

The new Defamation Act explained

What to avoid on your application form

PLUS A look into the Magic Circle

What
happens
to your
Facebook
after your
death?

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the magazine of the
Oxford Law Society

Hilary Term 2014

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EDITOR'S LETTER

Funnily enough, I got onto LawSoc committee by accident. After failing to get onto committee in my first term at Oxford, I decided to fall into the habit of submitting a nomination to Law Soc every term as a matter of course, each in the same format as the last: a parody of a randomly selected well-known song. Six terms later, I woke up to find I'd been voted onto committee. Clearly some sort of elaborate joke gone right. Well, better later than never, as they say - and I certainly learned a thing or two about perseverance. My first thanks therefore must go to Queen, Slade, Les Mis, and Carly Rae Jepsen for such changeable tunes, so enabling me to be here in the first place.

This is a cracking issue of Verdict, if I must say so myself. Essentially, if you're reading this, I've succeeded. By tapping into some relevant hot-button legal topics of our time - recent changes in defamation law and social media legacy - I hope I've made Hilary's magazine something you've picked up and had a quick curious flick through. Putting it together has involved much frustration along the way, but happily matched in equal measure by the satisfaction of the end result. Thanks go to my dedicated deputy editorial team, with particular gratitude to Akshay Chauhan; and most of all a tremendous thank you to our printers and to each of our contributors. It has been a pleasure working with our fantastic committee this term, led by the energetic and helpfully personable aura that is our president, Nick de Mulder.

Are you safely tucked in? Great. Read on!

Wishing you well,

Xin Fan
Verdict Editor
Hilary 2014



watching your
words
wisely



print / social media
/ law

The Defamation Act: what's new?



The new Defamation Bill, passed last year, was brought into force on 1 January 2014. It has been hailed as a significant advance for free speech. Nigel Tait, managing partner at leading media law firm Carter-Ruck, takes us through the key changes - how they will affect media law in practice, and how they might have made some previous outcomes rather different.

The Act codifies elements of the existing law on defamation and also introduces some substantive reforms. According to the Government, the new Act “rebalances the law on defamation to provide more effective protection for freedom of speech while at the same time ensuring that people who have been defamed are able to protect their reputation”.

The leading textbook, *Gatley on Libel and Slander*, agrees, stating that “the Act undoubtedly effects a shift of the law in favour of free speech”.

When I qualified as a solicitor in 1988, specialising in suing newspapers for libel, the balance between freedom of speech and reputation was to my mind entirely satisfactory. Of the last forty libel cases that had gone to trial against journalists, the media had lost every single one. Excepting one blip in 1988 where a newspaper actually won a case (a state of affairs so remarkable that an entire book was devoted to what was deemed a storm in a teacup), the pattern continued, with the next ten cases in a row going against the media. When one eminent libel QC (Desmond Browne) heard that I lectured to the profession on strategy and tactics in libel cases, he remarked that all I needed to say was: If you are acting for a plaintiff, issue a writ, and if for a defendant, tell your client to get out his chequebook.

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FOUR



Prior to the introduction of the new Act the polarity between reputation and free speech was already reversing. Twenty-six out of the last thirty-five cases had been decided in favour of defendants.

So how would the Act have affected historic libel cases? And what does the Act say about the future of defamation law for both claimants and their lawyers?

One of the most notable changes brought about by the Act is the requirement in **Section 1** that, in order for a statement to be regarded as defamatory, it has to be shown that its publication has caused or is likely to cause serious harm to the reputation of the claimant. Clearly this is intended to alter the previous common law threshold. The court will now have to look at all the circumstances of the publication, not just the words themselves. Thus evidence from the claimant that demonstrates harm is likely to be admissible on meaning. This will undoubtedly lead to increased costs in the initial stages of a defamation action and uncertainty for defendants who argue that a publication is not defamatory before seeing the evidence.

In 1990 I acted for famous explorer Sir Ranulph Fiennes over the publication of false allegations in six copies of a Canadian magazine that had been published in England. The Jury awarded £100,000 in damages. However, the new threshold in Section 1 (and the new provisions on jurisdiction), means it is unlikely the action would be brought now on the same facts or that Sir Ranulph would have been able to clear his name.

Section 1(2) of the Defamation Act provides that the harm to the reputation of a body that trades for profit is ‘serious harm’ only where it has caused or is likely to cause that body serious financial loss.

This is a significant new development. In 2008 I acted for Tesco over a report in the *Guardian*, which falsely alleged that Tesco was avoiding £1bn of corporate tax on property deals through an elaborate network of offshore accounts. Tesco was unhappy with the apology published by the *Guardian* but settled the dispute following the publication of a further, front page apology some eight months after the offending article. If Section 1(2) now says that harm to a profit-making organisation’s reputation is only ‘serious harm’ (something that now *has* to be established for a publication to be defamatory) if it caused or is likely to cause serious financial loss, could Tesco sue for libel today over the same allegation? How could it establish that it had, or

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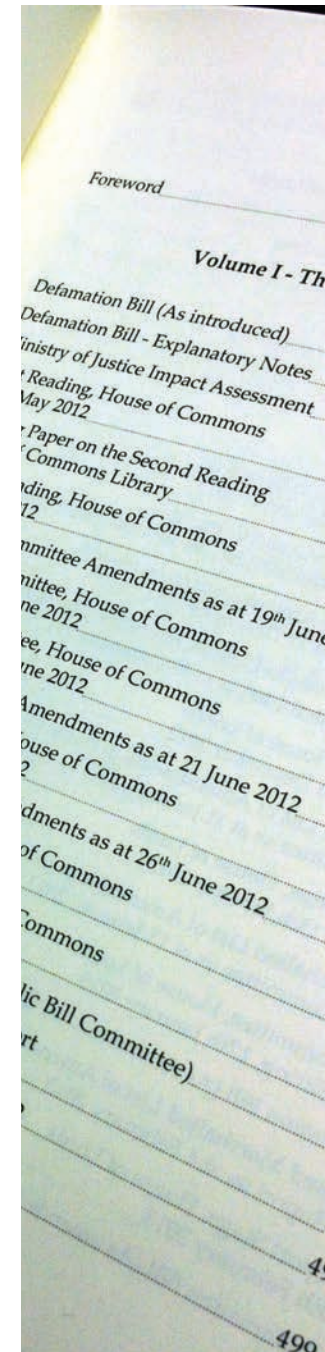
was likely to suffer, serious financial loss because of an article about corporation tax? It does, of course, depend on the facts, but the answer is probably with great difficulty, if at all.

Section 3 contains the statutory defence of honest opinion. This provision broadly reflects the previous defence of honest comment (formerly “fair comment”) however, the requirement that the ‘comment’ (or now the ‘opinion’) be on a matter of public interest has been removed.

In 1992 my client Vladimir Telnikoff was awarded £240,000 by a jury against the author of a letter published in the *Daily Telegraph* which accused him of “stressing his racist recipe”. Mr Telnikoff, who was not a racist, complained that the letter labelled him as one. A judge and the Court of Appeal decided that the words were comment, not an allegation of fact, and dismissed the case. The House of Lords allowed Mr Telnikoff’s appeal on the ground that a reasonable jury, properly directed, could find that the allegation was one of fact. Mr Telnikoff would not have won the case had the Act been in force because, due to its provisions, he would not have brought it in the first place.

