offences Act 2003 by introducing two offences under Section 67A leading certain acts to be criminalised if they met the criteria set out in the section. However, at the rate at which this Bill was passed by the government, one could almost say that it did not cover all the possible scenarios of upskirting and there was no proper scrutiny.

### **Common Law Offence of Outraging Public Decency on the issue of Upskirting**

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<sup>1</sup> David Ormerod and Karl Laird, *Smith and Hogan's Criminal Law* (14<sup>th</sup> edn, OUP 2014)

<sup>2</sup> HC Deb 15 June 2018, vol 642, col 1269

The legal response to upskirting was the common law offence of outraging public decency. This involves doing an act which is lewd, obscene or disgusting and the act must be witnessed by two other people or else it would not constitute as an offence.<sup>3</sup> If upskirting takes place in a public setting, then the common law defence of outraging public decency could possibly apply. In the past, this would have been the principle legal response. However, in 2007 this legal response was challenged based on its applicability to upskirting in the case of *Hamilton*.<sup>4</sup> The key issue that this case dealt with was whether the requirement of two people to have seen the act amounted to outraging public decency. In this case the Court of Appeal upheld the appellants conviction on the basis that although his actions had not been actively witnessed, they were capable of being noticed. The Court of Appeal stated that the use of the word outrage was not necessary in the sense that the public did not need to be outraged by the behavior, the simple fact that it had happened in a public area and was capable of outraging people was sufficient for a jury to convict someone.

Gina Martin, in multiple interviews made it clear that in her case the police were confused about the law. The police had said to her that she could not prosecute the perpetrators because the image they took was not graphic. Therefore, the common law offence can be very vague.

The Law Commission in 2015 considered ways in which this common law offence could possibly be amended. This would be by increasing its scope to consider scenarios such as upskirting, exposure or masturbation and other sexual activities. However, it would remain insufficient in the sense that the key issue with these acts is not one of creating disgusting sights for the public, rather they have a lot more to do with the infringement of the dignity of individuals.

### **Provisions of the Voyeurism (Offences) Act 2019 as well as the Recent Law Reform**

Section 1 of the Voyeurism (Offences) Act 2019 introduces two new offences into the Sexual Offences Act 2003, specifically in section 67A, criminalising upskirting. This came into effect on the 12<sup>th</sup> of April 2019 and carries a maximum sentence of 2 years. The two offences that it

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<sup>3</sup> *R v Hamilton* [2007] EWCA Crim 2026 [39]

<sup>4</sup> *Ibid*

inserts includes firstly, instances where without 'consent' or 'reasonable belief' of consent a person either operates equipment beneath or records an image beneath someone's clothing to observe their genitals or buttocks whether it be exposed or covered. Secondly, a person will be committing an offence if they are recording an image beneath the clothing of someone else.<sup>5</sup>

The government, during the process of making the Bill, chose to abide strictly to the Bill, this was commendable in the sense that it avoided the Bill from being side-tracked which could occur due to competing interests and lead to unnecessary discussions. Hence the legislation passed through the Parliament quickly with barely any changes. However, the Bill had its shortcomings from its inception. According to one specific source, considering how quickly Parliament passed the Bill, the legislation was flawed and only marginally protected women therefore, it was a waste of opportunity by the Parliament. The government was so fixated on the original wording that it blocked Parliament from doing its constitutional duty of scrutinising and amending the draft legislation.<sup>6</sup> Therefore, there are many loop holes within this act that need to be considered and although the government has referred to the Law Commission, we must understand that it could have on its own dealt with all the possible issues rather than simply relying upon the Commission, which takes very few projects per year, to filter out the left over issues. Professor Liz Saville Roberts, during a Parliamentary debate did state that a legislation that is made in haste is often flawed.<sup>7</sup> Therefore, it can be concluded that perhaps the government were too politically motivated allowing the pressure to trump the necessity of precision.

The actus reus of the new offence states that the equipment is to be operated 'beneath' the clothing of the victim. This could mean that one can only be convicted if they were actually trying to capture up the victim's skirt and exclude the fact of whether an image or video can be taken horizontally or if a person is sitting or lying down. Another important point is that the

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<sup>5</sup> Sexual Offences Act 2003

<sup>6</sup> Alisdair A. Gillespie, 'Tackling Voyeurism: Is the Voyeurism (Offences) Act 2019 A Wasted Opportunity?' [2019] MLR 1108.

<sup>7</sup> PBC Bill (235) col 7 2017-2019

offence only seems to account for photographs of genitals, buttocks and underwear covering it, it does not consider taking pictures of someone's breasts, it does not include 'downblousers'.<sup>8</sup>

Using an 'operating equipment' is not the only way in which one can upskirt. For example, what if person decided to sit in a certain manner in order to allow him to see under someone's skirt without using any equipment and without anyone being around. There would still be the violation of the victim's integrity however, this would not be punishable. Therefore, rather than referring to the use of an operating equipment the word 'looking' could suffice to prevent the problem.<sup>9</sup>

The provisions of the Act make it clear, in terms of its mens rea requirement that, for example, A must receive some form of sexual gratification for himself or for C intend to humiliate, cause distress or alarm to B who is the victim. However, it does not consider scenarios where A commits upskirting for financial reasons and not for any sexual gratification or purposely causing emotional turmoil for B. This raises the question whether it would be fair toward B, whose integrity has been questioned and she has in fact suffered emotionally?

This act also does not criminalise the distribution of footage or pictures. As pointed out by MP Maria Miller during the second sitting, after Scotland criminalised upskirting it recognised that it had done nothing to prevent the distribution of the images or videos. Therefore, Scotland passed as subsequent piece of legislation known as the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 to tackle this issue. The VOA 2019 adapted Scotland's approach towards upskirting therefore, it could have possibly also considered the issue of dissemination in advance unlike Scotland, this goes to show the meagreness with which the Bill was dealt with. She went on to identify that the Criminal Justice Act 2015 would possibly apply to prevent the distribution of these images if it causes distress but not in any other situations.<sup>10</sup>

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<sup>8</sup> Aaron Turpin, 'New Legislation: Statues Voyeurism (offences) Act (C.2) [2019] CLW

<sup>9</sup> Ibid 8

<sup>10</sup> PBC Bill (235) col 20 2017-2019

In conclusion, the simple application of the offence of outraging public decency was insufficient to deal with issues such as upskirting therefore, VOA 2019 was necessary in order to outlaw this behaviour. However, it proves to be insufficient as it fails to recognise multiple flaws that could have been easily rectified had Parliament taken the time to do so. The distress that is caused by the wrongdoing should encourage, not inhibit, parliament to provide proper scrutiny of the detail of the proposed legislation.<sup>11</sup>

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<sup>11</sup> David Pannick, 'The Upskirting Bill must be Scrutinised Properly to Make it Effective' *The Times*, 5 July 2018



## Legal Skills 2: Debate Resolution (Supporting)

Tiona Miller & David Saad

LLB1 (first year full-time)

This House believes that a jury's verdict ought to be accompanied by a statement giving an explanation of the reasoning that led to either the conviction or acquittal. Too much reliance is placed on good faith that a jury will act properly and in accordance with a judge's directions, to the extent that there is a risk of unfairness in criminal proceedings.

### Reasons the jury should be required to give reasoning for its verdict

1) The following submissions are made in support of the resolution:

- a) The right to fair trial under Article 6 of the Human Rights Act 1998 gives an individual the right to a fair hearing.<sup>1</sup> At Luton Crown Court in 2011, a juror was found guilty of searching for information about the defendant on the internet. The jury was no longer able to give a verdict based on evidence alone, and the defendant's right to a fair trial had been impeded.<sup>2</sup>
- b) The Vicky Pryce case raised concerns which heavily relied on the good faith of the jury alone. Specifically, whether juries are able to comprehend and engage with the information presented to them, and whether jurors want to fully engage in the jury process. If not, individuals are willing to let their prejudices make a decision before taking the evidence into consideration.<sup>3</sup>

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<sup>1</sup> 'Your right to a fair trial' <<https://www.citizensadvice.org.uk/law-and-courts/civil-rights/human-rights/what-rights-are-protected-under-the-human-rights-act/your-right-to-a-fair-trial/>> accessed 24 March 2020.

<sup>2</sup> Dominic Grieve QC, 'In defence of the jury trial' (12 December 2013)

<<https://www.gov.uk/government/speeches/in-defence-of-the-jury-trial>> accessed 24 March 2020.

<sup>3</sup> Samantha Love, 'Are Jury trials fair or is it time to scrap them' (*Oxford Royale Academy*, 30 May 2014)

<<https://www.oxford-royale.com/articles/scrap-jury-system/#ald=5e954976-2171-4719-bbcc-e14fc21c0f5f>> accessed 25 March 2020.

- c) Case simulations conducted by Professor Cheryl Thomas show that a considerable portion of jury members might not understand the judge's directions.<sup>4</sup> This leaves room for legal error in criminal proceedings.
- d) In *Connor and Rollock*, a juror told the court days after trial that jurors could not decide which defendant stabbed the victim so they convicted both in order to 'teach them a lesson'. Here the jury had unfairly convicted a potentially innocent man of a crime as serious as grievous bodily harm with intent.<sup>5</sup>
- e) The case of *Young* provides an example of what might go unnoticed under jury secrecy. After the defendant was convicted of a double murder, it was made known that several jury members had used an Ouija board that revealed Young was the killer. If a juror derogates from the judge's instructions it would be hard to determine liability for the alleged bias, as well as make the necessary corrections.<sup>6</sup>
- f) The courts rely on individual jurors to complain about any impropriety in the jury room to trigger further investigation. If reasons were required for the verdict there would at least be a basis for inspecting in each case whether the jury has provided a rational justification for the verdict.<sup>7</sup>
- g) Requiring a statement from the jury would also offer some means of examining whether the court itself can validate the verdict on the basis that proper considerations were applied and improper deliberations were disregarded.<sup>8</sup>

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<sup>4</sup> Connor Griffith, 'Incompetence and Impressionability: the English Jury System' (31 March 2017) <<http://www.keepcalmtalklaw.co.uk/incompetence-and-impressionability-considering-the-english-jury-system/>> accessed 25 March 2020.

