MELBOURNE LAW SCHOOL COVID-19 RESEARCH NETWORK

BIBLIOGRAPHY OF COVID-19 LEGAL LITERATURE¹

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Note: the annotated bibliography below is arranged A) Literature and B) Selected organisations with dedicated COVID-19 legal publications pages. The literature in Part A primarily includes scholarship and professional literature. We have not included many blogs or other online fora - an excellent resource of such online commentary, using such authoritative sources such as EJIL: Talk! and Opinio Juris, has already been compiled by the George C Marshall European Centre for Security Studies in Germany, and is being regularly updated – see Jonathan G Odom, ‘COVID-19 and the Law: A Compilation of Legal Resources’.

The literature in Part A is divided into broad topics, beginning with general literature followed by specific topics. We have only included each article under one topic heading, even if it is appropriate to be listed in two or more topics. A note on the jurisdiction is included if this is not immediately obvious from the title.

Links are provided to literature available on open access. Please contact the Academic Research Service at law-academicresearch@unimelb.edu.au if you would like the full text of any of the articles not available on open access.

This bibliography will be regularly updated.

¹ This bibliography was compiled by Robin Gardner, MLS Academic Research Service, using the following journal article databases: Index to Legal Periodicals (EBSCO), AGIS (INFORMIT), Westlaw UK Journals, Westlaw Canada Journals, HEIN, SSRN and Google Scholar. Few scholarly journals have yet published COVID-19 articles - although many journals have ‘relaxed’ the usually stringent peer review process in order to get articles published quickly, the process is still quite lengthy, so most scholarship listed is in its pre-publication form on eg: SSRN. Many of the SSRN articles have been uploaded independently by SSRN scholars, rather than as part of, for example, a research paper series.
## Contents

A) SCHOLARSHIP AND PROFESSIONAL LITERATURE

**GENERAL**

**GENERAL - REGULATORY AND POLICY RESPONSES / ADMINISTRATIVE LAW**

**BUSINESS LAW (INCLUDING FRANCHISES)**

**CHARITY LAW**

**COMMERCIAL CONTRACTS**

**COMPETITION AND CONSUMER LAW**

**CONSTITUTIONAL LAW**

**CONSTRUCTION LAW**

**CORPORATIONS LAW**

**COURTS / LITIGATION / ADMINISTRATION OF JUSTICE**

**CRIMINAL LAW / CRIMINAL JUSTICE**

**ENVIRONMENTAL LAW**

**FINANCE & BANKING / INVESTMENT LAW**

**FOOD, AGRICULTURE, ANIMALS**

**HEALTH / MEDICAL LAW & ETHICS (INTERNATIONAL, REGIONAL AND NATIONAL)**

**HUMAN RIGHTS / CIVIL RIGHTS / DISCRIMINATION**

**INDIGENOUS LAW & GOVERNANCE**

**INSOLVENCY & BANKRUPTCY**

**INTELLECTUAL PROPERTY**

**LABOUR LAW / EMPLOYMENT**

**LEGAL EDUCATION**

**LEGAL PROFESSION / LEGAL PRACTICE**

**PRIVACY & DATA PROTECTION**

**PUBLIC INTERNATIONAL LAW**
REFUGEE & ASYLUM SEEKER / IMMIGRATION LAW ................................................................. 86
SPORTS LAW .......................................................................................................................... 90
TAX LAW .................................................................................................................................. 90
TRADE ...................................................................................................................................... 92
WILLS ....................................................................................................................................... 92

B) ORGANISATIONS / JOURNALS / BLOGS PUBLISHING REGULAR COVID-19 LITERATURE ............... 93
A) SCHOLARSHIP AND PROFESSIONAL LITERATURE

GENERAL


Abstract: When the world restarts and the masks are put away, will the global legal order look the same? Should it? A crisis is a terrible time to make predictions about the future. But it’s a great time to rethink dubious assumptions of the past, and address tensions revealed in the present. Just within the field of international law, Covid-19 has encouraged all three. Pundits predict the death of globalization — or its rebirth. Others assert that they always knew the global public health infrastructure was fundamentally flawed, or that it was the one thing saving us from apocalypse. And, of course, there are those eagerly seeking someone, somewhere, against whom they might bring a lawsuit. So it might be helpful to sort some of the wheat from the chaff and map out what we know, what we don’t know, and where we might go from here.


Abstract: The course of a pandemic is dictated not just by biology, but also by law. And crucially, unlike biology, law can be readily adapted in response to a pandemic. Unfortunately, the current law does not take account of the compressed timeframe and rapidly changing social needs that distinguish pandemic times from normal times. We thus suggest three urgent, early lessons for law in the pandemic context: First, free information flows save lives, an observation which has ramifications for freedom of speech and press, copyright law, and patent law. Identifying particular hazards that patent law poses to the free flow of scientific research findings, we suggest a government-funded reward system as an adjunct to the patent system to incentivize pandemic-relevant research and its rapid publication. Second, politically accountable decisionmakers may not act optimally to save lives. We suggest a refashioned, politically insulated U.S. Public Health Service imbued with administrative independence in the vein of the Federal Reserve Board. Third, pre-crisis regulatory structures are not proving nimble enough in the midst of the pandemic. We suggest legislation that directs the FDA to be creative in
designing case-by-case approval procedures for vaccines and other treatments to allow them to get to market much faster. To accelerate approvals while retaining scientific rigor, we suggest allowing well-informed, consenting human testing subjects to take on more uncertain risk than the FDA currently tolerates. In sum, we argue for a more general, systematic, and critical perspective on law in the special context of a pandemic.


**Abstract:** This open access e-book contains insights and information by Columbia Law School academics on the most pressing legal issues the pandemic has raised across a wide range of topics from bankruptcy to privacy.

**GENERAL - REGULATORY AND POLICY RESPONSES / ADMINISTRATIVE LAW**

**Note:** This general section includes regulatory responses by legislatures and governments, and includes rule of law and oversight of administrative action issues. This section also includes literature on restriction of movement – including quarantine and lockdown regulations. Literature on restrictions on transborder movement is included below under the Refugee / Immigration heading.

Bar-Siman-Tov, Ittai, ‘*Parliamentary Activity and Legislative Oversight during the Coronavirus Pandemic - A Comparative Overview*’ (Bar Ilan University Faculty of Law Research Paper No 20-06, 2020)

**26 jurisdictions compared**

**Abstract:** The novel Coronavirus disease 2019 (COVID-19) is extremely contagious and currently incurable. Hence, much of the efforts to contain the pandemic have focused on social distancing, prohibiting gatherings and even curfews. The Coronavirus poses a new dual challenge for legislatures. First, the Coronavirus, and the measures taken to contain its spread, make it difficult and even dangerous for parliaments to operate, given that legislatures are by their very nature large multi-member bodies whose operation requires assembling a large group of people together to deliberate and vote. Second, the Coronavirus pandemic creates a sense of emergency that empowers the executive branch and emboldens it to assert greater authority at the expenses of the legislature. Despite these challenges, the continued operation of
legislatures throughout the Coronavirus crisis, and particularly the maintenance of legislative oversight of the executive, has never been more vital. Legislatures have a crucial role in checking the executive and ensuring that countries will not lose their constitutional and democratic values in the process of managing the Coronavirus crisis. This report begins by explicating the novel dual challenge the Coronavirus pandemic poses for legislatures. It then focuses on elaborating on the unique challenge currently faced by the Israeli Parliament. It explains how the unique combination between the Coronavirus pandemic and the complex political situation in Israel, has made the issue of parliamentary operation during the Coronavirus pandemic particularly acute and urgent. Against this background, this report examines whether and how parliaments in other democracies are operating during this crucial period of the evolving Coronavirus pandemic. Drawing on a combination of two main types of sources – a network of expert academics and a network of parliamentary research centers – it presents a novel and timely comparative overview about current parliamentary activity during the Coronavirus pandemic. The report covers 26 democratic parliaments from Europe, North America, Asia, Israel and Australia. It finds that most parliaments continue to operate during the Coronavirus crisis (including in countries in which the pandemic is quite substantial and in countries where legislators themselves were among those diagnosed with the Coronavirus). It also finds that even though some parliaments continue with business as usual, many parliaments are beginning to modify their operation, and generally show an ability to adapt to meet the Coronavirus challenge.

Bedford, Becket, ‘Covid-19, Brexit and Borders...what Does It Mean for the UK?’ [2020] Lawyer (Online Edition) 1

Abstract: The article offers information on the challenges faced by the Great Britain’s citizens. It discusses the impact of the coronavirus outbreak, along with information on the free to test new arrivals for Covid-19 at the airport in the Great Britain. It mentions the challenges faced by the citizens in the Great Britain in Europe due to the Brexit, along with mentions on the European law.
Civitarese, Jamil, ‘Social Distancing under Epistemic Distress’ (SSRN Scholarly Paper ID 3570298, 7 April 2020)

Jurisdiction: Brazil

Abstract: Under the social distancing label, there are policies steaming from governments and policies able to be implemented individually, but mostly they require acquiescence by citizens. In this paper, the social norm about complying with social distancing originates from knowledge diffusions based on social comparison and self-evaluation mechanisms. I use the empirical footprints of the contentious Brazilian health strategy in the COVID-19 outbreak to develop an evolutionary game theory model of governmental communication interacting with experts in an epistemic democracy. This model suggests a complementary effect from governmental actions and civil society preferences that may bias studies about the management of a pandemic crisis. Policy recommendations are towards institutional designs with tighter accountability links between experts and voters.

‘Croatia: Temporary Measures to Mitigate the Consequences of the COVID-19 Pandemic and Zagreb Earthquake in Civil, Insolvency and Criminal Procedure Law’ [2020] Lawyer (Online Edition) 1

Abstract: The article informs on recommendations issued by Croatian Ministry of Justice as of 14 March 2020 to prevent the transmission of the novel coronavirus and control the pandemic. It mentions that measures advise temporary adjustments to legal requirements in civil, insolvency and criminal procedure law to avoid hardship that would otherwise arise as a result of the coronavirus crisis. It also mentions that employees are allowed to work from home, and hearings should be postponed.


Note: The articles accepted for publication in this Special Issue have made available on open access in advance of publication by the publisher, Cambridge University Press, as part of its Coronavirus Collection. Some are also available on SSRN. Some of the articles in this special issue are listed here – others are listed under specific legal topics below.
Abstract: In the COVID-19 pandemic, whistleblowers have become the essential watchdogs disrupting suppression and control of information. Many governments have intentionally not disclosed information or failed to do so in a timely manner, misled the public or even promoted false beliefs. Fierce public interest defenders are pushing back against this censorship. Dr Fen and Dr Wenliang were the first whistleblowers in China to report that a new pandemic was possibly underway and ever since numerous other whistleblowers around the world have been reporting on the spread of the virus, the lack of medical equipment and other information of public interest. This paper maps the relevant whistleblowing cases in China, US and Europe and shows that many whistleblowers are initially censored, face disciplinary measures or even dismissals. At the same time, whistleblowing during the COVID-19 pandemic has drawn public attention to the shortcomings of institutional reporting systems and a wider appreciation of whistleblowers as uniquely placed to expose risk at early stages. Ultimately, whistleblowing as a means to transparency is not only becoming ever less controversial, but during COVID-19 it has become the ‘remedy’ to censorship.


Abstract: The COVID-19 outbreak offers a rich case study of government’s emergency response. As such, it is a test bed for risk research and regulatory theories in a world increasingly shaped by transboundary, uncertain manufactured and natural risks. This introductory essay to the special issue of the European Journal of Risk Regulation attempts at providing an initial analysis of the surprisingly uncoordinated, at times unscientific, response to an essentially foreseeable event like a novel coronavirus (nCoV) in a geopolitically shattered world. It warns that COVID-19 may go down in history as yet another major disaster occurrence with no learnings attached. Yet, as new transboundary disasters – from bioterrorism to climate change – loom on the horizon, neither the world nor risk regulation, as a discipline and practice of government, can hardly afford to let another crisis go wasted.

Alemanno, Alberto, ‘The European Response to COVID19: From Regulatory Emulation to Regulatory Coordination?’
Abstract: COVID-19 is a matter of common European interest since its very first
detection on the continent. Yet this pandemic outbreak has largely been handled as an
essentially national matter. This article makes a first attempt at unpacking how such
fragmented, uncoordinated national responses to COVID19 came into being under the
EU legal order. To do so, it systematizes the European response into separate stages.
Phase 1 – the emergency – has been characterized by the adoption of national
emergency risk management measures that, albeit country specific, were inspired by a
common objective of pandemic suppression, i.e. to reduce disease transmission and
thereby diminishing pressure on health services, under the by now well-known ‘flatten
the curve’ imperative. Phase 2 – the lifting – is about the attempt at relaxing some of
the national risk responses in a coordinated fashion to avoid creating negative spillovers
or distortions – be they sanitary and/or financial – across the Union. The article argues
that contrary to conventional wisdom the resulting uncoordinated EU response to
Covid-19 shouldn’t be seen as the inevitable consequence of the EU’s limited
competence in public health. Against this backdrop, it strives to define the regulatory
policy framework that might be governing the next phases of the European risk
management response to this pandemic as they will emerge from a widely undefined
yet unescapable dialectic between the Union and its member states. Ultimately, it
predicts that by testing the outer limits of the EU public health competence COVID-19 is
set to go down in history as a major catalyst in the advancement of EU health
emergency action.

Delmas-Marty, Mireille, ‘Governing Globalization Through Law’ 1-10

Constitution and European Private Law’

Morvillo, Marta, ‘I Just Can’t Get Enough (of Experts): The Numbers of COVID-19 and the Need
for a European Approach to Testing’

Abstract: This article offers a reflection on the testing strategies deployed in the
generation of epidemiological data in the European Union (EU). I will argue that, while in
the early days of the pandemic, Member States proceeded to testing in a rather
scattered way, the shortage of resources seems to have acted as a driver of
coordination, which is now increasingly being discussed at EU level. I will examine the
legal and institutional framework supporting such embryonic coordination efforts and offer a preliminary assessment of their implications for a European approach to epidemiological knowledge-making.


Abstract: In this short contribution we recall and analyze the administrative and legislative actions enacted in Italy to contain the spread of COVID-19, up to the country’s lockdown, under the light of the constitutional guarantees.


Introduction: On 11 March 2020, Prime Minister Scott Morrison announced a comprehensive $2.4 billion health package to protect Australians from COVID-19, including $100 million to fund new Medicare services. By 20 April 2020, there were twenty COVID-19 related delegated instruments, which were part of this initiative. All have been earmarked on the Senate Standing Committee for the Scrutiny of Delegated Legislation (SSCSDL) website for consideration at a future meeting, meaning these Determinations are already in force, having bypassed the law making norm of being scrutinised by the SSCSDL. With federal Parliament adjourned from 23 March 2020 for almost five months, it is unclear when usual Senate scrutiny of these instruments will be undertaken, if at all. In a media release dated 1 April 2020, the Chair of the SSCSDL announced that the Committee had resolved to meet and report regularly over the coming months, though there is no current indication of meeting dates or schedules.