There are some provisions in the Act that do not necessarily alter the status quo. **Section 2** of the Act codifies the defence of truth (formerly justification). **Section 4(1)** (the defence of publication on a matter of public interest) is expressly intended to reflect the common law defence of responsible journalism on a matter of public interest, as set out in *Flood v Times Newspapers* (2012 UKSC 11). However, **Section 4(3)** greatly expands the ambit of the defence formerly known as “reportage”, and may be used by the media to air scurrilous and false allegations on the basis that they are only reporting on a dispute (which they will have stirred up in the first place).

Other provisions reflect the way that the media landscape has changed over the years: they address how the liability of the operators of *websites* is to be determined. **Section 5** provides that, where an action is brought against the operator of a website in respect of a statement posted on the website, it will be a defence for the operator to show that it did not post the statement. Section 5(5) provides that regulations (which have now been published) may prescribe how website operators must respond to a notice of complaint. This is so they have a defence under Section 5 of the Act in relation to allegedly defamatory statements posted on their sites by others.



There are of course many other significant developments within the Act, but perhaps the development with most historical significance is **Section 11**, which abolishes the presumption that all defamation cases are to be tried by jury. Although an application may still be made for trial by jury, the presumption is now that a trial will be by judge alone - the section effectively abolishes trial by jury in libel actions.

In 2006, I acted for Sir Elton John over a nasty piece in the *Daily Mail* that was published despite the newspaper having been told prior to publication that the allegation was false. The trial was to be heard by a jury, a tribunal so often generous with other people’s money. The *Mail*, having discovered that there was a break in Elton’s tour schedule which coincided with the trial date, parted with £100,000 in damages, an apology and costs, in order to avoid the wrath of a star-struck jury. It is highly unlikely that, in the absence of jury trials, such a settlement would be achieved today.

As Charles Dickens so lucidly observed in *Bleak House*, “the purpose of the law is to make business for itself”, and in this regard I predict the Defamation Act 2013 will be a stunning success. Just when it looked as though clarity had been brought to the 1996 Defamation Act by a tsunami of court hearings (now largely won by defendants), this new Act will keep media lawyers and judges busy for at least ten years clarifying its wording and operation. So, we few lawyers should be happy. But what of our clients? Libel has until 1990, when conditional fee agreements were introduced, traditionally been the preserve of the rich. Just like the Ritz Hotel, the libel courts were open to all - provided you could afford it. Because of the high costs involved, the Master of the Rolls has issued a statement that he expects to see the earlier resolution of disputes, so perhaps the operation of the Act will not be tested so often. It is yet to be seen whether the Government’s proposals in relation to costs, following the abolition of the existing no-win-no-fee regime, will prove workable. Only if it does, will the Act make any difference to the majority of libel victims. ■



Nigel Tait is Managing Partner at **Carter-Ruck**. (with thanks to Zoe Brockett, Solicitor, Carter-Ruck)

Digital Remains: Your Social Media Legacy and the Law

As our technological horizons widen, so swells the the amount of personal user-generated content in the online sphere. Dealing with this glut of intangible debris is a fast-growing problem, and lawyers are at the forefront of making sense of who owns what in terms of virtual belongings. Damien McCallig, law researcher at Galway University in Ireland, is at the forefront of research into this new area, and gives us a taste of the issues involved.

Introducing digital remains

Earlier this year the *Wall Street Journal* ran an article on the emerging practice of memorialising the dead online. The piece began by posing a question: after you are dead and gone, what does it mean if Google doesn't know you were here? Of course it is practically impossible to live in the digital age without Google and other Internet-based service providers knowing you were here. You leave a vast array of digital footprints, including status updates, tweets, instant messages, tagged images on social media profiles, or other transaction and traffic data. Despite this vast digital biography and back-catalogue of one's life being recorded online, regulating access to these digital remains of the dead is proving problematic.

A more pertinent question might be to ask: should surviving family members, or others, have access to a deceased person's Google or Facebook account? Some of you reading this will recoil in dread at the thought of someone rummaging through your digital remains, and are quickly remembering all of those digital indiscretions and private messages you would prefer to assign to oblivion (but never got around to deleting). Other readers may remember a friend, no longer



alive today, and may turn to social media later to seek out a picture and recall a shared memory.

Of course reconciling the privacy interests of the deceased person with the emotional interests of family members plays an important role in the emerging debate on how to handle digital remains. Other considerations, such as the possible economic value stored in accounts that 'trade' virtual property and currency or facilitate real world transactions, cannot be ignored. Neither should it be forgotten that, in time, access to these digital accounts will also be sought after by historians and researchers. Will these digital materials of history be locked behind passwords with access dependent on the goodwill of providers such as Google and Facebook?

Contract regulates post-mortem access

How is posthumous access to digital accounts regulated? Primarily this is a matter of contract law. The more fastidious amongst you will have carefully read the terms of service agreements offered by the likes of Google, Facebook and others before accepting the legally binding contract by clicking "I agree". While your choice of social network provider may not have depended upon which offered the best post-mortem services, nevertheless the fate of your digital legacy is largely dependent upon that terms of service agreement and the evolving deceased user policies of providers.

While most service providers have specific policies relating to the death of an account holder, unfortunately no standard practice is emerging. For example, Google's Inactive Account Manager permits subscribers of their services to make arrangements for the transfer, or deletion, of the data stored in their Google accounts following death. Unlike Google, no other major service provider gives users an in-service option of nominating heirs who can subsequently claim data from accounts.

Once notified, Facebook 'memorialize' a deceased user's account, which means the Facebook profile is frozen, limiting visibility to those who could see it while the account holder was alive. Content on the profile

cannot be modified in any way. However, depending on the privacy settings of the deceased person's account, friends can share memories on the memorialized 'Timeline'. Should a surviving family member wish to access the content in a Facebook account they must follow what Facebook describe as 'a lengthy process' - which ultimately requires a court order, though without guarantee or right of access. By signing up with Yahoo! you agree:

that your Yahoo! account is non-transferable and any rights to your Yahoo! ID or contents within your account terminate upon your death.

Emerging deceased user policies

Despite these seemingly hard contract rules, these Internet giants are only feeling their way on the issue. Google's Inactive Account Manager will only be a year in existence in April 2014, and no details have yet emerged on how good, or bad, the system performs in practice. The Facebook memorialization process, although in existence in its current form since the Virginia

Tech college shooting in 2007, has also slowly evolved. Every service development on the social network seems to prompt a change to Facebook's deceased user policy.

