THE FOXHILL LAW JOURNAL

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The Foxhill Law Journal is willing to accept articles from law students on a freelance basis.

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It should be noted that opinions of all columnists are their own and are not endorsed by the School of Law in any way and any (legal) errors or omissions remain with the author. All law was current at the time of writing.

Editorial

The Foxhill Law Journal is a periodic publication created by students, for students at the School of Law. The team of thirteen intend this publication to bring current and developing legal news, contemporary legal critique and draw attention to the work of staff and students and emerging events within the School of Law.

This first issue will look at a variety of topics ranging from gender pay gap, international law issues and the move to 8-hour online exams. We hope that you enjoy this first edition and please do not hesitate to get in contact with any suggestions, comments or feedback.

Samuel Barber and Ben Holder, *Editors-in-Chief*

The Foxhill Law Journal was conceived to give students at the School of Law, a voice and engender a sense of community between students and staff. The purpose of the journal is to give students the opportunity to explore and write on legal matters that they are passionate about and want to share with others. It also spotlights academics at the School for the benefit of all students, as well as providing general news from around the School.

Sharon Sinclair-Graham, *Supervising Editor*

Legal News

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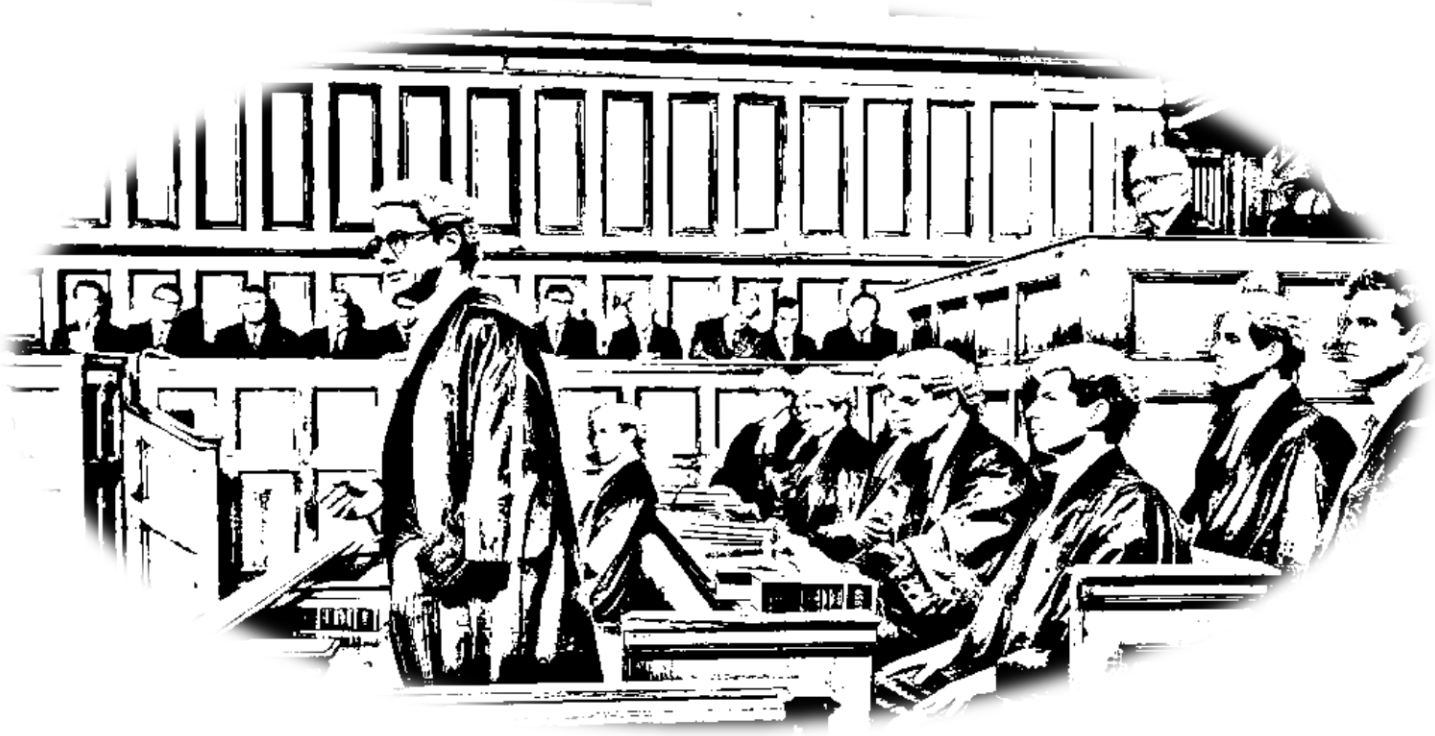


The Johnson and Johnson class action

Daniel Paul, *Columnist*

Second year student Daniel Paul explains the new legal import of class action litigation in the context of claims bought against Johnson and Johnson in the UK.

Growing up, there's a good chance you would have encountered talcum powder. You may even have some at home, likely collecting dust on your bathroom shelf. It's also highly probable that the talcum powder you have come across in your lifetime has been manufactured by pharmaceutical giant, Johnson and Johnson (J&J). J&J have recently found themselves embroiled in a global legal scandal that has left millions of consumers and healthcare professionals pondering the safety of the household staple.

What is the action about?

J&J are being faced with potential collective legal action in the UK over their talcum powder product, which has been criticised for containing asbestos that has caused ovarian cancer and mesothelioma.

The class action is being launched by the new British law firm Lanier, Longstaff, Hedar & Roberts LLP (LLHR), which was started by US attorney Mark Lanier. Mr Lanier is known as an effective and zealous litigator winning a legal action against J&J in the US worth $4.69bn back in 2018. His US claim against J&J was also in relation to cancer-causing asbestos in their baby powder making him a seasoned legal professional in high-profile personal injury litigation.

The class (claimants), represented by LLHR, allege that when J&J announced that they were to stop the sale of their talcum-powder based products globally in August 2022, two years after they stopped sales in the US and Canada, it was too late as their UK based consumers had already suffered irreparable harm. They say J&J placed profit before people by failing to tell their UK consumers about the risks arising from the use of their product, and that they failed in their duty to make sure their talcum powder was free from asbestos fibres. LLHR estimate tens of thousands of customers have been affected.

