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A LETTER FROM

THE EDITOR

Dear Members,

I am really excited to present to you this term's issue of Verdict magazine. In this term's edition we have aimed to provide a mixture of different articles to be both informative and engaging in equal measure. Special thanks must go to our guest writer Professor Andrew Dickinson for his interesting feature article discussing the importance of private rights. We hope that our commercial awareness section will prove a useful starting point for members considering a career in law, and interesting reading nonetheless for those members who are not!

Thanks also goes to all of the law firms who have contributed to and sponsored Verdict, to my Deputy Editor, Helena for her constant willingness to help and also to all of our outgoing executive committee, in particular, Nick for all of his guidance and support.

Happy reading!

Josie Levick,
Verdict Editor, Hilary 2016

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DO PRIVATE RIGHTS MATTER?
A CASE STUDY IN HEADINGTON

* **ANDREW DICKINSON,** ST CATHERINE'S COLLEGE

Notwithstanding the creation of an effective vaccine at the end of the 18th century, smallpox remained a public health risk in 19th Century England. In 1871, 50,000 people died from the disease in Britain and Ireland. Many others were left disabled or disfigured. The Metropolitan Poor Act 1867 authorised the formation of local bodies for the care of the sick and infirm poor and authorised them to buy land and erect buildings for these purposes. One such body built a hospital in Hampstead for those suffering from small-pox and other infectious disorders. Residents of Hampstead, including Sir Rowland Hill (inventor of the penny post), sought an injunction to restrain the use of the building for that purpose. The case went up to the House of Lords, and the residents succeeded. Having concluded that use of the hospital for this purpose constituted a private nuisance, Lord Blackburn concluded that "however desirable it might be to erect and maintain asylums for the reception of the sick poor," the claimant's interests should prevail unless Parliament had provided otherwise. It was for those who sought to take away private rights to show that this was the intention of Parliament. The 1867 Act did not, in their Lordships' view, disclose such an intention. (Metropolitan Asylum District v Hill (1880) 6 App Cas 193, 207-208).

Similar reasoning prevailed a few years later in Mayor of Tunbridge Wells v Baird. A local Act of UK parliament authorised the town's corporation to build public toilets in any street. The Public Health Act 1875 also vested the town's highway streets in the corporation. The corporation dug out the soil below the most famous of these streets, the Pantiles, in order to build underground toilets. The owners of the properties on that street sought an injunction to remove the toilets on the basis that the construction involved a trespass to their land. They succeeded: the 1875 Act did not grant the subsoil below the highway to the corporation to a greater extent than was required for the maintenance and repair of the street, and the local Act did not authorise a trespass. In the view of Lord Halsbury, any other view would "be inconsistent with the language of the enactments, and contrary altogether to the policy which the Legislature has certainly always pursued of not taking private rights without compensation" ([1896] AC 434, 439-440).

The Supreme Court recently took a more nuanced view as to the role of the public interest in nuisance cases in Coventry v Lawrence (aka Lawrence v Fen Tigers) [2014] UKSC 13, [2014] AC 822. While affirming that the public interest did not constitute a defence to the private law claim (see at [193], [222]), the majority expressed a willingness to take public interest considerations into account in deciding whether to grant or refuse an injunction to restrain the nuisance. Lord Sumption (at [161]) went so far as to suggest that damages would ordinarily be an adequate remedy for nuisance and that an injunction should not normally be granted in a case where it is likely that conflicting interests are engaged other than the parties' interests. He also suggested that an injunction should in principle not be granted in a case where a use of land to which objection is taken requires, and has received, planning permission. The majority were more circumspect, but accepted (at [124-125], [169-171], [240], [245-246]) that the public interest was always one of many relevant factors to be taken into account in deciding whether or not to grant an injunction to restrain a nuisance, and that the grant of planning permission may provide strong support for the contention that the activity is of benefit to the public. Lord Mance, however, expressed the view (at [168]) that Lord Sumption's suggested approach would put the significance of planning permission and the public benefit too high, in the context of the remedy to be afforded for a violation of private rights.

These cases sprang to mind recently when a private company and its funding partner proposed to dig a trench through Headington streets to link two hospital sites belonging to their customer, the local NHS Trust, and to place in that trench heat pipes and electricity and data cables to be used by the hospitals. The Trust and the contractor have extolled the "Energy Link" scheme as being in the public interest, not least through claimed financial savings to the Trust and reductions in carbon emissions. Some local residents are sympathetic to those objectives, and willing to put up with the disruption that the construction work will involve (assuming planning hurdles can be cleared). The sticking point, however, is that the trench and pipes will run through soil that (on the authority of cases such as Tunbridge Wells v Baird) would appear to belong not to the Trust or the contractor or the highway authority (the County Council) but to the owners of the houses fronting the affected streets.