The recent introduction of a look-back video provides an excellent example of this slow evolution. To mark Facebook's ten-year anniversary at the start of February, account holders received a short one-minute video - a retro-

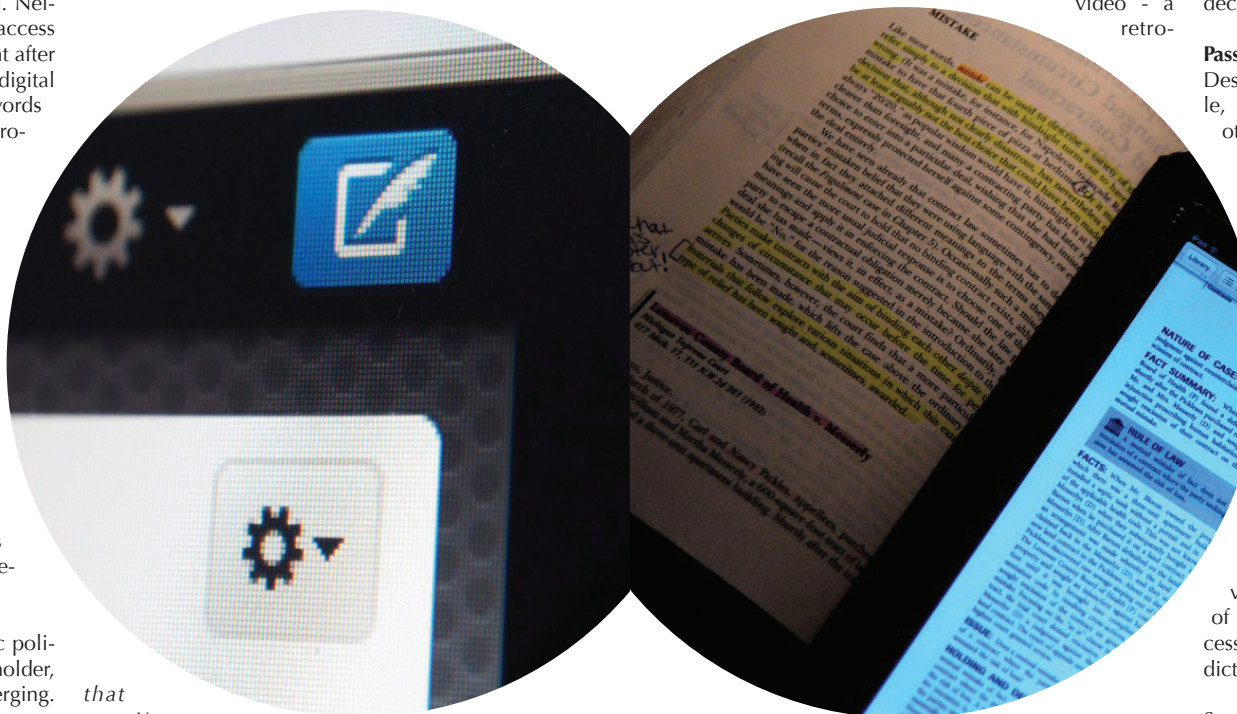
that due to this issue "touching their hearts", they amended the deceased user policy. Now all confirmed friends of a deceased Facebook account holder can request that person's look-back video. While some commentators believe this is a step forward in helping the grieving process, more cynical observers (including myself) see this merely as an effort by Facebook to boost the timely reporting of deceased account holders to them. After all, accurate identification of deceased users helps to better target advertising.

Password sharing prohibited

Despite differences emerging in policies, Google, Facebook and Yahoo!, in common with all other major service providers, will not hand over a password for a decedent's account. Of course, this does not prevent the account holder from sharing login details, including passwords, with chosen beneficiaries in advance of death. Online services have also emerged to assist in identifying online accounts and sharing the passwords of deceased persons with such beneficiaries: examples include PasswordBox, CirrusLegacy and DeadSocial. However, logging into a third party account (even if the account holder is dead) will violate most terms of service agreements and may result in the account being terminated or locked. For example, no one can log into a memorialized Facebook account, even if they have a valid password. Furthermore, access in breach of the terms may be deemed unauthorised access, which is a criminal offence in many jurisdictions.

Some families have taken the legal route, through the courts, to secure lawful access to their deceased relatives' accounts, but this has had mixed results. The earliest case appears to be that of Justin Ellsworth, a US marine killed in Iraq in 2004. Justin's father won an order from the Oakland County Probate Court in Michigan against Yahoo!, granting him access to copies of e-mails in Justin's account. However, in 2012, a UK family was refused an order by a California court to compel Facebook to provide the contents of their deceased daughter's account, due to a US federal law enacted to protect privacy in electronic communications.

Facebook eventually relented and created a look-back video for Jesse Berlin and shared it with his father. In their press release, Facebook claimed



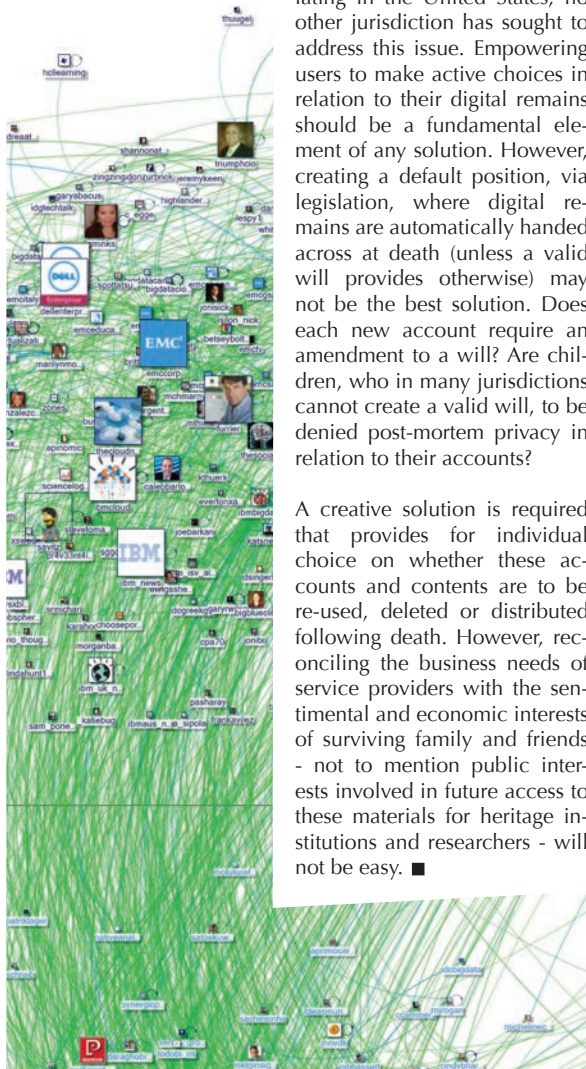
Legislating for digital legacy

At present seven US states (Connecticut, Idaho, Indiana, Nevada, Oklahoma, Rhode Island and Virginia) have enacted laws incorporating certain online accounts or information into the probate process. However, little consistency exists in the scope of these laws or the powers they create. For example, the law in Virginia only applies to the online accounts of children (under 18 years of age), while the law in Nevada merely grants a personal representative the power to 'terminate' the account of a deceased person.

In an attempt to address the issue of access to the digital accounts of the dead, and in order to harmonise the law in this area, the US Uniform Law Commission is currently drafting a Uniform Fiduciary Access to Digital Assets Act. However, the discussion drafts which have emerged merely create a default legally-required licence for the personal representative of a decedent to access digital accounts and obtain copies of the account contents. This access is then subject to the online service provider's terms of service agreement. Under the current proposals, the law will not provide a personal representative power by default to distribute the digital accounts and content to beneficiaries.