J&J have begun to move towards corn starch-based baby powder in the wake of these worldwide claims but insist this is a result of a fall in demand for their talc-based products, due to misinformation and not because of the allegations of their products causing cancer. This assertion is significant, as it takes away the potential for J&J being accused of wilfully putting consumers at risk of exposure to cancer-causing products which could give rise to increased damages being awarded to the class, as well as potential criminal proceedings.

What is a class action and how do they occur in England and Wales?

A class action will most often be brought where multiple claimants have suffered damage from a defendant in the same or a similar way. It is usually the case that an action brought by a single claimant is not great enough to be economically worthwhile and here the saying 'strength in numbers' certainly has a part to play in litigation, especially when taking on multinational companies like J&J, therefore bringing a class action amounts to what is referred to as "economies of scale".[1]

Originally, class actions in England and Wales were primarily based on 'opt-in' processes, where every claimant would have to involve themselves in the claim to be able to benefit from the case. However, we have increasingly seen the use of 'opt-out' processes being used, where the class of people who have been affected do not have to involve themselves in a claim to be able to take advantage of a remedy.

Class actions can arise in a number of ways in England and Wales. The main routes of note are:

- the opt-out procedure for competition law infringements. Since the Consumer Rights Act 2015, class actions for breaches of competition law can be brought exclusively before the Competition Appeal Tribunal (CAT) on an opt-out basis. Additionally, the UK Supreme Court case of *Merricks v. Mastercard* [2020] UKSC 51 has further encouraged more class actions in the CAT as the Supreme Court has loosened the criteria that is required to be met to be able to bring a class action to the CAT.

- the process of multiple claimants bringing their claims together using one claim form under Civil Procedure Rule 7.3, as long as the claims "can be conveniently disposed of in the same proceedings."

- the representative action procedure under CPR 19.6. Where different claimants have the same interest in a claim, the claim may be begun or continued by one or more of the claimants who act as representatives of the other claimants with the same interest. However, it has proved a difficult route to follow, for many claimants. In *Lloyd v. Google* [2021] UKSC 50*,* the UK Supreme Court ruled that the route is only applicable where all claimants have suffered exactly the same damage. The case concerned data protection, and the impacted class had all suffered damage in different ways. As such, any discrepancies in the damage to different individuals means the route is unlikely to succeed.

- Group Litigation Orders (GLOs). A GLO is a case management tool, that can be issued by the court or requested by the claimants, for "claims which give rise to common or related issues of fact or law" under CPR 19.10. It is easier to use than a representative action because the interests of the claimants do not have to be the same. A GLO can be expensive for claimants and very damaging on a defendant's reputation. Additionally, the use of GLOs has been decreasing with only one being issued in 2020 compared to five in 2017.

Why is the potential Johnson & Johnson action relevant?

There is absolutely no doubt that class actions are increasing in England and Wales, with the potential action against J&J being a high-profile case in point. There has been a firm increase in the number of claims brought in the competition arena, especially since *Merricks v Mastercard,* with a gradual increase in other areas of law. It is likely we will continue to see growth in the future, especially in spaces such as shareholder actions, environmental and human rights claims, employment, equal pay, product liability, and data protection (although this has arguably been setback by the decision in *Lloyd v Google*).

The reasons, for this evident growth is wide ranging, but there are three particular points that are worthy of note. Firstly, there has been a focus in the UK, and particularly the EU, on increasing access to justice, particularly, for consumers. The EU has even recently introduced an EU Directive on Representative Actions, to illustrate this point. As noted above, class actions bring economies of scale which make it more likely that those who have suffered damage will be able to bring a worthwhile claim.

[1.] *Economies of scale: where cost reductions occur due to a company's increased production, i.e., having multiple claimants under one action.*

Secondly, there has also been increased third-party litigation funding which makes funding class actions more viable. In fact, the third-party funding industry in England and Wales is now the second largest in the world.

Finally, the group litigation culture found abroad is seeping into the English Legal System. The J&J class actions started abroad in the USA and Australia, for instance, are now being tried here in the UK. Additionally, the USA and Australia have used opt-out processes for a long time, are becoming more prominent in England and Wales. In fact, it is useful to look at the global scene to see which trends could make their way into our legal system, in the future. Australia is a key focus as they have seen some important trends in recent years regarding group litigation. Damian Grave, a Partner at Herbert Smith Freehills, has recently highlighted three key trends in Australian class actions that could soon start to make their way to England and Wales:

1. Debates on the regulation of funding – since May 2021, Australian regulations on the funding of litigation by third parties has been loosened which has in turn led to more cases. The debate on how stringent regulation should be is relevant on the global stage, especially as the EU has proposed regulation of third-party funding of litigation within the Union which, despite Brexit, would apply to UK litigation funds that are used to fund cases within the EU.

2. The introduction of group costs orders in Victoria, Australia – group costs orders were introduced in Victoria in July 2021. This is where the law firm of the claimant party base their costs off of a percentage of the damages won from a case. As a result, it increases access to justice and allows cases to commence when litigation costs are too high. This has led to an increased number of class actions and could be introduced in England and Wales, especially as there is more of a focus on access to justice, particularly in competition law infringements.

3. Increased shareholder class actions – in Australia, there has been an increase in the number of shareholder class actions proceeding to trial. Law firms in the UK should be aware of this as companies continue to globalise.

It is important to be aware of these international trends as part of any lawyers' commercial awareness as we have seen the advance of foreign class action processes being adopted in England and Wales, like the 'opt-out' processes, for example.

The verdict?

Class actions are certainly going to become more common in England and Wales and have already seen a huge increase in popularity in contemporary times, with two important cases on the topic recently reaching the Supreme Court, paving the way for this type of litigation.

The continuance of the J&J class action is yet to unfold, and it is hard to tell what the next steps will be. Whether an agreement will be made with the pharmaceutical company to avoid costly litigation is difficult to predict, but would not be a surprising move considering the successful legal action made against J&J in other jurisdictions.

Female barristers' salaries still are not hitting the Bar

Ellie Delbridge, *Columnist*

Third year law student, Ellie Delbridge explores the shocking gender pay gap that continues to plague the Bar of England and Wales.

I was browsing through LexisNexis when an article from the Family Law Journal caught my eye: 'Bar Council releases Barrister earnings by sex and practice area'. Partly out of procrastination, I clicked on it and gave it a read. Much to my dismay, even in 2022, the gender pay gap amongst male and female barristers is still truly alive and kicking. Data from the Bar Council shows the income disparity Between male and female barristers has actually increased over the last 20 years. On average female barristers earn £30,000 less than their male counterparts.