<sup>5</sup> Ibid 4.

<sup>6</sup> Jennifer Tunna, 'Contempt of court: divulging the confidences of jury room' (2003) 9 Canterbury LR 79.

<sup>7</sup> John Jackson, 'Unbecoming Jurors and Unreasoned Verdicts: Realising Integrity in the Jury Room' (2016) <<http://eprints.nottingham.ac.uk/37000/>> accessed 25 March 2020.

<sup>8</sup> Ibid 7.

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## **Legal Skills 2: Debate Resolution (Opposing)**

Merary Eden & Joseph Keliny

LLB1 (first year full-time)

### **Debate Resolution:**

'This House believes that a jury's verdict ought to be accompanied by a statement giving an explanation of the reasoning that led to the conviction or acquittal as the case may be. Too much reliance is placed on good faith that a jury will act properly and in accordance with a judge's directions, to the extent that there is a risk of unfairness in criminal proceedings.'

In opposing the above resolution, we submit the following:

#### **1) The importance of the jury**

- a) Jury trials are important but challenging as jurors may feel pressured into making a fair and right decision.
- b) A 2010 report published by the Ministry of Justice shows the results from a study conducted by Professor Cheryl Thomas which concluded that jurors are fair, efficient, and effective.<sup>1</sup>

#### **2) Access to the internet and social media does not drive a decision**

- a) Despite instructions from trial judges against the use of internet sources and social media, jurors are tempted to access information from outside the courtroom. However, studies show jurors will adhere to their oaths and obey the judge's directions.<sup>2</sup>
- b) Last year, the Attorney General's Office concluded that social media "doesn't currently pose a serious threat" to the legal process after an 18 month review in which the Solicitor

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<sup>1</sup> Cheryl Thomas, 'Are Juries Fair?' (*Ministry of Justice Study, 2010*)

<sup>2</sup> 'How civil juries really decide cases.' [2007] *American Bar Foundation* Vol 18

General, Robert Buckland QC MP, said the risk is "relatively minor" out of approximately 15,000 annual jury trials.<sup>1</sup>

### 3) Isolating the Jury from external influences and jury tampering

- a) Sequestration was considered as a means to eliminate outside influences; however, it is not an ideal approach. Isolating juries from **ALL** external factors during a trial could be expensive and the duration of the trial will need to be factored in also. Juries can be warned of contempt of court, but Lord Laws said, "it is unrealistic to expect that the judicial direction not to research the case on the internet".<sup>2</sup>
- b) Having access to external influences does not mean a juror will base their decision on a Twitter post as they have first-hand evidence given to them.

### 4) Jury secrecy during deliberations

- a) Jurors are not lawyers or have the expertise to provide reasoning for their verdict. The Juries Act 1974 protects them from doing so.
- b) In the case of *Gregory v United Kingdom*, the ECHR, under Article 6, describes jury secrecy as a crucial and legitimate feature of English trial law.

## Conclusion

Sometimes the jury gets it right and sometimes they do not. This system is based on human beings who do not always give desirable outcomes. However, we believe in the need for a jury and that they strive to be fair and impartial towards their verdicts.

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<sup>1</sup> Rob Hastings, 'The verdict: Does the jury system need to be reformed or even replaced to ensure justice is served in our court trials?' (Long Reads, 7 March 2019)

<sup>2</sup> Afua Hirsch, 'Is the Internet Destroying Juries?' The Guardian (UK, 26 January 2010)

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## **Legal Skills 2: Debating Tips**

Sharon Roy & Diana DeMercado

LLB1 (first year full-time)

The students are given the opportunity to participate in debates where they are required to either oppose or support a topical legal issue. They usually work in teams to research and develop structured arguments with evidence and case law to substantiate their position. There is also an opportunity for rebuttal. Among other criteria, the presentations are judged based on the effective use of their knowledge, the depth of subject matter, the validity and relevance of facts, time management, tone, the persuasiveness of the argument and response to any questions.

### **Debate Layout**

- Each team member will be given 10 minutes to argue for/against the motion.
- Each team will be given 5 minutes to prepare for rebuttals
- Each team will have 6 minutes (3 each member) to deliver those rebuttals

### **Helpful tips for First Years participating in debates**

- 1) Read the motion carefully and split the question. Allocate which partner is going to target what part of the question.
- 2) Think about how the other side is going to argue for/against the motion and take notes based on that. If you are able to form a convincing argument against your own position, it would make it easier to work on your own motion.

- 3) Spend substantial time engaging in research and do not leave things to the last minute. Make sure you are able to formulate a minimum of three solid points and back it up with statistics, quotes, examples etc.
- 4) Being familiar with your material is key, make sure you have practiced with and without your partner, it will surely reduce the stress of presentation. It is not about memorizing your script; it is about learning and understanding it. Practicing will also ensure that none of your points are the same and can help you establish an argument that flows well together.
- 5) Listen carefully to what points the opposing team is making since it is essential in formulating your rebuttal at the end of the debate where you will only be given three minutes to respond effectively to the points raised by the opposing team. Practice and research will also prepare you for the rebuttals.



## Legal Skills 2: Summative Moot

Academic session 2019/20

### Facts and Procedural Outline

On 1 February, the owner of Auld-Autos telephoned Bentley, a regular customer, offering to sell him a unique, 1931 Alvis 'Beetleback' for £38,000 and asking for a response by 10 February.

On 8 February at 10am, Bentley telephoned to accept the offer, but could only leave a voicemail message, as no one answered. He had, in fact, been put through to the wrong extension number.

At 3pm on the same day, Bentley received a telephone call from a friend, Cooper, who was viewing other cars at the Auld-Autos showroom. Cooper told Bentley that DeLorean, another customer, was in the showroom negotiating to buy the 1931 'Beetleback'. Cooper was asked to pass on a message from Auld-Autos to Bentley, saying that they were very sorry, but they'd had interest in the 'Beetleback' from other parties and they may sell to someone else.

Bentley rushed into the showroom at 3:30pm but an Auld-Autos sales representative said he had just sold the car to DeLorean.

Bentley insisted the car was sold to him because he had let them know he wanted it that morning.

### Lower Court Decision

Judge Parrott, in the County Court, held that no contract had been formed by Bentley for the following reasons:

1. In respect of Bentley's telephone message, this had not been received by Auld-Autos (*Entores Ltd v Miles Far East Corporation* applied).
2. Revocation of Auld-Auto's offer had been effectively communicated to Bentley prior to the sale of the car to DeLorean (*Dickinson v Dodds* applied).

## **Instructions**

Bentley 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**

1 <sup>st</sup> speaker – Senior Counsel for Appellant	10mins
1 <sup>st</sup> speaker – Junior Counsel for Appellant	10mins
2 <sup>nd</sup> speaker – Senior Counsel for Respondent	10mins
2 <sup>nd</sup> 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. Contributions will be individually assessed along with each student's performance.

## **Legal Skills 2: Skeleton Argument for the Appellants**

Gabriella Brodhurst & Merary Eden

LLB1 (first year full-time)

**IN THE COURT OF APPEAL**  
ON APPEAL FROM THE COUNTY COURT  
Between:  
**BENTLEY Appellant (Claimant)**  
- and -  
**AULD-AUTOS Respondent (Defendant)**

### **COUNSEL FOR THE APPELLANT'S OUTLINE OF ARGUMENT**

#### **Ground (i): Senior Counsel**

The trial judge erred in concluding that no contract was formed when the Appellant's telephone message of acceptance was not communicated to Auld-Autos due to being transferred to the wrong extension number.

#### **Senior Counsel's Submissions:**

1. An intention to form a legally binding contract was made when the Respondent communicated an offer to the Appellant which is distinguished from an invitation to treat.
  - 1.1. Treitel's definition of an offer is an 'expression of willingness to be bound on certain terms, made with the intention that it shall become binding once it is accepted by the party to whom it has been addressed'.

- 1.2. If the 'expression' is clear and specific with an intention to be bound by it, the courts will deem it a legally binding offer *Storer v Manchester City Council* [1974] 1 WLR 1403. In this instant case, the manager of Auld-Auto called Bentley specifically, with the intention to be legally bound had Bentley accepted his offer immediately. Therefore, the manager cannot say it was a mere invitation to treat.
2. It was established in *Entores Ltd v Miles Far East Corp* [1955] 2 QB 327 that the general rule of acceptance is that it takes effect when it is communicated to the offeror.
  - 2.1. Treitel's definition of an acceptance is "a final and unqualified expression of assent to the terms of the offer".
  - 2.2. However, through Denning LJ's obiter, he outlines that 'if the offeree reasonably believes that he has communicated his acceptance, but this is not so because of the fault of the offeror, then the offeror may be estopped from saying that he did not receive the acceptance'. Given the facts of the instant case, Bentley cannot be at fault for being put through to the wrong extension. The objective observer placed in the offeree's position would also believe that they were leaving a message for the correct person.
3. In commercial transactions, the time of receipt of when acceptance is communicated should be taken into consideration.
  - 3.1. If acceptance is received by telex or via instantaneous communication during normal office hours, then it has been communicated effectively to the offeror, and it does not matter when they have read it *Tenax Steamship Company Ltd v The Brimnes (Owners)* "The Brimnes" 3 WLR 613.
  - 3.2. The House of Lords supported this principle in *Brinkibon v Stahag Stahl und Stahlwarenhandels GmbH* [1982] 2 WLR 264. Given the facts of the case, when Bentley called and left a voicemail message at 10am that morning, it should constitute as a valid communication of acceptance because it was within office hours,

although Bentley was through to the wrong extension number. By Bentley leaving a message, it shows that he truly believed he was transferred to the correct extension.