Feikert-Ahalt, Clare, ‘Restrictions on Movement Due to the Coronavirus Pandemic Across England – Part II’ In Custodia Legis: Law Librarians of Congress (Blog Post, 8 May 2020)

Abstract: This is the second part of a summary of the United Kingdom’s lockdown regulations ordered by the UK government to restrict movement and increase social distancing to reduce the effects of the 2020 COVID-19 pandemic.
Fernandes, Haniel, ‘Would the Lockdown Really Be Necessary for the Control of COVID-19 in Brazil?’ (SSRN Scholarly Paper ID 3578627, 17 April 2020)

Abstract: The lockdown quarantine applied in Brazil to contain the advances of the new coronavirus pandemic equivalent to European countries without first observing their demographic, socioeconomic and cultural differences, seems to involve political issues, in addition to controlling problems public health. Therefore, it is necessary to explain a critical idea about the type of prior conduct taken by Brazil to control this pandemic through a descriptive approach that links published policies adopted with the structure of the local health system and the country’s socio-economic and demographic characteristics, in addition to response to contagion. Thus, examining some facts intrinsic to the pandemic process that is installed in the world today.


Abstract: In the constantly evolving chaos, it is likely that this article will be out of date within days of it being published due to the frequent changes to laws and restrictions in response to the coronavirus (COVID-19) pandemic.


Jurisdiction: USA

Abstract: The coronavirus pandemic upturned Americans’ lives. The profound financial effects caused by even a few weeks of the coronavirus’ upheaval spurred Congress to pass the CARES Act, which purported to provide economic relief to individuals and businesses. For individuals, the CARES Act includes five provisions that were effectively designed to provide people money. Chief among those provisions are a direct payment in the form of a tax rebate and enhanced employment benefits. Ultimately, this financial support will prove to be shockingly minimal. The direct payments represent a fraction of the average American households’ monthly budget. The unemployment benefits, while providing people with more money over several months, require that people be laid off and similarly are unlikely to reach people quickly enough to be effective. These corner pieces of the CARES Act are best understood as gimmicks. Through them, the
federal government told people that it would take care of them in ways that were immediately salient to them as the coronavirus crisis began. It also became quickly apparent to at least some lawmakers that Congress would need to pass at least one additional stimulus package. Indeed, Congress may have several more opportunities to craft legislation that actually will help American families survive the pandemic. This legislation must provide people with true funding to stay current with their minimum necessary expenses as these expenses are incurred. In this Essay, we discuss the gimmicks of the CARES Act’s individual provisions and what Congress should do for people in future bills to address this pandemic.

Gogarty, Brendan and Gabrielle J Appleby, 'The Role of the Tasmanian Subordinate Legislation Committee During the Covid-19 Emergency' (SSRN Scholarly Paper ID 3587177, 23 April 2020)

Abstract: On 17 March 2020, Tasmania entered a ‘state of emergency’ in response to COVID-19. Parliament stands adjourned, and the executive is regulating the crisis through delegated regulations that significantly limit civil rights and freedoms. Despite assurances Tasmania’s Subordinate Legislation Committee would scrutinise executive power throughout the crisis, its role has been limited, due to an overly prescriptive (we argue incorrect) reading of Tasmania’s scrutiny framework, which has not been properly reformed in several decades. This is a salient lesson about why constitutional laws require regular reviewed and modernisation, to ensure Parliaments remain supreme even (especially) during crises and emergencies.


Abstract: CDC modeling suggests that, without mitigation, SARS-CoV-2, the virus that causes novel coronavirus disease 2019 (COVID-19), could infect more than 60 percent of the United States population. President Trump has declared a national emergency coupled with 49 governors declaring state emergencies (Figure 1), unprecedented actions. Social distancing aims to flatten the epidemic curve to moderate demand on the health system. Consequently, whether through voluntary action or state mandates, individuals are increasingly sheltering at home, schools and universities are closing, businesses are altering operations, and mass gatherings are being cancelled. Some countries have resorted to more aggressive measures,
including a cordon sanitaire (a guarded area where individuals may not enter or leave) or large-scale quarantines. What powers do the President and governors possess in the United States? How should we balance individual rights and public health at a critical point in safeguarding the nation’s health?

Grogan, Joelle, ‘Right Restriction or Restricting Rights? The UK Acts to Address COVID-19’

*Verfassungsblog on Matters Constitutional* (Blog Post, 17 April 2020)

*Abstract*: The UK was initially slow to adopt measures to address the COVID-19 pandemic. However on 23 March 2020 and following escalating infection and mortality rates, the government introduced the most restrictive measures on movement in modern UK history. These lockdown measures which introduced sweeping limitation on movement outside the home were introduced through statutory legislation: regulations which were made by the government and not debated nor legislated by Parliament. This paper considers the issues the UK’s legal responses to address the COVID-19 raises in terms of democracy, human rights and the rule of law.


*Abstract*: The United States is currently trying to manage a fast-moving public health crisis due to the coronavirus outbreak (COVID-19). The economic and financial ramifications of the outbreak are serious. This Working Paper discusses these ramifications and identifies three interrelated but potentially conflicting policy priorities at stake in managing the economic and financial fallout of the COVID-19 crisis: (1) providing social insurance and a social safety net to individuals and families in need; (2) managing systemic economic and financial risk; and (3) encouraging critical spatial behaviors to help contain COVID-19 transmission. The confluence of these three policy considerations and the potential conflicts among them make the outbreak a significant and unique regulatory challenge for policymakers, and one for which the consequences of getting it wrong are dire. This Working Paper — which will be continually updated to reflect current developments — will analyze the major legislative and other policy initiatives that are being proposed and enacted to manage the economic and financial aspects
of the COVID-19 crisis by examining these initiatives through the lens of these three policy priorities. It starts by analyzing the provisions of H.R. 6201 (the ‘Families First Coronavirus Responses Act’) passed by the house on March 14, 2020, subject to subsequent Technical Corrections of March 16, 2020, and then passed by the Senate without amendment and signed by the President on March 18, 2020. Next, it analyzes the provisions of H.R. 748 (the ‘Coronavirus Aid, Relief, and Economic Security Act’ or the ‘CARES’ Act) enacted into law on March 27, 2020. By doing so, this Working Paper provides an analytical framework for evaluating these initiatives.


Jurisdiction: USA

Abstract: Despite millions of active infections and tens of thousands of COVID-19 deaths, multiple state governors, led by Georgia Governor Brian Kemp, are actively reopening businesses and withdrawing stay-home orders. President Trump should be elated. The White House has aggressively pushed state efforts to reboot the economy. Yet, the president publicly criticized Kemp for proceeding ‘too soon’ in a rush to reopen. Underlying the political theatrics, the novel coronavirus is exposing a deep rift in American federalism as federal and state governments vie for primacy in remedying the nation’s ills. What powers could the president use to influence state actions whether to impose or lift mitigation measures? What zone of decisions are designated for the states alone?


Abstract: Since its emergence from Wuhan, China in late 2019, novel coronavirus, 2019-nCoV, is spreading rapidly, escalating domestic and international concerns, and leading to calls for emergency declarations. By now one might think that we are globally prepared for these type of threats given the successful control of prior coronaviruses like SARS and MERS since 2002. Yet, as Paules, Marston, and Fauci observe in their JAMA Viewpoint on January 23, 2020, ‘[t]he emergence of yet another outbreak of human disease caused by a [coronavirus] . . . underscores
the perpetual challenge of emerging infectious diseases and the importance of sustained preparedness.’ This commentary explores some of these contemporary challenges.

Note: Future Tense is an online magazine – a collaboration by Slate, New America, and Arizona State University. It examines emerging technologies, public policy, and society.


Abstract: On Saturday, March 28, 2020, President Donald Trump floated the possibility of issuing a ‘quarantine’ order for the states of New York, New Jersey, and Connecticut because of their numerous COVID-19 cases. Later that day, Trump backtracked and declared that a quarantine order would ‘not be necessary.’ While quarantines can differ in type and scope, they generally involve restricting the movement of those exposed or potentially exposed to an infectious disease during its period of communicability. As for Trump’s quarantine order, it is unclear what it would have required: whether it would have affected all three states in their entirety or just partially, mandated that all people in those states stay at home, prohibited all travel into and out of those states, or some combination of these. What is certain, however, is that under current federal law, the president does not have authority to issue a quarantine order that is effectively statewide, including prohibiting all or nearly all travel within a state or into and out of the state. It is also unlikely that Congress could give the president new authority to do so under its Commerce Clause power, which is the basis for the current federal law on quarantine. As COVID-19 continues to radically change daily life in the United States, it is vital to understand the limits on federal authority over mandatory, statewide quarantines—not only to avoid pitched legal battles between the government, quarantined individuals, and the states, but also to deal with current and future pandemics. Involuntary quarantines are often ineffective at resolving such health crises. Expanding federal power in this area is, as such, unlikely to be an effective health measure, both currently and going forward.

Jurisdiction: USA

Abstract: How can agencies effectively implement programs to address the COVID-19? Following the 2009 Recovery Act, the IBM Center sponsored a number of research reports to explore the government’s response to the economic downturn that began in 2007, known as the Great Recession. However, the accountability provisions under the law were entirely new and required new ways of working with both their local governments (who had to report through their states to the federal government) as well as with federal agencies. Below are some of the lessons learned from that experience, and a potential governance framework that addresses the current environment for ensuring the dollars and programs make a difference for the American people.


Jurisdiction: Turkey

Abstract: The article offers information on the challenges faced by the coronavirus in the [sic] Turkey, along with the information on the safety measure taken by the Turkey President, Recep Tayyip Erdoğan. It mentions the declaration of the coronavirus outbreak as a global pandemic by the World Health Organization.


Abstract: This contribution explains the legal basis for the COVID-19 lockdown and governmental response in New Zealand. It discusses some of the issues, challenges and future possible future developments too.

Abstract: Painful as they may be, it is beyond question that radical limitations of a wide range of human rights are necessary to limit the spread of Covid-19, keep healthcare systems afloat, and help saving human lives. The aim of this contribution is not to argue against such measures per se. In spite of the gravity of the situation, however, any measures adopted to combat it must be adopted by competent bodies, following the procedure and under the conditions envisaged by law. In other words, rule of law concerns have to be fully respected. It is my concern that Slovenia has been failing this ‘rule of law in times of emergency’ test.

Lawson, David, ‘The Power to Quarantine’ [2020] Lawyer (Online Edition) 1

Jurisdiction: UK

Abstract: The article discusses law and practice of quarantine of individuals, of groups and of places, of the unwell and of the healthy including the outbreak of coronavirus, 2019-nCoV, that quarantine can take many forms from regions larger than the UK in lock down to individuals in intensive treatment via groups of people detained for precautionary monitoring; last category includes the recent evacuees to the UK from Wuhan signed a contract to remain at Arrowe Park Hospital in the Wirral for 2 weeks.


Abstract: In January of this year, when China decided to lock down Wuhan due to COVID-19, Taiwan took an exceptionally precautionary approach based on three major factors: Taiwan’s decades-long exclusion from the international health community without World Health Organization (WHO) membership/observership and access to other arms of the United Nations (UN); traumatic experiences during the 2003 Severe Acute Respiratory Syndrome (SARS) outbreak, where regulatory failure led to a wave of reforms; and the island’s geographical proximity to and geopolitical suspicion about China. Yet Taiwan’s proactive and precautionary response to COVID-19 might at the same time pose a threat to this young democracy. The
critical issue here is how a constitutional democracy survives a public health emergency with the unprecedented magnitude of COVID-19. The urgency to take effective and efficient measures oftentimes justifies a wide margin of executive discretion. On the other hand, measures adopted in times of emergency tend to linger and become normalized. Emergencies frequently serve to expand the power of executive agencies and sideline legislative or even judicial gatekeepers or lead to irreversible harm to fundamental human rights. This paper therefore aims to offer an anatomy of Taiwan’s regulatory actions taken in response to the global COVID-19 pandemic, assess their implications for risk regulation and governance in a global context, and urge a re-imagination of the administrative state in the—hopefully—post-COVID-19 world.


Abstract: President Trump and other prominent Republicans have argued that the measures taken to slow the spread of COVID-19 will create economic consequences too serious to justify the number of lives saved. Are they right? We do the math.

Lord, Phil and Lydia Saad, ‘Outline of Government Programs Related to the COVID-19 Pandemic in Canada’ (SSRN Scholarly Paper ID 3567474, 8 April 2020)


Abstract: The radical uncertainty around the current COVID19 pandemics requires that governments around the world should be able to track in real time not only how the virus spreads but, most importantly, what policies are effective in keeping the spread of the disease under check. To improve the quality of health decision-making, we argue that it is necessary to monitor and compare acceleration/deceleration of confirmed cases over health policy responses, across countries. To do so, we provide a simple mathematical tool to estimate the convexity/concavity of trends in epidemiological surveillance data. Had it been applied at the onset of the crisis, it would have offered more opportunities to measure the impact of the policies undertaken in different Asian countries, and to allow European and North-American
governments to draw quicker lessons from these Asian experiences when making policy decisions. Our tool can be especially useful as the epidemic is currently extending to lower-income African and South American countries, some of which have weaker health systems.


Introduction: In response to the complex and potentially devastating threat posed by COVID-19, Parliaments around Australia have transferred unprecedented powers to executive governments and their agencies, often with the full support of the communities they represent. The usually sturdy doctrine of separation of powers that defines Australia’s constitutional democracy wobbled as Minister after Minister was handed sweeping discretionary powers designed to facilitate the fight against the invisible COVID-19 enemy.

What interests me greatly is that from within this throng of emergency law-making and institutional power transfer, one parliamentary oversight mechanism managed to struggle to its feet. The very same parliamentary mechanism that owes its existence to war-time law-making emerged as the go-to safety blanket in this modern crisis: the parliamentary committee. While Parliaments themselves have packed up shop and suspended or reduced sitting days, parliamentary committees have emerged as the forum of choice when it comes to providing some form of parliamentary oversight of executive action.

As George Williams and Lisa Burton have pointed out, this choice – this instinctual reliance on a mechanism designed to provide parliamentarians with the space to deliberate and examine executive decision making – says something important about the parliamentary model of rights protection that exists in Australia. It also raises important questions as to whether parliamentary committees are up to the job – particularly when the stakes are so high and the political terrain so uncertain.

In this post I will briefly describe some of the specialist parliamentary committees that have been set up to oversee the extraordinary powers transferred to the executive in response to COVID-19, and offer some thoughts on the capacity of these committees to deliver meaningful rights scrutiny in these exceptional circumstances. So what are parliamentary committees anyway, and how do they usually work to protect rights and hold the executive to account?
Ohlin, Jens David, ‘Pandemics, Quarantines, Utility, and Dignity’ (SSRN Scholarly Paper ID 3591784, 3 May 2020)

Abstract: Medical quarantines were once common in the United States, but in the last 50 years they have been used infrequently by the government. That changed with the spread of the novel Coronavirus, and the resulting Covid-19 illness, in 2020. Cruise ships where the virus had taken hold were quarantined and passengers were prohibited from disembarking. Residents of towns in Spain, and an entire province of China, were prevented from leaving by their respective governments. This Article argues that the permissibility of coercive quarantines is best understood as an example of threshold deontology. Threshold deontology is the view that individual human dignity must prevail over the common good, but that in moments of extreme emergency, when a ‘threshold’ has been reached, the reverse is true: the common good can trump individual rights. Part I provides a brief overview of the use of coercive quarantines to fight Covid-19 and the surprising lack of objection that these measures triggered. Part II explores the unmistakably utilitarian logic behind public health generally and quarantines specifically. Then, Part III introduces the concept of human dignity as a constraint on utilitarian public health by surveying three representative jurisdictions: The United States, German domestic law, and the European Convention on Human Rights. Part III concludes that even liberal democracies vary subtly but significantly in how strongly they protect human dignity and that these differing levels of commitment to human dignity help explain why some legal cultures have been so quick to resort to quarantines, while other communities have been reluctant. Finally, Part IV suggests that jurisdictions that are usually protective of individual rights but decide to fight Covid-19 with coercive quarantines are best understood as operating under the sway of threshold deontology. This Article does not defend threshold deontology as a moral theory but does argue that it is best understood as a covert form of indirect consequentialism. Moreover, this Article concludes that threshold deontology is the key moral battleground for debating the quarantine power during the Covid-19 era.
Extract from Introduction: As Covid-19 spreads around the globe, governments have imposed quarantines and travel bans on an unprecedented scale. China locked down whole cities, and Italy has imposed draconian restrictions throughout the country. In the United States, thousands of people have been subjected to legally enforceable quarantines or are in “self-quarantine.” The federal government has also banned entry by non–U.S. nationals traveling from China, Iran, and most of Europe and is screening passengers returning from heavily affected countries. Still, the numbers of cases and deaths continue to rise.