What is the gender pay gap?

The gender pay gap is the percentage difference between average hourly earnings for men and women. According to the Office for National Statistics, across the UK, men earned 18.4% more than women in April 2017. Under the Equal Pay Act 1970 and the Equality Act 2010, it is unlawful to pay people unequally based on their sex, which is a protected characteristic. Thus, a company may still have a gender pay gap if a majority of men are in higher positions, despite paying male and female employees the same figure for similar roles. However, barristers are self-employed, and do not fall within this protection.

How do barristers secure work and get paid?

Barristers are specialist legal advisers and primarily courtroom advocates. There are two ways in which barristers receive remuneration for the work they carry out; firstly, they can be 'instructed' by the client themselves, this is a relatively contemporary development, and will often happen when a client needs courtroom advocacy. If the client has a solicitor, the solicitor will instruct the barrister on their behalf, on matters that have escalated to a dispute or matters requiring higher rights of audience. Once receiving their instructions and having their case prepared for by solicitors, the barrister will argue the client's case before the court.

We've all heard that the majority of barristers are 'self-employed', but there is sometimes confusion as to how they access work and get paid for doing so. Barristers can be described as 'individual businesses', where like-minded individual barristers group together into sets of chambers and share the burden of administrative costs. This is done by paying a percentage of all of their fees and a rent to chambers. In return, the chambers will provide services which help the running of cases, such as billing, negotiating fees and providing conference rooms. In most barrister's chambers, a head or senior clerk will oversee the administrative duties of chambers to support and manage the professional lives of the barristers in chambers. It is the clerks who secure and manage incoming work and assign it to the barrister with the right skill set for the role.

Gender pay gap is prevalent

Anonymous income data from self-employed barristers shared by Bar Mutual Indemnity Fund (BMIF) alarmingly shows the gap between men's and women's earnings actually expanded from 2000 - 2020.

In all but 2 of the 30 practice areas analysed, female barristers received a lower proportion of the gross fee income than the rest of the barristers in the field.

In the Bar Council's report, it was found that a male barrister's average gross fee earnings across all practice areas, *did* decline somewhat in 2021, while women's earnings slightly increased. Although this has partially reduced the existing disparity, it must be emphasised that across all practice areas, women continue to earn a whopping 34% less than their male counterparts. Since the year 2000, male barrister's average income has jumped from around £50,000 to £90,000, whilst women's average earnings have meekly increased from £31,000 to £53,000 for doing the same work.

It is also disheartening to see the gap between men and women's earnings are in fact getting wider again in some practice areas. In immigration, the gap in earnings increased from 33% to 38% between 2020 and 2021. Again, in the Chancery (contentious) division, women persistently earned 39% less than men.

In the higher earning, and larger practice areas of Personal Injury and Commercial and Financial Services, male barristers fee income is more than double the earnings of women, despite more women than ever joining this practice area. Perhaps the most shocking statistic is that women earned 53% less than men in Personal Injury in 2021.

There is no singular reason for the gender pay gap. The Fawcett Society suggests caring responsibilities have a large role to play. Female barristers who choose to start a family and have children will incur the 'motherhood penalty', putting aside the opportunity to grow their own careers as much as their male counterparts.

It is not all bad news however, as women are closing the gap in other practice areas. Women's earnings have even overtaken men's earnings in Defamation, out-earning them by 36% in 2021. In Employment, female barristers earned 6% less than men in 2021 compared to 16% less in 2020. In Commercial and Financial Services, women earned 51% less than men in 2021, compared to 57% less in 2020. Though, undoubtedly this is still an incredible gap in the highest earning practice areas. Hopefully the pay gap in these areas will continue to shrink.

The Bar Council have initiated some extra projects to tackle inequalities at the Bar. The schemes include a fair distribution of work, improving practice management which will support new barristers, and measures to tackle discrimination and inappropriate behaviour. With moves like this being made, a profession at the Bar may be less daunting for women.

Concluding observations

There are more women than ever working at the Bar which should be celebrated. Women are thriving at a career that historically accommodated privileged white men. However, it is worrying that women have accounted for half of all new pupils in the last 20 years, yet the gender pay gap is getting wider. The tough questions need to be asked as to why so many men continue to out-earn women, especially in the larger practice areas where men's income is more than double that of women's. Even in 2023, it feels like wishful thinking that the gender pay gap will be eradicated completely anytime soon.

Is Israel in breach of international law?

Hiera Zeib, *Columnist*

The ongoing Israel-Palestine crisis once again triggered protests and demonstrations in 2021, examples include solidarity marches in countries such as England, Turkey, South Africa, and the USA. The catalyst for this was Israel's 11-day bombardment of Gaza which resulted in the death of 250 Palestinians.

My objective in writing this article is due to my understanding that reports on this ongoing crisis are only produced when the media deems the topic relevant, as well as developments not being consistently or correctly reported on. In the last month or so, there has been a significant development which has sought to tackle the idea of whether Israel's occupation of the Palestinian territory is in breach of international law.

This has led to a request for a new Advisory Opinion from the International Court of Justice.

On the 27th of October 2022, the UN Commission presented their report on the Israel-Palestine conflict to the UN General Assembly. The main purpose of the UN Commission is to respond and investigate a vast variety human rights issues and abuses. In their report they looked at many different aspects of the Israeli occupation. They reviewed the *'policies and actions'* Israel used to maintain the occupation. As well as how Israel '*sustained its settlement enterprise'* and reviewed their *'expropriation and exploitation of the land and natural resources.'* The report made several significant conclusions, the first being that Israel *'remains accountable for violations of the rights of Palestinians'*. Next, they said some of the Israeli policies and actions '*may constitute elements of crime under international criminal law*.' The ultimate result from this report is that it presented a new sense of urgency for a second opinion from the International Court of Justice. Commissioner Miloon Kothari asserted that there is so much '*silent harm and psychological trauma'* further proving the necessity of urgent action.