On that view, disputed by the contractor, the scheme involves a trespass at every step along the road. The legislation authorising the street works does not require a different conclusion, as it makes clear that the grant of a licence to place apparatus in the highway does not dispense the licensee from obtaining any other consent that may be required (New Roads and Street Works Act 1991, s. 50(3)).

If a trespass is made out, how should the law react? It may be tempting to suggest that the importance of public health services in modern society, demands for a low carbon economy and the scarcity of land within the city boundaries should favour the public interest over private rights, and that the correct balance between private rights and the public interest is struck by ensuring that landowners should receive some compensation but should not be able to block the scheme by seeking an injunction. On the other hand, respect for the rule of law and the autonomy of private property ownership may be argued to be equally important, and countervailing, public interests. Moreover, one might think that it should be for the legislature, and not the courts, to fix the terms on which proprietary interests can be compulsorily aquired for purposes which serve the public interest.

Other questions arise. If the public interest is to prevail, who should be the judge of the public interest? Are the courts well suited for that role? What about other possible uses of the land in question which may be equally or more advantageous? Does the Human Rights Act 1998 and in particular Art. 1 of Protocol 1 to the Convention demand a different answer? The answers to these questions are far from obvious, but it seems certain that the courts will need to grapple with them increasingly in the future.

* Declaration of interest: I am a resident of one of the streets in Headington affected by the "Energy Link" and have raised objections to the scheme on grounds including those raised here. My aim in this article is not to trespass unduly on matters in dispute (if you will pardon the pun) but to raise a broader question as to the relationship between private rights and the public interest.

TOP TIPS FOR INTERVIEWS

1 *SHOW PERSONALITY* - this is your chance to sell yourself. Don't just show that you're bright, show us that you're also someone we want to work with going forward. Confidence and a sense of humour goes a long way.

2 Firms are generally interested in how you think rather than any specific legal knowledge – luckily for you, you'll be used to this approach from tutorials. *KEEP CALM AND ADDRESS ANY HARDER QUESTIONS LOGICALLY* - every interviewee will be faced with a tricky question or two, but the firm isn't looking for you to get it 100% correct all the time.

3 *DO SOME HOMEWORK* - don't force it into conversation, but if called upon, showing us you have a decent knowledge of the firm, its offices, its clients and any major deals going on is going to impress. You don't want to shoot yourself in the foot by asking an obvious question.

4 *REREAD YOUR APPLICATION* – make sure you can justify/ explain everything you've written.

5 *"COMMERCIAL AWARENESS"* – the buzz words. To an extent, "commercial awareness" covers anything and everything – but you could start by understanding how any law firm works as a business, thinking about the commercial implications of the work a lawyer does and reading recent business news.

ESSAY COMPETITION

RUNNER UP

WHAT WOULD BE THE IMPLICATIONS OF BRITAIN LEAVING THE EUROPEAN UNION?

ANNA LUKINA, 1ST YEAR BA LAW (JURISPRUDENCE), HERTFORD COLLEGE

With the EU being a unique jurisdiction in the heart of the continent, the questions concerning its membership structure are of a vital importance to the overall geopolitical balance. That is why the proposal of "Brexit" (Britain leaving the EU), with the referendum on it scheduled before the end of 2017[2], appears to have a potential for both domestic and international implications in multiple spheres, mainly economic, political and legal.

Most rhetoric surrounding Brexit is focused on its political nature, however, considering the initial economic purpose of the EU, it would be sensible to analyse these types of effects in advance. The European Union is an economic union. This form of economic integration is characterized by the adoption of the common external trade barriers; free movement of land, labour and capital within the union; and harmonized fiscal policy. These features predispose the economic implications of Brexit.

Most obviously, there are direct economic implications such as the absence of economic commitments and need to comply with the EU regime as a member state. It will lead to the opportunity for a more independent and flexible domestic policy – a great potential tool to tackle local economic difficulties, as well as a new international trade agenda – fostering the trade with non-EU partners. Importantly, Brexit also provides a stable ground for protectionism. However, the great degree of this economic independence is already in place – e.g., the UK's refusal to sign the European Fiscal Compact makes harmonization of such policy within Britain rather problematic.