Quarantines and travel bans are often the first response against new infectious diseases. However, these old tools are usually of limited utility for highly transmissible diseases, and if imposed with too heavy a hand, or in too haphazard a manner, they can be counterproductive. With a virus such as SARS-CoV-2, they cannot provide a sufficient response.

In public health practice, “quarantine” refers to the separation of persons (or communities) who have been exposed to an infectious disease. “Isolation,” in contrast, applies to the separation of persons who are known to be infected. In U.S. law, however, “quarantine” often refers to both types of interventions, as well as to limits on travel. Isolation and quarantine can be voluntary or imposed by law.

Abstract: To combat COVID-19, unlike its Member States, the Union may act ‘only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein’. As legal scholars, we understand why one may think that the Union has no power to act in ways that public health experts, and others, such as economists and behavioural psychologists, suggest would be helpful. The Union’s powers in the health domain are traditionally understood to be severely constrained: health law and policy is seen as a matter for Member States. We propose an alternative to this standard legal analysis. The Union
has more possible legal powers to create health law and policy in response to the COVID-19 outbreak than traditionally understood, particularly if the different iterations of the protection and promotion of public and human health throughout the Treaty on the Functioning of the EU (TFEU) are read in relation to one another. This alternative interpretation of the Union’s competence norms, the ‘legal bases’ on which the Union institutions act, either to adopt binding legal rules, or persuasive measures, suggests that there are legal options that permit the Union a wider range of actions than it has taken to date, and which support, and go further than, the approaches that the European Commission (Commission) and European Centre for Disease Control have suggested in various policy documents, guidance and communications in March and April 2020. In short, we are arguing that legal impediments to Union action are less restrictive than commonly understood.


Abstract: Many incentives are monetary, and when private or public institutions seek to change behavior, it is natural to change monetary incentives. But many other incentives are a product of social meanings, about which people may not much deliberate, but which can operate as subsidies or as taxes. In some times and places, for example the social meaning of smoking has been positive, increasing the incentive to smoke; in other times and places, it has been negative, and thus served to reduce smoking. With respect to safety and health, social meanings change radically over time, and they can be dramatically different in one place from what they are in another. Often people live in accordance with meanings that they deplore, or at least wish were otherwise. But it is exceptionally difficult for individuals to alter meanings on their own. Alteration of meanings can come from law, which may, through a mandate, transform the meaning of action into a bland, ‘I comply with law,’ or into a less bland, ‘I am a good citizen.’ Alteration of social meanings can also come from large-scale private action, engineered or promoted by ‘meaning entrepreneurs,’ who can turn the meaning of action from, ‘I am an oddball,’ to, ‘I do my civic duty,’ or, ‘I protect others from harm.’ Sometimes subgroups rebel against new or altered meanings, produced by law or meaning entrepreneurs, but often those meanings stick and produce significant change.
Abstract: Seán Ó Fearghail, the Ceann Comhairle, has informed his colleagues, that in light of ‘a very serious constitutional problem,’ the Seanad will be unable to pass legislation after Sunday. He is supported by advice offered from the Attorney General and the Secretary General of the Department of the Taoiseach. The single argument which has been put forward in public in support of the Ceann Comhairle’s position is not entirely frivolous. It is the sort of argument beloved by legal academics giving final examinations based on fictitious fact patterns. Such arguments usually do not play prominent roles in the legal advice offered by officers of state, senior law officers, and highly placed civil servants during national and international emergencies. I respectfully suggest the Attorney General has erred, and the Ceann Comhairle erred in relying on such advice.

Introduction: This is an introduction to a two-part series about public procurement during the coronavirus or COVID-19 pandemic.

As the rapid spread of the coronavirus or COVID-19 pandemic continues around the world with devastating effects, the growing crisis brings two issues into clear focus: the importance of government action in the emergency response and the essential and often lifesaving role of public procurement.

Clean public procurement not only saves money, but most importantly, it saves lives by making sure the people who are most vulnerable receive the support they need.

Yet, the ongoing global health crisis exposes vulnerabilities in public procurement: loose requirements that contribute to unequal competition and bidding wars and rushed measures that result in low quality or faulty goods, price gouging, undue influence and limited access to information.
van Rooij, Benjamin et al, ‘Compliance with COVID-19 Mitigation Measures in the United States’ (SSRN Scholarly Paper ID 3582626, 22 April 2020)

Abstract: The COVID-19 mitigation measures require a fundamental shift in human behavior. The present study assesses what factors influence Americans to comply with the stay at home and social distancing measures. It analyzes data from an online survey, conducted on April 3, 2020, of 570 participants from 35 states that have adopted such measures. The results show that while perceptual deterrence was not associated with compliance, people actually comply less when they fear the authorities. Further, two broad processes promote compliance. First, compliance depended on people’s capacity to obey the rules, opportunity to break the rules, and self-control. As such, compliance results from their own personal abilities and the context in which they live. Second, compliance depended on people’s intrinsic motivations, including substantive moral support and social norms. This paper discusses the implications of these findings for ensuring compliance to effectively mitigate the virus.

Ventura, Deisy de Freitas Lima, Fernando Mussa Abujamra Aith and Danielle Hanna Rached, ‘The Emergency of the New Coronavirus and the “Quarantine Law” in Brazil’ (2020) Revista Direito e Práxis (advance article)

Abstract: Law no. 13,979, of February 6, 2020, regulates public health measures related to the emergence of the new coronavirus with high potential to restrict fundamental rights, including quarantine and isolation. This critical analysis addresses the international dimension of the emergency, and the casuistic and anti-democratic procedure of the Brazilian law. Based on health law principles and the epidemiological legislation in force, it scrutinizes restrictive measures and safeguards for its implementation.


Abstract: A short essay showing how therapeutic jurisprudence and its concepts of therapeutic design of the law (TDL) and therapeutic application of the law (TAL) can be used in short, informal policy statements, including matters such as maintaining social distancing on a staircase of a high-rise apartment building.
BUSINESS LAW (INCLUDING FRANCHISES)


Abstract: Small businesses are among the hardest hit by the COVID-19 crisis. Many are shuttered, and far more face cash flow constraints, raising questions about just how many will survive this recession. The government has responded with a critical forgivable loan program, but for many of these businesses, this program alone will not provide the cash they need to retain workers, pay rent, and help their business come back to life when Americans are no longer sheltering in place. This essay calls on regulators to find new and creative ways to work with existing intermediaries, including banks and online lenders, who have the infrastructure and tools needed to help small businesses get the additional loans they need to survive and thrive. Leveraging existing institutions could enhance the speed, scale, and scope of the government’s response, all critical virtues in the efforts to support small business.


Abstract: The COVID-19 Pandemic is the biggest challenge for the world since World War Two, warned UN Secretary General, António Guterres, on 1 April 2020. Millions of lives may be lost. The threat to our livelihoods is extreme as well. Job losses worldwide may exceed 25 million. Legal systems are under extreme stress too. Contracts are disrupted, judicial services suspended, and insolvency procedures tested. Quarantine regulations threaten constitutional liberties. However, laws can also be a powerful tool to contain the effects of the pandemic on our lives and reduce its economic fallout. To achieve this goal, rules designed for normal times might need to be adapted to ‘crisis-mode’, at least temporarily. Business Laws in particular fulfil an important function in this context. Our livelihoods depend on how well businesses are able to navigate through the current crisis. Beginning in early February 2020, the Oxford Business Law Blog has published posts on how Business Laws could contribute to containing the effects of the COVID-19 Pandemic, and on how they need (or need not) to be adapted to achieve the desired effect. This working paper collects the posts published throughout March in chronological order. Thematically, the focus is on finance, financial regulation and insolvency laws. This is not surprising as the most pressing problem businesses face right now is to manage their cash flow.
We hope that the contributions in this paper inspire more work by scholars and help policymakers worldwide to adopt the right measures to reduce the damage caused by the Pandemic.


**Jurisdiction:** USA

**Abstract:** An editorial is presented which discusses the Impact of COVID-19. It discusses about how the new federal coronavirus laws will impact the business from Littler Mendelson’s Michael Lotito and James Paretti; IFA board member Jerry Crawford from Jani-King shares important information about how to safeguard your business, employees and customers; and the rest of this issue is still dedicated to providing important information about franchising to our members that we know you’ll find value from.


**Jurisdiction:** USA

**Abstract:** The article discusses legal developments related to Covid-19. Topics include California Consumer Privacy Act went into effect on January 1, 2020, the CCPA establishes consumer rights with regard to data; California’s AB 5 law finally came into effect in January 2020; and The Protecting the Right to Organize (PRO) Act.

**CHARITY LAW**

Johnstone, Syren, ‘A Viral Warning for Change. COVID-19 Versus the Red Cross: Better Solutions Via Blockchain and Artificial Intelligence’ (University of Hong Kong Faculty of Law Research Paper No 2020/005, 2020)

**Abstract:** Among the many issues being raised in the course of the recent COVID-19 coronavirus outbreak is the ability of charities to respond to crises and to fulfil their fiduciary and moral duty to apply donations effectively and for the purposes intended. This article notes the problems encountered by charities, in China and elsewhere, and argues that the present crisis should be
seen as a call to arms for the tech industry, which has the relevant know-how and resources to radically change the landscape of crisis response and the management of donations through the implementation of blockchain and artificial intelligence tools that are already in common commercial use. Fundamental changes are needed to the structure and method of how such crises are handled. The time for global technologists to develop, on a collaborative basis, borderless solutions to issues of common humanitarian concern is now.

COMMERCIAL CONTRACTS


Jurisdiction: Nigeria

Abstract: It is no longer news that the world is confronted with a common enemy today – the novel Coronavirus 2019 popularly known as COVID-19. The virus was first discovered in China and has today spread across over 190 countries around the globe. COVID-19 has disrupted the world economy and businesses across the globe are heavily hit by the operation of the pandemic. There is no gainsaying the fact that this novel coronavirus has surfaced in Nigeria with over 40 cases discovered so far as at the time of this article and still counting. The Nigerian Government, like other countries of the world have taken some measures to contain the spread of this virus in the most populous nation in Africa, which measures obviously is taking a hard toll on businesses, transactions and the economy at large. While the world continuously strives hard to put an end to this misery ravaging the whole world, it is almost certain that the post COVID-19 world would likely herald a bundle of commercial disputes possibly arising from breach of obligations as a result of the sudden outbreak of this disease. Thus, commercial lawyers would be called upon to review various commercial agreements and defaulting litigants would rely on commercial lawyers, to present a solid defence for them, to the breach of their obligations resulting from the COVID-19 disorder.

Abstract: Force Majeure and Hardship provide legal tools to deal with the effect of unexpected future events and unforeseen changes in circumstances, particularly in long-term contracts. Given its global and unprecedented dimensions, its lethal potential and its drastic effects on international contracts the COVID-19 pandemic will generate years, if not decades, of post-pandemic litigation and arbitration focusing on the application of these two concepts. The paper examines the two concepts, from their historic origins over the different paths they took in civil and common law to modern transnational contract law as applied by international arbitral tribunals. Based on this historic and comparative analysis, the paper shows that in such extraordinary times, the doctrines of Force Majeure and Hardship assume the role of regular, rather than exceptional legal remedies, allowing for the risks emanating from the unprecedented crisis to be evenly distributed between the players in the global economy.

German, Peter, ‘Coronavirus (COVID-19) and Force Majeure’ [2020] Lawyer (Online Edition) 1

Abstract: The article offers information on the impact of the coronavirus pandemic on the commercial activities around the world. It discusses the coronavirus outbreak and force majeure, along with information on the restrictions on travel and gatherings imposed by the government officials all over the globe. It mentions the steps taken by business to limit business travel and participation in meetings and social events.


Abstract: The article discusses the issues on the use of the force majeure clauses in commercial transactions due to the coronavirus pandemic when the virus is not explicitly included in the terms of agreement. Also cited are the clauses’ aim to eliminate the liabilities of both parties in a contract, a background of the pandemic that affected up to 24 countries, and the Principles of International Commercial Contracts detailing why the pandemic is a force majeure event.

Abstract: Force-majeure and Frustration are contract principles which are very significant in the present context of Covid-19 pandemic. This article is a study on the said contract principles with various judicial pronouncements on the applicability of force-majeure and frustration.


Jurisdiction: UK, USA and Europe

Abstract: The spread of COVID-19 has had a global impact, with the human toll being significant, and with the the economic cost being unquantifiable. With regards to business and contractual relationships, legal liabilities owed to disruption, cancellations, or to the imposed halt of everyday life are perhaps the most notable. This article starts by examining frustration in English, US and continental contract law in relation to cases where the circumstances have changed due to unnatural events such as the ongoing COVID-19 pandemic. It then moves on to discuss the impact of Covid-19 on insurance, in particular business interruption, travel and general liability insurance. The likelihood of success of future claims, the scope of coverage, together with the meaning and interpretation of the term “force majeure” and how this will relate to exclusions from insurance coverage is discussed. Valuations methods are also considered and evaluated with a view to protect the policyholder as his business interruption policy is a contract of adhesion not having left him any room to negotiate. In addition, possible interpretations to be followed by courts in future claims and liability for catastrophic risks and methods of compensation are examined and conclusions on the role of insurance in the COVID19 pandemic are drawn.
Abstract: This paper examines the efforts of the American Bar Association to draft proposed Model Contract Clauses for businesses that prohibit modern slavery and child labor in supply chain contracts. This involves a careful balancing of a buyer’s desire to avoid consuming goods manufactured with human rights abuse and its desire to protect itself legally, in order to ensure that the company is acting in alignment with its responsibility to respect universally recognized human rights under the UN Guiding Principles on Business and Human Rights. This subject is quite timely in light of the current efforts of many companies, in response to the COVID-19 pandemic, to exercise force majeure clauses in their contracts to dump suppliers without regard to the impacts of vulnerable workers in their supply chains.


Abstract: The article offers information on the health challenges faced by the coronavirus outbreak in the Canada. It discusses the declaration of the coronavirus outbreak as a global pandemic by the World Health Organization. It mentions the role of the force Majeure clauses protect the person in times of extreme events, such as Coronavirus outbreak in the Canada.


Jurisdiction: USA

Abstract: The article discusses the impact of COVID-19 pandemic on contractual obligations which contains force majeure clauses. Topics discussed include the common-law doctrine of supervening impracticability, the restatement of Contracts and common contractual clause that discharges parties of their performance obligations.