Creative solution required

The law in this area is only slowly responding to the emergence of digital remains issues. Therefore should account holders wish to ensure their digital legacy is passed on to beneficiaries, certain pre-planning and self-help measures need to be undertaken. Despite efforts at legis-



lating in the United States, no other jurisdiction has sought to address this issue. Empowering users to make active choices in relation to their digital remains should be a fundamental element of any solution. However, creating a default position, via legislation, where digital remains are automatically handed across at death (unless a valid will provides otherwise) may not be the best solution. Does each new account require an amendment to a will? Are children, who in many jurisdictions cannot create a valid will, to be denied post-mortem privacy in relation to their accounts?

A creative solution is required that provides for individual choice on whether these accounts and contents are to be re-used, deleted or distributed following death. However, reconciling the business needs of service providers with the sentimental and economic interests of surviving family and friends - not to mention public interests involved in future access to these materials for heritage institutions and researchers - will not be easy. ■



Damien McCallig is a Ph.D. candidate at the School of Law, National University of Ireland, Galway, and an Irish Research Council postgraduate research scholar. If you want to learn more on his research entitled: The Law of Digital Remains, you can follow him on twitter @DamienMcC_dli.

Your online footprint: what the graduate recruiters say



We hear it more and more these days: "Careful what you post on Facebook, or say to the student media - your future employers are watching you!" But how much truth is there to it? Verdict solicited a panel of recruiters from City law firms and asked the questions you've been wondering about how social media can impact your application.

So, am I being watched?

NORTON ROSE FULBRIGHT We don't actively monitor applicants' online footprint. However, applicants should be aware of what comes up on an individual Google search in case anyone does choose to look into their online profiles. Remember that LinkedIn is a professional tool and your profile should reflect this. Facebook also has privacy settings for a very good reason! Exercise caution at all times - after all, you wouldn't want your online profile to affect a recruitment decision.

CMS CAMERON MCKENNA We do not monitor an applicant's online footprint - I would be very surprised if a firm had the time and resources to actually monitor an applicant's various online profiles.

BURGES SALMON We don't actively look for students' social media profiles; however if a candidate were to send an invitation to 'link' on LinkedIn, we may have a look through their profile.

What should I avoid on social media?

BERWIN LEIGHTON PAISNER Applicants should just use their common sense, and not put inappropriate photos or comments up where potential employers can see them. To be extra sure, they should make their profiles extremely



private. Don't give firms a reason to reject you due to you having posted something on Twitter in a moment of madness!

HOGAN LOVELLS Even though we don't monitor an applicant's online footprint, I would make sure students have a professional and personal profile, or use the likes of LinkedIn, which is more focused on job search opportunities than Facebook and is a professional networking tool.

BURGES SALMON It is important for students to think about the impression they make, in any way - including on-line. Your Facebook profile picture

will probably be easily accessed by anyone, so think whether or not you would be happy for a prospective employer to see it, especially if you use Facebook to interact with prospective employers. Although we may not search for you, if you 'like' us then we can see you. Anything that could be viewed as offensive may be wisely avoided. Similarly if you use your Twitter account to follow and interact with firms, be aware that they may look at what else you have been tweeting. Again, it is best to avoid anything rude or offensive.

Can social media enhance my application?

CMS At graduate level we do not use social media to source applicants, and it does not form part of our selection criteria. Most users are now turning to LinkedIn to increase their job search, and this is used widely when searching for experienced hires.

HOGAN LOVELLS It's a good way students can keep up with what an organisation's doing.

BLP If you are engaging with firms on social media in a constructive way i.e following them, taking part in Q&A sessions, entering online competitions then I think you are able to make yourselves known to firms in the right way; and you can then proceed to talk about this in your application. Social media is increasing used as a recruitment tool, and it is only going to increase, so if you are active on Twitter or Facebook for the right reasons it may help you in the long run!

BURGES SALMON LinkedIn is growing in popularity for students and a well-written profile used to link with prospective employers could help you be remembered in a positive way.

Many firms use Twitter to publicise recruitment events and deadline dates, so it may be useful to follow them to keep up to date. It would also be beneficial to follow firm-wide Twitter feeds to keep yourself in the loop with recent work, news and events within the firm. This is an easy way to keep on top of new developments.

Online application bloopers... *oh no you di-n't!*

Ever wondered what to steer clear of on those tiresome online applications? Courtesy of Hogan Lovells, CMS Cameron McKenna, Burges Salmon and Norton Rose Fulbright, we can give you the following list of classic bloopers - and some you might never have guessed in the slightest...

"use of text language"
"grammatical errors"

"Getting the name of the firm wrong"
"using another firm's name instead of ours"

"forgetting to include email address and phone number"

"Inappropriateness when answering a question, i.e. we have had an applicant describe in graphic detail how they helped deliver a baby"

"One word answers to 'long' questions"
"Incomplete application"

"spelling their name incorrectly"

"spelling their address incorrectly"

"Not actually answering the question"

"Someone once put: 'I'm not 100% certain that I do want to be a lawyer, but the training contract will help me to decide' - this doesn't inspire confidence or demonstrate commitment or ambition"

"Referring to the firm incorrectly. Many firms have merged with other firms, so do not abbreviate their names!"

"One person wrote: 'I don't believe application forms, but I will interview me'"



Essay competition:

“Would it be right (or wrong) if I plagiarised this essay?”

Every term Verdict runs its essay competition, inviting students in Oxford to submit a response to a legal or ethical question. This term, we chose an ethical theme - plagiarism - which opened the field to a wide range of students, both law and non-law. Of the various imaginative responses we received to this provocative question, the following engaged us the most. Thank you to all who submitted entries - and congratulations to this term's prize-winners.



[Winner] : Richard Ridyard, Keble College

YES AND NO. Attempting to establish whether it is ‘right’ can easily lead to confusion because there are unresolved difficulties in defining plagiarism and secondly—and this is perhaps more important—in recognising plagiarised work. It should not be assumed that because plagiarism is defined in, for example, university policy, that it is possible to do so in a satisfactory way. The word tends to be used in so vague a way that any definition is liable to be challenged. In his essay *In Defense of Plagiarism*, Christopher Hitchens warns that the matter of definition should be approached with extreme caution. One must draw a distinction between plagiarism and copyright, the latter being outside the scope of this discussion. After a strenuous journey through many a definition some common ground emerges—that plagiarism involves the appropriation of original ideas. Further confrontation with difficulty is necessary now that the ability to recognise originality is required. Indeed, as Christopher Hitchens said, “if you think you know what plagiarism is, you are making a very large claim—the fact that you know originality when you see it.”

Another question raised is simply this: to whom do you award the right to decide whether something is original? Apprehension may descend upon anyone who is about to recommend a judge to carry out this task with precision. The judiciary are not known for their understanding of the creative process, something that was graphically demonstrated in the case of Creedence Clearwater Revival singer, John Fogerty. Who, guitar in

hand, excruciatingly described his creative process when accused of plagiarising himself.

