



Editorial

Welcome to the IALS Student Law Review

Welcome to the Winter 2016 issue of the Institute of Advanced Legal Studies Student Law Review (ISLRev).

Now approaching its fifth year, it is a pleasure to see the ISLRev continue to contribute to academic knowledge by offering scholars and practitioners the opportunity to be instrumental to knowledge with their articles by addressing contemporary issues in numerous jurisdictions and from multi-disciplinary perspectives.

This issue of the ISLRev includes papers on: the doctrinal underpinning to Gains Based Remedies; the individual and the management of public affairs; common intention constructive trusts and the disputes arising in non-married couples; challenges in accessing Personal Independence Payment (PIP) and; difference between proportionality and Wednesbury unreasonableness review under the Human Rights Act.

We hope that the readers of the ISLRev will find this latest Issue engaging. If other authors feel inspired to write a piece in response or submit a new article on current issues to the ISLRev, we strongly encourage you to do so. Our editorial board is composed of PhD students eager to review scholar articles, notes and work fruit of empirical observation, providing feedback when needed. We always aim to engage with the authors, no matter the drafting stage of the articles, because we know how valuable is to obtain a professional feedback that helps us all to improve.

In this issue:

Tom Stafford examines the phenomenon of “Gains Based Remedies” and the seeming lack of unity that baffled commentators who have tried to search for an underpinning doctrine. The article discusses the flaws in breaking down these remedies into categories by suggesting that any search for a doctrinal underpinning to Gains Based Remedies is misguided. It argues that awards granted have only one feature common which is the claimant’s loss is, that is impossible to assess, so the courts use as the only measure of the wrong available, the defendant’s gain.

Mirko Pečarič addresses the theme of the individual in contemporary society in an attempt to enlighten the fundamental human right of participation in the management of public affairs aimed at implementing new systems of public participation. Looking at different perspectives, such as those of the individuals, public servants, governments and their relations directions, provides that the public administration could be upgraded through representative bureaucracy, making citizens active members and bringing the right to participate in the public life to a new level, namely that of management by the managed.

Ben Fullbrook examines the current state of the law about the use of common intention constructive trusts to determine disputes arising from the breakdown of relationships between cohabiting, non-married couples and maintain certainty with regard to property ownership while striking the right balance. The article analyses the key cases that have been heard in the senior courts about this matter and identifies key issues with the current state of the law. By analysing the Cohabitation Rights Bill, it suggests that the Bill is unlikely to overcome any of these issues because it seeks to increase, rather than reduce the role of the courts and suggests that the law should be simplified such that couples are allocated the same portion of the beneficial interest unless they expressly declare otherwise.

T Varshini addresses from hands-on perspective the procedures with regards to the Personal Independence Payment (PIP) indicated various difficulties faced by both advisors and claimants in obtaining access to PIP. The article paper analyses the theoretical and practical challenges concerning the application process and accessing information for PIP, from the claimant's point of view. It provides that there are several differences in theory and practice with regards to the PIP. While drawing conclusions on the effectiveness and fitness for the scope, the paper exemplifies how charities have been used by claimants to bridge the gap that exists in theory and practice. It concludes that with the current budget cuts, the government needs to reform the PIP to ensure fairness and justice for its claimants.

Veena Srirangam addresses the question whether there is a difference between the proportionality review under the Human Rights Act and Wednesbury unreasonableness review. The article reviews relevant case-law where Wednesbury unreasonableness was applied and argues that the courts did not consider the relative weight or the fair balance struck by the decision as these elements are unique to proportionality review. It concludes that as a result the proportionality review should be preferred because it affords better protection to human rights. In the face of the possibility of a new human rights regime, insufficiently distinguishing between these standards of review can lead to an erosion of the protection afforded to human rights under proportionality.

While handing over the coordination and management of the journal activities to the new editorial board, I would like to offer my most sincere thanks to Dr Constantin Stefanou for his academic counsel on the Board and to Steven Whittle for his invaluable support in bringing the finer details of the publication to life. Working as member of the editorial board has been a life to change experience and a learning opportunity.

I would also like to thank our Associate Editors and Peer Reviewers for lending us their time and expertise during the submission stage and helping to maintain the quality of content within the ISLRev. Last but not least, I am grateful to all those who submitted their articles for inclusion in this issue of the ISLRev. It has been a pleasure to get acquainted with so many talented professional and academics.

We expect our next issue to be published around June 2017, so please do not hesitate to submit your papers for consideration as soon as possible. Submissions can be made through the ISLRev's online submission form at: <http://sasojs.da.ulcc.ac.uk/lawreview/user/register> or by email to: ials.islr@sas.ac.uk

Best wishes to all, **Paolo Biondi (Editor-in-Chief, *IALS Student Law Review*)**

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