

Editorial

Welcome to the IALS Student Law Review

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Welcome to the Autumn 2021 Issue of the Institute of Advanced Legal Studies' Student Law Review (ISLRev).

The last few months have been marked by intense public debate on climate change, sustainability, development of technology such as the Artificial Intelligence (AI) and the role of state of law, while the ferocious pandemic is still sweeping the globe and threatening lives. Added to this is the spread of disinformation and misinformation about the pandemic, a decade of rising populism or "my country first"-global politics in recent years and likewise the declining faith in experts.

However, John F Kennedy already referred to chances during crises with his famous speech in 1959: "When written in Chinese, the word 'crisis' is composed of two characters – one represents danger and one represents opportunity." (although today it is widely recognised that this is not the correct interpretation of the Chinese characters, the reference to opportunities remains unique). The bottom line is that the ongoing crises and the extreme threats can be used for directing individuals, a country or even the world to a solution and a better place. This edition of ISLRev has very fascinating articles which, inter alia, provide practical and useful problem-solving approaches that will be introduced below.

First, we would like to congratulate Mohammed Subhan Hussain Sheikh for becoming our new Associate Editor:

Mohammed Subhan Hussain Sheikh is a PhD candidate at IALS specialising in International Human Rights Law, South Asian Laws, Comparative Law, Jurisprudence and Legal Theory, Gender and Law, Company Law, UK and International White-Collar Crime, Civil Fraud, and Parallel Proceedings.

We also would like to thank Professor Anton Cooray from the City Law School, University of London, for acting as the Academic Editor of the ISLRev.

The new Editorial Board of the ISLRev is aiming to offer a wide range of interdisciplinary services such as academic webinars with professors/practitioners specialising in their field of publication. Additionally, we are planning to conduct online and physical events where academics, practitioners and students will have the chance to meet and discuss various legal and economic topics around the journey of pursuing a PhD, publishing in peer-reviewed journals, writing books, etc.

Finally, for each issue of the ISLRev going forward, the Editor-in-Chief will alternate writing an editorial opinion piece. These will give a broad overview of the relevant legal topics alongside the articles included in the respective issue.

Hence, we are delighted to introduce the following articles of this ISLRev-edition:

Shreevana Gurung discusses the simplification to the Immigration Rules and its effects as the Immigration Rules hold paramount importance in controlling and monitoring the UK borders and non-British population. These rules expansively dictate the boundaries and movements of every non-British citizen; hence, they are relied upon widely by public bodies and the judiciary. The Immigration Act 1971 was initially passed to control the UK immigration system. However, the law under this statute has been developed on an ad hoc basis which has resulted in a convoluted set of laws being established. The difficulties concerning the current Immigration Rules have led the Law Commission in its 13th Programme of Law Reform to propose the idea that the Immigration Rules need urgently a simplification.

Reem Kabour explores what effect the enlightened shareholder value (ESV) principle in the Companies Act 2006 (CA 2006) has on the corporate objective of UK companies. The Organisation for Economic Co-operation and Development defines the corporate governance as the system by which companies are directed and controlled, and through which a company's objectives are set. To assess whether section 172(1) of the CA 2006 has modernised the shareholder value (SV) model established in the

pre-2006 case law, this article explores the impact of the legislation on subsequent corporate governance practices in the country, specifically regarding the reporting requirements found in later statutory instruments. Finally, it is concluded that despite legislators omitting to profoundly expand on the case law preceding the ESV provisions, rebranding SV with an 'enlightened' streak creates a margin for more fundamental changes, both legal and normative in nature in the future of the doctrine, should this be required.

Alreem Kamal discusses the right of non-refoulement which dictates that no refugee or asylum seeker is to be returned to any territory where he or she may face persecution, torture or other ill-treatment. This fundamental obligation is both of a customary nature and enshrined in numerous instruments, the most pertinent of which for the purposes of refugees being the Convention Relating to the Status of Refugees (known as the 1951 Refugee Convention or the Geneva Convention of 28 July 1951). Despite this, an alarming trend has emerged in the practice of states in direct contravention thereto. Several states have sought to curb refugee movement and intake through, inter alia, bilateral agreements and forcible repatriation. Considering this, the article undertakes a critical examination of the principle of non-refoulement, with a view to demonstrating its patent inviolability.