Following this in December 2022, members of the UN General Assembly Committee adopted a request on a second Advisory Opinion from the International Court of Justice on the occupied Palestinian territory. This was done in accordance with Article 96 of the UN charter. Before going into detail to what this essentially means it is fundamental to highlight that if this request is approved and moved forward with it will be the second opinion produced. Since a request was made and accepted on the 8th of December 2003 resulting in an Advisory Opinion from the International Court of Justice. The question being asked through this advisory opinion was '*what are the legal consequences arising from the construction of the wall being built by Israel … in the occupied Palestinian Territory*' While forming their opinion on this question the court considered the actual route of the wall which '*encompassed 80% of settlers living in occupied Palestine territory*.' As well as considering the impact the wall would have on the '*daily life'* of the Palestinian people. They went on to consider the obligation Israel has to '*respect the rights of the Palestinian people to self-determinate.'* The court concluded on the fact that Israel must *'cease the work of construction of the wall due to their violation of international obligations'*.

This new Advisory Opinion is essential in helping create a resolution for the dispute. However, it can be argued that there are major objections from the Israeli government of whether their occupation is in breach of international law and due to this it could be expected that without strong evidence change will be difficult.

The purpose of this new ICJ Advisory Opinion is to answer questions on three different factors. The first being *'What are the legal consequences arising from Israel's violation by settlement on Palestinian territory*.' The next being '*How Israel's policies will affect the legal status of occupation.*' This is an interesting point to investigate as there are many different legal interpretations of how the proportionality of Israel's actions should directly affect the legality of their occupation. Specifically, the extremeness of force damaging their defence for claiming legal occupation. This is a simple correlation with international law on self-defence. '*As a state may use self defence against another state when an attack is imminent.*' The understanding is that this doctrine must be applied in *'good faith and on the basis of sound evidence*'. Once they have acted beyond that they are subject to legal consequences. There have been many different thoughts on whether Israel's actions go against Article 51 of the UN Charter regarding self-defence and therefore their actions are damaging. However, it must be noted this is solely an opinion and has not been legally accepted.

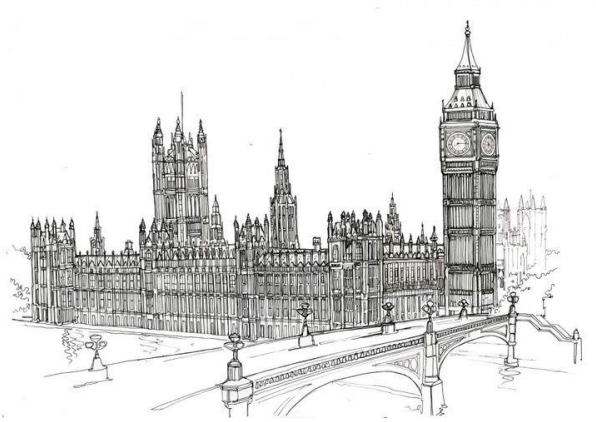
To conclude, one must consider *'what are the legal consequences that arise for all states and the UN'.* This question arises in relation to their obligations to respect International Law. With this request for a new Advisory Opinion, there is an indication of countries partaking responsibly in the dispute as well as having an active role in enforcing any provisions of international law that are put forward. This to me is a major movement forward as it proves the power of the International Court of Justice and how it is utilised and respected worldwide.

'98 States voted in favour for the second advisory opinion while 52 countries abstained from voting. 17 states voted against, including Canada and Germany.' The USA significantly voted against, as it was stated that they believed the only solution to the conflict was to create two separate states. To finalise, the request of the second advisory opinion needs further approval, only then will it be adopted, and plans will be made to produce a report looking to create conclusive answers on the questions that I spoke about previously. It should be noted that this is an advancement to generate more legally supporting evidence for a resolution which will be created on the occupation, as well as snowball action towards ending the 55 years of conflict.

The UK set to criminalise street harassment

Siti Zainal, *Columnist*

Second year student, Siti Zainal explains newly introduced and much needed legislation to broaden the criminalisation of street harassment.



As of 9th December 2022, the UK Government has introduced a Bill proposed by former Business Secretary Greg Clark that would criminalise public sexual harassment. Offenders would face up to 2 years in prison. Within the scope of public sexual harassment are the following:

1. Catcalling
2. Making offensive gestures
3. Walking too closely behind someone at night
4. Blocking someone's path
5. Driving slowly next to someone who is walking

Existing English law pertaining to sexual harassment is governed by the Harassment Act 1997 in which it is stated that "*A person who pursues a course of conduct which amounts to harassment of another person, and which they know or ought to know amounts to harassment, can face up to six months in prison or an unlimited fine*". However, sexual harassment is defined in s.26 of the Equality Act 2010 as *"unwanted conduct specifically of a sexual nature or related to gender reassignment and has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant or violating his or her dignity."* The Act states that alarming an individual or causing them distress also amounts to harassment. Sexual harassment is covered by current law and is illegal, however, in comparison to the newly introduced Bill, the current law only fines perpetrators up to £1,000.

It seems that with the new Bill the Government seeks to deter perpetrators as well as encourage people to report their experience. The new Bill focuses on the consent of the parties when the supposed act occurs. The Bill does not criminalise intimate acts in which consent is given by both parties such as between friends and family, however, it cracks down on the unwanted attention and in most cases the undesired sexual advances that women face.

In 2022, research was held by the Opinions and Lifestyle Survey to assess the current perceptions of safety and experiences of harassment that the interviewees had during the last 12 months. The results showed that 82% of women felt fairly or very unsafe walking alone in the park or an open space after dark whilst 42% of men felt the same. Half of all women feel unsafe in a quiet street close to home, 48% on public transport and 45% in a busy public space. Additionally, in 2021 an UN Women UK survey found that 71% of women of all ages said they had experienced sexual harassment in a public space. Evidently, sexual harassment in the UK is occurring at an alarming rate and the statistics that are being reported do not even account for unreported cases.

The current focus on gendered violence and the safety of women clearly stems from the unfortunate death of Sarah Everard. Although there have been multiple cases such as hers, what drew people's attention were the circumstances at which her kidnapping and death occurred.

She was labelled as a “blameless victim” as she had taken all precautions that a woman is told to when walking alone, and yet she was brutally murdered, by a police officer, no less. Her death placed emphasis on how unsafe it is for a woman in the UK to even go about her daily life, shedding light on how severe the current situation is for the safeguarding of women.