Let us not seek refuge in technology either. Software is useful in finding patterns and obvious examples of copy and paste. However, it cannot reliably determine originality. This is why a shift in focus is required. Even in the case of the copying of, or, heavily relying on passages, the question whether it is right remains a tricky one. No-one flinched when William Shakespeare transformed Sir Thomas North's translation of Plutarch's *Life of Mark Antony* into beautiful, lucid blank verse. Similarly, as Christopher Hitchens observes, T.S. Eliot's, *The Waste Land* and Martin Luther King's 'I Have a Dream' speech relied, heavily in parts, on certain unattributed 'source material.' Yet, these examples have been treated very differently from, for instance, Harvard's, Kaavya Viswanathan. Several passages in her chick-lit novel, *How Opal Mehta Got Kissed, Got Wild, and Got a Life*, bear a striking resemblance to the work of one of the genres most successful authors, Megan McCafferty. The fallout was spectacular, with Viswanathan losing a reported \$1 million book deal. What differentiates the Viswanathan case from the others cited appears to be a refulgent mystery. Judge Richard Posner helps by proffering one reason in his article, *In Defense of Plagiarism: No harm, no foul is what the law ought to be*. Whereas Viswanathan was hitting a competitor in the bottom line, Shakespeare was not hurting North, who was not a competing playwright. Nor was he competing unfairly with other playwrights, since they were as free as he to copy passages of other authors. The careful distinction Judge Posner makes between harmful and harmless borrowings of others' work provides some much needed clarity. But, so too should we approach the 'competition' aspect with caution. Where intense competition and rivalry exists, accusations and cries of foul will not always be made in good faith. Some might seek to cash in on a successful work, as seemed the case in the failed claims against J.K. Rowling. Accusers will not always be transparent with regards to motive. Therefore we must be scrupulous with regards to evidence. A similar point is captured in a quote by Thomas De Quincey and Christopher Hitchens response to it. "It is undeniable, that thousands of feeble writers are constantly at work, who subsist by plagiarism, more or less covert. It is equally undeniable...that thousands of feeble critics subsist by detecting plagiarisms as imitations, real or supposed." Hitchens responds, "Just as writers should beware of joining the first category, so readers should not be too eager to enlist in the second."

Much would be lost in our culture without borrowing and adaptation. Deciding in what instances it is right to plagiarise is replete with difficulties. Hitchens and Posner's contributions helps guide us towards a clearer understanding. The question whether it is right should become less originality orientated, and more concerned with improvement and whether there is any harm. Where work is improved and no writer harmed, plagiarism can be justified. ■

[Runner-Up] : Alex Figurski, Regent's Park College

I am writing on “Would it be wrong if I plagiarised this essay?” Perhaps ironically, the first thing I do is google “Would it be wrong if I plagiarised this essay?” Perhaps even more fittingly, the results page is a menu bursting with black market websites, all boasting a sleazy assurance that they have First Class-standard answers on every essay question under the sun. The fact is that many students will have plagiarised by the time they leave university. Some will have “borrowed the structure” of their friend's essay when wallowing in the murky depths of an essay crisis. Others will have “taken inspiration” from Wikipedia. Others still will have hit the jackpot and been sent all their essays by that likeable chap in the year above. Now the question: Is that morally wrong? Let us take the first of the examples above, namely that of the student in the depths of an essay crisis. Is there any persuasive argument to convince the student not to ask for the help of his friend's work? I will approach this question by investigating whether the student has any response in particular to the Kantian argument which so dominates legal and ethical thought and which would so boldly claim that plagiarising in any circumstances was in fact wrong.



The University of East Anglia, like many other universities and academic institutions, has an immediate response in this vein for our crisis-ridden student, recently declaring in no uncertain terms in an FAQ on plagiarism: “It’s morally wrong”. They back up the bold assertion, though, with a decidedly underwhelming reason: “How would you like it if someone took an idea you’d put a lot of effort into and got all the credit?” An appeal to the supposed upset someone will feel at sharing an essay with a friend in need is unlikely to convince our student. Nevertheless, perhaps they were right to argue the action’s moral worth derives from its applicability in other circumstances at other times, and this approach deserves further investigation.

Immanuel Kant, arguably the most influential modern philosopher, indeed argued that a moral action was one which could be willed as a universal law, i.e. one which would apply in all circumstances at all times.

Let us consider, then, whether plagiarising an essay will pass this well-known Kantian test of universalisation. Let us say that the student universalises “I plagiarise the essay”, whereby the universal law would be “Everyone plagiarises the essay”. Kant would then survey whether such a proposition were conceptually and volitionally coherent. In other words, if such a universalised action avoided a contradiction in conception and a contradiction in the will, then it is indeed morally permissible. But for a Kantian it avoids neither. The proposition is conceptually incoherent because if everyone plagiarised their essay, then everyone’s essay would be a copy of someone else’s essay, and so there would be no essay to copy in the first place. The proposition is also volitionally incoherent because it would contradict other intentions the student has, such as the intention for develop knowledge and understanding, or for to do well in exams. In order to will these ends, the student would have to adopt all necessary means to these ends, such as producing original work, or practising properly for exams. In this way, plagiarising the essay appears to bluntly fail the Kantian test for morality, as it cannot coherently be universalised. And for Kant “universalisation” is “moral worthiness” as it is the only way of ensuring that I am not making an exception of myself, which plagiarising appears to quite clearly be an instantiation of.

Yet the student in our example, hoping to secure the morality of plagiarising the essay and thus avoid witnessing sunrise out of the library window, has an effective retort to Kant. The student may have to accept that a universalisation of plagiarising the essay is conceptually incoherent, but, he or she may ask, does that really matter? Does that really capture what it is for an action to be morally right or wrong? Indeed, surely if there is something really wrong with plagiarising, then it is because of something in the plagiarising itself, rather than because it happens that not everyone could plagiarise all the time. Further, as to the supposed volitional incoherence, surely it will better promote the student’s ends of developing their understanding and practising for their exams to plagiarise a good essay, rather than hastily compose one from limited, if any, reading. Thus it appears student has a response to Kant after all. Instead, per-

haps a more flexible moral approach is needed, one where the best consequences dictate the action’s moral worth, and one which allows our crisis-ridden student to get a far better understanding of the material, and, equally, a good night’s sleep. ■

[Special Mention] : Lottie Pyper, New College

‘Becoming a student at the University of Oxford’¹ ‘was ‘terrifying’². ‘Obviously’³ ‘we had a talk about’⁴ ‘plagiarism’⁵. ‘I’ll be honest; I was a little bit scared because I didn’t know much about’⁶ ‘it’.⁷ ‘Apparently’⁸ ‘ignorance is not a valid excuse; all students must learn proper techniques for conducting research, incorporating it into their writing, and quoting, citing, and documenting properly.’⁹ ‘It turns out that’¹⁰ ‘plagiarism is the copying or paraphrasing of other people’s work or ideas into your own work without full acknowledgement. All published and unpublished material, whether in manuscript, printed or electronic form, is covered under this definition’¹¹.