### **Ground (ii): Junior Counsel**

Judge Parrott, in the County Court, erred in holding that no contract had been formed by applying *Dickinson v Dodds* [1874 D. 94] and finding that Auld-Auto's revocation had been effectively communicated to Bentley prior to the sale of the car to DeLorean.

### **Junior Counsel's Submissions:**

1. Auld-Auto clearly had a business/customer relationship with Bentley which according to the contract law suggests that there is a presumption for commercial/business arrangements to be intended to be legally binding and have legal consequences flowing from them. Thus, justifying Bentley believing that he has a legal contract with Auld-Autos and had until the time limit to accept without any competition.
  - 1.1. This case can be distinguished from *Dickinson v Dodds* [1874 D. 94] for having a different business relationship and a clear intention to create legal relations by both parties.
  - 1.2. The Australian case, *Goldbrough Mort & Co Ltd v Quinn* [1910] was distinguished for having two contracts. One being an option to keep the offer for a specific timeframe and the other being the actual offer. The judges held that the option was irrevocable. Thus, indicating that the option of time was more than a mere promise and a breach of contract by Auld-Auto.
2. The second rule of revocation in contract law; an offer is made irrevocable by acceptance, was breached by Auld-Auto.
  - 2.1 The outdated postal rule of distant forms of communication outlined in *Adams v Lindsell* [1818] 106 ER 250, does not account for many instances including in the

present case. The postal rule affords one assurance if the mail courier does not deliver the mail properly. The same rule should apply when a phone company puts a client through to the wrong extension because the client relied on that company to put them through to the correct extension. Bentley's acceptance should be valid applying the same principle of using a service as shown in the postal rule.

2.2 Lord Wilberforce noted in *Brinkibon Ltd v Stahag Stahl* [1982] 2 WLR 264, 'No universal rule can cover all such cases: they must be resolved by reference to the intentions of the parties, by sound business practice and in some cases by a judgement where the risks should lie.' Thus, the court should look at the parties' intentions and see that there was a breach of intention, sound business practice and trust by Auld-Auto.

3. Revocation must be communicated. In this case Bentley's friend phoned to inform him that Auld-Auto had other interest, and might sell the car to someone else. Not only is this ambiguous language but it does not suggest that there is even revocation at all.

3.1 In *Byrne & Co v Leon Van Tien Hoven & Co* (1880) 5 CPD 344, Justice Lindley ruled that revocation is only available until the offer is accepted. The principles in this case should apply to the present case given that the court agreed that there was acceptance.

## **Legal Skills 2: Skeleton Argument for the Appellants**

Sharon Roy & Joseph Keliny

LLB1 (first year full-time)

### **IN THE COURT OF APPEAL**

27 April of 2020

**BENTLEY**

**Appellant (Claimant)**

- v -

**AULD-AUTOS**

**Respondent (Defendant)**

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### **SKELETON ARGUMENT ON BEHALF OF THE RESPONDENT**

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#### **First ground of appeal**

1. In respect of Bentley's telephone message, this had not been received by Auld-Autos (*Entores Ltd v Miles Far East Corporation* applied).

#### **Submissions**

2. Offer and acceptance are two fundamental exchanges which the parties to be bound are to participate in. It is a long established principle in this court that in most cases of communication acceptance must be received by the offeror to be bound in the eyes of the law. This was made especially clear by Denning LJ who gave the leading judgment in *Entores Ltd v Miles Far East Corporation*.

2.1. Bentley left a voicemail message at the wrong extension which is irrelevant but for the fact that it was not received by Auld-Auto just as Denning LJ illustrates:

2.2. "I shout an offer to a man across a river or a courtyard but I do not hear his reply because it is drowned by an aircraft flying overhead. There is no contract at that moment. If he wishes to make a contract, he must wait till the aircraft is gone and then shout back his acceptance so that I can hear what he says. Not until I have his answer am I bound."

3. The House of Lords has followed the precedent set in *Entores* again in *Brinkibon Ltd v Stahag Stahl und Stahlwarenhandels-Gesellschaft M.B.H.* with regards to the need for communication of acceptance that is received by the offeror.

3.1. Lord Wilberforce makes it clear that the same rules must apply to instantaneous communication as would generally citing the telephone as one method of instantaneous communication.

4. In very recent years the Supreme Court has again followed and substantiated the precedent set in *Entores* in the case of *Brownlie v Four Seasons Holdings Inc.* stating that the only exception to the general rule of acceptance and communication is the postal rule established in *Adams v Lindsell*.

4.1. As the facts of this case only deal with instantaneous communication there is no basis at all to argue that Bentley's acceptance was effectively communicated or received.

### **Second ground of appeal:**

Judge Parrot's decision in the county council was right regarding the revocation made by Auld Auto's being valid. As stated by professor Treitel, an offer is an 'expression of willingness' to be bound on certain terms made with the intention that it shall become binding once it has been accepted by the party to whom it has been addressed, it is not a promise to only sell to one party. Also, acceptance, which is a final and unqualified assent to the terms of an offer, must be communicated to the offeror for there to be a proper agreement.



- 1) For a revocation to be valid it must be communicated by the offeror before an acceptance is made as expressed in the case of *Routledge v Grant*<sup>1</sup>.

“The Court say, that, until an acceptance, the party is supposed to be continually repeating his offer. The presumption of a repetition of the offer is rebutted by a declaration that the offer is retracted. It is not just, that one party should be bound when the other is not.”<sup>2</sup>

- 2) The communication of the revocation does not necessarily need to come from the offeror, it can be made through a reliable third party as seen in the case of *Dickinson v Dodds*.<sup>3</sup> This case further emphasises why there can be no agreement because “...if there be no agreement, either verbally or in writing, then, until acceptance, it is in point of law an offer only, although worded as if it were an agreement...”Therefore, there was no agreement between the parties.

- The general principle of acceptance is that it must be communicated to the offeror unless of course it were made through post where the postal rule would apply. However, here we are dealing with an instantaneous form of communication therefore, the principle of Entores applies, and the acceptance was not communicated.

- 3) Although Bentley was a regular customer of Auld Auto’s, that does not mean that the offer that was made to him could be considered commercial with the presumption that it will lead to a binding contract. This case can be distinguished from that of *Edwards v Skyways*.<sup>4</sup>

- 4) An offeror who has promised to keep his offer open for a specific amount of time can withdraw that offer any time before it is accepted unless some form of consideration is provided by the offeree as expressed in the case of *Mountford v Scott*.<sup>5</sup> However, Bentley had not communicated with Auld- Autos at all showing interest or providing

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<sup>1</sup> (1828) 172 ER 415

<sup>2</sup> *ibid*

<sup>3</sup> (1876) 2 Ch D 463

<sup>4</sup> [1964] 1 WLR 349

<sup>5</sup> [1975] Ch 258

consideration. “The court will never lend its assistance to enforce the specific execution of contracts which are voluntary, or where no consideration emanates from the party seeking performance, even though they may have the legal consideration of a seal:...”

## **TBLS Mooting Competition**

Kathy Gonzalez & Daniel Lee

LLB2 (second year full-time)

Mooting is an essential activity for any law student, whether they want to appear in court or not. It develops many skills, both written and oral and will give you lots of good experience to make your mistakes as a student and not as a practicing lawyer. We were in the moot competition final, which took place during the induction week with the new first years watching the arguments in front of our guest moot judge, the Solicitor General Reshma Sharma back in September 2019.

### **Kathy**

The TBLS mooting competition is organised with the development of its students in mind. It is a tool that should be taken advantage of by all, particularly the first-year students. The process is the greatest learning experience. You are independently researching your grounds of argument, as you would in the 'real world' if litigation was your thing. It is such a powerful feeling. You are gaining knowledge, confidence and a bit of an ego-in a positive way.

It is almost as if during that process of research, you are not only gaining knowledge, but an understanding of life in general and confidence. It is such an important skill to have throughout your law school career to be able to articulate your academic opinion fluidly. I can say that mooting released a potential I would have never known that I had if I had not stepped out of my comfort zone and tried something new.

The experience gained is invaluable, and the opportunities are gratifyingly endless. After participating in the mooting competition, I find myself much more opened to different concepts in terms of legal research, which branches off into other areas of my life on a professional level and even leisure-learning. The attention to detail is present, and of course, this too is ever developing. The mooting competition gave me the drive and confidence to take on tasks on my own.

I would recommend the mooting competition to any new student, and those returning students who have not yet taken up the challenge. Not only is it a great way to learn but it builds a relationship with your peers when you are required to collaborate; to discuss the grounds of your arguments and determine how to amalgamate them in a seamless manner to execute your case in 'court'.

### **Daniel**

Mooting is an invaluable tool for students; providing them with the opportunity to gain immense knowledge and explore practical aspects of the legal system. Students must learn to apply the prevailing law in each case which helps them gain the analytical, research and writing skills that practicing lawyers have. Applying these skills provides students with the opportunity to learn how to argue effectively and efficiently in front of a judge. Not only does it enhance advocacy, legal research and writing skills, but mooting also provides students with the opportunity to work closely with and learn from one another whilst engaging with complex and interesting legal issues.

When I first started at TBLS I was absolutely terrified of public speaking and never thought I would strive to join a mooting competition. Even though I had my concerns when I first joined the competition, I persevered and realised that mooting is both intellectually rewarding and highly enjoyable. Although it can be nerve-racking and frustrating at times, there is no better feeling than going into the Moot Court with a bundle (that you spent hours perfecting) and knowing that you are prepared and ready to answer any questions the judges may have for you on the specific area of law in question.