Abstract: This paper sets out the role of force majeure clauses and legal rules on post-formation unforeseen circumstances in the specific context of the COVID-19 pandemic, from a comparative and international commercial law perspective.

COMPETITION AND CONSUMER LAW

Bloomfield, Doni, ‘Competition and Risk’ (SSRN Scholarly Paper ID 3566661, 2 April 2020)

Abstract: Merger review in the United States has overlooked a significant competition harm: increasing risk. Mergers can increase both counterparty risk and systemic risk—the risk of idiosyncratic firm shocks harming trading partners and the national economy. There is now clear evidence that negative shocks to a firm can impose significant harm to that firm’s trading partners, leading to national economic effects. And as the COVID-19 pandemic has shown all too clearly, how we structure our markets can, in a crisis, become a matter of life and death overnight. I argue that mergers that increase counterparty and systemic risk by harming the competitive process can be blocked as violations of the Clayton Act. Systemic and counterparty risk should therefore be treated like innovation in merger review as factors that can increase or decrease merger legality. I show when a merger is likely to change risk, to whom, and in what direction. Important factors include pre- and post-merger market power, counterparty exposure, and network centrality. When a merger increases risk because of a harm to competition, that increased risk is an antitrust harm under the consumer welfare standard and can therefore be used to condemn the merger. Moreover, the agencies’ prosecutorial discretion allows them to consider risk harms in merger review even when such harms are not directly caused by reduced competition. To illustrate, I apply merger risk analysis to a large generic pharmaceuticals deal. I conclude with recommendations on how to incorporate risk analysis into merger review. Bringing risk analysis into merger review reveals otherwise invisible but significant merger harms and demonstrates that merger efficiencies have not just benefits but also serious costs. In an Appendix, I propose language for a new section in the Department of Justice and Federal Trade Commission’s Horizontal Merger Guidelines.
Cordray, Richard, Diane E Thompson and Christopher Lewis Peterson, ‘Consumer Financial Protection in the COVID-19 Crisis: An Emergency Agenda’ (SSRN Scholarly Paper ID 3569357, 6 April 2020)

Jurisdiction: USA

Abstract: The coronavirus pandemic is creating overwhelming needs, in three waves. First is the health crisis; second is the macroeconomic crisis created by the abrupt halt in much business activity; and now third is a consumer crisis, as households are faced with total or partial job loss, sharp income decline, and potential loss of health care. Millions of Americans are falling behind on their bills, including major obligations like mortgages, rent, car payments, and other forms of household debt. At the same time, they face a financial industry itself struggling to respond to the compounding crises and widespread confusion as to what the new rules of the road are as financial institutions, states, localities, and the federal government scramble to respond. The result is fertile ground for consumer scams. The authors call upon the Consumer Financial Protection Bureau to recognize and respond to this new consumer crisis, providing an action plan of more than a dozen practical steps that the CFPB can and must take immediately to prevent widespread consumer harm. The action plan starts with the most basic and essential step of collecting and disseminating timely and accurate information for both consumers and policymakers. The CFPB must address pressing consumer risks in four primary areas: foreclosure prevention, non-mortgage debt forbearance, oversight of debt collectors, and supervision of credit reporting companies. In each of these primary areas, and on all the issues discussed in this paper, the CFPB must use all of its authorities to ensure that crucial relief is delivered to distressed consumers.


Abstract: This paper explores how EU competition law enforcement might be affected by the COVID-19 pandemic. Each section of this paper reviews how various components of EU competition law are impacted. The paper evaluates the state of play and, where relevant, it makes policy proposals for how competition law might develop. It suggests that the Commission’s state aid policy is unprecedentedly lax but more tightening up might be welcomed to ensure state funds are not misspent. In the field of antitrust it recommends that competition
authorities should be watchful of excessive prices and price discrimination, using interim measures more boldly. Collusion should remain an enforcement priority but a procedural pathway to review agreements that may be in the public interest is proposed, drawing on practices developed in the US in the aftermath of major natural disasters. In merger control, the Commission’s strict interpretation of the failing firm defense is appropriate but, in general, a more skeptical attitude towards mergers may be warranted during this period. Advocacy plays a key role: competition agencies can both point to existing regulations that limit competition and monitor proposed emergency legislation that would harm competition for no good reason.


Abstract: EU competition law is traditionally understood in two-dimensions: judicial control and enforcement. This paper considers a third dimension: its normative concerns in the context of EU law. In mapping the future of these dimensions, the paper asks if the understanding behind the modernisation of the Commission’s enforcement is still tenable. In relation to judicial control, the effects-based approach of modernisation has either been incorporated by the case law at the cost of its coherence or ignored. Regarding enforcement, modernisation has resulted in the Commission having to step outside its guidance and in multiple proposals to adjust competition rules. As for the normative dimension, modernisation’s emphasis on consumer welfare has not prevented openness to broader concerns and setting this priority aside in reaction to COVID-19. The direction of modernisation will thus continue to raise judicial difficulties and, should it hamper enforcement, possibly lead to legislation that marginalises competition law. A better alternative would be, as was done for COVID-19, to reinforce the normative connection with the rest of EU law.


Abstract: Cooperation in the life sciences industry and EU competition law in the context of COVID-19 The life sciences industry is facing unprecedented demands due to COVID-19. ...
CONSTITUTIONAL LAW

Hogan, Gerard and Hilary Hogan, ‘Legal and Constitutional Issues Arising from the 2020 General Election’ (27 April 2020)

Jurisdiction: Ireland

Abstract: In 1989, a series of novel legal issues arising out of the general election of the same year were examined by the first named writer. If the aftermath of the election of 1989 seemed unusual, it pales in comparison to the series of events that took place following the 2020 general election. It seems timely to re-visit some of the issues explored in the 1989, as well as considering some of the new issues thrown up by the 2020 general election. In this article, we analyse the following questions: what is the effect of a death of a general election candidate? Is the outgoing Taoiseach obliged to resign if he is not re-elected as Taoiseach on the date of the first sitting of the Dáil following the general election, and no other candidate for that office is elected on that day? What is the scope of powers afforded to a caretaker Taoiseach and his Ministers? Is the Seanad validly constituted if a new Taoiseach has not nominated eleven members? If not, can the Oireachtas continue to pass legislation over which the Seanad has a more limited role? Many of these questions assumed new relevance in the context of the actions taken by the acting Government during the Covid-19 pandemic.

Karavokyris, George, ‘The Coronavirus Crisis-Law in Greece: A (Constitutional) Matter of Life and Death’

Verfassungsblog: On Matters Constitutional (Blog Post, 14 April 2020)

Abstract: Each time a crisis emerges, the law is entitled to seize the exceptional moment and contain it, within the limits of democracy and the rule of law. Legal normality, as a vague standard, is usually redefined by the legislator and the courts and rapidly adjusted to reality. The constitutional value of public interest comes into conflict with civil liberties and scholars begin to question the law. The saga of the (Greek) coronavirus crisis-law is, like everywhere, utterly reduced to the proportionality of the exceptional measures of the (Greek) State, but its moral and political implications seem far broader and ambiguous.

Abstract: Commentary on constitutional and practical regulatory issues of conducting elections during the 2020 coronavirus contagion.

CONSTRUCTION LAW


Jurisdiction: UK

Abstract: The article focuses on the impact of Covid-19 pandemic on construction law. It mentions consequences of this for construction projects depend on the work contracts. It also mentions that for difficulties that arise for a contractor as a result of COVID-19 force majeure he can therefore generally not claim any additional costs, and the contractor is also not entitled to adjust the contract on this basis.

CORPORATIONS LAW

Anidjar, Leon Yehuda, ‘Directors’ Duty of Care in Times of Financial Distress Following the Global Epidemic Crisis’ (SSRN Scholarly Paper ID 3577404, 16 April 2020)

Abstract: The global Covid-19 pandemic is causing the large-scale end of life and severe human suffering globally. It is the most massive public health crisis in modern living memory, which created a significant economic crisis. This dramatic change is reflected in a significant recession of global production and the collapse of confidence in the functions of markets. Corporations and boards of directors around the world are required to design specific strategies to tackle the negative consequences of the crisis. This is especially true for small and medium-sized enterprises (SMEs) that suffered tremendous economic loss, and their continued existence as ongoing concern is questionable. Given these uncertain financial times, this Article is devoted to exploring directors’ duty of care from a global perspective. In particular, I argue that the current crisis will underline the importance of the advisory role of the board of directors rather than the monitoring function, and further regulatory reforms that strengthen such capacity are expected
to emerge. Furthermore, I maintain that the civil law rather than the Anglo-American law on directors’ duty of care provides boards with a more expansive scope of discretion to confront the unusual challenges associated with the Covid-19 because these governance regimes are tailored to the unique features of companies and markets. I apply this novel argument in different types of SMEs, mainly in the family business and venture capital-backed firms.

Cheema-Fox, Alexander et al, ‘Corporate Resilience and Response During COVID-19’ (SSRN Scholarly Paper ID 3578167, 17 April 2020)

Abstract: During a market collapse, it is strategically important for a company to be evaluated as resilient, thereby maintaining trust among investors. We study whether during the 2020 COVID-19 induced market crash, investors differentiate across companies based on a firm’s human capital, supply chain and operating crisis response. Using data derived from natural language processing of news around corporate responses to the coronavirus crisis, we find that companies with more positive sentiment exhibit higher institutional investor money flows and less negative returns than their competitors. This is especially true for companies with more salient responses.

‘Covid-19 and Damages for Negligent Advice’ [2020] Lawyer (Online Edition) 1

Abstract: The article informs on damages that companies and investors are entitled to who face losses face due to negligent advice in the advent of Covid-19 pandemic. It mentions that COVID-19 pandemic has caused historic losses across financial markets and business, exacerbated by the oil price war between OPEC and Russia. It also mentions about addressing claims related to disadvantageous transactions in the situation.


Jurisdiction: USA

Abstract: A number of states are reacting to the COVID-19 pandemic by adopting emergency legislation or executive orders to authorize shareholder meetings that are not held ‘at a place’
but only by telecommunication – referred to as ‘virtual-only’ meetings. As corporate practitioners know, Colorado corporations are required to hold annual meetings of shareholders (C.R.S. § 7 107-101(1)), and those meetings involve certain formalities (which can be made more restrictive in the articles of incorporation or bylaws) such as: 1. Preparation of a shareholders’ list as of the record date that is available for review by shareholders; 2. Sending notice of the meeting place, date, and time to shareholders; and 3. Counting of votes from properly registered and voting shareholders entitled to vote. These requirements apply to Colorado corporations that are public companies subject to the rules of the Securities Exchange Act of 1934 as well as to private companies with one to one hundred or more shareholders. Of course, Colorado corporations which are subject to the 1934 Act’s proxy and reporting rules have a number of requirements to meet in addition to the requirements of Colorado law. Subject to contrary provisions in the articles of incorporation or bylaws of a Colorado corporation, the Colorado Business Corporation Act contemplates that Colorado corporations may hold hybrid shareholders’ meetings, but do not yet provide for virtual only shareholders’ meetings. In Colorado, as in other states, other statutes for corporate-like entities (such as nonprofit corporation statutes, statutes for cooperative organizations, and statutes for homeowners associations, should also be reviewed together with the governing documents for those organizations.


Jurisdiction: New Zealand

Abstract: Watch for liquidity or production roadblocks, emerging insolvency risk, and rating downgrades

Trends to watch: • Willingness of overseas wholesale markets to fund NZ lenders • Difficulty of accessing overseas corporate bond markets • Continuing exchange rate hedging and counterparty risks • State liquidity measures focussing on domestic goals, rather than international liquidity and trade flows

Disputes Insights: • Additional benefits (eg, flexibility, adaptability and enforceability) from international arbitration already in place in cross-border contracts • If commencing formal dispute, consider at outset whether final award or judgment will be enforceable against foreign assets
Exporters & importers / Cross Border Trade: Exporters & importers International goods + services contracts.


Abstract: Legislation responding to COVID-19 allows us to examine how, and to what effect, the corporate governance framework can be amended in times of crisis. Almost all leading industrialized nations have already enacted crisis legislation in the field of company law. Here, given the difficulties or indeed the impossibility of conducting in-person meetings currently, the overall trajectory of company law reforms has been to allow for digitalization. We note five fields in which legislators have been particularly active. First, the extension of filing periods for annual and quarterly reports to reflect the practical difficulties regarding the collection of numbers and the auditing of financial statements. Second, company law requires shareholders to take decisions in meetings – and these meetings were for the most part in-person gatherings. However, since the gathering of individuals in one location is now at odds with the measures being implemented to contain the virus, legislators have generally allowed for virtual only meetings, online-only proxy voting and voting-by-mail, and granted relief to various formalities aimed at protecting shareholders (including fixed meeting and notice periods). Third, provisions requiring physical attendance of board members, including provisions on signing corporate documents, have been temporarily lifted for board matters. Fourth, parliaments have enacted changes to allow for more flexible and speedy capital measures, including the disbursement of dividends and the recapitalization of firms, having accepted that the crisis impairs a company’s equity. Fifth and finally, some countries have implemented temporary changes to insolvency law to delay companies’ petitioning for insolvency as a result of the liquidity shock prompted by the imposition of overnight lockdowns. This working paper seeks to (1) document the respective crisis legislation; (2) assist countries looking for solutions to respond rapidly and efficiently to the crisis; (3) exchange experiences of crisis measures; and (4) spur academic discussion on the extent to which the crisis legislation can function as a blueprint for general corporate governance reform. Countries considered in full or in part include Australia, Austria, Belgium, Canada, China, France, Germany, Hong Kong, India, Italy, Luxembourg, the Netherlands, Norway, Portugal, Singapore, South Korea, Spain, Switzerland, Thailand, the United Kingdom,
and the United States. Readers are encouraged to highlight any inaccuracies on the part of the authors in their presentation of the respective laws, and to bring further crisis-related legislation not considered in this working draft to the attention of the authors. Moreover, readers are invited to indicate where there is room for improvement therein, and/or to signal the need for policy reform.

**COURTS / LITIGATION / ADMINISTRATION OF JUSTICE**

Allman, Kate, ‘Covid-19: Events Suspended; Hearings Move Online, but Rule of Law Will Continue “to the Extent Possible”’ [2020] (65) **LSJ: Law Society of NSW Journal** 16

*Abstract*: Courts have suspended face-to-face hearings and asked they be heard via telephone or online in a bid to follow "social distancing" recommendations and stem the spread of coronavirus in NSW.

‘Effects of the Covid-19 Crisis on Limitation Periods’ [2020] **Lawyer (Online Edition)** 1

*Abstract*: The article offers information on the enactment of Indian 2nd COVID-19 Act on limitation periods. It mentions that there is a substantively significant provision in Section 2, the period from the entry into force of this federal law on March 22, 2020 until the end of April 30, 2020 is the time in which a lawsuit or an application may be filed with a court or a Declaration is not included. It also mentions that deadlines for appealing to the court will be suspended in the advent of COVID-19.


*Abstract*: As the coronavirus led to the vast majority of Americans living under stay-at-home orders, government institutions confronted a public health imperative to slow the spread of a communicable disease while still maintaining vital services for their constituents. Judicial branches of governments faced particular challenges given the traditional face-to-face and often time-sensitive nature of their work. Further, while governors can generally exercise centralized control over many parts of the executive branch of government, the judicial function in many
states does not operate under a single chief administrator. Ohio represents one such non-unified court system, and this research project sought to review and summarize the formal responses of Ohio courts in the weeks during which the state began shutting down non-essential services in response to the COVID pandemic. This review reveals considerable formal action in service of minimizing physical appearances at court, but also highlights that relatively few court orders included express provisions aimed at decreasing the number of people entering prisons or authorizing proactive steps to release people from detention.