Previously, the issues that came with criminalising sexual harassment is how the law would decide what constitutes sexual harassment. If it is only based on alarming someone or causing them distress, it can be found that everyone is unique in what they find alarming or distressing. For example, Muslim women try to avoid any physical contact with men due to their faith, thus when faced with a man who tries to shake their hand, maybe even thrusting his hand her way, is it harassment? A case that has highlighted this issue is *Raj v Capita Business Services Ltd*. where a man claimed that he was sexually harassed after his female colleague continually massaged his shoulders. The Employment Appeal Tribunal dismissed the case on grounds that the act was not of a sexual nature however, it can be suggested that if the claimant was a female, the ruling might have differed.

With the present situation, it can be said that many are overjoyed by the government finally putting in the efforts to combat the dangers that most women face. Of course, there is still rage that it took the MeToo movement as well as the unfortunate death of Sarah Everard to commence changes but the fight against sexual harassment has been a long time coming. Currently, the Bill has passed its Second Reading by unanimous assent in the House of Commons and is making its way to the Committee Stage. The Government's progress pertaining to the Public Sexual Harassment Bill should be critically observed within the next few months and hopefully, there will be appropriate measures implemented.

Sexism in Law, an exploration into the ways in which English law is inherently patriarchal

Adam Newman, *Columnist*

Adam Newman examines the current gender discrepancies in the law of England and Wales, drawing on much of the jurisprudence Lady Hale presided over during her time as a President of the Supreme Court.

Judicial Appointment

Throughout the legal system, there continues to be male bias and orthodox views. Even now, the vast majority of judges are male rather than female. In 2003, the first woman, Lady Hale was appointed in the Supreme Court. This article will explore Lady Hale's views on sexism in the law and will observe certain cases that expose potential unfairness in the legal system.

Lady Hale states that at least half of the judiciary should be women. According to the Ministry of Justice figures in 2018, only 29% of court judges were women. The ratio of male to female judges is higher in lower courts than those courts that take higher precedence like the Supreme Court. Only 3 out of 12 judges were female.

Lady Hale: "We should be half of the judges at least"

The Law itself

There has been a lack of acknowledgement for socially constructed gender differences such as the impact of women looking after children. An area of law that can particularly be focused on is constructive trusts. For example, there is no protection for unmarried cohabiting couples. Whilst direct contribution can play a key role as protection, the main issue lies in sole-ownership cases where courts will determine a proprietary interest purely on finances, rather than the importance of looking after the children.

It is not uncommon for a wife with children to be evicted where her interest is not enough to buy another home with the same circumstances. They may have to move to another area, therefore facing negative impact on their child in terms of schooling and lifestyle. In *Re Citro* [1991], Nourse LJ highlighted the common consequence in land law where the wife has not contributed as much as the husband financially due to looking after the children:

> *"Such circumstances, while engendering a natural sympathy in all who hear them, cannot be described as exceptional. They are melancholy consequences of debt and improvidence with which every civilised family has been familiar"*

Women often find themselves in this situation and there is a sense of social injustice. For future legislation, Lady Hale said:

> *"there is a need for sone sort of financial remedy between unmarried couples… similar laws to that which already exists in Scotland."*

Many couples live together but are unmarried. There needs to be protection such as that recognised under Scottish law for these situations. For example, s.25 of the Family Law Scotland Act 2006 takes into account factors for cohabitants such as the length of time the parties have been living together and the nature of their relationship during that time. A clear example of the Courts not willing to make exceptions for children in cohabitant homes, can be seen in *Citro*. DC was separated from his wife but still living at the family home. They had children who were 10 and 12. The judge wrongly applied the case of *Holliday* [1981] which was a case allowing for the postponement of the selling of the house in exceptional circumstances. There were no exceptional circumstances in this case. Even though DC's wife and children would suffer from his improvidence, it was not deemed to be an exceptional circumstance.

Common Intention in Constructive Trusts more closely

The idea of direct financial contributions suffers from gender bias which has a negative impact on women's interests. Courts will look at detrimental reliance and will view what they perceive as 'natural' the role of women looking after the home and children. Courts will see this 'natural' behaviour as not fulfilling the category of detrimental reliance and would deem it insufficient when looking at interests. Overall, women's domestic duties hold little value when looking at their legal interests which is unfair. There are clearly assumptions as to the normal roles of women.

Burns v Burns was a cohabitation case which focussed on direct contributions of the parties. Scholars such as K Christopherson have argued that:

> *"Prejudices economically weaker cohabitants and has led to allegations of inherent gender bias against female partners."*

There is gender bias for the traditional view of the tendency for women to be the primary caregiver. Valarie Burns, the woman in this case had a 2-year relationship. She walked away with little interest from the home. Despite having maintained the family home, looking after the children, and having contributed to household expenses, she could not claim any interest. Her lack of direct contribution towards the mortgage meant that her interest meant nothing. This overall reflects the stereotype of men being the money makers due to a lack of recognition of female work in maintaining the relationship and family home. There should be a gender-neutral approach to limit this gender bias.

The distribution of property often discriminates against women. Overall, women are often impacted by the less favourable valuation of non-monetary contributions during marriage such as looking after the home and children. Many countries have laws that prevent females from inheriting property from family members to follow the norm of male lineage. In many states, laws have reflected traditional views which have limited women's economic participation.

There are many areas of law, not just property law where women's economic activity has been limited and there is gender bias. We can see this in Constitutional Law and Civil Rights. The 219 Women, Business and the law report explained that:

> *"a woman cannot effectively look for a job or go on an interview if she cannot leave her home without permission."*

In 45 countries, women cannot apply for a passport or travel abroad on the same terms as men. In a quarter of the world's countries, women are not allowed to travel on their own. In some countries, women are even prevented from voting or running for office. These constraints are based on customary beliefs and traditional norms.

History of the Progress of Women in Politics

Until the 1990s, the percentage of women as MPs was only 4 percent and has only risen to around 22 percent in 2010. Therefore, there are not enough female representatives in multiple branches: Parliament and senior judiciary.