Even if you are not on the winning team there is still so much to take away from every Moot as you are constantly learning how to improve. Each time you engage with a different judge (who all have very different personalities) or go up against another team of peers, you learn how to develop your technique; you may find the structure of your legal arguments changing over time or even the way you present orally to the court. Although you learn a great deal through lectures, tutorials and readings, nothing really compares to the experience you gain from mooting as it helps prepare you for legal practice and enables students to demonstrate their competence as advocates to prospective employers. I would highly recommend that students

at any level consider joining mooting as it is an amazing experience which will not only prepare them for their future careers but will also give them skills which will be highly beneficial during their time in law school.



Left to right: *Daniel Lee, Kathy Gonzalez, Solicitor General Reshma Sharma, Brad Johnston, Tiffany Titus.*

## **TBLS Events: Street Law**

Tiffany Titus

LLB2 (second year full time)

Brad Johnston

LLB3 (third year full time)

Street Law is a fantastic opportunity for law students to develop crucial skills while encouraging high school students to study law. Street Law is a programme where law students attend local high schools and conduct a series of short seminars on various legal topics. The programme has been found to reduce youth crime in the United States and also serves to encourage students to study law.

We provided overviews of a broad range of legal topics and highlighted interesting or controversial issues. We were met with genuine enthusiasm and interest while guiding the students through the subjects. It certainly made us much more cognizant of the extensive preparation required of lesson plans and the different techniques to engage students. As we only recently commenced our legal studies, we may be more cognizant of difficult concepts and were able to offer a unique perspective. It was very rewarding to know we may have made some students consider law and remove any stigma that law is intimidating, overly complex or dull.

Furthermore, the innovative programme provides an opportunity to strengthen many skills vital to a law student's success. Reverting to basics, Street Law improved our foundational knowledge of the law as we had to answer novel and thought-provoking questions from the students. Street Law also improved our ability to explain complex topics simply and present information in an interesting and friendly manner.

For these reasons, participating in the Street Law programme should be considered by all law students, whether they plan on going into practice or academia. The success of this programme

can only be accredited to the commitment of Mr Atkins and Mr Perkins. They went above and beyond to ensure that we were properly prepared and comfortable with the tasks we were assigned. In addition, the support received from the lecturers enabled us to deliver such tasks with confidence. We will forever be grateful and honoured to be a part of such a tremendous team. Thank you again Mr Atkins and Mr Perkins for such a memorable experience.

For anyone interested in volunteering for the Street Law programme, please see Mr Perkins for further details on how to become involved with the local schools in this initiative.



## **TBLS Events: Mediation and Arbitration Workshops**

Annette Vaughan & Janet James

LLB2 (second year full-time)

### **Overview**

A series of workshops on mediation and arbitration takes place in February of the second semester. It introduced all interested students to the principles, technique and skills of negotiating and how to be successful as a result. The workshops took place over four consecutive weeks and were facilitated by Mr Malcolm MacKillop. This year he was ably supported by Mr Andrew Perkins. The workshop focused on the goals and benefits of mediation or arbitration as opposed to litigation. Its purpose is to introduce all interested students to the principles, techniques and skills of successful negotiating. In so doing, the workshop concentrated on the process and skills for establishing the best alternative to a negotiated agreement (BATNA). We participated in problem scenarios to affect our skills, learning and understanding. The feedback was incredibly meaningful, supported by the wealth of knowledge and experience of the facilitators. Overall, the workshops were extremely productive, enlightening and relevant. The information and skills apply to our current learning situation or any actual situation. We are better and wiser for having participated.

### **The Presenters**

Malcolm MacKillop is a special sessional lecturer at Truman Bodden Law School. He has extensive litigation experience in federal and superior trial courts and courts of appeals, administrative and quasi-judicial tribunals, and arbitration processes. Mr MacKillop is a founding member of Shields O'Donnell MacKillop LLP (SOM LLP) which is a labour and employment law firm based in Toronto, Canada. He has practiced exclusively in employment



law for more than 30 years. He is a member of both the Law Society of Newfoundland and Labrador and the Law Society of Upper Canada. His expertise is in fiduciary litigation. Malcolm is also a successful trial lawyer and represents employers, and senior executives in all areas of employment law, including wrongful dismissal, human rights, employee obligations and shareholders dispute litigation.<sup>1</sup>

Malcolm is also a professional speaker, professor of law, and author of several leading texts on employment law such as Employment Law Solutions, Creative Solutions, and Damage Control. He specializes in human rights and has built his legal career on two pillars: proactive legal advisement on all aspects of workplace law, and representation of employers and senior executives in all aspects of the employment law disputes.<sup>2</sup>

Andrew Perkins is a senior lecturer at Truman Bodden Law School. His teaching responsibilities include Intellectual Property Law LLB, Banking Law LLB, International Banking Law and Capital Flows LLM and International Insolvency Law LLM. He sits on the Advisory Committee of the Cayman Islands Arbitration Centre to assist in drafting CIAC rules and model arbitration clauses. He has taught Dispute Resolution on the Bar Professional Training Course. His focus in the workshop was 'Arbitration procedures and practice in the Cayman Islands'.<sup>3</sup>

### **The Presentations/Workshops (Format)**

The sessions were on Thursday evenings from 4:00 pm to 6:00 pm The first half being a lecture and the second is interactive. It is at this time that the participants get the opportunity for application of the theory through discussion and enactment of problem scenarios.

The workshop focuses on the goals and benefits of mediation, arbitration and negotiation as opposed to litigation. It also presents an in-depth focus on the steps for establishing the best alternative to a negotiated agreement (BATNA) and skills for principled negotiating. Those skills

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<sup>1</sup> <<https://www.somlaw.ca/>>accessed 29 July 2020

<sup>2</sup> <<https://malcolmmackillop.com/>> accessed 29 July 2020

<sup>3</sup> <<http://lawschool.gov.ky/portal/page/portal/lawhome>> accessed 26 August 2020

focus on: People, Interest, Options and Criteria (PIOC). This skill purports that a mediator separates the people from the problem, focuses on interest - not positions, invents options for mutual gain and insists on objective criteria.

The additional mediating measures are meaningful and applicable to both strategies. These include:

1. the importance of being assertive without being disrespectful
2. the importance of thorough and meaningful planning
3. Strategies or negotiating, such as what, when and how much to say when negotiating
4. The importance of listening and observing
5. The importance of doing research; knowing the client(s) and their affairs.

### **Reflection on the benefits of problem scenario practice and feedback**

We participated in problem scenarios to affect our skills, learning and understanding. The application of 'BATNA' was usually an exciting and engaging segment of the class. Each scenario was discussed and presented in a mediation simulation, which allowed participants to see the approach and focus of the other groups. Discussing the BATNA of each group also introduced or reinforced other perspectives. Understanding how to effectively utilize 'BATNA' is usually the success or failure of the mediation.

Furthermore, we learned that mediation focuses on a five-step process, namely:

1. Introduction: Statement of the Problem
2. Information gathering
3. Identification of the problem
4. Bargaining
5. Settlement

We also learned that while this process is useful, it is not for everyone. Panel members, consultant, and the mediator will have exchanges or feedback which can be candid, unsettling

and sometimes surprising. However, both sides need to prepare for this type of interaction which, more often than not, is better than going through the litigation process in court.

## **Conclusion**

Overall, the workshops are incredibly productive, educating, enlightening and relevant. The knowledge and skills are such that are transferrable to our current learning or any actual situation. We are more informed for having participated.

The aim is to bring this valuable workshop to the students' awareness, to heighten interest or to awaken a desire to be a participant. Why not resolve now to be among them at the next session? The new knowledge and skills acquired would be beneficial and applicable in current academia and future pursuits. It is then that all would be satisfied with the decision.

Mr MacKillop is a regular visitor to the Law School and students should look out for future workshops and events that should not be missed.



Left to right: *Malcolm MacKillop, Annette Vaughan, Kattina Anglin, Janet James, Shay Miller, Nelva Ebanks*

## **TBLS Events: Grand Court Justice Phillip St John-Stevens**

Sharon Roy and Diana DeMercado

LLB1 (first year full-time)

The TBLS Student body and faculty was visited by a Justice of the Grand Court Philip St John-Stevens who gave an informative, fun, and exciting presentation and discussion.

### **About Justice St John-Stevens**

Justice St John-Stevens was a Crown Court Judge in England for some time and is now a Grand Court Justice here in the Cayman Islands. He took on some very serious and well-known criminal cases, wrote some money laundering regulations and was involved in the area of cyber-crime. With expertise laid out in various areas, his advice to the student body was of vital importance.

As the first year students had to undertake a debate as well as a moot in order to showcase and improve their advocacy skills, Justice St John-Stevens provided some useful information on how he became a confident and poised advocate for his clients whilst giving strategies on how to tackle your side of the argument.

### **His Advice to Law Students in being the Best Advocate**

- **“The Skills of an advocate have nothing to do with the way they talk or act”**

He emphasized that you do not have to have strongest oral or argumentative skills. He stated that when tackling cases, he pretends like he has different little boxes above his head with all the information that he must open, analyze, and pull together to make strong arguments.

- **“It’s not about memorizing a script. It is about learning and understanding it”**

He understood the struggles of a nervous first year law student who is scared of speaking up, but he emphasized that understanding the material is key to strong submissions. However, a script is helpful in boosting basic confidence.

- **“Knowledge is the gathering of facts and intelligence is the simplifying of those facts”**

There is a difference between knowledge and intelligence.

Knowledge is the gathering of facts and intelligence is simplifying of those facts or being able to use what you know effectively.



Left to right: *Andrel Harris, Merary Eden, Sharon Roy, Annette Vaughan, Diana DeMercado, Justice St John-Stevens, TBLS Director Mitchell Davies, Nardia Henry, Jesse McNaughten, Rory McDonough*

## **TBLS Events: Employment Law Pecha Kucha sessions**

Daniella Carrazana

LLB3 (fifth year part-time)

### **Introduction**

When you think about it, the words Pecha Kucha it seems kind of funny to associate this type of wording with law. But as strange as it sounds, it is one of many presentation techniques used by lecturers and professors to assist students with their presentation skills on a topic covered in during the semester.