‘Justice System Responds to COVID-19 Crisis’ (2020) 42(3) Bulletin (Law Society of South Australia) 26

Abstract: The COVID-19 pandemic has created unprecedented challenges for all industries, and the legal industry is no exception.


Introduction: Reforms of courts and judicial processes generally occur at a glacial pace. Not only is law inherently conservative, courts are complex systems. The implications of change need to be carefully considered to ensure relevant protections are maintained and cherished objectives promoted.

All of this makes the breakneck transition to ‘virtual courts’ in response to COVID-19 at once terrifying, thrilling, concerning and exciting. Necessity is forcing changes, particularly in the use of remote and online hearings, that were impossible to imagine a few short months ago. The challenge in such a transition is to find the right balance in protecting both the short- and long-term rights and interests of parties and the public. Not only may bad practices adopted in emergency conditions be difficult to wind back later, but vital protections may be unnecessarily denied in the coming months.

This post seeks to identify and discuss the potential challenges raised by this dramatic pivot in court practices. The focus is on general principles of public law (rather than discrete Australian constitutional restrictions), and it adopts a self-consciously comparative approach.

Abstract: In this short essay we provide a preliminary analysis of the lawsuits filed by Missouri against China, and New York against the World Health Organization over the COVID-19 pandemic. We also situate the lawsuits against the expanding coronavirus-related misinformation ‘epidemic.’


Abstract: Fundamental to the practice of law is the need to adapt to the ever-changing circumstances of human society. The COVID19 pandemic is requiring lawyers, courts, judges and others involved in the justice system (such as Alternative Dispute Resolution (‘ADR’) practitioners) to reassess how they operate in an rapidly changing environment that requires them to use technology to operate remotely and to make use of technological tools that often are not constructed to support the needs of those working in the justice sector. Responses by courts and ADR practitioners vary considerably from jurisdiction to jurisdiction and many responses are ad hoc and informed by a crisis management approach. At the same time, innovation that has often been stalled by inertia across the sector is challenging many to contemplate how rapidly approaches can be introduced to ensure that the justice system can continue to deliver outcomes without increasing delay that can enable economic recovery in the face of a rapid projected increase in disputes. This article explores current response to COVID19 in the context of courts and mediators and also considers these responses in view of past technological developments. The authors note that responses are changing on an almost daily basis in some jurisdictions and therefore note that some responses may alter again as courts and others continue to innovate in this new environment.
Tomlinson, Joe et al, ‘Judicial Review in the Administrative Court during the COVID-19 Pandemic’ (SSRN Scholarly Paper ID 3580367, 15 April 2020)

*Jurisdiction: UK*

*Abstract:* In this paper we report the first set of preliminary empirical findings concerning how the judicial review process in the Administrative Court has operated under COVID-19 measures. Our findings suggest that, while there is support for the process continuing and remote hearings have certain strengths, there are also various technical difficulties arising and remote hearings are not seen as universally appropriate, even in a jurisdiction with a focus on ‘law-heavy’ disputes.

**CRIMINAL LAW / CRIMINAL JUSTICE**


*Jurisdiction: USA*

*Abstract:* It is hard to overstate the impact of COVID-19. When it comes to the criminal justice system, the current COVID-19 crisis has shone a light on pre-existing flaws. Long before the first confirmed case in Seattle or elsewhere, America’s jails and prisons were particularly susceptible to contagions, exacerbated by problems from overcrowding to over policing to lack of reentry programs. This Essay focuses on one aspect of the challenges the criminal justice system faces in light of COVID-19 and beyond—that of a pretrial detention system that falls more harshly on poor and minority defendants, has swollen local jail populations, and has incentivized pleas contributing in its own right to prison overcrowding. Even in the best of times the pretrial detention system is often punitive, fraught with bias, produces unnecessarily high rates of detention, and carries a myriad of downstream consequences both for the accused and the community at large. In the context of the COVID-19 crisis, this pretrial detention system faces an exacerbated challenge: the health and safety of those in custody and those who staff U.S. jails and prisons. This new reality reveals that even during ‘ordinary times’ the pretrial detention system fundamentally miscalculates public safety interests to the detriment of both detainees and the communities they leave behind. Simply put, current pretrial detention models fail to account for risks to defendants during periods of incarceration and pit defendants’ interests against the very communities that depend on them. The public health crisis of COVID-19
demonstrates in very real terms the interconnected nature of a defendant’s and the community’s safety interests. This connection is not unique to the current public health crisis, however, COVID-19 brings to light the persistent reality that communities are often weakened, not made safer, by the removal of defendants during pretrial periods.

‘Coronavirus: Impact on Penalties – Portugal’ [2020] Lawyer (Online Edition) 1

Abstract: The article informs that breach of legal provisions regulating market organization is punishable in Portugal under public health epidemiological crisis. It mentions that crimes aimed at repressing anti-economic and public health offences, the law provides for and punishes as a crime the acquisition of essential goods, such as medicines, masks, or disinfectant product in the situation of coronavirus.

Flanders, Chad et al, “‘Terroristic Threats’ and COVID-19: A Guide for the Perplexed’ (SSRN Scholarly Paper ID 3575700, 14 April 2020)

Jurisdiction: USA

Abstract: The first few months of the COVID-19 outbreak in the United States saw the rise of a troubling sort of behavior: people would cough or spit on people or otherwise threaten to spread the COVID-19 virus, resulting in panic and sometimes thousands of dollars’ worth of damages to businesses. Those who have been caught doing this — or have filmed themselves doing it — have been charged under so-called ‘terroristic threat’ statutes. But what is a terroristic threat, and is it an appropriate charge in these cases? Surprisingly little has been written about these statutes given their long history and regular use by states. Our article is one of the first to look systematically at these statutes, and we do so in light of the rash of these charges during the recent pandemic. Our argument begins with the premise that these statutes typically contemplate a ‘core case’ of terroristic threatening, e.g., someone calls in a bomb threat which forces the evacuation of a building. But these statutes have been variously revised and repurposed over the years, most notably to mass shootings, and more problematically to those who threaten to give others HIV. The recent COVID-19 charges seem to involve facts that are outside the ‘core case,’ so that even if terroristic threatening is a permissible charge in these cases, it is often not the most appropriate one. We conclude by suggesting that in many of the
COVID-19 cases other charges should be made (criminal mischief, disorderly conduct, false reporting, etc.) instead of terroristic threatening, and that a lot of the expressive and deterrence benefits of more serious charges can be accomplished just as well by social disapproval.

Kirchner, Stefan, ‘End-of-Life Decisions Amid the Covid-19 Pandemic as a Practical Problem of Criminal Law Theory’ (SSRN Scholarly Paper ID 3576543, 15 April 2020)

Jurisdiction: Germany

Abstract: The current Covid-19 pandemic threatens to overwhelm health care systems. Because many patients have to be provided with ventilators, there is a risk that not all patients will receive the medical help they require. This has already happened for example in Italy, Spain and France and at the time of writing, during the second week of April 2020, it appears likely that other countries will face the same shortages. In some countries, guidelines have been created to determine under which circumstances a patient will be allocated a ventilator. This allocation of scarce life-saving resources raises significant concerns regarding the protection of the right to life and respect for human dignity. By determining that a person’s life has to end in order to re-allocate resources such as a respirator in an intensive care unit the patient is no longer an actor but becomes the mere object of the decision made by others. This is incompatible with the concept of human dignity, in particular when one takes into account the definition of human dignity employed by the German Federal Constitutional Court in several cases. This notion can be traced back to Immanuel Kant. In practice, however, medical decision-makers will be forced to choose between different patients. These choices can be deadly for one patient and potentially life-saving for the other, violate human dignity and place an inhuman burden on those who have to decide. This text aims to investigate this matter from the perspective of criminal legal theory and to provide guidance as to whether ending life-saving measures amounts to an action or an omission.
Nwokeke, Chidera, ‘Does the Law Support the Grant of Posthumous Pardon in Nigeria?’ (SSRN Scholarly Paper ID 3579276, 18 April 2020)

Abstract: This article examines the position of our law with regards to granting of posthumous pardon. Who can benefit from presidential pardon? The effect of presidential pardon and its impact on COVID-19.


Abstract: As coronavirus disease (COVID-19) is spreading around the world, many national and local governments have imposed social restrictive measures to limit the spread of the virus. Such quarantine measures in different cities across the world have brought a new trend in public safety improvement and crime reduction. Using daily crime reports in the US and European major cities, the aim of this project is to evaluate the effects of quarantine and ‘shelter-in-place’ policies on different crime categories. We adopt a difference in difference strategy to evaluate the change in crime rates. Early results from Oakland and San Francisco in the U.S. suggest a drop by about 40% across the communities and crime categories in both cities. While theft, homicide, and traffic accidents have fallen sharply, domestic violence incidents show no sign of reduction from our early observations. These trends although promising a glimpse of positive outcome for the community during the outbreak, may not have a lasting impact in the long term.

ENIRONMENTAL LAW


Abstract: The COVID-19 pandemic has caused more rapid changes to the law than most of us have seen in our lifetimes. These changes have remade, and in many cases severed, our social and economic connections to each other, in ways unprecedented except during war. As many have argued, climate change is also a dire emergency, requiring an equally sweeping legal response. Climate change is COVID-19 in slow motion, but with less clarity and far greater destructive capacity. Lawyers, like legislators and executive branch leaders, are responding to the coronavirus pandemic with creativity and improvisation. We may find that attorneys seeking to address climate change will be able to learn valuable lessons from the legal response to COVID19. Part I of this Essay, echoing a point that has already been made many times now, explains why, on a practical level, COVID-19 and climate are intertwined. Part II argues that climate attorneys should focus on coronavirus lawsuits, which could be more consequential to climate progress than recent executive or legislative action. Part III of the Essay identifies three specific lawsuits climate attorneys should track. And Part IV concludes with a thought for attorneys as we weather this pandemic – and a warming planet – together.

Huang, Jie (Jeanne) and Jiaxiang Hu, ‘Can Free Trade Agreements and Their Dispute Resolution Mechanisms Help Protect the Environment and Public Health? The CPTTP, MARPOL73/78 and COVID-19’ (Sydney Law School Research Paper No 20/24, 2020)

Abstract: Preventing or managing a global pandemic such as COVID-19 requires states to strictly comply with International Health Regulations 2005 (IHR). However, they lack a strong enforcement mechanism, like many multilateral environmental protection agreements. Over the past fifteen years, several such conventions have been incorporated into free trade agreements (FTAs) to enhance State compliance and therefore promote environmental protection. A typical example is the International Convention for the Prevention of Pollution from Ships and its Protocols (MARPOL 73/78). Vessels, like viruses, are globally mobile. Vessel-sourced pollution also mirrors human-carried viral infection, because the locations of potential harm are unpredictable and widespread. This Chapter examines first whether FTAs (especially mega-regional FTAs) can effectively encourage States to comply with MARPOL 73/78. Through
this analysis, it generates implications regarding whether the IHR regime could also rely on new or renegotiated FTAs, or be reformed directly, to enhance state compliance with public health initiatives.


Abstract: The COVID-19 pandemic is a seismically disruptive event. This commentary explores some of the key ways this seismic shift will interact with environmental law. It explores four types of change triggered by the pandemic: (1) behavioral changes (including of behaviors with environmental impacts); (2) demographic changes that affect levels of background risk against which laws (including environmental laws) operate; (3) changes in values (including regarding the environment); and (4) changing resources (including those that can be spent on environmental or other amenities). Each of these changes has potentially important implications for the assumptions built in to environmental law, for the ability of environmental law to effectively regulate the environment, and for the way that humans will interact with the environment in coming years and decades.

FINANCE & BANKING / INVESTMENT LAW


Abstract: Countries with large debts stocks are vulnerable to the vagaries of the markets. Confidence crises can arise out of nowhere, constricting access to the markets. Hence, the question arises as to whether these countries should put in place mechanisms that will help them better prepare for the possibility of crisis. In effect, the choice is whether to buy insurance. The cost of buying such insurance is that the possibility that markets will see the sovereign’s proactive steps to protect against a crisis not as an indication of prudent governance but rather as an indicator that a crisis is imminent. In this article, we use the case of a Euro area country (Italy) with a large debt stock and that has been hit particularly hard by Covid-19 to set forth its options, as of 2020, to anticipate a possible future debt restructuring. It can: do nothing, do a little; or do something substantial.
Cattelan, Valentino, ‘Sacred Euro: Sovereign Debt(s) and EU Bare Credit in the Corona Crisis’ (SSRN Scholarly Paper ID 3592382, 4 May 2020)

Abstract: This is a contribution that I wrote for the discussion opened by Prof. Werner Gephart among the current and former Fellows of the Käte Hamburger Center for Advanced Study in the Humanities ‘Law as Culture’, on the topic ‘The Corona Crisis in light of the Law-as-Culture Paradigm’. The paper advances an interpretation of the current EU political impasse about how to deal with the COVID-19 emergency by shifting Agamben’s paradigm of the ‘homo sacer’ to the ‘sacertas’ of the Euro. In this frame, it describes the Euro as a currency (nomisma) lacking in an appropriate nomos to give Member States (economic) credit backed by EU (political) credit.


Abstract: The announcement of the Pandemic Emergency Purchase Programme (PEPP) by the European Central Bank on March 18, 2020 marks an unprecedented step in the European history of monetary integration. But it is a commensurate response to the global public health emergency that the COVID-19 outbreak continues to pose as well as the financial and economic shock that it triggered. The legality of the PEPP can be defended in light of both these extraordinary macroeconomic circumstances as well as the European Court of Justice’s assessment of previous ECB bond purchase programmes. As this short essay shows, the Court’s Gauweiler and the Weiss decisions have defined the boundaries within which the ECB may design its monetary policy measures. And the PEPP does not transgress these boundaries. However, in order to mitigate the risk of any ex-post legal challenges, the legal act on which the PEPP is based should underscore the following principles, which are informed by the pertinent case law:1. The PEPP’s objectives are proportional because they address a malfunctioning of the smooth transmission of monetary policy signals across the currency area triggered by the sudden stop of economic activity, thereby undermining the singleness of monetary policy.2. The PEPP’s design is proportional because it entails the following safeguards: bond purchases are (i) restricted to EUR750 billion, (ii) limited to periods of malfunctioning monetary policy transmission channels, (iii) not selective, (iv) limited to securities with stringent eligibility criteria, and (v) subject to a limited loss-sharing arrangement.3. The PEPP does not breach the monetary financing prohibition because it (i) has no equivalent effect to bond purchases on the
primary markets (due to the safeguards mentioned in 2.) and (ii) does not incentivize Member States pursue unsound budgetary policies.


Abstract: Congress has imposed laws, rules and ratios on financial institutions which in times like this limit the ability of lenders and regulators to do their jobs. The 2008 financial crisis was due, in no small part, to the mark-to-market accounting rule known as SFAS 157, which resulted in the senseless destruction of $500 billion of capital in the banking system.