In the 1980s, there was a traditional expectation that men were 'breadwinners' and that women had to look after the home. The wives would have childcare duties whereas the husbands would be making all of the financial contributions. Lady Hale highlights how we need to maintain the recognition of a family as a small social system. She states how the partner earning more economically should take responsibility to assist the other partner and compensate them. Lady Hale argues that this is the case because women and men are not equal and women are not encouraged to work outside their homes. There is a need for remedies for all partnerships: married, civil and unmarried couples so that the woman is better protected

Concluding remarks

To conclude, the law continues to suffer with a chronic gender bias which pervades all aspects of the English legal system. These norms are constraining women's economic contributions. If we explore Land Law, we can see how domestic duties of women, despite them being economically held back, have little weight in defining their direct contributions to property in cohabitation cases. It has become common for many wives and children to be evicted from homes and to be forced to move to another home in a different area. Overall, this could be down to orthodox views adopted from predominantly male judges. Women are not equally represented in senior judiciary and Lady Hale explores this notion of gender bias in the law and how it impacts peoples' everyday lives.

Law School News

Contents:

Why has the School of Law reduced twenty-three-hour examinations?

Liam Symonds, *Columnist*

Liam Symonds addresses the move by the University of Reading to reduce twenty-three-hour examinations to eight-hour and explores why this is a decision that should be welcomed.

With the first publication of the Foxhill Law Journal, it would be a prudent approach to address the biggest and most controversial issue we face here at the School of Law, which is the removal of the twenty-three-hour examinations, and the adoption of the new eight-hour examinations. Since early September, when we were all told that the examinations would be reduced to eight hours, there has been outrage from some law students across campus with many protests and petitions to move it back to the original twenty-three-hour examinations.

Understandably students are worried about this new format as it is unfamiliar and with many of us going into our second and final years, we don't want any sudden changes which could throw off our ability to answer questions to the best of our abilities and therefore affect our grades.

To help get a better understanding of the new examination format and to hopefully ease many law students minds, I had a conversation with the man who made the decision. Recently, I had a one-to-one chat with Professor Peter Miskell, who is one of the University's Pro-Vice-Chancellors for Education and Student Experience. In the conversation, we spoke about the reasons for the change of format, what other options were considered, if this new format will affect students' grades, and lastly, if this will be a permanent change or if there will be a gradual shift back to face-to-face examinations.

Liam: Why have the examinations moved from twenty-three hours to eight hours?
Peter: So, the basic reason for it, and I'm going to try and put it as simply as possible, is because everybody is now back on campus. The reason we had twenty-three-hour examinations originally was because of Covid. We are a university with a lot of international students who live all over the world, and when Covid came we had to find a way to incorporate multiple time zones therefore, … we had to move away from in-person examinations. We realised if we were to have a three-hour online examination, if you're based in China for example, how could you be expected to do that in the middle of the night, it is just not reasonable. It was never intended for students to spend twenty-three hours answering the questions, it was just a way to incorporate all the time zones during Covid.

Can you assure students that this won't have a large effect on their grades as a result of having less time to complete the questions?
We found that in the vast majority of cases there was almost no difference at all in the average results profile. Lots of students feel that they will get a greater advantage by having more time to work on the questions; however, averages were the same from the years before the twenty-three-hour online examinations were introduced.

In addition, we found that although they may have all the time in the world, that doesn't necessarily mean that their grade will increase. Back in the days of in-person examinations, one would be very well prepared and could often get an answer across in a really concise and clear way. Whereas if you feel as if you've got all the time in the world, then it is easy to go off course and get distracted by other things.

Everyone was in the same circumstances so it's fair to say that when everyone is completing an eight-hour examination, it will not be an issue. The twenty-three-hour examinations actually had the opposite effect on students, … there was a slight decrease in the number of students getting poor marks, due to the use of lecture notes and textbooks during the exam, there had also been a decrease in the amount of very high grades produced, as it seems students tended to play safe in online examinations when compared to in person. Many students tend to look at the question, and then go to their lecture notes and other material which is available to everyone leading to the answers all being very similar.

Can we expect online examinations to be moved to in-person? Six-hour examinations or Four-hour examinations in the next coming years?

Our intention here is to keep with the eight-hour format as the standard online format going forward. I obviously can't say for sure, as we could have another pandemic and so that might change things again. But the overall intention here is to try to get to a sort of long-term sustainable solution, that eventually examinations might move back to in-person, but will not be for a while yet. There are certain subjects, not law, but some of the more mathematical-based subjects, where there is a very obvious right and wrong answer.

In summary, it is very likely all current law students reading this will not have to worry about examinations being in person or reduced to six hours for the duration of their studies. Therefore, the eight-hour examinations are here to stay but that isn’t to say it is a bad thing, as there were possibilities of it being six-hour or even fewer.

An interview with Professor Marko Milanovic

Imogen Taylor, *Columnist*

Second year student, Imogen Taylor, takes a look at the interesting life of Marko Milanovic exploring his academic journey, areas of interest and some helpful advice for students.

Imogen: Could you explain to me briefly what areas your research tends to explore?

Marko: I am what you would call a generalist international lawyer, so I deal with some questions of international law that cross the sub-disciplines, such as state responsibility or treaty interpretation.

I do have some specific interests in human rights law - especially in the digital world - and the use of force.

What kind of journey did you take to end up in your position?
Somehow, I always wanted to be an academic. To qualify that, I went through law school as a nerd - I found it to be very intellectually stimulating and I wanted to become a professor. I never really wanted to be predominantly a practitioner.

I grew up and did my first Law degree in Serbia, in Belgrade. Whilst doing this, I worked for a leading human rights NGO called the Belgrade Centre for Human Rights and I realised that human rights was what interested me.

After that, I went to America to do my LLM, where I got a scholarship at the University of Michigan. The university took part in a program with the International Court of Justice where the university would fund a recent graduate to work as a law clerk with one of the judges. I went to The Hague and worked for a year for Judge Thomas Buergenthal, which was a really interesting experience involving assisting him with some of his work.

Following this, I went to Cambridge [again, a scholarship] to do my PhD for three years. It was here that I wrote my thesis, which eventually became a book: Extraterritorial Application of Human Rights Treaties (OUP, 2011). This concerns what happens when a State does something (or fails to do something) to a person outside of its territory. For example, if America spies on somebody in the UK, or if the UK kills somebody with a drone in Syria.

I got my first job at the University of Nottingham, where I stayed for ten years. Then, I moved to the University of Reading.