The Pecha Kucha presentation is akin to a quick pitch on a topic with timed slides covering a specific area of law that you have studied. The presentation essentially gives the listener a quick but substantive synopsis of the topic you have chosen to address.

Pecha Kucha is Japanese for “chit-chat”. It is believed to be the world’s fastest-growing storytelling platform. By this method, twenty slides set at 20 second intervals of commentary per slide are presented on a selected topic. It is simple and engaging and is used by millions globally.

### **Basis of Pecha Kucha session**

During my final year at TBLS, we underwent a Pecha Kucha session for Employment Law. Each student was given a topic by the lecturer to focus on and explain their research and findings within a limited time frame. As exams were fast approaching, the Pecha Kucha session gave me insight to what was necessary to study for the exam and a head start on my revision for this topic.

Your presentation was conducted in front of two persons, the Lecturer and another student. The presentation tested your knowledge on area you were given, your presentation skills, attention to detail and your critiquing skills on that area of law. The Pecha Kucha session also gave the presenter an opportunity to improve on their critiquing skills and highlighted areas that needed improvement to obtain a better grade.

The Pecha Kucha session assisted me greatly as it helped to bring focus on the topic chosen to discuss, allow you to learn from your peers on their research skills/techniques and allow feedback from the lecturer on areas for improvement. The session was well placed in this area of law as Employment Law is very case law heavy and the sessions aims to have an individual present on an area with limited time, really allows the person to focus on what is true relevant to the area and what the problems are with that area, if any.

### **Conclusion**

I recommend these Pecha Kucha sessions for any topic/area of law as it helps students who are struggling in the area to better understand what is required of them for exams and the topic generally.

## **TBLS Events: Medical Law Online Symposium**

Nelva Ebanks

LLB3 (third year part-time)

### **Symposium on Health Law & Genetic Justice**

This year's 3<sup>rd</sup> Year students - the unique and resilient Class of 2020 - were privileged to have Medical Law and Ethics added to their list of electives for Semester 2. The module covered several interesting topics including one on Genetic Justice where the class was able to join an online conference at DePaul University in Chicago.

The conference was held by the Jaharis Health Law Institute at DePaul University and included an interdisciplinary group of speakers from medicine, legal practice, and academia. Discussions covered issues on distributive and procedural justice in the field of Genetics and Genomics as they relate to scientific innovation, intellectual property, human subject research, and civil and criminal justice systems. The content offered practical insight into how practicing lawyers can address questions of justice that arise as new technologies impact the practice of medicine.

'Genetic Justice: Data, Privacy, and Crime' was the theme of this year's conference and lined up well with the topics covered to that point in the syllabus. The conference fleshed out the 'wicked problem' that exists between ethics and justice, how to achieve just results/prevent unjust results, and what can be done to create more justice. Indeed, these were key factors highlighted by our lecturers, Mr Marc Johnson and Mr Michael Bromby, at the introduction of the course. For instance, one speaker covered informed consent regarding an individual's data in clinical trials/research, the rules/laws surrounding this area and how insurance companies can use (and manipulate) this information.



Overall, the conference was thought-provoking, informative, and interesting. Not only was it a good alternative to the usual class lecture, it also provided the students an opportunity to assess their module content to this point. Generally, it proved to be relevant to the LLB as the theme involved other modules of the degree programme. Their topic included Criminal Law, Intellectual Property Law, and Commercial Law, illustrating how areas of law intersect and overlap with the others, which every 3<sup>rd</sup> Year student realizes sooner or later.

8:45 a.m.	<b>Welcome and Introductions</b>
9:15 a.m.	<p><b>Panel 1: Justice in the Acquisition of Genetic Information: Inclusion and Representation in Genetics Research</b></p> <ul style="list-style-type: none"> <li>○ Moderator: Valerie Gutmann Koch, Jaharis Faculty Fellow, College of Law, DePaul University</li> <li>○ Pilar Ossorio, Professor of Law &amp; Bioethics, University of Wisconsin-Madison</li> <li>○ John Novembre, Professor, Department of Human Genetics and Department of Ecology &amp; Evolution, University of Chicago</li> <li>○ Jonathan Kahn, Professor of Law &amp; Biology, Northeastern University</li> </ul>
10:30 a.m.	<b>Coffee Break</b>
10:45 a.m.	<p><b>Panel 2: Use and Control of Genetic Information: Informed Consent and Privacy through a Justice Lens</b></p> <ul style="list-style-type: none"> <li>○ Moderator: Joshua D. Sarnoff, Professor of Law, DePaul University</li> <li>○ Leslie Francis, Professor of Law &amp; Philosophy, University of Utah</li> <li>○ Anya Prince, Associate Professor of Law &amp; Member of the University of Iowa Genetics Cluster, University of Iowa</li> <li>○ Stephen Hilgartner, Professor, Department of Science &amp; Technology Studies, Cornell University</li> </ul>
12:15 p.m.	<b>Lunch and Featured Speaker:</b> Sheila Jasanoff, JD, PhD, Pforzheimer Professor of Science and Technology Studies, Harvard Kennedy School of Government
1:30 p.m.	<p><b>Panel 3: Genomics in the Justice System</b></p> <ul style="list-style-type: none"> <li>○ Moderator: Monu Bedi, Professor of Law, DePaul University</li> <li>○ Christopher Young, Intelligence Analyst, FBI-Chicago</li> <li>○ Maya Sabatello, Adjunct Assistant Professor in Law, Columbia University</li> <li>○ Lauren Kaeseberg, Legal Director, Illinois Innocence Project</li> </ul>
2:45 p.m.	<b>Coffee Break</b>
3:00 p.m.	<p><b>Panel 4: Using Genealogical Data to Solve Crimes</b></p> <ul style="list-style-type: none"> <li>○ Moderator: Wendy Netter Epstein, Professor of Law &amp; Faculty Director of the Mary &amp; Michael Jaharis Health Law Institute, DePaul University</li> <li>○ Christi Guerrini, Assistant Professor, Center for Medical Ethics &amp; Health Policy, Baylor College of Medicine <ul style="list-style-type: none"> <li>○ Craig Klugman, Professor, College of Science &amp; Health, DePaul University</li> </ul> </li> <li>○ Sara Huston Katsanis, Research Assistant Professor of Pediatrics, Northwestern Feinberg School of Medicine &amp; Instructor, Initiative for Science &amp; Society, Center for Applied Genomics &amp; Precision Medicine, Duke University</li> </ul>
4:15 p.m.	<b>Symposium Concludes</b>

## **Update from the Student Law Society**

Julie Campbell – current president

LLB2 (fourth year part-time)

The Student Society is a student-run non-for-profit organization. However, foremost we are a Society who work to engage the legal community with their local students. Our mission is to create communication and establish opportunities for students to interact with business professionals for future endeavours.

Our goal each year is to host two major fundraising events; the annual Gala and annual Golf tournament. Proceeds from these events are used for any of the following:

- Management of Graduation
- Supplies for the student lounge
- Mooting activities
- Social media sponsorship
- International guest speakers

## Board Members of the Student Society



President – Julie Campbell



Vice President – Jewel Ebanks



Secretary – Colleen Ebanks



Treasurer – Deborah Borderick



Treasurer – Tiffany Titus

## **Alumni Profile: Franz Manderson, MBE JP CERT HON LLB (Hons)**

Honourable Deputy Governor and Head of the Civil Service

LLB 1997 - 2002

Mr Manderson graduated from the Truman Bodden Law School in 2002 as a part time student. He completed the PPC in 2003, graduating with commendation from the Queens University Belfast.

Mr Manderson is the Deputy Governor and Head of the Cayman Islands Civil Service, where he is responsible for the overall performance of 4,000 staff and a budget of over \$700 million. He is also a member of Cabinet and is the first Official Member of the Legislative Assembly.

He was kind enough to take some time out and answer a few questions for us and feature as our first Alumni Profile in this edition.

### **What made you want to pursue a Law Degree?**

Early in my career, I was employed as an Enforcement Officer with the Immigration Department. I was required to enforce the immigration law and to attend court regularly and give evidence. I was most impressed with the prosecutors and defence lawyers in their pursuit of justice. One day, I attended a Court of Appeal hearing and was fascinated with how the judges operated, in particular the late President of the Court of Appeal, Justice Sir Edward Zacca. His ability to challenge lawyers, quickly discern the facts and arrive at a sound decision was fascinating. That particular day was the day I decided to enrol in law school.

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

Travelling overseas was not an option for me as I was really enjoying my career at the Immigration Department. Moreover, the part time degree programme afforded me the flexibility to both work and pursue my law degree simultaneously.

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

The benefits of attending TBLS were immeasurable. Having the ability to study Evidence and Criminal Law really enhanced my career in immigration. I was promoted twice while pursuing my law degree. Moreover, being exposed to other subjects such as Constitution and Administration Law and Human Rights really shaped my career and enhanced my decision-making capabilities.

There were many challenges I had to overcome during my tenure at the TBLS. First, I was required to work very long hours at the Immigration Department, (16-hour days were the norm). So, finding time to study and prepare course work became a real challenge. I often found myself falling asleep in class. I recall reading over my notes in preparation for an exam and seeing the words "Franz, wake up" in my notes as my hand writing became illegible.

It was also very difficult to concentrate in class at times, especially if I attended class after a particularly challenging enforcement operation where I was involved in difficult arrests. It would often take me at least 30 minutes to really focus on the lectures as my mind and adrenaline were both still racing from the operation.

In fact, the challenges of the job became so overwhelming that I ended up having to suspend my legal studies for a year. However, I was not deterred and returned to complete my degree.