‘Well, it seems to me that’¹² ‘risk assessment... must be reconceptualized’¹³. ‘It’s easy to dismiss’¹⁴ ‘individual words’¹⁵ ‘and not’¹⁶ ‘cite them right’¹⁷. ‘If a word is... in the dictionary’¹⁸ ‘it has been used’¹⁹ ‘at

- 1 <https://www.ox.ac.uk/students/new/>
- 2 <http://www.irishexaminer.com/breakingnews/entertainment/farrell-sex-while-sober-was-terrifying-622618.html>
- 3 <http://www.oed.com/view/Entry/130097?redirectedFrom=obviously#eid>
- 4 Meredith L Patterson, ‘Okay Feminism, It’s time we had a talk about empathy’ <https://medium.com/dear-blank/bd6321c66b37>
- 5 <http://www.oed.com/view/Entry/144939?redirectedFrom=plagiarism#eid>
- 6 Carmen on Page 220, Corbett, A. M., Dickson-Gómez, J., Hilario, H. and Weeks, M. R. (2009), A Little Thing Called Love: Condom Use in High-Risk Primary Heterosexual Relationships. *Perspectives on Sexual and Reproductive Health*, 41: 218–224. doi: 10.1363/4121809
- 7 <http://www.oed.com/view/Entry/100246?rkey=9fEdqT&result=2&isAdvanced=false#eid>
- 8 <http://www.oed.com/view/Entry/9522?redirectedFrom=apparently#eid>
- 9 <http://uss.tufts.edu/arc/writingresources/documents/avoid.pdf>
- 10 <https://www.phrasemix.com/phrases/it-turns-out-that-clause>
- 11 <http://www.ox.ac.uk/students/academic/goodpractice/about/>
- 12 Gillian Anderson from <http://www.goodreads.com/quotes/219728-well-it-seems-to-me-that-the-best-relationships--p222>, Corbett, A. M., Dickson-Gómez, J., Hilario, H. and Weeks, M. R. (2009), Condom Use in High-Risk Primary Heterosexual Relationships. *Perspectives on Sexual and Reproductive Health*, 41: 218–224. doi: 10.1363/4121809
- 14 <http://www.theguardian.com/technology/2010/aug/15/internet-brain-neuroscience-debate>
- 15 ‘Learning Individual Words’ at <http://www.learnspell.org.uk/learning.htm>
- 16 ‘Why does cycling thrive in some cities and not in others?’ <http://www.economist.com/blogs/economist-explains/2013/12/economist-explains-12>
- 17 ‘Cite them Right’ <http://www.amazon.co.uk/Cite-them-right-essential-referencing/dp/0230272312>
- 18 ‘If a word is not in the dictionary, does that mean it isn’t a real word?’ http://www.merriam-webster.com/help/faq/real_words.htm
- 19 <http://www.usenglish.com/forum/threads/119888-quot-it-is-being-used-quot-or-quot-it-has-been-used-quot>

least once²⁰ 'before'²¹ 'Clearly you didn't²² 'make it up'²³ 'yourself'²⁴. 'Isn't it right for you to²⁵ 'give'²⁶ 'credit where credit is due'²⁷?²⁸

'You...need to cite your sources'²⁹. 'Otherwise'³⁰ 'you're letting yourself down'³¹. 'Quite simply'³² 'it'³³ 'counts as cheating'³⁴ 'Before you cheat'³⁵ 'think about the consequences'³⁶. 'When people cheat in any arena, they diminish themselves - they threaten their own self-esteem and their relationships with others by undermining the trust they have in their ability to succeed and in their ability to be true.'³⁷ 'Who came up with the term cheating, anyway? A cheater, I imagine. Someone who thought liar was too harsh.'³⁸ 'If'³⁹ 'cheating and lying are business as usual'⁴⁰ 'what is the point'⁴¹ 'in anything'⁴²?⁴³

20 <http://www.buzzfeed.com/ridiculouslynotcool/11-reasons-you-should-travel-alone-at-least-once-7nxa>

21 <http://www.oed.com/view/Entry/17055?redirectedFrom=before#eid>

22 <http://rapgenius.com/Cher-Lloyd-want-u-back-lyrics#note-1293430>

23 <http://dictionary.cambridge.org/dictionary/british/make-it-up-to-sb>

24 <http://www.metrolyrics.com/shine-lyrics-take-that.html>

25 <http://www.metrolyrics.com/it-isnt-right-lyrics-the-platters.html>

26 <http://www.thefreedictionary.com/give>

27 <http://dictionary.cambridge.org/dictionary/british/credit-where-credit-s-due>

28 http://en.wikipedia.org/wiki/Question_mark

29 <http://oxford.library.emory.edu/research-learning/citation-plagiarism/citing.html>

30 <http://www.thefreedictionary.com/otherwise>

31 <http://www.psychologytoday.com/blog/open-gently/201301/do-you-always-feel-youre-letting-yourself-down>

32 <http://www.quitesimplyfrench.co.uk/>

33 <http://www.oed.com/view/Entry/100246?rskey=KogrOO&result=2&isAdvanced=false#eid>

34 http://www.menslifetoday.com/fo/feature/relationships/more_than_friends/what_counts_as_cheating/index.html#.Uv4pryZo20

35 http://www.menshealth.com/mhlists/cheating_on_a_woman/

36 http://www.mhhe.com/socscience/comm/obrien/no_commentary/think_of_the_consequences.html

37 Cheryl Hughes <http://www.goodreads.com/quotes/tag/cheating>

38 David Levitham, <http://www.goodreads.com/quotes/tag/cheating>

39 <http://www.theguardian.com/film/movie/36272/if->

40 <http://www.cultofmac.com/254695/for-samsung-stealing-cheating-and-lying-are-business-as-usual/>

41 <http://ehealthforum.com/health/what-is-the-point-of-life-t203743.html>

42 http://en.wikipedia.org/wiki/Anything_In_Anything

43 http://en.wikipedia.org/wiki/Question_mark

'It takes time,⁴⁴ 'it's definitely not for the faint-hearted'⁴⁵ 'but if you'⁴⁶ 'just have a little patience'⁴⁷ 'you'll'⁴⁸ 'reap rich rewards'⁴⁹ 'and promote'⁵⁰ 'academic good practice.'⁵¹ 'Developing these skills throughout your time at university will not only help you to produce better coursework, dissertations, projects and exam papers, but will lay the intellectual foundations for your future career.'⁵² 'What's not to like'⁵³?⁵⁴

'As students,⁵⁵ 'we're the young generation'⁵⁶ 'who will lead'⁵⁷ 'academia'⁵⁸ 'in'⁵⁹ 'to the Future'⁶⁰. 'With great power comes great responsibility.'⁶¹ 'The internet is'⁶² 'making it easier'⁶³ 'to find quotations'⁶⁴ - 'is it really so'⁶⁵ 'much'⁶⁶ 'more difficult'⁶⁷ 'to cite everything'⁶⁸?⁶⁹ ■

44 <http://www.youtube.com/watch?v=MBxEUOpGHmg>

45 Alex Tyndall, <http://oxford.tab.co.uk/2014/02/13/lets-give-valentines-day-another-chance/>

46 Mae West, <http://www.goodreads.com/quotes/1598-you-only-live-once-but-if-you-do-it-right>

47 <http://www.azlyrics.com/lyrics/takethat/patience.html>

48 <http://www.macmillandictionary.com/dictionary/british/you-ll>

49 <http://www.houzz.com/ideabooks/20181978/list/Garden-for-Wildlife-to-Reap-Rich-Rewards>