Jacqueline Lee provides a case comment on Case C-343/19 Verein für Konsumenteninformation v Volkswagen AG which is an EU jurisdictional dispute about an Austrian consumer claim concerning vehicles that were defectively manufactured by a German company. The resulting decision by the Court of the Justice of the European Union (CJEU) granted jurisdiction for Austrian courts to hear the case. This case comment will proceed in five steps. Firstly, it provides a summary of the facts. Secondly, it lays down the jurisdictional rules per Brussels I Regulation 2012 (Brussels I) and the precedence surrounding Article 7(2) Brussels I on alternative jurisdiction for torts. Thirdly, it agrees with the CJEU that the place of final purchase before the scandal (ie, Austria) is the place of the initial damage. Fourth, it criticises the CJEU's characterisation of the case as one involving material damage rather than pure financial loss, while using reasoning from pure financial loss case to justify granting alternative jurisdiction in the present dispute. Finally, this comment laments that the CJEU failed to (i) clarify alternative jurisdiction rules for when the place of purchase and place of marketing are different and (ii) flesh out substantive criteria for what 'other specific circumstances' are required to grant Article 7(2) alternative jurisdiction.

Luigi Pecorella provides a critical overview of the existing legal rules concerning the subordination of shareholder loans and, in doing so, examines what function the Insolvency Law should assist when dealing with it. In financially distressed companies, shareholders have the tendency recorded throughout all the major jurisdictions to provide finance by way of loans for purposes of accomplishing a better position in the prospective insolvency proceedings to the detriment of the external creditors while "gambling" on the company's resurrection. Against such practice, the Insolvency Law seeks to intervene by subordinating this type of shareholder loans to the claims of the other creditors, thus upholding its nature of 'creditor protection law'. Moreover, the author analyses the development of the US Bankruptcy Law and the German Insolvency Law in this regard.

Harleen Roop discusses whether the definition of 'mental disorder' under the Mental Health Act 1983 (MHA) should encompass autism for the purpose of the compulsory detention. To be sectioned under the MHA, an individual must meet the definition of 'mental disorder' as per Sec 1(2). Despite the scarcity in academic scholarship concerning autism within the scope of the Act, the 'mental disorder' definition has been considered incredibly broad. This article seeks to highlight that the inclusion of autism under the MHA results in discriminatory detention based on autism-related behaviour; therefore, the removal of autism from the MHA is necessary. The author also analyses the legislative framework concerning compulsory detention as per Sec 2 of MHA and criticises the current safeguards as well as the relevant government and the legislative reports.

Eeman Talha examines whether the French law restricting the religious practice of the Islamic full-face veil amount to persecution within the remit of International Refugee Law, or whether it is a legitimate distinction under International Human Rights Law. Muslim women who wear an Islamic veil do so as a

badge of honour – one that is liberating, empowering, and brings solace because it is worn solely as a religious act of compliance to God. Such face coverings are a valid form of manifestation of freedom of religion; a freedom enshrined as a non-derogable right under International Human Rights Law. Yet, Muslim women have been severely deprived of such a right since the enforcement of Loi 2010-1192 du 11 Octobre 2010 interdisant la dissimulation du visage dans l'espace public – Law 2010-1192 as of 11 October 2010 on the Prohibition of Concealing the Face in Public Space. This law has allowed for the nationwide marginalisation of a group of women simply trying to live in the comfort of their faith. The author contends that such a profane law is not only a clear form of indirect discrimination under International Human Rights Law through the state's illegitimate justifications, but also that the law amounts to persecution on cumulative grounds under the 1951 Refugee Convention.

Finally, we are hugely thankful to our authors for their submissions. We would like to encourage any postgraduate student, practitioner and academic who intend to submit an article to get in touch with us. The details for submission can be found below:

<https://ials.sas.ac.uk/digital/ials-open-access-journals/ials-student-law-review>

We look forward to hearing from prospective contributors. Until then, please enjoy the latest issue of the ISLRev!

Tuğçe Yalçın & the ISLRev Editorial Board.