Jackson, Howell E and Steven L Schwarcz, ‘Pandemics and Systemic Financial Risk’ (19 April 2020)

Abstract: The coronavirus has produced a public health debacle of the first-order. But the virus is also propagating the kind of exogenous shock that can precipitate – and to a considerable degree is already precipitating – a systemic event for our financial system. This currently unfolding systemic shock comes a little more than a decade after the last financial crisis. In the intervening years, much as been written about the global financial crisis of 2008 and its systemic dimensions. Additional scholarly attention has focused on first devising and then critiquing the macroprudential reforms that ensued, both in the Dodd-Frank Act and the many regulations and policy guidelines that implemented its provisions. In this essay, we consider the coronavirus pandemic and its implications for the financial system through the lens of the frameworks we had developed for the analysis of systemic financial risks in the aftermath of the last financial crisis. We compare and contrast the two crises in terms of systemic financial risks and then explore two dimensions on which financial regulatory authorities might profitably engage with public health officials. As we are writing this essay, the pandemic’s ultimate scope and consequences, financial and otherwise, are unknown and unknowable; our analysis, therefore, is necessarily provisional and tentative. We hope, however, it may be of interest and potential use to the academic community and policymakers.

Abstract: In March 2020, it was revealed that several U.S. Senators had cashed in their stocks after receiving intelligence on COVID-19, sparking both outrage and renewed interest in congressional insider trading. The pandemic trades exposed gaps not only in current law, but in scholarship and leading reform proposals. Congressional securities trading (CST) generates unique challenges, such as the risk of policy distortion, as well as more prosaic ones, like the management of benign trading by insiders. The current framework—which centers fiduciary regulation of theft—is poorly matched to both types. Surprisingly, rules from a related context have been overlooked. Drawing on SEC regulations that govern public company insiders, this Essay proposes a taxonomy of CST, situates the Senators’ conduct within it, and develops a novel, comprehensive prescription to manage it. Like Members of Congress, corporate insiders such as CEOs engage in securities trading despite possessing valuable inside information. The system designed to manage these trades provides a model. Specifically, Rule 10b5-1 plans (which disclose trades ex ante) and the short-swing profits rule of Section 16(b) (which disgorges illicit profits ex post) should be adapted to the congressional context. Both devices emphasize the management of legitimate trades rather than the punishment of criminal ones (which is already accomplished by other rules). Rules like these would address policy distortion and unjust self-enrichment by Members of Congress. To reduce those risks further, lawmakers should also be restricted from owning any securities other than U.S. index funds and Treasuries. None of these rules would require new legislation or regulation; all can be adopted by chamber rule. A third risk—the unjust enrichment of third parties—is often conflated with the others, but presents distinct tradeoffs and should be taken up separately. SEC rules provide useful precedent here as well.

FOOD, AGRICULTURE, ANIMALS


Abstract: The article offers information on the enforcement of laws governing trade in wild animals, which is believed to be linked to the COVID-19 outbreak as reported by China’s Xinhua News Agency.

Abstract: This paper presents a literature-informed and data-driven critique of the Rice Tariffication policy in the Philippines, in the time of the COVID-19 pandemic that has already disrupted rice supplies and hiked rice prices globally. Gaps in the surveyed literature are complemented by discussing the rationale of rice self-sufficiency in an increasingly volatile, uncertain, complex & ambiguous (VUCA) world, and outlining a roadmap to rice self-sufficiency bolstered by practical policy recommendations to bring the law closer to the Philippine State’s declared policy, which is ‘...to ensure food security and to make the country’s agricultural sector viable, efficient and globally competitive.’


Abstract: The article discusses the role of China’s wildlife market in the spread of the coronavirus disease and mentions the wildlife protection law which should be revised by the Chinese legislature.


Abstract: A number of virological, epidemiological, and ethnographic arguments suggest that COVID-19 has a zoonotic origin. The pangolin, a species threatened with extinction due to poaching for both culinary purposes and traditional Chinese pharmacopeia, is now suspected of being the “missing link” in the transmission to humans of a virus that probably originated in a species of bat. Our predation of wild fauna and the reduction in habitats have thus ended up creating new interfaces that favour the transmission of pathogens (mainly viruses) to humans. Domesticated animals and wild fauna thus constitute a reservoir for almost 80% of emerging human diseases (SARS-Cov, MERS-CovV, Ebola). These diseases are all zoonotic in origin. As if out of a Chinese fairy tale, the bat and the pangolin have taught us a lesson: within an increasingly interdependent world, environmental crises will become ever more intertwined with health crises. Questions relating to public health will no longer be confined to the secrecy
of the physician’s consulting room or the sanitised environment of the hospital. They are now being played out in the arena of international trade, ports and airports, and distribution networks. Simply put, all human activity creates new interfaces that facilitate the transmission of pathogens from an animal reservoir to human. This pluri-disciplinary article highlights that environmental changes, such as the reduction in habitats for wild fauna and the intertemperate trade in fauna, are the biggest causes for the emergence of new diseases. Against this background, it reviews the different measures taken to control, eradicate and prevent the emergence of animal diseases in a globalized world.

HEALTH / MEDICAL LAW & ETHICS (INTERNATIONAL, REGIONAL AND NATIONAL)


Abstract: European Union and the United States have experienced some of the most severe outbreaks of Covid-19. Paper investigates the EU and US divisions of power and suggest that due to the relative advantages and disadvantages of centralized federal responses and decentralized state responses, actions seeking to limit the impact of Covid-19 on society need to reflect a ‘smart mix’ of both centralized and decentralized responses to the pandemic. Centralized procurement and distribution of necessary medical goods can solve problems related to harmful competition between states to procure these goods and allows states to exercise buying power. Centralized responses to procurement and distribution may solve a problem of moral hazard which leads to the hoarding of necessary medical goods, which represents a cross border externality when other states within the federal system face a shortage of necessary medical goods. This also applies to the procurement of medical goods related to testing for CV. However, paper argues the use of these goods and implementation of testing programs may be best done through a decentralized process because localized authorities have an information advantage over centralized authorities. Decentralized responses may also be necessary to gather information about which form of public health intervention works best, given that there is uncertainty as to which approach is most efficient. States must weigh not only the benefits of implementing public health interventions, but also the costs of these interventions on society.

Donley, Greer, Beatrice Chen and Sonya Borrero, ‘The Legal and Medical Necessity of Abortion Care Amid the COVID-19 Pandemic’ (2020) Journal of Law & the Biosciences (forthcoming)

**Jurisdiction:** USA

**Abstract:** In response to the COVID-19 pandemic, states have ordered the cessation of non-essential healthcare. Unfortunately, many conservative states have sought to capitalize on those orders to halt abortion care. In this short paper, we argue that abortion should not fall under any state’s non-essential healthcare order. Major medical organizations recognize that abortion is essential healthcare that must be provided even in a pandemic, and the law recognizes abortion as a time-sensitive constitutional right. Finally, we examine the constitutional arguments as to why enforcing these orders against abortion providers should not stand constitutional scrutiny. We conclude that no public health purpose can be served by this application because abortion uses less scarce resources and involves fewer contacts with healthcare professionals than prenatal care and delivery assistance, which is continuing to be provided in this public health emergency.


**Abstract:** Optimism among health law scholars is rare in the time of coronavirus. Yet this piece suggests that the crisis might be helpful in overruling one controversial health law policy that predates the virus: the FDA’s blood donation ban for gay and bisexual men. The blood ban was developed in response to the 1980s HIV-AIDS outbreak. Scholars have criticized this policy for years now as being outdated and unconstitutional. A step in the right direction occurred on April 2, 2020, when the FDA issued new recommendations to blood banks changing the one-year deferral for donations from men who have sex with men to a three-month deferral due to the shortage in the blood supply and after a public outcry on the issue. Yet, the policy is still problematic as it expresses disdain about sex between men. In response to the COVID-19
pandemic, states have issued travel restrictions on travelers from severely impacted states. This piece argues that outside of the dwindling blood supply, experience with stigma as a result of the travel restrictions has the potential to change public perceptions about the ban. Both policies, the blood ban and the COVID-19 interstate travel restrictions, are necessary for the short term, are based on activities connected with a disease, and create stigma with respect to the affected populations. Although no one can imagine the travel restrictions continuing after the pandemic is under control, the FDA’s ban has existed for decades after the end of the AIDS crisis. Drawing parallels between the policies and their stigmatizing effects could help mobilize the public against the blood ban and eventually have it lifted entirely.


*Abstract*: The international incidence of health workers being infected with COVID-19 is deeply troubling. Until a vaccine is developed, they are the community’s bulwark against the pandemic. It is vital that they be protected to the maximum extent possible. This entails the need for implementation of effective and compassionate protocols to keep their workplace as safe as possible for them, their colleagues and their patients in a context of much as yet not being known about the virus and awareness that some persons infected by it are for a time at least asymptomatic and that others test negative for it when they are prodromal or even already displaying some symptomatology. This has repercussions both for the liability of hospitals and multi-practitioner centres for negligence and also under occupational health and safety legislation. With the commencement of the roll out of biosecurity and disaster/emergency measures by government and escalating levels of anxiety in the general population, it is important to reflect upon the measures that most effectively can be adopted practically and ethically to protect the health and safety of those whose task it is to care for us if we become infected by COVID-19.
**Note:** this article was written in 2019, before the coronavirus pandemic.

**Abstract:** Pandemics pose a significant risk to security, economic stability, and development. Annualized expected losses from pandemics are estimated at $60 billion per year. Despite the certainty and magnitude of the threat, the global community has significantly underestimated and underinvested in preparing for pandemic threats. We cannot wait or continue with the status quo, in which we pay attention to infectious disease threats only when they are at their peak and then are complacent and remain vulnerable until the next major outbreak. To reinforce and sustain international focus, funding, and action, it is crucial that pandemics rise to the level of ‘high politics,’ becoming standing agenda items for political actors. I make the case for fundamental reform of the international system to safeguard global health security. I propose an action agenda for rapid detection and response to dangerous infectious diseases. If my action plan were adopted, it would safeguard the global population far better against infectious disease threats. It would reap dividends in security, development, and productivity.


**Abstract:** Richard Griffith, Senior Lecturer in Health Law at Swansea University, considers what powers are available to ministers, health and local authorities to minimise the spread of the novel coronavirus and the disease it causes.


**Abstract:** The International Health Regulations (2005) (IHR govern how 196 countries and WHO collectively address the global spread of disease and avoid unnecessary interference with international traffic and trade. We - 16 global health law scholars - came to this conclusion after applying the interpretive framework of the Vienna Convention on the Law of Treaties and reaching a jurisprudential consensus on the legal meaning of IHR Article 43 (panel). A State Party implementing additional health measures referred to in paragraph 1 of this Article which
significantly interfere with international traffic shall provide to WHO the public health rationale and relevant scientific information for it.


Abstract: This chapter presents a critical analysis of the international law and institutions responsible for ensuring global health security. In 2005, the members of the World Health Organization adopted a thoroughly revised set of International Health Regulations, establishing an innovative and binding legal framework for declaring and responding to global health emergencies. At the heart of the Regulations was a particular conception of global health ‘security,’ which emphasized the early identification of health threats, and a coordinated global response that avoided undue interference with trade, travel, or human rights. In practice, the WHO has struggled to live up to these ideals, as it is unable to ensure that governments provide accurate information about disease outbreaks or to prevent unduly harsh responses when disease outbreaks are publicized. At the same time, the WHO has struggled to resolve the tension between expert advice and political discretion that lies at the heart of the Regulations. And it has faced competition from other institutions involved in pandemic response and from alternative normative visions of global health security. This chapter excavates these key tensions and identifies directions for further research and reflection. The aftermath of the COVID-19 pandemic will provide an unprecedented opportunity to rethink the foundations of the international regime for global health security. This rethinking requires a clear understanding of the existing legal and institutional framework, and of the lessons already learned from previous crises.


Abstract: The COVID-19 pandemic is the first modern public health crisis with the potential to overwhelm the public health care system. Health care is a shared society resource, and thus the
ethical principles guiding its rationing require health care services, drugs, and equipment to be applied where they are most effective, which gives priority to patients most likely to benefit from treatment. Health care providers—primarily physicians—will make these rationing decisions, and providers deserve considerable latitude for good-faith decisions guided by settled ethical frameworks. Those disadvantaged by these decisions are likely to second-guess those who make them. Providers have a responsibility to make these decisions fairly, both procedurally and substantively, and, like all professionals, they should be held accountable for them. The legal standard of care requires health care professionals to exercise the skill and knowledge normally possessed by providers in good standing in the same field or class of practice in similar communities acting in the same or similar circumstances. But practicing medicine in crisis conditions, like those created by COVID-19, is not the same as or similar to practicing in non-crisis conditions. Thus, the standard of care, properly applied, expects less of health care professionals making decisions under the stress of COVID-19’s triage conditions. Because many health care providers do not perceive this to be true, and for pragmatic and normative reasons, policymakers should articulate clearer rules that limit the liability for health care providers’ rationing decisions, as well as other acts and omissions, occurring in crisis conditions. Clarified limitations on liability should not create absolute immunities, however. Health care providers should be accountable when practicing in crisis conditions for their acts, omissions, and decisions—including rationing decisions—that are criminal, reckless, willful or wanton, grossly negligent, or unlawfully discriminatory, or that are intentional violations of settled ethical norms.


Jurisdiction: Australia

Abstract: Front-line healthcare personnel, particularly anesthetists and others dealing with acute cases of coronavirus, face a high risk of infection and thus mortality. The scientific evidence establishes that to protect them, hospital protocols should require that wearing of the highest levels of personal protective equipment [PPE] be available for doctors and nurses performing intubation of COVID-19 patients. Although several international bodies have issued recommendations for a very high-level PPE to be used when intubation procedures are
undertaken, the current PPE guidelines in Australia are more relaxed, and hospital authorities relying on them might not comply with legal obligations to their employee healthcare workers. Failure to provide high level PPE in many hospitals is of concern for large number of healthcare workers; this article examines the scientific literature on the topic and provides a legal perspective on hospital authorities’ possible liability in negligence.


Abstract: The emergence of the 2019 novel coronavirus—or COVID-19—outbreak has resuscitated global attention on the state of global health governance. Legal scholars and political scientists have long been fascinated by global governance of health, which had galvanized intellectual discourse that began almost two decades ago. Increasingly, global health operates in a complex, multipolar world, which is informed by pluralistic values. The ever-changing configuration of players, interests and values adds complexity to the global health landscape. It is timely to reexamine the landscape of global health, where new transnational challenges—such as galvanizing a global concerted effort towards international infectious disease control, financing global health activities in a sustainable manner, and achieving Universal Health Coverage—also inform new global health configuration. The article takes a historical view and traces the evolving of the global health landscape and examines the various of norms, processes and institutions that form global governance of health. The article also identifies the strengths and weakness of the International Health Regulations—the international legal architecture for international infectious disease control—as the novel coronavirus outbreak unfolds.


Abstract: At some point during this pandemic or next, all countries will need to answer hard questions about whether and when scarce ICU resources (such as ventilators, beds and staff) should be either withheld or withdrawn from certain groups of patients solely for the purpose of providing them to others. Attempts to answer these hard questions can be found in ICU triage
protocols and ethical guidance documents, many of which embrace the foundational principle of ‘save the most lives’. Unfortunately, this worthwhile goal has generated many suggestions that could violate the law. This article identifies 10 ways in which the withholding or withdrawal of a clinically indicated ventilator might violate a patient’s rights, along with recommendations on how to avoid doing so. While our analysis is based on UK law, its lessons are relevant for other countries with similar legal systems. If the issues we identify are not addressed, doctors may act unlawfully. Worse, patients may die unlawfully.