50 <http://www.equalityhumanrights.com/advice-and-guidance/before-the-equality-act/guidance-for-employers-pre-october-10/how-to-tackle-discrimination-and-promote-equality/>

51 <http://www.ox.ac.uk/students/academic/goodpractice/>

52 <http://www.ox.ac.uk/students/academic/goodpractice/about/>

53 <http://www.phrases.org.uk/meanings/whats-not-to-like.html>

54 http://en.wikipedia.org/wiki/Question_mark

55 <http://anticuts.com/2014/01/31/joint-press-release-escalation-of-repression-as-students-pledge-to-mobilise/>

56 Theme from The Monkees, at http://www.lyricsfreak.com/m/monkees/theme+from+the+monkees_20095368.html

57 <http://fusion.net/leadership/story/hugo-chavez-lead-left-wing-governments-latin-america-22527>

58 <http://www.oed.com/view/Entry/877?redirectedFrom=academia#eid>

59 <http://www.oed.com/view/Entry/92966?rskey=lgBBZz&result=1&isAdvanced=false#eid>

60 'Back to the Future' at <http://www.imdb.com/title/tt0088763/>

61 Voltaire from <https://www.goodreads.com/quotes/709747-with-great-power-comes-great-responsibility>

62 <http://www.theguardian.com/technology/2010/aug/15/internet-brain-neuroscience-debate>

63 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/80175/TSO-HMG_Making_it_Easier_Civil_Society_1.pdf

64 <http://library.williams.edu/guides/quotations.php>

65 <http://www.metrolyrics.com/is-it-really-so-strange-lyrics-the-smiths.html>

66 <http://www.oed.com/view/Entry/123133?rskey=8JTays&result=1&isAdvanced=false#eid>

67 [http://www.fiberline.com/news/konstruktioner/"not-more-difficult---just-faster"](http://www.fiberline.com/news/konstruktioner/)

68 <http://www.englishclub.com/writing/plagiarism-citation.htm>

69 http://en.wikipedia.org/wiki/Question_mark



Magic Circles, White Shoes

post-Oxford
perspectives
from City trainees

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TWENTY TWO

PROFILE | DOUGALL MESTON

Allen and Overy
Oriol, Classics
Graduated 2008

What do you like most about your firm?

Friendly people and a great start to my career, with lots of opportunities within and beyond the firm. High profile, multi-jurisdictional deals, with lots of responsibility for trainees.

What's the most interesting project you've done so far?

Working on the takeover of a listed UK infrastructure company – very political.

What's the culture of the firm like?

Everyone who works at A&O is extremely bright, and there are high expectations (in a good way – you soon develop them too). You will be expected to understand complex matters quickly and then run with them yourself. Thanks to the firm's worldwide network of offices, you quickly become friends with A&O lawyers in other jurisdictions – this makes life much easier when dealing with cross-border deals.

Why did you pick this firm?

The training contract is one of the best in the City. I was also very impressed by the teams I worked with during my vacation scheme. There is an opportunity to do a secondment abroad during the training contract – I am doing my fourth seat in Moscow, which is an amazing city.

What's the worst part of the job? (Besides the hours!)

Learning how to prioritise competing demands. As everywhere, there is a lot of administration.

What advice would you have for those aiming for your firm?

Read the FT every day. Apply early. Do your research on the firm and its competitors.

PROFILE | BEN BLUEMEL

Clifford Chance
Oriol, Classics
Graduated 2010

What do you like most about your firm?

The whole working environment has been set up to help you become the best lawyer that you can be. The offices in London have excellent facilities – both in terms of support staff but also in terms of the gym, swim-

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TWENTY THREE

ming pool or coffee bar which provide a space to unwind in the middle of a hard day. The work is fast-paced and cross-border which means that it is varied and you are always speaking to different people (often in different countries). While the work is often intense and pressurised, you are well looked after and the fact that you are working with some of the experts in the legal field is a constant motivating factor.

What's the most interesting project you've done so far?

I am currently working in the Real Estate department and was recently given the chance to take responsibility for helping a charity move into new offices in London – one of the firm's pro bono matters. While the deal itself did not have the complexity or international element that many of CC's deals have, it was the fact that I was able to take a bit of a lead, dealing directly with the client, and see every part of the deal as it progressed which made it so interesting. The extra responsibility made for a steep learning curve, but that is part of what makes the job so enjoyable – a chance to challenge yourself in an environment where you are forced to use your initiative.

What's the culture of the firm like?

As with any top level law firm, there is certainly a culture of high intensity and high achieving work – the standards are high, but they need to be as CC's clients are looking for the best legal product in the market. However, it is the people within that culture that makes it stand out for me. Partners are almost always accessible and easy to talk to, and everyone is willing to help you learn. When you are working hard, you feel like you are in it together with your team, and the end product is always rewarding. The culture is not intimidating; rather, it is a healthy one that encourages the best from you, rather than trying to tread you into the ground.



Why did you pick this firm?

When I was going through the application process, I always found that there was something slightly different about the people that I met from CC compared with those from other firms. The culture, diversity and friendliness of the firm stood out from the start, and my initial impressions have been confirmed since I joined.

What's the worst part of the job? (Besides the hours!)

Every job has its mundane tasks and there is no denying that you get a fair few being a trainee at a law firm. However, you often find that if you embrace some of the more boring work, you can actually learn a lot from the documents that you are working with, even if the task itself is simply admin-based.

What advice would you have for those aiming for your firm?

Don't try to make out that you are someone that you are not. CC has a strong reputation for its diversity and willingness to find talent from any and every walk of life. Of course the firm is looking for high performers and people that are ambitious, but it is also looking for people that will make for a healthy and inspiring workplace. For me, it is the diversity of people that makes CC such a top quality firm, and consequently it would be a mistake to try and fit into

a pre-conceived 'mould' of what you think corporate law firms look for. It may well be that the thing that makes you different is the thing that makes you successful.

PROFILE | SIOBHAN HAIRE

Cleary, Gottlieb, Steen & Hamilton

New, Philosophy and French

Graduated 2008

What do you like most about your firm?

The people! Interesting and generally good both to work with and to chat to.

What's the most interesting project you've done so far?

Assisting in the acquisition of the *Times Educational Supplement* by a private equity client, although being in the room when Google's fair search commitments were being negotiated was pretty exciting.

What's the culture of the firm like?

Quite open – I find that if you have an idea about systems or processes that could be changed, people are generally receptive. The stereotype is that we work hard and play hard.

Why did you pick this firm?

Interview answer: Because of the high quality people, clients and work.

Real answer: A friend was applying so I thought I would give it a go, then I really enjoyed the vacation scheme. Again I think that no matter where you apply, it is the people who make a firm.

What's the worst part of the job? (Besides the hours!)

This one is a double-edged sword really. Being given responsibility means that I often feel challenged (sometimes out of my depth), but I rarely feel bored or that I'm not using my brain. When I have a question, there's always someone to go to.



