

EDITOR'S INTRODUCTION

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Welcome to the third issue of the fifth volume of the new series of *Amicus Curiae*. We are grateful to contributors, readers, and others for supporting the progress that the new series of the journal is making.

Dr Maria Federica Moscati, from the University of Sussex, introduces and edits the Special Section on “Children’s Rights: Contemporary Issues in Law and Society” (Part 2).¹ In her edited section, a broad array of studies provides indepth socio-legal and interdisciplinary examinations of critical questions related to children’s rights. This comprehensive approach not only explores the legal frameworks and protections afforded to children but also explores the multifaceted impacts of these rights on their wellbeing and development. Furthermore, some of the efforts seek to expand the diversity of contributions made to scholarly journals, by introducing new perspectives

and methodologies that enrich the academic discourse surrounding the rights of children. Through this innovation it is hoped to enhance our understanding and advocacy for these fundamental rights, highlighting their importance in shaping a just and equitable society for all children. *Amicus* is especially grateful to Dr Moscati for stepping in and filling in what might have been a hole in contributions to the journal in this and the previous issue.

In the Articles section, the contribution made by Justice Sir Dennis Adjei of the Court of Appeal, Ghana, entitled “Freedom of Expression and its Legal Ramifications in the Era of Social Media” is based on a public lecture delivered at Kwame Nkrumah University of Science and Technology. The contribution notes that the concept of freedom of expression is now a widely recognized term, and carries a meaning that goes deeper than

¹ Part 1 was published in *Amicus Curiae Series 2* 5(2).

its surface-level interpretation, as evidenced in various international and national legislation. The Universal Declaration of Human Rights, adopted by the United Nations (UN) General Assembly in Paris on 10 December 1948, aimed at preventing human rights abuses following the atrocities of the Second World War. It highlighted freedom of expression as a cornerstone of democracy. Today, all 192 UN member states are committed to that value, thanks to their adherence to subsequent UN treaties, despite its original non-binding nature. Over time, this Declaration has evolved into a value in customary international law, carrying obligatory weight. Freedom of expression, an inherent human right, allows individuals to seek, receive and impart information across borders through any media, thereby playing a crucial role in educating people about their rights.

Dr Neels Kilian (Faculty of Law, North-West University, South Africa) in his contribution entitled “What about Insurance Law Principles? A Comment on the South African Case of *African Unity Life Limited v Prosper Funeral Solutions* Case No 2021/55922/” examines legal issues in South African law associated with the concept of an insurance net premium. The term “net premium” encompasses both individual

premiums and the collective aggregation, often referred to through a loss ratio calculation. This calculation holds particular relevance for a specific agent within an insurance company, known as a binder holder, which is analogous to a cover holder at Lloyd’s of London. In the South African context, a binder holder represents an approach equivalent to a cover holder, functioning as an insurance entity without possessing an insurance company licence. This arrangement enables the execution of tasks such as drafting policy wordings and adjudicating claims. The article reviews a case where the court overlooked the significance of both a binder holder and a net premium, as well as the relevance of a bordereau in the operational undertakings of the company called Prosper Funeral Solutions.

In his essay “The British Courts and Compulsory ADR—How Did *That* Happen?” Dominic Spenser Underhill examines the nature and significance of the Court of Appeal’s decision of 29 November 2023 in *James Churchill v Merthyr Tydfil County Borough Council* by which the Court ruled that courts in England and Wales have the legal authority to compel parties to participate in alternative dispute resolution (ADR) processes outside of court. This landmark decision aligns

with expectations. This article demonstrates, through case law, judicial commentary and the Civil Procedure Rules (CPR), that this ruling reflects a longstanding judicial tendency to encourage parties towards negotiated, consensual resolutions, rather than relying solely on court judgments. This decision addresses a discrepancy in the CPR, which requires parties to consider ADR to achieve the overriding objective, yet previously did not grant courts the power to enforce this requirement. The article will explore the origins of the Court of Appeal's decision, assessing how it represents both a continuation in the trajectory of judicial evolution and a significant processual innovation.

Dr Mei Ning YAN in her contributed essay on Hong Kong entitled "Is There a Right to Newsgathering in Hong Kong? Putting The CFA Judgment of *Choy Yuk Ling* in Context" examines the Court of Final Appeal decision in the recent case of the *HKSAR v Choy Yuk Ling*. The Court overturned the convictions of a journalist charged with making false statements while searching a government-maintained vehicle register that held personal data crucial for journalistic investigations. The Court ruled that the interpretation

of permitted search purposes should not be so narrow as to exclude legitimate journalism. It emphasized the importance of freedom of speech and press freedom, noting that data protection laws allow for the disclosure of personal data in the public interest for journalistic activities. However, the Government in Hong Kong quickly countered this decision with new regulations that effectively barred any use of the register for journalistic research, undermining the court's stance on press freedom.

As part of the Special Section on Children's Rights, in the Visual Law section,¹ Alankrita S's essay "Participation of "Walled" Children Begins When Adults Listen—The Right to Participation of Children in Conflict with the Law in India" studies children experiencing legal troubles. It employs qualitative methodology to explore adult practitioners' perceptions of the participation rights of juveniles who are in conflict with the law within India's juvenile justice system. The research seeks to identify obstacles that hinder these children's right to participate. The findings indicate that adults often view these children merely as future contributors, thereby underestimating their capacity

¹ Readers of 'Visual Law' are also encouraged to peruse the article by Caralyn Blaisdell, Fatmata K Daramy & Pavithra Sarma at page 399.

for meaningful participation. However, the study reveals that when children's voices are heard, they can significantly enhance the knowledge and methodologies of adult practitioners. Additionally, feeling listened to makes children feel valued, increasing their willingness to engage. This underscores the responsibility of adult practitioners to create safe spaces for children to express

themselves and meaningfully contribute to decision-making processes.

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