However, there still is a downside of leaving the EU – the economic union exists for a reason, providing certain internal trade benefits for the member states. Outside the EU Britain would lose the preferential access to those markets. With regards to the close geographical proximity, leaving the EU poses a high risk of economic isolation. Another concern is that this move would provide a large degree of uncertainty, making Britain less attractive for prospective investment. With both those factors in mind, it is important to emphasize the dual nature of Brexit with respect to economic developments – it might have both positive and negative consequences for Britain. The common consensus between the economists is hardly optimistic – because of losing benefits of economic integration and spiraling uncertainty, Britain would be likely to suffer lower economic growth[3].

While the economic background is highly necessary for examining the issues surrounding Brexit, political implications seem to be of more interest for this essay. While the economic effects generally tend to affect only the domestic markets, policy considerations present both external and internal concerns.

On the one hand, Britain leaving the EU might destabilize the latter and foster uncertainty and distrust among its members. With the rhetoric surrounding Brexit being dominated by the narrative of the EU not providing adequately tailored regulations for its member states, Britain, by quitting the union, can create a dangerous precedent and an example for other member states to follow. With the EU facing global challenges such as the current migration crisis and economic difficulties, it might be quite likely that the described example will be followed.

On the other hand, ironically, Brexit can create risks of break-up of not only the EU, but the United Kingdom itself. It is quite evident that the nations comprising the UK differ in their average political attitudes and position on certain issues of national importance, and the euroscepticism is not an exception. It is widely known that the devolved nations, most fundamentally, Scotland, are more favorable towards the European integration[4]. In the light of the recent referendum in Scotland (which indicated a high risk of it becoming independent) and the potential instability in Northern Ireland (mitigated by the current common borders and economic policy in the EU), Britain's decision to quit the EU would be unlikely to sustain the UK's integrity.

Therefore, Brexit would certainly change both internal and external political landscape, posing great risks of break-up of the EU and the UK. This decision might not be risky per se, but is certainly rather destabilizing when being placed in the wider context of current questions and challenges.
In the light of the discussed economic and political implications, it is rather important to examine the legal effects of Britain leaving the EU. The current legal framework shows a significant disparity of perceptions. On the one hand, there is the ECJ's understading of the relationship between the UK law and the EU law a domestic and a supranational legal system, manifested in cases of Costa and Van Gend en Loos[5]. Respectively, they established the supremacy and the direct effect of the EU law in member states, including the UK. However, on the other hand, current British position on the EU law seems unclear, provoking disparities in relation to parliamentary sovereignty, balance of powers and the rule of law.

The notable case of Factortame[6], highlighting the potential conflict between the EU law principles (implemented by the European Communities Act 1972) and the Mechant Shipping Act 1988, was interpreted in different ways: as a constitutional revolution that abolished the parliamentary sovereignty; as a recognised constitutional reality; and as a metod of avoiding the conflict between the statutes – so-called constructivist approach. In those three contexts, consequently, Brexit would adopt distinct meanings: the constitutional revolution will be reversed; the political reality will shift once again; or, under constructivism, only regular, insignificant change will occur. However, it can be stated that in all scenarios Britain leaving the EU would require at least some change of constitutional framework.

The effects of Brexit on parliamentary sovereignty will hence be dependent on the current status quo.

However, regardless of the adopted approach, it appears that while the EU law is directly implemented by the judges who can disapply the statutes contradicting the EU principles, moving away from the European legal order might potentially shift the balance of powers back to the legislature. This might potentially foster the commitment to democratic values, represented by the elected House of Commons rather than the unelected judges. This change might satisfy all those skeptical about the growing judicial activism.

It should be however noted that the rule of law requirement might be potentially hindered by the departure from the EU rules, if we adopt substantive approach to the rule of law and recognise values underlying the EU as socially beneficial. After all, the EU regulations facilitate fairer trade within the Union, at the same time protecting the working population from unfair working conditions and unequal pay, as well as countering side-effects of protectionist policies such as obvious discrimination (as in Factortame). Therefore, with Brexit, judges' ability to facilitate the rule of law by interpreting the legislation in the line with certain conceptual framework of values and principles will be undermined. Of course, with the strictly formalistic understanding of the rule of law, such disparity would not occur. Therefore, it can be concluded that, in respect to constitutional principles, Brexit would have at least limited impact on parliamentary sovereignty, balance of powers and the rule of law. Since the current state of affairs and the discussed values differ in their interpretation, it is impossible to make a clear judgment on strictly negative or positive effect of Britain leaving the EU.