Abstract: In December 2019, there was an outbreak of pneumonia caused by Novel Coronavirus (COVID-19) in Wuhan City, China. It was unfortunate that the outbreak has taken so many lives. It was partly because that the handling of the outbreak by the World Health Organization (hereinafter ‘WHO’) was not timely or appropriate. There are so many positive and negative lessons we can learn from the outbreak. At the international level, WHO is supposed to lead the world to fight against the outbreak based on the International Health Regulations (2005) (hereinafter "IHR (2005)"). However, it is apparent that there are many operational problems with the IHR (2005). The role of the IHR (2005) seems not to be critical in guiding States Parties for tackling the outbreak. The operation of the IHR (2005) can definitely be improved to make the system more capable of addressing lifethreatening and life-saving issues. First, the compliance with the requirements of the IHR (2005) should be seriously addressed. Second, the independence of the Emergency Committee and that of the WHO Director-General should also be addressed so as to respect the desirable independence in performing their duties. Third, the transparency issue should also be addressed to help the country where the public health emergency of international concern (hereinafter ‘PHEIC’) occurs to faithfully respect the disclosure requirement and to become more transparent. Fourth, the timeliness and precautionary principle should be dealt with so as to require a timely decision of a PHEIC and to ensure that the precautionary principle plays a supplementary role to help the declaration of a PHEIC in a timely and efficient manner Fifth, WHO, its Director-General and States Parties of the
IHR (2005) should also be expected to allow non-Parties’ meaningful participation in the operation of the IHR (2005).

Mulrenan, Stephen, ‘China’s Belt and Road Initiative Faces Major Challenges’ (2020) 74(3) *IBA Global Insight* 26–33

Abstract: China’s transformation from developing economy to powerhouse status ranks among the most dramatic stories of the 21st century, with the Belt and Road Initiative its latest chapter. But serious concerns over the government’s treatment of the Uighurs and human rights, and the devastating outbreak of Covid-19, threaten to derail the country’s ambitious project.


Abstract: Persons experiencing addiction may be at very high risk of infectious disease like COVID-19 due to high rates of smoking, recent imprisonment, conditions like HIV/AIDS, and high-risk behaviors (Ezzati et al. 2002; Farhoudian, et. al. 2020). During the COVID-19 pandemic, most courts have shuttered, and treatment center admissions have halted, yet the opioid crisis rages on. America’s opioid epidemic may have just become more lethal and socially costly.

de Ruijter, A et al, ‘EU Solidarity and Policy in Fighting Infectious Diseases: State of Play, Obstacles, Citizen Preferences and Ways Forward’ (Amsterdam Centre for European Studies Research Paper No. 2020/06, 2020)

Abstract: In this paper we confront the role the EU traditionally plays in the domain of health with the urgent need for collective action triggered by the corona virus pandemic. In the face of such a crisis, we argue that the joint procurement, stockpiling and allocation of medical countermeasures is a key component of true European solidarity, besides maintaining the integrity of the Single Market. We present the first results of a survey experiment taken before the current crisis on citizens’ attitudes towards centralizing at the EU level of policies to combat infectious diseases, which indicates considerable support. We conclude that a more robust
policy framework with substantial centralization of procurement, stockpiling and allocation is warranted.


Abstract: Scientists are racing to develop vaccines against the novel coronavirus. While some vaccine candidates may enter the market in record time, the current vaccine innovation ecosystem exposes governance lacunas at both the international and domestic levels.


Abstract: John Tingle, Lecturer in Law, Birmingham Law School, University of Birmingham, discusses patient safety during the present coronavirus pandemic [ABSTRACT FROM AUTHOR]


Abstract: Freshly, India has invoked various provisions of the Epidemic Diseases Act of 1897 to control communicable disease which is more or less turned into the most critical one globally. Coming up of COVID-19 has opened the debate for the new legislation or to clear the pending bill The Public Health (Prevention, Control and Management of Epidemics, Bio-Terrorism and Disasters) Bill, 2017 or to come up with special legislation named The Epidemic Bill, 2020. Here, the public health should be the concern in present condition of the society. Objective To respond to Epidemic situation for dissemination of lessons learnt from present crisis across the country that has begun with the strong need of legislation which can repeal the Epidemic Act, 1897.
HUMAN RIGHTS / CIVIL RIGHTS / DISCRIMINATION


Abstract: The purpose of this note is to provide some further detail to the human rights law issues raised by the COVID-19 pandemic in the United Kingdom. This is a rapidly moving situation and new human rights issues and challenges arise every day. In this note, the following issues are considered: derogation from the ECHR (and HRA); the overarching Article 2 right to life duty; medical treatment for COVID-19 patients; lockdown and deprivation of liberty.


Abstract: The purpose of this note is to provide some further detail to the human rights law issues raised by the COVID-19 pandemic in the United Kingdom. The focus is on setting out the applicable legal rules and, where possible, suggesting how these might apply to current issues. Part 1 of this note concerned: derogation; the overarching duty to protect life; medical treatment of COVID-19 patients; and lockdown and the right to liberty. This note, Part 2 concerns: domestic violence; discrimination; self-imposed restrictions; closure of businesses; access to information; and surveillance and privacy issues arising from lifting lockdown.


Abstract: Thanks to the coronavirus pandemic, the threat of medical rationing is now clear and present. Hospitals faced with a crush of patients must now seriously confront questions of how to allocate scarce resources—notably life-saving ventilators—at a time of severe shortage. In their protocols for addressing this situation, hospitals and state agencies often employ explicitly disability-based distinctions. For example, Alabama’s crisis standards of care provide that ‘people with severe or profound intellectual disability “are unlikely candidates for ventilator support.” This essay, written as this crisis unfolds, argues that disability-based distinctions like these violate the law. The Americans with Disabilities Act, the Rehabilitation Act, and the
Affordable Care Act all prohibit health care providers from discriminating against qualified individuals with disabilities because of their disabilities. The explicit discrimination embodied in numerous state policies on its face violates these prohibitions. Nor can medical providers simply define disabled patients as being ‘unqualified’ because of disabilities that do not affect the ability to ameliorate the condition for which treatment is sought. Longstanding and authoritative interpretations of the law bar the use of such circular techniques to insulate disability discrimination from legal challenge. Although a proper interpretation of the law may permit medical providers to use disability as a basis for a rationing decision where an individual’s underlying disability will kill the individual in the immediate term regardless of the treatment, those circumstances will be narrow. And a proper interpretation of the law requires assurances that such imminent-death determinations will be made based on the best available objective evidence, free from bias against people with disabilities or devaluation of their lives. Medical providers retain substantial discretion to make resource allocation decisions in a time of triage. They may make decisions based on non-disability factors. And where those factors do not dictate a decision, they may employ a lottery process. Such a process is more fair and democratically legitimate than placing the burden on disabled individuals—individuals who already experience disadvantage as a result of societal discrimination, and who disproportionately lack access to the political processes that frame policies concerning medical rationing.


Abstract: Restrictions on international and intra-EU traffic of persons have been at the heart of the political responses to the coronavirus pandemic. Border controls and suspensions of entry and exist have been presented as key policy priorities to prevent the spread of the virus in the EU. These measures pose however fundamental questions as to the raison d’être of the Union, and the foundations of the Single Market, the Schengen system and European citizenship. They are also profoundly intrusive regarding the fundamental rights of individuals and in many cases derogate domestic and EU rule of law checks and balances over executive decisions. This Paper examines the legality of cross-border mobility restrictions introduced in the name of COVID-19.
It provides an in-depth typology and comprehensive assessment of measures including the reintroduction of internal border controls, restrictions of specific international traffic modes and intra-EU and international ‘travel bans’. Many of these have been adopted in combination with declarations of a ‘state of emergency’.

Chilton, Adam S et al, ‘Support for Restricting Liberty for Safety: Evidence During the COVID-19 Pandemic from the United States, Japan, and Israel’ (SSRN Scholarly Paper ID 3591270, 2 May 2020)

Abstract: Democratic governments around the world have taken dramatic steps to halt the spread of COVID-19. These steps have prevented new infections and deaths, but they have also entailed unprecedented restrictions on civil liberties. Navigating this tradeoff between security and liberty is particularly difficult for democracies because they need to maintain public support for their policies and are constrained by their constitutions. We administered surveys to nationally representative samples in three economically advanced democracies—the United States, Japan, and Israel—to assess the extent to which the public supports liberty restrictions designed to combat COVID-19. We found consistent and widespread support for policies restricting civil liberties across all three countries. We also experimentally manipulated information about (1) the constitutionality of these policies and (2) the infections they would prevent, finding evidence that respondents’ support for restrictions on civil liberties may depend more on their effectiveness than their legality.


Introduction: The COVID-19 pandemic has caused a devastating loss of life and economic stagnation across the globe. Governments have quickly introduced laws and policies to reduce the spread of the virus, ease the burden on health systems, and assist flailing economies. Australia is no exception in this regard. The scale and scope of the government response at the Commonwealth, state and territory levels is nothing short of massive.

This post considers the possible implications for the COVID-19 response arising from the Human Rights Act 2004 (ACT) (‘ACTHRA’), the Charter of Human Rights and Responsibilities 2006 (Vic) (‘Victorian Charter’) and the Human Rights Act 2019 (Qld) (‘QHRA’) (collectively, the ‘Australian
HRAs’). We also consider the somewhat unique model of rights protection provided at the Commonwealth level under the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) (‘2011 Act’).


**Abstract:** Whoever said pandemics were equalizers doesn’t know a thing about disability legal history. It does not take much of a pretext to rollback disability rights. This is because disability rights laws, despite enumerated principles of equal opportunity and civil rights, have always been viewed as ‘nice to do’ and not ‘must do.’ Simply put, society continues to misunderstand disability—what it means, who the category includes or excludes, its relationship to impairment, its valence and construction as an identity. Moral and religious-tinged frames have trumped the perception of disability as a protected class akin to race, gender, or national origin. This view explains Congress’s intent that the Americans with Disabilities Act (ADA) play, not only a remedial role for disability discrimination ex post, but a proactive, ex ante role in upending problematic social norms that treat disability and incapacity as synonymous. Similarly, the perception of disability as a different kind of civil right helps explain the Supreme Court’s interpretive missteps in the infancy and adolescence of the ADA and Congress’s direct reproach and redirection of the Court in the ADA Amendments Act eighteen years later. Inattention to underlying social judgments about disability and the associated discrimination has caught up with us. Progressive legislation in this pandemic without requisite interventions designed to address how people interpret the disability laws offers precarious protections for people with disabilities. The stakes could not be higher in some areas, namely, life or death denials of health care access based on certain disabilities or biased quality of life measures. Disability scholars in recent weeks have largely focused on addressing why COVID-19-related rationing on the categorical basis of disability offends federal (and state) disability antidiscrimination laws as a means to ensure people with disabilities have access to life-saving medical treatment in and out of hospitals. They persuasively apply disability laws and principles of legal and medical ethics to show why disability is an improper consideration in rationing care and resources. The underlying problem with rationing is much larger and is slowly unfolding with respect to access and rights in other areas including education, housing, and employment. That is, it is not just about
devaluation of the lives of individuals with disabilities; it is a symptom of something much deeper. The pervasive and negative impacts of this devaluation will endure long after the immediate healthcare issues are tackled. This Essay surfaces a broader, unresolved issue in disability law laid bare by the current pandemic—that disability rights have never had the public understanding and buy in necessary to exercise and interpret disability laws to generate largescale structural reform. As a result, when people with disabilities are seen (and treated) as unequal, deficient, and incapable, legal enforcement of antidiscrimination laws is, at best, seen as optional and aspirational, creating space for the current manifestations of disability discrimination during the coronavirus crisis. These problems are compounded when medical supplies, personnel, and time are limited. Part I describes real time rollbacks of disability rights in the healthcare access context that are currently unfolding, and the legal responses designed to push back on health care rationing. I then shift to a less studied area, access to education, an evolving landscape as students across the country face the realities of distance learning. Part II argues that the current forms of discrimination lay bare the fundamental information deficits about disability that negatively skew legal interpretation and undermine the protections of disability laws. Part III identifies key questions and areas of concern as we contend with the virus and its aftermath.

Hellman, Deborah and Kate Nicholson, ‘Rationing and Disability in a State of Crisis’ (Virginia Public Law and Legal Theory Research Paper No 2020-33, 2020)

Abstract: The rise in COVID-19 cases is soon to overwhelm health care systems, leading to difficult moral and legal choices about how to ration scarce resources, and, most especially, ventilators. Many states have protocols that address this question. These protocols adopt a fully utilitarian approach, aiming simply to save as many lives as possible. To do so, they prioritize patients who are most likely to benefit from care and set standard benchmarks for how quickly a patient must show improvement to continue ventilation. These protocols and related policies of private health care systems are likely to disadvantage people with disabilities, as a disproportionate number of disabled people have health conditions that will make them less likely to survive or will require them to have more time to show improvement. This (draft) Article examines whether the utilitarian approach, which considers only aggregate harms and benefits, is consistent with The Americans With Disabilities Act, and other discrimination
Statutes, which pay significant attention to the distribution of harms and benefits. The Article focuses especially on facially-neutral policies that will have the effect of discriminating impermissibly against the disabled. As such, it considers four rationing principles that track those used by states and ultimately argues that none balances equity with utility, as discrimination law demands.


Abstract: No article can cover the panoply of human rights issued raised by the COVID 19 pandemic. Hence, this article takes a selective approach. Stages of the cycle of the crisis, from its past, its present, to its presumed future, are discussed in relation to salient rights issues affecting the general population. Freedom of expression and access to information arose in the ‘past’, the virus’s beginning, when China suppressed information about its nature and its virulence. Currently, States are imposing lockdowns to stop the spread of the virus, and in some cases have overwhelmed hospital systems: ‘the present’ raises issues regarding the rights to health, life, livelihood, and freedom of movement, assembly and association. Finally, the ‘future’ end of the crisis, in the form of the development of a vaccine, will raise new rights issues, regarding the rights upon whom vaccine candidates are tested, and in terms of access to the vaccine once it is available.

Meier, Benjamin Mason, Dabney P Evans and Alexandra Phelan, ‘Rights-Based Approaches to Preventing, Detecting, and Responding to Infectious Disease’ in Mark Eccleston-Turner & Iain Brassington (eds), Infectious Diseases in the New Millennium: Legal and Ethical Challenges (Springer, 2020, forthcoming)

Abstract: Human rights offer universal frameworks to advance justice in public health, codifying international standards to frame government obligations. Health-related human rights have evolved dramatically over the past thirty years to offer a normative framework for justice in preventing, detecting, and responding to infectious disease outbreaks. Where human rights were long neglected in international health debates, the advent of the HIV/AIDS pandemic response would operationalise human rights for public health, as advocates looked explicitly to
human rights in framing public health efforts. In this period of heightened fear and emerging advocacy, policymakers first sought to implement human rights law in public health law—viewing discrimination as counterproductive to public health goals, abandoning coercive tools of public health, and applying human rights to focus on the individual risk behaviours leading to HIV transmission. By finding a link between public health and human rights, the health and human rights movement could move away from its early focus on the conflicts between public health goals and individual human rights, employing human rights to advance public health. However, infectious disease control efforts continue to challenge the notion that individual rights can best support population health. In the new millennium—from the 2005 revision of the International Health Regulations to the 2014 birth of the Global Health Security Agenda—policymakers have sought to balance infectious disease imperatives for the public’s health with individual dignity protections in human rights. Yet, national public health efforts continue to employ mechanisms that infringe individual rights—from the recent Ebola epidemics in Sub-Saharan Africa to the ongoing COVID-19 pandemic that threatens the world—with public health laws violating individual bodily integrity through vaccination mandates, violating individual medical privacy through surveillance and reporting, and violating individual liberty through quarantine and isolation.