### **How did the law school prepare you for or assist you in your professional career?**

I use my legal training almost every day throughout out my career. My research skills allow me to have command of many complex subject matters. As I was promoted up the ranks of the Civil Service, subject areas such as Employment Law and the local legislation that I studied in the PPC equipped me to effectively deal with the numerous challenges that I faced on a daily basis. In reality, my legal training instilled in me the irreducible obligation that we have to respect human rights, to be just and fair in our decision making and always ensure that decisions are defensible in law.

**Briefly share thoughts of your experience as the Deputy Governor of the Cayman Islands that most people would not know?**

Holding the post of Deputy Governor and Head of the Civil Service is an absolute privilege. I think most people are not aware of the diverse subject matters that I am required to deal with on daily basis. For example, during the COVID-19 lock down I was at work every day leading the Civil Service's response to the pandemic. Each morning at 9:00am, I was in the National Emergency Operations Centre setting the priorities for the day. That particular meeting was held via Zoom with about 60 staff across the entire public service in attendance.

However, even without a pandemic my days are still equally exciting. I regularly discuss diverse subject areas such as succession planning, disciplinary matters, innovation, nationality matters, child safeguarding, staff welfare and matters relating to national security.

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

I think the one thing that we must find within ourselves is our purpose. In the Civil Service, our purpose is to make the lives of those we serve better and every day I see that happening in extremely impactful ways.

Given that I joined the service right out of high school, I knew that I would never have advanced in the Civil Service without tertiary education. I also knew that I had to set a standard for my family and my colleagues. So on those days, when I entered the elevator on my way to class and questioned myself as to why I was attending class feeling tired and frustrated: I reminded myself of my purpose - to make my family proud, set an example for my children and be a role model for other Caymanians.

## **Alumni Profile: Scott Burley**

3<sup>rd</sup> Year Transfer to University of Liverpool

Truman Bodden Law School (2015 - 2018)

Scott grew up in the Cayman Islands and attended Triple C High School. He spent the first two years of his LLB law degree studying at the Truman Bodden Law School (TBLS) before transferring to the University of Liverpool for his final year. Scott then went on to study the Legal Practice Course at the University of Law in Manchester in January 2020.

Scott began his journey by shadowing Mr Barton of Richard Barton Attorney-At-Law after school and on summer holidays. The work experience was for 3 years and focused on areas such as Criminal Law, personal litigation in Tort, as well as company matters. He was later awarded a sponsored summer internship with Appleby (Cayman) Ltd. for a 5-year period. During that time, he sat with numerous attorneys in the Corporate & Commercial Practice Group, as well as the Dispute Resolution Practice Group. Scott also sat in the Corporate Practice Sector at the law firm Walkers in the summer of 2015. In 2019, Scott assumed a paralegal role with Bodden & Bodden where he gained experience working on the Property team assisting at various levels of real estate transactions. In addition, Scott assisted with several finance transactions, immigration and probate matters. Scott expects to complete his course in October 2020, after which he will return to the Cayman Islands to train as an attorney.

### **Why did you choose to earn your LLB at TBLS?**

The main reason I chose to begin my LLB studies at TBLS was because I was eager to study in an environment where I could take advantage of having significant face time with my lecturers. From speaking with students before me and my own research, I could tell that the course would be fast paced from the beginning. I also knew that despite being able to stay home, close

to family and friends, TBLS offered several opportunities to take part in international mooted events as well as evening lectures put on by local firms.

**What were the benefits of attending TBLS and what were the challenges (if any)?**

The TBLS offered me the opportunity to work in a controlled space where I could develop successful study strategies and reap the benefits of greater classroom participation. The TBLS also hosted many networking events where I could engage with professionals to ask questions and build relationships. The main challenge for me when studying at the TBLS was the library's early closing hours however, those concerns were addressed when it extended library hours during exam time.

**What made you want to transfer to the Liverpool campus in your 3<sup>rd</sup> year?**

Having completed two years of my degree at the TBLS I was excited to take what I had learned and compete on an international level. I had grown to enjoy the TBLS however, I wanted to step out of my comfort zone and experience a different lifestyle and format of teaching. Personally, I also knew that I was leaning towards taking the English LPC course, so I wanted to make use of Liverpool's career service which helps students format their CVs and prepare for work and university interviews.

**What are some experiences and skills that the TBLS provided you whether academically, socially that Liverpool main campus did not? (such as smaller classrooms so easier access to lecturers)**

It was definitely a lot easier to get in contact with lecturers at the TBLS as you could go and knock on their door to ask a question or schedule an appointment. Whereas, at the Liverpool main campus, as with many larger universities, there was an online system where you had to contact your professors to schedule meetings and they were not always quick with responses. The class sizes at the TBLS also provided the added benefit of allowing the students to get to know each other quickly and get past any initial fear of answering questions in a group setting. I



also gained valuable public speaking experience when I took part in the Vienna moot team training at the TBLS.

### **What were the benefits of this transfer?**

I met many people from around the world and made a lot of new friends in study groups. I was happy to experience learning in both a small classroom setting as well as a larger lecture theatre. I also took part in many clubs and student societies on campus which allowed me to add further extra-curricular activities to my CV. Another benefit that came with the transfer is that I was able to travel around to visit other areas of the UK and Europe whilst studying.

### **What challenges did you encounter?**

The main challenge for me was living away from home. I expected to miss family and friends, but the culture shock and weather shift was more intense than I originally anticipated. Fortunately, there is a large support group of Caribbean students in Liverpool and, specifically Caymanians, which I was able to connect with and make living away from home still feel like home. There are also many Caymanians all over the UK and we were able to come together for holidays and meet and greets hosted by the CI Government. For instance, we were able to celebrate Cayman Thanksgiving as well as meet up to socialise in-between classes.

### **Do you have any tips that you can recommend for a student considering the transfer?**

*The things I experienced which might be worth considering are:*

- Studying overseas helped broaden my mindset regarding studying generally as well as my future career ambitions. Interacting with students and professors from different countries opens you up to different ways to view problems and creative ways to achieve solutions.
- In addition to my mindset, I was also exposed to wider issues based on the courses I took. For example, a course not offered at the TBLS like International Investment Law exposed me to wider socio-economic issues which other countries (and their

domesticated companies) consider before deciding on any foreign investment. Thus, I was forced to rethink issues we have at home and think of ways Cayman, which is heavily reliant on tourism, could look more attractive to other countries.

- With greater interaction with more people, there are also valuable scholarship and job opportunities that a student may want to consider if they do not want to limit themselves to working and living only in Cayman right out of university.
- It is of course, a significant financial strain to move away as oppose to completing your entire degree at the TBS. However, as Liverpool is a largely student focused city, it has made a point in recent years to cater to its vast student population with plenty of student discounts at restaurants and shops all over.

## TBLS Alumni: Statistics

Although the Law School is situated in the Cayman Islands, many of our graduates have come from elsewhere. The flags below illustrate where our more recent graduates have come from, based upon their stated nationality in their application form.

Data from LLB graduations 2015-2020 only:

**Cayman Islands: 32**



**Canada: 15**



**Jamaica: 15**



**United Kingdom: 9**



**United States of America: 4**



**Guyana: 3**



**Bermuda: 1**



**The Bahamas: 1**



**Trinidad & Tobago: 1**



**Cuba: 1**



**Colombia: 1**



**India: 1**



**Kenya: 1**



**Germany: 1**



## **CILPA: Update from the Student Representatives**

Romario Ysaguirrie - incoming 2020/21 Representative

LLB2 (second year full-time)

The Cayman Islands Legal Practitioners Association (CILPA) is an organization for practicing attorneys to represent the legal profession within the Cayman Islands in matters of national and international interest that affect the profession. CILPA also provides ongoing professional support and development for legal professionals by holding various seminars, distributing newsletters and consultation reports on contemporary legal issues. Despite being structured primarily around the membership of practicing attorneys, CILPA also welcomes student members while utilizing a student representative to bridge communication between the two groups.

I applied for the role of CILPA Student Representative because I perceived it as a valuable opportunity to network with legal professionals and to gain further insight into the legal industry. That is exactly what it turned out to be. The role of CILPA Student Representative generally requires you to assist with registering new student members, and to help with evening seminars held by CILPA at various locations. Individuals who are outgoing, enjoy meeting new people, and like to be involved in social activities will find that this role fits them like a glove. I highly encourage anyone interested to apply for the role when the opportunity arises – you will not regret it!

Kattina Anglin - outgoing 2019/20 Representative

LLB3 (third year full-time)

Now that the transition period for Student Representatives is complete and we are all able to breathe following the first round of exams for some students and the beginning of the final lap to a law degree for others, I wish to take this time to share some of my experiences as the

Student Representative for the Cayman Islands Legal Practitioners Association (CILPA) with you and of course, hope to encourage you to become a student member of CILPA if you are not already one.

First, perhaps a bit of history is most befitting, especially for first-year students. CIPLA evolved from the merger of the Caymanian Bar Association (CBA) and the Cayman Islands Legal Society in 2018. I enrolled as a student member of CBA at their presentation at Truman Bodden Law School (TBLS) in 2017. This was one of the smartest decisions I have made; enrolling to TBLS to achieve my law degree ranks really high on the list, as many of you will agree.

As a student member, I had access to seminars which addressed a plethora of legal topics I might not have become aware of if I were not subscribed as a member. Those seminars created new visions of opportunities and means to utilise my law degree. There is often a limited view as to what and how law degrees can be used, which is generally that they are limited to use in criminal, family or corporate and company law, that is- the courts. Nothing could be further from the truth. I had the wonderful experience of learning other areas of law namely: aircraft registration -another legal service and social status that the Cayman Islands are fast becoming recognized and sought for- maritime law- which is most fitting considering our heritage- hedge funds, real estate and utility regulations.