All in all, the analysis underlying the discussed question – in economic, political, and legal aspects – is highly depended on the assessment of what Britain gains today from the EU membership. In an attempt to contextualise Britain's possible exit from the EU it can be concluded that, while economic and political conditions obviously represent certain risks, the legal situation is not that clear because of it being based on theoretical assumptions about the main constitutional principles. In any case, it would not be wrong to say that Brexit might certainly have far-reaching and quite multi-dimensional consequences, affecting many spheres of social and political life.

[2]The European Union Referendum Act (2015)
[3]Economists' forecasts: Brexit would damage growth, Financial Times <http://www.ft.com/cms/s/0/1a86ab36-afbe-11e5-b955-1a1d298b6250.html#axzz404XTRtYR>
[4]S. Douglas-Scott, 'British withdrawal from the EU: an existential threat to the United Kingdom?' U.K. Const. L. Blog (13th October 2014) <http://ukconstitutionallaw.org>.
[5][1964] ECR 585; [1963] ECR 1.
[6][1990] UKHL 7.

ESSAY COMPETITION

WINNER

WHAT WOULD BE THE IMPLICATIONS OF BRITAIN LEAVING THE EUROPEAN UNION?

JOSEPH J. M. BUNTING, 1ST YEAR BA LAW (JURISPRUDENCE), MAGDALEN COLLEGE

The implications of Brexit are vast, and are political, legal, constitutional, economic, and social. Above all they are uncertain – "it is impossible to predict the full consequences of a UK withdrawal"[7]. The economic impact is unclear[8]. The political effects are similarly uncertain: would it jeopardise our special relationship with America[9]; would it diminish the British presence on the world stage; would it destroy the Union?[10] What are the social effects? The answer to these questions are innately murky. It is not the intention of this essay to answer them.

Rather, the legal and constitutional impact of Brexit must be explored. This will first be done by considering the impact of the mode of exit (repeal of the ECA 1972 only, or following the procedure under Article 50 TEU). The impact on parliamentary sovereignty will be explored (and Barber's claim that Brexit will not restore sovereignty will be supported). Next, the protection of EU rights will be considered and the potential extension of the ECHR to fill the void. Finally, the impact on the devolved nations and the resulting constitutional problems will be explored.

The first consideration must be the implications of the method by which Brexit is achieved. Tim Oliver identifies five potential methods[11], but assuming it is a unilateral decision by the UK, then only two apply; viz. exit under Artile 50 TEU or simply repealing the ECA 1972. It is the latter method that concerns us here. It would precipitate a constitutional crisis. In Thoburn[12], Laws LJ, [62] held that the 1972 Act is a constitutional statute, but that there remains no obstacle to Parliament expressly repealing it, provided clear and precise language is used. Clearly, a repeal of the 1972 Act would contravene EU law, but domestic courts appear to accept that this can be done. The CJEU will be compelled to declare such a statute void if art. 50 is not followed. In HS2[13], Lord Reed, [79], held that such a conflict 'cannot be resolved simply by applying the doctrine developed by the Court of Justice of the supremacy of EU law, since the application of that doctrine in our law itself depends upon the 1972 Act'. Lords Mance and Neuberger held, [207], "it is for United Kingdom law and courts to determine" the outcome. In Thoburn, Laws LJ, [57] summarises the position of the CJEU as being "that Parliament could not legislate tomorrow to withdraw from the EU at all. Such a state of affairs might be said to be vouchsafed by the reasoning in Costa v ENEL". He rejects this claim. The CJEU, though, asserts it is the ultimate arbiter of the issue[14]. The initiation of Brexit by simply repealing the 1972 Act would thus be to precipitate the kompetenz-kompetenz issue. In short there would emerge a constitutional crisis in the UK, and a legal crisis in the EU, as domestically, EU law would no-longer have effect, while the CJEU ruled that it did. The conflict between the courts could damage, constitutionally, both the UK and the EU.