You often write about huge, global events that are ongoing, such as in your articles for the European Journal of International Law (EJIL). How would you describe this experience?
It's a blessing and a curse. It's a blessing because what I'm doing is immediately relevant and current; I don't have to explain to anybody why what I'm doing is important, as it's self-apparent. This is especially true when you find yourself in a position to produce work that will genuinely contribute towards debates on these issues. On the other hand, it's a curse because these types of crises can undermine your faith in the ability of the law to make society better or to make a real difference because the law gets broken. In both domestic and international law, the rich and the powerful tend to get away with breaking the law in ways that the poor and the weak cannot. So, that is sometimes dispiriting, but of course not enough to stop me from liking what it is that I do.

You also research international cyber law. Would you say that it's important for current law students to keep up with technology?
Absolutely. It's hugely important because part of the experience of the law is adapting old rules or old ideas to new problems, which includes problems that arise from new technologies. That can be anything from cyberspace, to how we communicate with each other, to how we organise peaceful protests through apps. It raises really interesting questions about law and ethics.

You can't be stuck - if you're a lawyer - in constantly doing and redoing the same type of issues. The same themes will be there, but it's really interesting to challenge yourself to apply the law to new problems.

Looking at your research and from this discussion, it's fair to say that you have a wide range of research interests. Do you have anything to say to students who aren't quite sure yet about which areas of the law truly interest them?
Only very few people will really know very quickly what gets their juices flowing, whether they burn with passion for - I don't know - insurance law. It's a fairly rare thing, and the vast majority of people end up in areas of the law as practitioners because it was somehow an easier route to take. You need to earn a living and some areas of the law make more money; it makes sense. So, a lot of people by inertia end up in an area of the law without necessarily liking it. However, that also applies to any other job.

So, if you have the privilege to be able to do a job that you actually like and are interested in - even if it might mean making less money - that's a really good thing. To get there, you need luck and time. The only real requirement to be good at an academic job is to be intellectually curious; this isn't just being intelligent; it is having that interest and desire to open your horizons.

Do you have any recommendations for any books that a student could read if they were interested in your area of research?
It's a hard question to answer as international law is so vast. If I had to recommend a nice introductory book, it would be 'International Law' by Vaughan Lowe (OUP, 2007). It's short and gives a flavour of how international law works. Really, though, I would recommend reading the news and taking an interest in current affairs.

Finally, do you have any advice for current law students?
Different people need different advice. For some, I would say, '"don't be lazy," but for others I would say, "it's not neurosurgery; the stakes are not that high! There is a middle ground for sure."

An interview with Elizabeth Conaghan

Imogen Taylor, *Columnist*

Second year student, Imogen Taylor, explores Elizabeth Conaghan's route into the law as well as drawing light to the important work she has conducted in the law school.

Imogen: Could you talk me through your route to your current role as an Associate Professor?

Liz: I studied Psychology and Physiology as my undergraduate degree, which I really enjoyed. At the time, I was thinking about becoming an educational psychologist. But upon graduation, some friends, who had done various other degrees; such as Japanese and biology, were going off to do the Law conversion courses. I wanted to look into law further! I had always enjoyed debating, public speaking, and drama, and I wondered, maybe that would be quite a good fit. So, I did like lots of people, sent off parallel applications for a teacher training post as the first stage of educational psychology and I also applied for the graduate diploma in law and some funding. I was lucky enough to get the funding, and that was the decision made! So that's what I did at BPP Law School, going on to the Inns of Court to do the bar vocational course.

It sounds like that funding really helped you to narrow down your options?

It was really fortunate, and it does make you realize why funding is so important. Nobody in my background had been lawyers and like many people, I was the first generation in my family to attend higher education. I think that's made me realize the importance of trying to promote funding opportunities, particularly for people who want to go to the bar because generally you have to fund yourself more than maybe the solicitor route. That's why anytime we get applications and invitations to make applications for scholarships, it's something I'm very keen to promote because I was the beneficiary of that myself.

What advice would you give to students that aren't 100% sure what career they want to end up in?

Try not to panic. Looking to the longer-term picture, you probably have half a century of work ahead of you, and therefore don't be too hard on yourself if you're not too sure what you want to do now. Most of us are subject to various financial constraints which might dictate what we have to do and when, but if finances allow and circumstances allow, having a year where you are just in the world of work, and then maybe doing some traveling, generally, you then bring more life experience to a vocational role such as a lawyer.

I know sometimes I speak to students who feel like they're on this hamster wheel and they've got to get to the next stage. And maybe, there is a moment to pause and say I need time. I don't think it's any disadvantage to a career in law these days to be doing something non-law related, because it often has transferable skills. I also think about how half our students go on to train as lawyers and the other half do something completely different, which is just as wonderful.

Do you think that your non-legal interests have helped you to explore the law and in your career?
I am interested in the role of emotion and learning as part of the student experience and maybe that stems from an interest in psychology which makes me think about how we learn. Part of my degree was about some of the mechanisms for learning, I think there are potential gender differences which can be explored and issues of intersectionality; all of that can give us a better understanding of how we can meet the needs of diverse learners. For example, statistically women are much more uncomfortable with being picked upon in classes.

As for the drama, I'm a really big believer that different ways of expressing yourself are enormously important to flourish as human beings. With funding from the Vice Chancellor, I'm currently working on a play about the biggest miscarriage of justice in recent times. It's about people who ran post offices who got accused of taking money which was supposed to be in their post office tills, and many of them went to prison. Some of them sadly took their own lives as a result of losing their homes, their businesses and the breakdown of their relationships. It eventually transpired that none of those people, or at least the vast majority of those people, had ever stolen that money. But nobody would believe, including the courts, that the Post Office computer system (Horizon) could be wrong.

Building on that answer, do you think that there's more room for creativity in legal classrooms, then?
I wouldn't want to impose my particular way of learning or doing things as they might not necessarily be for everyone, but I think there is a lot of research on it at the moment. Emma Jones at the University of Sheffield is looking a lot at the role of emotion in legal learning. So it is, I think, a developing area. I suppose we're trying to challenge the notion that subjects have to be dry and boring; they don't, because most subjects at the end of the day are about people, and people are generally interesting, for better or for worse.

What does intersectionality mean to you and how do you think that the law school is trying to consider it?
It's a really great question and it's something which I'm learning myself. I have spent a little bit of time recently thinking about what that means. Recently, me and a few colleagues did a survey of first years where we were looking at their experiences of group work, and what we wanted to pick out was whether or not there were issues relating to their experiences of group work. We looked at various factors like gender and disability and ethnicity and we were looking at the interplay between those.