As the Student Representative and member of the Seminar Committee, I had the distinct advantage and pleasure of being the seminar aide to Mr Neil Timms QC, the Chairman of CBA and interim Chairman of CILPA and to work with the other Committee members to plan and produce the seminars at TBLS, and at other law firms as required. I was afforded the privilege of attending Education and Seminar Council meetings, the annual general meetings (AGM) and the option to attend other wonderful events presented by CILPA and its member firms. I embraced the many opportunities to network and made essential connections to lawyers - including Partners in major firms. Realistically, I will not all utilize all these connections immediately following graduation, but each encounter will eventually prove its own worth in the future.

One of the most impacting events I was privileged to attend as the Student Representative was the 2019 WISTA International AGM & Conference at the Marriott hotel. You can learn more about WISTA at <https://wistainternational.com>. This two-day event was attended by the Minister of Environment and Culture, The Honourable Dwayne Seymour, Greek shipping company owners, global maritime law attorneys, marine environmentalists, representatives from MARPOL, NAMEPA, a host of other essential shareholders in the maritime industry and a vast number of local representatives from the Cayman Islands legal industry and the General Registry. It was a phenomenal event and I was able to attend because I initially signed up as a student member, volunteered at the seminars and was offered the invite by one of the seminars' presenters, Mr Derek Jones, a former partner at HSM and his wife Charice Jones, President of WISTA for 2019.

As the CILPA representative, I didn't just sign up and show up. I volunteered as much as I could for their events to help ensure that the body realised its goals. Volunteering at the seminars was a way of giving back, and the CBA and CILPA AGMs granted me the honour of assisting along with others to ensure that the electoral process was executed according to the Association's laws to produce a fair result. Of course, an AGM is another great opportunity to match the names to the faces of the legal industry and network.

Being a student member and Student Representative taught me not only to seize opportunities to advance my legal career but also opportunities to serve others, to give back. By embracing these concepts, I will grow into a more effective advocate for my community, country and humanity.

I offer much gratitude to our Director Mr Davies, Ms Minty and the other TBLS staff, for their assistance and guidance when required for the fulfilment of my duties. I wish my successor, Mr Romario Ysaguirre, every success and have full confidence he will represent both TBLS and the CILPA student bodies most admirably during his tenure as the Student Representative 2020.

## **External Events: Conyers 100 Years of Women in Law: Making It Rain**

Tiffany Titus: LLB2 (second year full-time)

Patrice Morgan: LLB1 (first year part-time)

Conyers held an evening of roundtable presentations by lawyers who offered their personal experiences and key advice for women to develop their careers on the right foot. The presentations were impassioned, filled with personal anecdotes that underscored many important approaches. Below are the key takeaways from both of us.

### **Tiffany**

1. Make sure to surround yourself with persons who will support you and encourage you at every step of your career.
2. Identify your strengths and hone them to give yourselves an advantage over others.
3. Embrace being different from men. Do not try to blend in but use your differences to elevate yourself within the workplace.
4. Always be passionate about your work and always be creative. Let your performance speak for itself.
5. Keep an open mind and continue to learn from seasoned lawyers.
6. Feedback is crucial to your success. You don't have all the answers so accept the critique while you have access to it.
7. Networking is very important and can be especially beneficial if you start the process early in your career. Those relationships will help you later on.

### **Patrice**

1. Move honestly and with integrity in every interaction with fellow lawyers and clients. You never know who is watching.
2. At every stage of your career, reach back and help someone else. This will be of benefit to the profession as a whole, and it just feels good to be part of that.
3. Fight for yourself but do it smartly. Don't shrink out of fear of offending, but don't burn bridges unnecessarily.
4. Honour your beliefs and principles, no matter the cost. You have to live with the consequences.

## **Articled Clerk Reflective Review**

Michaiah Bryan

Attorney General's Chambers (2020-2021)

### **Issue to be considered**

Can employees be compelled to work on a particular day when doing so is against their religious beliefs?

### **My role in the case**

I researched the basis of Freedom of Religion in the Cayman Islands and searched for any relevant local cases. As there was no local case law addressing this specific issue, I considered UK Court of Appeal and European Court of Human Rights (ECtHR) decisions. I then drafted the advice to the client, discussed this with my principal, made the requested changes, and sent the advice to the client.

Freedom of religion in the Cayman Islands is protected under section 10(1) & (2) of the Cayman Islands' Bill of Rights, Freedoms and Responsibilities which is part of the Cayman Islands Constitution Order 2009. This section of our Bill of Rights is itself modeled upon Article 9 of the European Convention on Human Rights ('ECHR').

Freedom of religion is not an absolute right but is subject to limitations set out in section 10(6) of our Bill of Rights (equivalent limitations appear in Article 9(2) ECHR). Additionally, ECtHR jurisprudence indicates that people's freedom to manifest their religion may be influenced by the particular situations of the person claiming that freedom. Furthermore, Article 9 does not protect every act motivated or inspired by a religion or belief. When an employee seeks to rely upon their right to freedom of religion in relation to their employment this must be counterbalanced against the contractual terms of their employment agreement. Also relevant are the provisions of Cayman's Bill of Rights which require public officials to act in a reasonable manner and to make decisions which are lawful, rational, proportionate, and procedurally fair



and the provisions of the Public Service Management Law which mandate public officials to operate a personnel policy which ensures the fair and proper treatment of employees in all aspects of their work.

The case law also contained competing views which had to be taken into account when providing advice to the client. The UK Court of Appeal was hesitant to follow the decisions of the ECtHR on this issue, particularly where employers had introduced new duties or where the manifestation of the employee's beliefs could have been reasonably accommodated.

### **Reflections on the Case**

This case had a heavy focus on ECtHR law and administrative law, and I am grateful for the time I spent grappling with those areas of law during the LLB.

Moreover, this matter initially involved the use of the simple formula that was repeated by Truman Bodden Law School lecturers many times during the LLB and PPC: "Ascertain the facts of the case, research the law, and apply the law to the facts."

However, clients need more than just law applied to facts. They need actionable recommendations based on the law presented to them. This is where the foundational knowledge I gained during the LLB and PPC was bolstered by the real-world experience of the attorneys guiding me during my Articles. My principal helped me to shift my focus from simply interpreting the law to also considering the implications our advice would have on our clients, their ongoing relationship with the relevant employees, and any future implications for our clients' personnel management operations.

## **Articled Clerk Reflective Review**

David Lee

Walkers (2019-2021)

### **Entity Migration**

Earlier this year we received instructions to effect a transfer by way of continuation in relation to a Cayman Islands company. A transfer by way of continuation is a mechanism prescribed by the Companies Law (2020 Revision) in which either: (i) an entity existing under the laws of another jurisdiction is registered under the laws of the Cayman Islands (sections 201-205, Companies Law) or (ii) an entity existing under the laws of the Cayman Islands is deregistered with the Cayman Islands Registrar of Companies (the "Cayman ROC") and registered under the laws of another jurisdiction (sections 206-209, Companies Law). We focused on the latter set of provisions as the Company needed to be deregistered with the Cayman ROC (the "Migration Out") and registered with the Mauritius registrar of companies (the "Mauritius ROC").

### **Issues to be considered**

Numerous Cayman specific requirements need to be fulfilled in order to successfully deregister an entity with the Cayman ROC, but it should be underscored that the requirements of the jurisdiction taking on the entity are of equal importance. By way of example, if an entity is successfully deregistered in Cayman but fails to be registered in the new jurisdiction, it will exist in a stateless limbo and its status will be unclear. To this end, we had to ensure that any necessary pre-authorisations were obtained and that both the Cayman requirements and Mauritius requirements were satisfied before we submitted the Migration Out filings to the Cayman ROC. One such requirement arising under Mauritius law was the need to notarise and apostille certain documents in Cayman. Appearing before a notary in the midst of a global pandemic is not without significant challenges and an issue in most countries; furthermore, even if we were able to get the documents notarised, the Cayman Islands Passport & Corporate Services office had already announced the suspension of its apostilling service.

### **My role in the case**

I was heavily involved in this matter from start to finish. My role included: ensuring that we had a detailed step plan in place so as to fulfil both jurisdictions' requirements; drafting all required documentation; liaising with the client, other departments within my firm, Mauritius counsel, the Cayman ROC, the Mauritius ROC; and advising the client on matters of Cayman law arising throughout. The collaborative effort between myself and international counsel was by far the most rewarding aspect of my work, especially as we grappled with the issue of notarising and apostilling in an uncertain environment until we reached a successful outcome.

Ultimately technology saved the day as we determined that in circumstances where the signatory was off-island, the recently enacted Notaries Public (Virtual Conduct of Notarial Acts) Regulations, 2020 and the Electronic Transactions Law (as amended) facilitated a 'virtual notarisation conference'. As a result of the e-meeting the Notary Public could ask the signatory certain questions to verify the authenticity of the document before affixing their notarial seal to the copy of the electronic original.

On the apostilling front, whilst this service had been suspended at the time, the Cayman Islands Passport & Corporate Services office offered an alternative whereby the Mauritius ROC could contact them to confirm the authenticity of the notarial seal. This involved some back and forth but in the end the Mauritius ROC was happy with this arrangement.

## **Reflections**

I was motivated to ensure that the transaction was completed as I had not previously received instructions to effect a Migration Out. The skills and knowledge acquired during my LLB and LPC years were certainly instrumental in allowing me to understand the statutory mechanisms at play but there are many things that books cannot prepare you for, and the pandemic is certainly one of them. As a student it was easy for me to underestimate the dynamic nature of the law - I considered statutes as all-encompassing devices, perfect and set in stone. My time as an articled clerk, in particular during this transaction, has taught me that this is far from the case; sometimes we are forced to look outside of a text book or the law to find an answer, that the provision of legal services can be significantly enhanced by technology and occasionally what is correct is as simple as 'what makes sense'. Learning the law is very important, but learning how to think like a lawyer is critical.