Independent of the method of its achievement, Brexit will have an impact on the constitutional doctrine of Parliamentary sovereignty. EU membership certainly mutilated parliamentary sovereignty, and potentially killed it[15]. But, Bradley[16], Goldsworthy[17], and Redwood[18] have all argued that this will be rectified by Brexit – pre-1972 sovereignty will return. It is submitted this is wrong. The traditional core of sovereignty can be expressed, crudely, by stating Parliament has "the right to make or unmake any law whatever[19]"; and, statute is the supreme source of law (De Keyser's Royal Hotel[20]); no one may declare statute void (Pickin v BR Board[21]); and, there is no hierarchy of statutes and implied repeal is, therefore, always effective (Ellen Street Estates[22]). Wade[23] and Barber[24] hold that following the judgement of Lord Bridge in Factortame No. 2[25], and the repeated suspension of incompatible statutes (e.g. EOC[26]), there has been a technical legal revolution – a change in the rule of recognition[27], killing sovereignty. There does not seem to be any logical reason why Brexit would compel the rule of recognition to revert back to its pre-Factortame or pre-1972 state. Moreover, Brexit will not reverse the rise of a hierarchy of statutes, of 'constitutional statutes' or 'instruments', as expressed in Thoburn and HS2 [207] respectively. The doctrine of implied repeal will not suddenly revert to being always applicable. The threat of the UKSC potentially suspending a statute that grossly violated the 'rule of law' will not disappear; as mooted in Jackson [28][102] (Lord Steyn), and AXA General Insurance[29] [51] (Lord Hope) - "the judges must retain the power to insist that legislation of that extreme kind is not law which the courts will recognise" [my italics]. While such a violation of traditional sovereignty has never been realised, the use of 'retain' suggests the courts already have this power. At any rate, membership of the EU has triggered changes to the idea of parliamentary sovereignty, and Barber[30] is correct in claiming there is no reason to assume Brexit will simply rewind the clock.

It must be noted that EU has created "vast systems and structures of rights and obligations[31]" and the most obvious implication is the uncertainty over which EU provisions we will retained after Brexit. Art. 50 TEU implicitly acknowledges the confusion created by providing for a negotiation period. Certainly some rights would appear to now be vested: "rights and statuses created under a treaty owe their origin to the treaty, those that have already been executed and had their effect before withdrawal 'have acquired an existence independent of it; the termination cannot touch them[32].'" The impact will be on those continuing obligations and the provisions of the Charter of Fundamental Rights of the European Union. They will no longer apply in the UK. The result is likely to be that the ECtHR will take up the slack. Dean Spielmann's recent lecture[33] highlighted how the 'living instrument' nature of the ECHR has allowed Strasbourg to extend its rights protection far beyond its original provisions; this is especially so of Article 8. Brexit would likely precipitate an even greater extension of these by Strasbourg, especially in the protection of social and economic rights. Domestically, we should expect rapid development of common law rights to fill the void. Such are probable implications of Brexit.

Consideration must now be paid to the constitutional effects of Brexit on the devolution settlements. Firstly, it will potentially cause a breach of constitutional conventions. The devolved competences require legislation passed by those bodies to be compatible with EU law[34]. Such provisions would need to be repealed. There exists a convention that the UK Parliament will not legislate on issues affecting the devolved territories

without the consent of those territories[35]. The best example is the Sewel Convention. It is entirely foreseeable that the devolved territories will refuse to pass the appropriate legislative consent motions[36]. Presumably the UK Parliament would have to breach convention, and alter unilaterally the devolution settlements, which could be constitutionally (and politically) damaging. A resulting, second, concern may be cited as:

"at present the policy on a devolved matter in Scotland, Wales and Northern Ireland is constrained by EU law[;] a removal of that constraint, because of a UK withdrawal from the EU, would allow the three nations to develop their own policies. These might diverge from one another, creating greater fragmentation within the UK than at present[37]."

This would create a need to alter the reserved, excepted and devolved categories of competences, and constitutional strife about the inequalities of devolved competences would be reawakened. A third impact is that on constitutional position in Northern Ireland. The Belfast Agreement 1998 was founded on an assumption of continued EU membership[38], and Brexit presents legal obstacles to its effective application. An EU/non-EU border frontier will result, the European Arrest Warrant will not take effect across the border, and a tax and customs frontier will be created. In short, the fragile stability the current constitutional and legal settlement provides will be jeopardised in Northern Ireland. Overall, Brexit has implications for devolution.