What advice would you have for those aiming for your firm?

Be thoughtful and honest in your interview answers is a good idea. Reading about our work and how the practice is organised is also worthwhile - we don't want to be asked about our criminal or real estate practices (we don't have either). I think, however, that for strong candidates with lots of options, it's more about what we can show you that impresses you than the other way around.



Pizza and Prosecco

Pizza Express



Cocktails and Cupcakes

The Grand Cafe



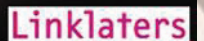
President's Drinks

Oxford Castle



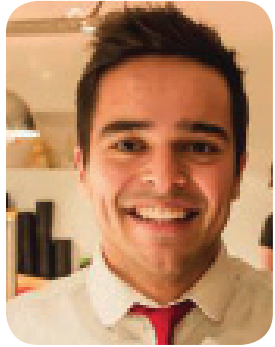
Sushi School

Yo!Sushi



HILARY HIGHLIGHTS

hilary 2014 committee



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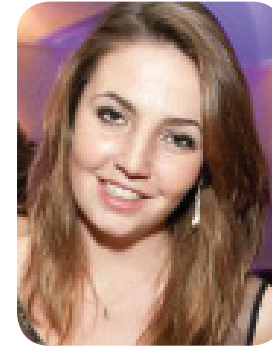
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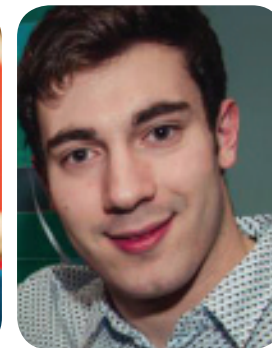
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Ball Secretary

This term has been the most exciting, action-packed, fun-filled term that I have had since starting at Oxford.

With events such as 'Back to Term Cocktails', 'Sushi School', 'Burritos and Mojitos', 'Pizza and Prosecco', 'Cocktails and Cupcakes' and the Ball at Warwick Castle, I hope that our members have been as entertained as I have been!

Working as the Vice-President has been extremely rewarding, if a little stressful at times, especially in the run up to the Ball. But the Committee have always been on standby to step in and help out, which has been a massive support. I would like to say a big thank you to everyone on the Committee for coming to the meetings and helping out at all the events – your effort has been very much appreciated and I hope that you have enjoyed the term!

I would also like to say a massive thank you to the rest of the Executive Committee. Nick, Richard and James, I cannot imagine having done this term without you - you have all been absolutely amazing. I think that having a successful term really depends on how well the Exec work together and get on. I feel extremely fortunate to have had such a great team to work with and will miss not talking to you 24/7!

I have loved my time on Oxford Law Society Committee and will miss it terribly. Organising and running the incredible events that we offer are clearly one of the highlights, but the best thing that I have found from this experience has been meeting all of the other people on Committee. You become so close to everyone, particularly when you are on the Executive Committee, and it is the friendships that I have made

along the way that I will treasure the most.

Love,

Rebecca Butt

It has been a pleasure to be Treasurer of Oxford Law Society this term. Nick has done a

fantastic job as President and overseen another very successful term for the society, a term where we have maintained the reputation of LawSoc, from carrying on age-old, well-loved events such as Cocktails and Cupcakes, to creating new events such as Burritos and Mojitos. Particular highlights have included President's Drinks, which proved to be a great evening at Oxford Castle, and of course the Law Society ball, held at Warwick Castle. In all of this, the support of the committee has been amazing and the success of this term certainly could not have happened without them. Of course, thanks must all go out to all our members, whose keen attendance at each and every one of our events in the pursuit of vodka, sushi and G&Ds is what the success of LawSoc is based upon. We have had some great sponsorship this term, with firms such as Herbert Smith Freehills, Linklaters and Allen & Overy providing informative presentations, forming links with our members and providing for our keynote socials. My time on Law Society has been huge fun and something I have learnt a great deal from. I wish the next term's committee well and I am sure that they will continue to do an outstanding job.

Respect,

James Reid

I owe thanks to so many individuals for their enthusiasm and dedication to the Oxford Law Society this term, correspondingly making my time as President an absolute pleasure. In particular reference to Verdict, I must thank Xin and his deputies for their hard work, vision and creativity in making sure that our Hilary 2014 publication more than lives up to the illustrious reputation of its predecessors – the pages of this issue are a proud souvenir of the achievements of the LawSoc team this term. This gratitude is extended to the entirety of this team, the current committee, all of whom have contributed substantially to the success of our events this term and forged a team dynamic that has been integral in pushing LawSoc forward, and made for some fantastic meetings and socials!

A particular heartfelt thanks goes to my executive committee, James, Rebecca, and Richard, for being involved in preparations for this term every step of the way, putting up with me at all stages, and being generous with their time, creativity and efforts to make Hilary 2014 a huge success. This term has truly been a team effort, and without your commitment to creating fresh and exciting new events and innovating the way we do things this term would not have been half as successful or enjoyable as it was. We have had great incidental fun along the way. I feel very fortunate to have worked closely with three fantastic people since Michaelmas on this project, and would love to think that I depart having made three new close friendships from the process.

Last, but absolutely not least, I would like to give thanks to the support of our ever-generous sponsors, and also to each and every LawSoc member. It is your enthusiasm for LawSoc which ensures the Society's very existence, and that we go from strength to strength each term.

All that remains is for me to give prospective thanks, and present best wishes, to next term's executive team, Esi, Heather, Adrien and Alice, who I know will do an outstanding job for Trinity 2014. I would love to emulate the assistance of past Presidents Sophie, Serena and Tabatha, whose help and advice for my term was invaluable. And indeed Hilary 2014 will go down as one term in my Oxford career I will never forget.



Nick de Mulder

Hilary 2014 Termcard

- | | | |
|----------|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Tuesday | Live Interview Workshop with Allen & Overy
Back to Term Cocktails with Allen & Overy |
| 2 | Tuesday
Thursday | Burritos and Mojitos with Baker & McKenzie
Case Study Workshop with Herbert Smith Freehills
President's Drinks with Herbert Smith Freehills
Varsity Moot at Gray's Inn
Fresh Perspectives with Freshfields |
| 3 | Tuesday | First Year Pathfinders with Linklaters
Sushi School with Linklaters |
| 4 | Tuesday
Thursday | Commerical Awareness with the University of Law
Ice Cream Indulgence at G&D's |
| 5 | Thursday | Pizza and Prosecco with Burges Salmon |
| 6 | Tuesday
Wednesday | Dinner at Brown's with Travers Smith
Cocktails and Cupcakes with Cleary Gottlieb |
| 7 | Thursday | The Oxford Law Society Ball at Warwick Castle |

A final glance back by this term's editor*

*Yesterday, end of Hil'ry seemed so far away
Now I'm handing in my last essay
(I started reading yesterday)*

*Suddenly, I'm not half the man I used to be
There's a shadow 'hanging over' me.
Oh yes to days where drinks are free.*

*Law Soc: work and fun, all in one! I wouldn't say
that there's much else on where you'll find your better days.*

Kin Fan
after J. W. O. Lennon



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