## **Articled Clerk Reflective Review**

Alexander McGrath

Walkers (2019-2021)

### **Company mergers**

I recently assisted with a merger transaction that involved multiple Cayman companies merging with and into three 'surviving companies' that had each been renamed and repurposed for this matter. This deal involved several moving parts as the filings to be submitted to the Registrar of Companies (the "Registrar") included three separate mergers, all happening concurrently, to then be immediately followed by another round of mergers. The method to effect a merger in Cayman is governed very specifically by the Companies Law (2020 Revision) and the requirements must be followed to successfully effect a merger within the Cayman Islands.

We advised that it would be important to ensure that there was no outstanding security against any of the entities and that a thorough review of each company's register of mortgages and charges would be necessary. Upon inspection of the registers we found that there was outstanding security against a number of the entities that made up some of the 'merging companies'. It was vital to ensure that all this security had been discharged before we could move forward. Only after this process were we then able to draft the necessary merger documentation to be submitted to the Registrar. Once all the documents had been filed, and the Registrar had deemed the application successful, we were presented with a certificate of merger for each merger that we were then able to present to the client as evidence that the mergers had been effected.

### **Issues to be decided**

1. What constitutes proper evidence of the discharge of security for the purposes of updating a company's register of mortgages and charges?

2. Logistical and file management considerations - with so many moving parts and documents, ensuring that everything remained organised and in proper order to be submitted to the Registrar was imperative.

### **My role in the case**

This matter had several distinct steps to it: (i) Firstly, we had to effect the change of name for each of the 'surviving companies'. I assisted with drafting the resolutions necessary to do this and also amending and restating the memorandum and articles of association of the company to reflect this change of name. (ii) It was then necessary to conduct a thorough review of the registers of mortgages and charges and flag any outstanding security with the client. Once provided with the relevant release documents, we liaised with the relevant companies' registered office to ensure that the registers were updated to reflect that there was no outstanding security. (iii) Finally, we prepared the documents, and subsequently submitted them, for the Registrar to effect the mergers. This included drafting a plan of merger, director and shareholder resolutions, declarations of the directors, notices of the effective date of the mergers, balance sheets and obtaining certificates of good standing.

### **Reflections**

I found this matter to be interesting from an organisational point of view. There were several entities all doing the same thing and multiple copies of documents for each entity were needed, each with subtle differences, the paper load and checks could have become unmanageable very quickly. For tasks such as this one, I find using a checklist the best approach. The checklist helped me to ensure that all documents were thoroughly reviewed, which in turn allowed me to manage the paper load effectively and efficiently. Developing organisational skills throughout law school, for even the smallest of exercises, can make your life far easier and will leave you with a skill that is easily transferrable into the working world.

## **Articled Clerk Reflective Review**

Moesha Ramsay-Howell

Harneys (2019-2021)

**Case Name:** In the Matter of Duet Real Estate Partners 1 LP

**Court:** Financial Services Division (FSD)

**Citation:** FSD No. 22 of 2020

**Judge:** The Hon. Justice Kawaley (IKJ)

**The Parties Involved:**

Petitioner - Colville LLC

Respondent - Duet Real Estate Partners 1 LP (An Exempted Limited Partnership)

### **Material Facts**

The Petitioner invested around \$4.5 million into the Respondent (a Fund) and became a limited partner in 2007. The Respondent's constitutional documentation provided that the term had expired in March 2012, or no later than March 2014. The Petitioner failed to receive a return on their investment and after numerous failed attempts to garner information from the Respondent, the Petitioner subsequently presented a winding up petition to the court in respect of the Respondent.

The Court ordered the Respondent be wound up pursuant to s.92 (c) Companies Law (as revised) on the basis that the duration had expired. This is the first decision in the Cayman Islands which considers the application of section 92(c) (expiry of term) to exempted limited partnerships, whilst providing jurisdictional guidance on section 92(c).

### **Issues to be decided**

1. Did the court have jurisdiction to make a winding up order on a contributory's petition on the ground that the duration of the Respondent was at an end?
2. Could the Petitioner demonstrate a sufficient or tangible interest in a winding up?
3. What interest must the applicant for a winding up order possess?

### **Ratio / Disposition**

The Respondent, being an exempted limited partnership, was ordered to be wound up pursuant to s. 92(c). In making the winding up order, the court provided guidance on s.92(c):

- (i) In seeking the winding up of an exempted limited partnership, the provisions of the Companies Law in relation to the winding up of companies will apply unless there are conflicting provisions in the Exempted Limited Partnerships Law (as revised).
- (ii) The tangible interest that a petitioning contributory must demonstrate is a question that will be formulated based on the specific winding up ground(s) that are relied upon.
- (iii) The issue of tangible interest is connected with the statutory purpose of s.92 (c). In this instance, the petitioner needed to demonstrate that the Respondent had a fixed duration which had expired and that the Petitioner is a contributory with a crystallized contractual right to a voluntary winding up. An investor should not be locked into a company or fund for a longer period than that for which the shareholder signed up.
- (iv) Alternatively, the court would have found that the Petitioner could not be required to establish the solvency of the Respondent in circumstances where its management failed to provide the necessary information.

### **My role in the case**

I was involved in the preparation and ultimate presentation of the petition before the court. I was tasked with preparing various supplemental documents in support of the petition, whilst identifying the relevant legal issues and skillfully applying the appropriate legal knowledge. During second year LLB, I studied Company Law I and II which laid the theoretical foundation and helped me to grasp the basic legal concepts in this complex area of law. Thereafter, the LPC provided the opportunity to apply that knowledge in a practical manner, by drafting various dispute resolution documents which proved beneficial when preparing the supplemental documents that were presented before the court in this matter. It felt rewarding to see how the result of my work was evaluated, supplemented and delivered to the court by senior colleagues.

This experience has been an incredibly rewarding and interesting experience, as I have been directly involved throughout the process. I gained useful practical knowledge and skills and developed an improved sense of responsibility and diligence. I am grateful that Harneys provides a mentally stimulating environment which continues to encourage the development of these practical skills, the acquisition of new knowledge and ensuring a comprehensive understanding of the dispute resolution practice. The knowledge and skills gained during the progression of the matter have resulted in invaluable experiences which will inevitably benefit my future legal career. I gladly welcome the opportunity to receive greater exposure to this area of law.

## **Articled Clerk Reflective Review**

Aoife Murphy

Walkers (2019-2021)

### **Amending and Restating Memorandum and Articles of Association (the "Articles") to Protect Founder Shareholder**

We were instructed by a client in relation to a proposed share allocation involving the issuance of further shares in a Cayman Islands company (the "Company") in which there was currently a sole shareholder (the "Founder Shareholder"). The client was concerned that when further shares were allocated the Founder Shareholder's control of the Company would be diluted. We advised that any issued shares would dictate the ownership of the Company and the voting in respect to shareholder decisions.

Therefore, further issuance of shares could also dilute the control of the Company. In order to ensure that the Founder Shareholder maintained control of the Company amendments needed to be made to the Articles of the Company. We drafted the updates to the Articles to ensure that the provisions in relation to certain items, including the issuance of shares, required the consent of the Founder Shareholder, thereby ensuring that the Founder Shareholder's control of the Company was enshrined in the Articles.

#### **Issues to be considered**

1. How the proposed issuance of shares would dilute the Founder Shareholder's control.
2. The provisions that would require the Founder Shareholder's consent under the Articles in order to maintain control over certain shareholder and director decisions.

#### **My role in the case**

I assisted with drafting the amendments to the Articles. It was important that the Articles contained all of the provisions that the Founder Shareholder considered important to maintain



control of the Company. We drafted the Articles to provide the Founder Shareholder with two separate ways in which the client could communicate their consent: (i) in their capacity as shareholder; or (ii) in their capacity as a director (for so long as the client was elected). By drafting the Articles in this way the administrative burden on the Founder Shareholder was lessened when providing his consent because the client was able to provide consent by an affirmative vote in either a shareholder or director meeting. We also included provisions for departing shareholders and had to consider in detail how a buyout would occur pursuant to the provisions in the Articles depending on the circumstances of the shareholder departure.

### **Reflections**

This was an interesting matter as it allowed me to put my understanding of company law, which I completed courses on during both my LLB and LPC, to practical use. It also highlighted the importance of thinking around an issue, in other words, to see if, in addition to the question posed, there are any other issues to consider. We were first instructed regarding share issuance but such issuance created potential issues with regard to the dilution of the Founder Shareholder's control of the Company.

Therefore, thinking about the problem laterally allowed us to advise as to the potential legal issues that such issuance could create. Thinking creatively around a problem is a skill I have further developed since working in a law firm. The LLB and LPC provided me with a solid basis of legal understanding and knowledge which is very important as it underpins everything we do as lawyers. The knowledge I acquired allows me to assist qualified lawyers in the workplace which in turn has led to the further development of my practical legal skills.

## Submissions for 2021

Michael Bromby

Academic Editor

This Student Law Review relies on contributions from the students themselves, and the hard work of the editorial team over the summer.

During the 2020/21 academic year, if you plan to attend a TBLS run event or a legal event hosted elsewhere (perhaps by CILPA or one of the firms) then please let me or any of the editorial team know. We can provide support and advice on how to construct your entry. We suggest that any article ought to contain three aspects (not necessarily headings):

- Descriptive – who, what, where, when
- Evaluative – why, how, so-what, what-next
- Reflective – what did you learn, how did your (legal) knowledge change

We would also welcome any other thoughts and contributions that would make interesting reading to the student body.

Equally, we welcome case notes and reflective reviews from articulated clerks that summarise their own learning experiences following their time at law school and entry into the profession. This may comprise a case note if there was litigation, a report on other types of work or even a commentary on the introduction of new regulations or laws in the Cayman Islands.

As ever, I am indebted to the students in the current editorial team. They put a great amount of effort into this year's edition following our much smaller pilot edition in 2019. I am also grateful to the first year Legal Skills students whose work was selected for inclusion. There were many excellent pieces of work to choose from, making the task of selection harder still!



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