In conclusion, while the full implications of Brexit have not been considered, it will have significant constitutional and legal effects. Exit by repealing the 1972 Act and not following Article 50 will precipitate a crisis of competences between the CJEU and domestic courts. Brexit will do nothing to reset parliamentary sovereignty to how it was pre-Factortame or pre-EU. The sudden void in social and economic rights protection in the UK resulting from Brexit will likely result in the ECtHR extending the scope of the ECHR, and domestic courts extending common law rights. Finally, there are clear constitutional implications of Brexit for the devolution settlements.

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[22]Ellen Street Estates v Minister of Health [1934] 1 K.B. 590
[23]WADE (1995) 13 CLJ 172
[24]BARBER, N., The Afterlife of Parliamentary Sovereignty, I-CON 9 (2011), PP. 144–154
[25]R. v Secretary of State for Transport Ex p. Factortame Ltd (No.2) [1991] 1 A.C. 603, [1990] 3 W.L.R. 818, [1990] 3 C.M.L.R. 375
[26]R. v Secretary of State for Employment Ex p. Equal Opportunities Commission [1995] 1 A.C. 1, [1994] 2 W.L.R. 409, [1995] 1 C.M.L.R. 391, [1994] I.C.R. 317
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COMMERCIAL AWARENESS IN BRIEF:
KEY ISSUES FOR 2016

1

Politics: The UK referendum on EU membership.

The date for the UK referendum on EU membership has been set as 23rd June 2016 when the question asked will be: "Should the UK remain a member of the EU or leave the EU?"

Friday the 19th of February marked the end of a two-day summit in Brussels at which David Cameron negotiated a "new position" for Britain within the EU.
The key points of the deal are:

- An "emergency brake" on migrants' in-work benefits for four years when there are "exceptional" levels of migration. This brake will be available for UK operation for 7 years.
- Child benefit for the children of EU migrants living overseas will now be paid at a rate which is based on the cost of living in their home country. This will be applied immediately for new arrivals and from 2020 for the 34,000 existing claimants.
- The amending of EU treaties will explicitly state that references to the requirement to seek ever-closer union "do not apply to the United Kingdom". This will mean Britain "can never be forced into political integration."
- The UK has the ability to enact "an emergency safeguard" to protect the City of London, to stop UK firms being forced to relocate into Europe and to ensure British businesses do not face "discrimination" for being outside the eurozone.

2

A sluggish global economy

After tumultuous slips in China's economy, the world's second biggest, January seemed to be looking up with the end of January seeing GDP numbers in line with forecasts of 6.9% growth. However, forecasts for global growth in 2016 are being revised downward, as per the trend which has emerged over the last few years. The IMF has cut its initial estimate from 3.6% to 3.4%. World trade has also been worryingly slow, with volumes falling in the first half of 2015.

Oil prices have fallen again again to below $28 a barrel amidst fears about global oversupply. The panic was partly down to Implementation Day, when some of the international economic sanctions placed on Iran were lifted following its cooperation in dismantling significant parts of its nuclear program. Among the benefits for Iran, western powers can no longer limit her oil exports. This has fuelled concerns of Iranian barrels adding more supply to a market already depressed by an overabundance of oil from US shale oil and the Organisation of the Petroleum Exporting Countries (OPEC)'s refusal to slow production.

Industry benchmark Brent crude fell by 2% to $27.67, following last week's 14% drop. Some individual oil grades are doing even worse, like Canada's tar sands which fell to single digits. Overall, oil prices have fallen more than 70% since the middle of 2014.

3

NHS and the Junior Doctors

Ministers and junior doctors are currently in the midst of a long running dispute over proposed new contracts. The government has described the current arrangements with junior doctors, a label that describes a wide range of people within the medical profession, as "outdated" and "unfair", emphasising that they were introduced in the 1990s.

Ministers drew up plans to change the contract in 2012, but discussion collapsed in 2014. The government has indicated it will impose the new contract in England, but the British Medical Association (BMA) has responded by initiating the industrial action process.

The BMA has recently warned that imposing the new contract, which, amongst many other things, would redefine unsociable hours not to include weekends, would cause "untold damage" to future generations. With debate ongoing and official figures from the regulator NHS Improvement showing hospitals and other services have overspent by £2.3bn in the nine months ending December 2015, and are on track for a total year-end deficit of £2.8bn, it will be interesting to see how this issue unfolds over the course of the year.