For example, group work might be negatively experienced by one group, but was that compounded if you say added in another factor? That's what we looked at and we subjected it to statistical analysis. Yet again, our biggest finding actually was not so much the intersectionality, it was the differences in gender; men and women reported different experiences of group work, and that was statistically significant.

I've also been thinking quite a lot about what it means to *decolonise* the curriculum. That was something of which I really had no clue or understanding, but I did some courses on that which were run by the University, and just recently read a brilliant book called *Empireland* by Sathnam Sanghera.

It was such an eye opener to me and that's made me think a lot more about it, so I've recently got some funding and I'm going to put a call out with Frances and Beth for a series of staff-student workshops on what it might look like to decolonise the curriculum because we think we probably need that training first before we can try and do it in a discipline specific way. I'm also on the decolonising curriculum working group.

I should also mention that there's a lot of work going on in the law school in respect of the awarding gap and something called the BAME di-Lawgues as well. So, there are a number of projects going on. We can always do more, but it’s always beneficial to work with students to improve their experience.

Law in Literature

Imogen Taylor, *Columnist*

Home Fire by Kamila Shamsie

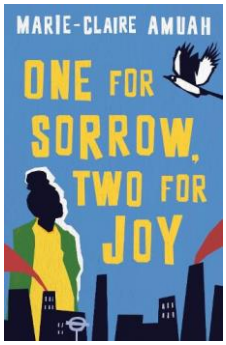
Plot: In a modern-day retelling of Sophocles' 'Antigone' (don't worry - you don't have to read the original to understand this story!), Kamila Shamsie emotionally explores the destructive, hypocritical ways that British Muslims have been treated by the government and the media.

Legal issues to consider:

- When obedience to the law triggers moral dissonance, how does an individual decide whether or not to conform? Can you think of any laws in the UK that cause individuals to make decisions that may clash with their values or beliefs?
- Does the law apply equally to all people and the State? Can you think of instances where the State has arguably bent the law to achieve its desired outcome? It may be worth considering the judgement in *Entick v Carrington* [1765] for this.
- In what ways does the makeup of the people making the law (see: older, wealthier white men) impact how it applies to the general population? In what ways would a more diverse and representative legal system change this?

Quote: 'Yes, Dr. Shah, if you look at colonial laws you'll see plenty of precedent for depriving people of their rights; the only difference is this time it's applied to British citizens, and even that's not as much of a change as you might think, because they're rhetorically being made un-British.'

One For Sorrow, Two For Joy by Marie-Claire Amuah



Plot: Set between London and Ghana, this book follows Stella as she grapples with her identity, intergenerational trauma, and mental health. With all of this already on her plate, she begins studying to become a barrister, culminating in a story that is both heartbreaking and intensely hopeful.

Legal issues to consider:

- Do all law students experience the same challenges when studying for their degree? What could be done to level the playing field for those who face societal obstacles when studying?
- With Stella facing so much uncertainty in her life, it seems that she leans on her legal skills at times to navigate. What skills has your degree given you that could apply to non-legal situations?
- What does intersectionality mean to you? It may be worth considering Kimberlé Crenshaw's 'Mapping the margins: intersectionality, identity politics, and violence against women of colour' (1991) for this.

Quote: 'To stay alive, you basically have to not want to die. I bet you think it's easy for me because I've been through a lot and I've made it this far. Because I wear a suit from Hobbs and go to court. Because I make submissions to the judge and closing speeches to the jury. Because I cross-examine witnesses and say the sky is blue. It's not easy for me. Nothing is.'

Pressures of a Law Student

Marilia Patsalidou, *Columnist*

Second year law student, Marilia Patsalidou, provides an insight into the everyday pressures of a law student and the different ways in which this manifest.

Law school can be overwhelming sometimes. I get it!

Wake up. Shower. Brush your teeth. Eat buttered toast. Drink coffee. Get dressed. Go to lectures. Study. Order in. Shower. Brush your teeth. Sleep. Repeat! What a boring routine… and for what? Just to get good grades and then again, the same repetition for the next 3 to 4 years. The struggle never seems to end.

Over nine hundred law students every year at the University of Reading strive for knowledge, good grades, and internships. Every student wants the same thing, however, an important factor many seem to forget and neglect on a daily basis, is themselves, more specifically their mental health.

Following a meeting I had with Teaching and Learning Dean for the School of Law, and Mental Health Champion, Professor Louise Hague, I learned that there are many students throughout the University who struggle with their mental health. In 2023, we live in a society where thankfully, mental-health issues are understood, accepted, and where the stigma surrounding the subject has diminished, and particularly in Reading where there are staff that can provide support for students.

There are different ways in which students might manifest their cry for help; they may not study or overwork themselves, are unable to complete their assignments on time. Some students might stop coming to the lectures or tutorials, or they might stop participating in their tutorial groups. Due to the high number of law students, there are different things that people do to comfort themselves from the high stress that law school generates. Some of them turn to food, others to games, compulsive shopping, nightclubs, while others turn to meditation or exercise. However, many of them, including myself, seem to neglect themselves and forget that life is not just about grades and studying. We should have fun, however, today's society seems to point in the direction that life is only about grades. Some of us will become solicitors or barristers and others have different plans, and that is okay.

As we grow older, those assignments we had during our time at law school, which we did not do so well in, simply will not matter. It will not matter because you got the job you wanted. You may have passed the Bar or SQE exams or fulfilled other ambitions. After all the mental strain, the limitless hours at the library, missing out on house parties - it will all be worth it. You might be rejected thirty-five times but be accepted once at the law firm or the job that will change your life for the better. Don't punish yourself because you did not do well at the interview for a position you did not get, failing is part of the process, you should embrace it and treat it as a learning opportunity.

NOTE: If you are experiencing mental health issues, you have access to various services within the University: https://www.reading.ac.uk/essentials/Support-And-Wellbeing/Student-Wellbeing-Services

Law School Announcements

- On the 8th December, **Cameron Clark** and **Martina Mazzacato** attended the final of the British Inter University Commercial Awareness Competition (BUICAC) hosted by Fieldfisher at their London Office. The competition consisted of commercial presentation, negotiation and a client pitch which resulted in Cameron coming twelfth place and Martina coming in eighth place – both securing prizes at top international law firms. Huge congratulations to both.

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