4

Rio Olympics

When Rio was awarded the Olympics in 2009 it seemed like a great idea: Brazil's economy was booming and it was surrounded by only positive vibes. This is now being called into question as the Games loom ever closer. The questions of whether Rio de Janeiro's shaky infrastructure will be able to handle the Games, whether stadiums will be ready on time, and what state the government will be in, persist. Over the past 7 years, Brazil has spiralled into a recession, the Rio de Janeiro Organizing Committee for the Olympic Games has seen massive overturn, no resolution has been found for the water pollution problem, key venues haven't been completed, and the country is now experiencing an outbreak of the Zika virus. It seems there are serious, legitimate reasons to question whether or not Rio will be prepared to host more than 10,500 athletes in the most prestigious sporting event in the world by this summer.

Another question mark that hangs over the Games is whether Russia will compete. They became the first country ever to be banned from competitions after widespread, state-sponsored doping in athletics was uncovered. Many people believe they will be there when the torch arrives in Rio, though it is doubtful any spectators will be able put the memory of recent events far from their minds.

Adapted from Bright Network Commercial Awareness Update.

IN DEPTH: DATA PROTECTION:

THE MAX SCHREMS CASE AND THE ABOLITION OF THE 'SAFE HARBOUR AGREEMENT'

Data protection laws have undergone significant developments in recent times, with the Google Spain case raising the issue of 'the right to be forgotten', and, more recently, the case of Max Schrems, which ended in the invalidation of the 15-year-old 'safe harbour' agreement of data protection between Europe and the U.S.

Who is Max Schrems?

Max Schrems is an Austrian privacy activist who brought a claim against Facebook in Ireland. Schrems had been a member of Facebook since 2008 and, while studying at university in the U.S, investigated Facebook's apparent lack of awareness of EU privacy laws. As it was, some or all of the data provided by Mr Schrems to Facebook was transferred from Facebook's Irish subsidiary to servers located in the United States, where it was kept. **Following Edward Snowden's leaks** in 2013 regarding the activities of the U.S intelligence services, particularly the National Security Agency (NSA), Schrems filed a complaint with the Irish data protection authority, arguing that the law and practices of the U.S. offer inadequate protection against surveillance by the U.S. of the data transferred from European countries. **The Irish data protection authority** rejected Schrems' complaint, on the basis that in 2000, the Irish data protection Commission had declared that under the 'safe harbour scheme', the U.S. offered adequate protection of personal data transferred. Upon this rejection, Schrems appealed to the Irish High Court, which referred questions to the European Court of Justice (CJEU) for preliminary ruling.

What is the Safe Harbour scheme?

Under EU privacy law, the movement of its citizens' data outside of the EU is strictly prohibited unless the recipient country is deemed to adequately safeguard privacy protection in accordance with privacy protection measures of the EU. The European Commission and the U.S. Government had entered into an agreement, referred to as the 'safe harbour agreement', which, in essence, promised to afford adequate protection to EU citizens' data transferred by American companies to the United States. The 'safe harbour' served as a mechanism which allowed for the export of personal data to the U.S, from whichever European country, without the need to establish consent or negotiate agreements on case-by-case bases. It was under this 'safe harbour' that companies like Facebook have had the freedom to self-certify that EU citizens' data would be protected when transferred to and held in U.S. systems.

The CJEU's decision: The CJEU, on the advice of the Advocate General who found that the European Commission was unable to guarantee that 'adequate' safeguards for data protection were being met, declared the 'safe harbour' invalid and in violation of EU rights. The Court found that the agreement allowed for government interference, the Advocate General stating that, 'The surveillance carried out by the U.S. intelligence services is mass, indiscriminate surveillance… In those circumstances, a third country cannot in any event be regarded as ensuring an adequate level of protection'. The Court also found that the agreement did not provide effective legal remedies for individuals who wish to access their personal data or to have it erased or amended, and that it prevented national supervisory bodies from exercising their powers.

Implications: As of the CJEU's ruling, national supervisory bodies have the power to examine data transfers between the EU and the US, increasing the strength of protection of individuals' privacy rights. For multinational companies, and even fledgling start-ups headquartered in the U.S., the invalidation of the safe-harbour agreement will mean significantly increased scrutiny from European regulators. Many businesses have relied on the safe harbour as the primary means of transferring data, and it will now be necessary for these businesses to seek an alternative legal framework through which to transfer data. According to some experts, some regulators could have the power to totally suspend the transfer of the data, resulting in a situation akin to Russia, where a local government demands that all data relating to its citizens be held within the country, rather than within U.S. data systems.

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HIGHLIGHTS FROM THIS TERM


LAW
SOC
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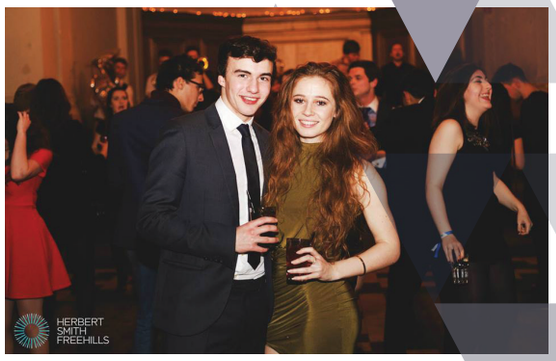
ashurst


HERBERT
SMITH
FREEHILLS


GIBSON DUNN


HERBERT
SMITH
FREEHILLS


BAKER & MCKENZIE


BAKER & MCKENZIE

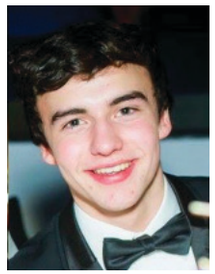

BAKER & MCKENZIE


GIBSON DUNN


HERBERT
SMITH
FREEHILLS

OUTGOING EXECUTIVE MESSAGES

NICK WOOD
PRESIDENT



I owe a huge thanks to a huge amount of people for making my time as President an absolute pleasure this term. In particular reference to Verdict, I would like to extend a massive thanks to the Editor Josie and the Deputy Editor Helena for their hard work, vision and dedication in making sure that the Hilary 2016 edition of the magazine is engaging and accessible for all our members. This gratitude is extended to the entirety of the current committee, all of whom have contributed substantially to the success of our events this term and have ensured that LawSoc continues to offer unrivalled social events and informative presentations.

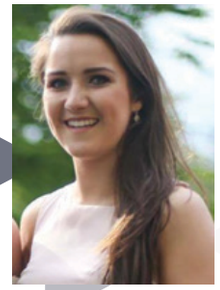
My unforgettable and rewarding experience as President this term is down to all those involved in the society. A particular heartfelt thanks goes to my executive committee, Amol, Laura and Amy, for making the past eight weeks such a huge success. This term has been a team effort and I feel very fortunate to have worked so closely alongside three truly talented people since Michaelmas. I look forward to leaving the society having made three new close friendships from the process. I would also like to all of our sponsors, without whom this term would not have been nearly as enjoyable. Finally, I would like to thank each and every LawSoc member. I really hope that you have enjoyed the events hosted by the society this term. All that remains is for me to give my best wishes to next term's executive team, Georgie, Elizabeth, Matt and Laura, who I know will do a fantastic job in Trinity 2016.

AMOL CHALISGAONKAR
VICE PRESIDENT

Being Vice-President this term has involved a huge amount of work with sponsorship, running events and emailing firms - but it was made much easier by a wonderful, hard-working Exec and a committee willing to take on just a bit more to help us out.

I'm really happy that we've been able to come out with some innovative events, like the Puppy Party. That leads me on to one of the people I'd really like to thank: Nick Wood. Nick has been instrumental in making sure we meet all our deadlines, been motivating when we're stressed, and most of all been great fun at all our events. We couldn't have had such a successful Hilary term without him. I'm also glad to have served on Exec with Laura and Amy, who made Ball-related decision making so much easier. For all the stress, them and Committee made it worth it! I hope the incoming Exec and new committee members have a great Trinity, as I'm sure they will - Georgie, Elizabeth, Matthew and Laura have already hit their stride!

LAURA ROBERTS
TREASURER



Hilary term can often be a challenging one as it sits awkwardly between Vac Scheme and Training Contract deadlines, however, I'm really proud of the term we've been able to pull together. At times it has been very challenging and I have wondered why I decided to take on the role of Treasurer in my final year, however, working as part of team with such great people has made it worth the stress.

Nick Wood has been the hardest working President I could have imagined and your perfectionist ways have really contributed to the success of this term. Amol's professionalism never ceases to amaze me and Amy's minuting skills (and passion for her rep card) are undeniable. The rest of the committee have also contributed so much (thanks to execs love of delegation) and it has been such fun getting to know everyone. As I enter my final term at Oxford, I will miss all that Law Soc has been able to offer me, with the small exception of my extensive spreadsheets. Finally, I want to say a MASSIVE good luck to Georgie, Elizabeth, Matt and Laura for next term. I know you guys will be amazing!