Abstract: During times of pandemics, the law is not silent. Unlike the suggestion by Schmitt et al that there are times where there exists a state of exception, this paper argues that the constitution of Kenya does not permit such a scenario. Even in emergencies, the law applies. This paper looks at the measures and regulations adopted by the executive in a bid to address the Corona problem and tests them against the constitution of Kenya.


Abstract: This paper explains why the two core goals of policies proposed or adopted in response to the COVID-19 pandemic that allocate scarce medical resources by using medical
evidence—saving more lives and saving more years of life—are compatible with disability law. Disability law, properly understood, permits considering medical evidence about patients’ probability of surviving treatment and the quantity of scarce treatments they will likely use. It also permits prioritizing health workers, and considering patients’ post-treatment life expectancy. All of these factors, when assessed based on medical evidence and not inaccurate stereotypes, are legal to consider even if they disadvantage some patients with specific disabilities. It then discusses why triage policies that use medical evidence to save more lives and years of life, which I call ‘evidence-based triage,’ are ethically preferable for people with and without disabilities. In doing so, I explain why recent critiques err by treating people with disabilities as a monolith, overlooking the political disadvantages of less-visible victims, and treating the social origins of scarcity as a justification for sacrificing vulnerable lives. Evidence-based triage should be recognized as similar to other responses to COVID-19, like physical distancing and postponing some medical procedures, that may burden people with specific disabilities but are nevertheless justified because they save more patients with and without disabilities.


United Nations High Commissioner for Human Rights (OHCHR)

Note: This site contains many news items and publications on COVID-19 human rights related issues. See for example:

• ‘Seven Actions”: A guide to Protect African Women’s Rights during COVID-19’

INDIGENOUS LAW & GOVERNANCE


Abstract: America’s reaction to the COVID-19 pandemic of 2020 is a microcosm of how Americans see the nation. It is a story of rugged individualism versus community needs. Many
Americans insist on freedom to do as they please, rigorously pushing back on government. But in an environment where small numbers of individuals can easily transmit a deadly infection to others, creating the exponential increase in infections, rugged individualism is a terrible threat. Pandemics, luckily for humans, do not seem to occur all that frequently, but when they do occur, they can dramatically alter human history. Indian people know all too well the impact of pandemics on human populations, having barely survived smallpox outbreaks and other diseases transmitted during the generations of early contact between themselves and Europeans. Indian people also suffered disproportionately from the last pandemic to hit the United States about a century ago. Some things have changed for the better for Indian people, namely tribal self-governance, but many things are not much better, including the public health situation of many Indian people. Modern tribal governments navigate a tricky legal and political environment. While tribal governments have power to govern their own citizens, nonmembers are everywhere in Indian country, and the courts are skeptical of tribal authority over nonmembers. For example, after the Navajo Nation announced a 57-hour curfew for the weekend of April 10-13, 2020 (Easter weekend for many), the sheriff’s offices of Cibola and McKinley counties sent letters to the tribe insisting that the tribe refrain from citing nonmembers during the curfew, further insisting that nonmembers are governed more ‘fully’ by the Governor of the State of New Mexico. Further, the fact that it is the county sheriff’s offices – and not counsel for the nonmembers – sending the letters is a deeply consequential signal to the tribal government. Of course, allowing nonmembers freedom to flout the tribe’s curfew defeats the purpose of the curfew. During a pandemic, the limitations on powers of tribal government could lead to tragedy. This short essay is designed to lay down the argument favoring tribal regulatory powers over nonmembers in Indian country during a pandemic. It should be an easy argument, but federal Indian law makes it more complicated than it should be.

INSOLVENCY & BANKRUPTCY


Abstract: The international spread of the coronavirus is not only generating dramatic consequences from a social perspective but it is also heavily affecting the global economy. For
this reason, governments, financial regulators and international organizations are responding to the coronavirus with a package of legal, economic and financial measures. Among the legal measures included in these packages, many countries, including Australia, Germany, Spain, India, Singapore, Colombia, Portugal, Czech Republic, Russia, New Zealand, the United Kingdom, and the United States, have proposed or implemented temporary changes to their insolvency frameworks. This paper starts by discussing whether using the insolvency system should be the optimal solution to deal with companies affected by the coronavirus. For that purpose, it will analyze the role and limits of insolvency law. It then discusses the most relevant insolvency reforms taking place around the world as a response to the global pandemic, as well as other insolvency and insolvency-related reforms that could be implemented to minimize the harmful economic effects of COVID-19. The paper will conclude by arguing that, even though these responses can provide companies and corporate directors with a valuable breathing space, these reforms need to be accompanied by a more comprehensive package of legal, financial, tax and economic measures to support businesses, employees and the well-functioning of the judicial system.

Morrison, Edward R and Andrea C Saavedra, ‘Bankruptcy’s Role in the COVID-19 Crisis’ (SSRN Scholarly Paper ID 3567127, 7 April 2020)

Jurisdiction: USA

Abstract: Policymakers have minimized the role of bankruptcy law in mitigating the financial fallout from COVID-19. Scholars too are unsure about the merits of bankruptcy, especially Chapter 11, in resolving business distress. We argue that Chapter 11 complements current stimulus policies for large corporations, such as the airlines, and that Treasury should consider making it a precondition for receiving government-backed financing. Chapter 11 offers a flexible, speedy, and crisis-tested tool for preserving businesses, financing them with government funds (if necessary), and ensuring that the costs of distress are borne primarily by investors, not taxpayers. Chapter 11 saves businesses and employment, not shareholders. For consumers and small businesses, however, bankruptcy should serve as a backstop to other policies, such as the CARES Act. Consumer bankruptcy law’s primary goal is to discharge debts, but that’s not what most consumers need right now. What they need is bridge financing, and perhaps forbearance, until the crisis ends, they get back to work, and they regain their ability to pay their debts again.
These key policy levers—bridge financing and forbearance—are available in theory to small businesses in Chapter 11, especially if the government supplies the bridge financing when credit markets are dysfunctional. The practical reality is that bankruptcy is expensive for small businesses, which may deter them from using it in the first place. Equally important, our courts will be flooded if Chapter 11 is the primary rescue policy for small businesses.

Stegner, Clemens and Wolfgang Höller, ‘Coronavirus: Effects on the Insolvency Filing?’ [2020] Lawyer (Online Edition) 1

Abstract: The article discusses how the COVID-19 presents companies with major challenges including restricted operation, cancellations and the lack of customers that can also lead to liquidity problems in otherwise healthy companies and discusses requirements for opening insolvency proceedings. It informs that in the case of corporations, insolvency law overindebtedness – are met, there is an obligation of the Austrian Insolvency Code to file an application for bankruptcy without culpable hesitation.

INTELLECTUAL PROPERTY

Huang, Vicki T, ‘COVID-19 as a Trade Mark in Australia: Issues and Implications’ (SSRN Scholarly Paper ID 3577389, 16 April 2020)

Abstract: In the past, well-publicized adverse events have triggered surges in ‘tragedy’ trade mark applications for signs such as ‘9/11’ or ‘MH370’. Unsurprisingly (as at 31 March 2020) there were 57 trade mark applications for the word ‘COVID-19’ across trade mark registers across the globe. In Australia, these types of marks face a variety of legal hurdles that may prevent registration. These include the question of whether the mark is ‘distinctive’ and the bar against ‘scandalous’ marks. This article discusses how ‘COVID-19’ (and other tragedy related trade marks) challenges the boundaries of these rules; the likelihood of COVID-19 being registered; and whether Australian law should change to expressly proscribe against ‘tragedy’ trade marking.

Abstract: It is fascinating to see how the law has always followed human needs and development. Historically, when a new issue came out the governments started legislating in order to ensure social stability and keep the trust of citizens on the politics, but sometimes the regulatory process may be undertaken in advance. Indeed, even if the compulsory licensing procedure has always been one of the flexibilities of the TRIPS agreement, ever since 1995, it has sporadically been used by some states while other nations have never applied this flexibility at all. Recently, due to the COVID-19 pandemic, the importance and the popularity of compulsory licenses have been growing all over the world.

LABOUR LAW / EMPLOYMENT


Abstract: The history of the support by society of the aged is discussed in cross cultural and historical context. Various cultural traditions are compared with the forms developed in complex societies from ancient Egypt and Greece and Rome, to China, the Aztec, Inca and Maya, to those of religious organizations, or those developed under different modern ideological systems like capitalism and communism as well as social democratic nations. It is found that the way a society values the aged and views their contribution to society determines largely their willingness to provide for their support. An increasing number of companies have gone bankrupt in recent years following the 2007 credit crisis and stock market collapse. More have raided their pension funds to stay afloat or have closed them and transferred liability to the federal Pension Benefit Guaranty Corporation. Major changes to federal law concerning pensions and the responsibility of corporations to fund them has made under the Pension Protection Act of 2006. World wide workers’ retirement payments are under assault as are investments by pension funds due to laws governing priority of payment in different countries concerning stock holders vs bondholders and liability for pension funds. The need for
retirement of some kind in the post-Covid-19 world will require new forms as well as recovery of pre-Covid-19 savings and investments. Changes in the law are proposed to increase the stability of pensions and reliability to workers of pension payments.


Abstract: The COVID-19 pandemic has created unprecedented challenges for businesses, who are dealing with how remain operational while ensuring the safety of their workers, while also complying with industrial law obligations and Government directives in the wake of this public health crisis. This article provides some guidance on the most commonly asked questions with regards to employment law issues.

Das Acevedo, Deepa, ‘Searching for Silver Linings During COVID-19’ (SSRN Scholarly Paper ID 3568750, 4 April 2020) Jurisdiction: USA

Abstract: This short essay responds to currently circulating suppositions about how COVID-19 will impact—specifically, will improve—working conditions in America once the pandemic has concluded. I argue that these predictions are cautiously optimistic, rationally deduced from ongoing events, and thoroughly unlikely to be realized. As world-transforming as COVID-19 has already proven to be, I show that both governmental and corporate responses to date do not support optimistic assessments as to the pandemic’s effects on labor and employment law in the United States. I also respond to various analogies that have been drawn to previous world-transforming events as a way of supporting the idea that the pandemic will change working conditions in America for the better, and I show why either those analogies rely on bad history or are simply faulty in the way they compare previous events to COVID-19. The lesson—because even in these difficult times, papers by academics must have lessons—is as grim as the news about the virus itself: America’s problematic labor system is far more resilient than the workers who suffer because of it.
de Flamingh, Jack and Heidi Fairhall, ‘Employment Law and WHS: Containing Coronavirus: Workplace Considerations’ [2020] (65) *LSJ: Law Society of NSW Journal* 71

*Abstract:* The very size and nature of a workplace makes it an area of high risk for the spread of COVID-19, with the additional feature that it is subject to a high degree of control by the employer. It is hardly surprising, therefore, that employers around the world have been called upon to play a leading role in containing COVID-19 (World Health Organisation ‘Getting your workplace ready for COVID-19’).


*Abstract:* The COVID-19 pandemic has created unprecedented challenges for businesses, who are dealing with how remain operational while ensuring the safety of their workers, while also complying with industrial law obligations and Government directives in the wake of this public health crisis. This article provides some guidance on the most commonly asked questions with regards to employment law issues.

International Labour Organization, [*COVID-19 and the World of Work*](https://www.ilo.org)  

*Note:* This site includes news, analysis, publications such as ILO Monitor, policy and technical briefs and country policy responses. See for example:  


*Issue abstract:* This special issue intends to provide a systematic and informative overview on the measures set out by lawmakers and/or social partners in a number of countries of the world to address the impact on the Covid-19 emergency on working conditions and business operations. The aim is to understand which labour law norms and institutions and which workplace arrangements are being deployed in the different legal systems to tackle the global health crisis. Another aim is to find whether and to what extent the established body of laws is
proving able to cope with the problems raised by the current extraordinary situation or whether, on the contrary, new special regulations are being introduced. The national reports may be subject to updating in case of major changes.

Contents:

Editorial


National Reports

COVID-19 and Labour Law: Australia Anthony Forsyth
COVID-19 and Labour Law: Austria Martin Risak
COVID-19 and Labour Law: Brazil Ana Virginia Moreira Gomes and Eduardo Rocha Dias
COVID-19 and Labour Law: Canada David J Doorey
COVID-19 and Labour Law: Chile Pablo Arellano Ortiz, Andrés Ahumada Salvo and Natalia Astudillo Sanhueza
COVID-19 and Labour Law: China Wenwen Ding
COVID-19 and Labour Law: Colombia Juan Pablo López Moreno, Luz Angela Duarte González and Juliana Morad
COVID-19 and Labour Law: Croatia Ivana Grgurev
COVID-19 and Labour Law: Denmark Mette Soested and Natalie Videbaek Munkholm
COVID-19 and Labour Law: France Nicolas Moizard
COVID-19 and Labour Law: Georgia Zakaria Shvelidze
COVID-19 and Labour Law: Germany Rüdiger Krause, Jonas Walter Kühn
COVID-19 and Labour Law: Greece Effrosyni Bakirtzi
COVID-19 and Labour Law: Hungary Tamás Gyulavári
COVID-19 and Labour Law: India  Saurabh Bhattacharjee
COVID-19 and Labour Law: Iran  Elaheh Zabeh
COVID-19 and Labour Law: Ireland  David Mangan
COVID-19 and Labour Law: Israel  Einat Albin, Guy Mundlak
COVID-19 and Labour Law: Italy  Chiara Gaglione, Ilaria Purificato and Olga P Rymkevich
COVID-19 and Labour Law: Japan  Qi Zhong
COVID-19 and Labour Law: Mexico  Alfredo Sánchez-Castañeda, José Pablo Hernández Ramírez
COVID-19 and Labour Law: The Netherlands  Beryl ter Haar
COVID-19 and Labour Law: Norway  Bernard Johann Mulder
COVID-19 and Labour Law: Pacific Island Countries and Fiji  Elena Gerasimova
COVID-19 and Labour Law: Pakistan  Iftikhar Ahmad
COVID-19 and Labour Law: Panama  Tequila J. Brooks
COVID-19 and Labour Law: Poland  Izabela Florczak
COVID-19 and Labour Law: Portugal  David Carvalho Martins
COVID-19 and Labour Law: Republic of Korea  Sion Gil
COVID-19 and Labour Law: Republic of San Marino  Leonardo Battista
COVID-19 and Labour Law: Republic of Serbia  Dragana Randelović
COVID-19 and Labour Law: Russian Federation  Iuliia Ostrovskaja
COVID-19 and Labour Law: South Africa  Stefan van Eck
COVID-19 and Labour Law: Spain  Rafael Gómez Gordillo
COVID-19 and Labour Law: Sweden  Caroline Johansson
COVID-19 and Labour Law: Taiwan  Wanning Hsu
COVID-19 and Labour Law: Turkey  Ceren Kasim
COVID-19 and Labour Law: United Kingdom  Tonia Novitz

Lord, Phil, ‘Incentivising Employment during the COVID-19 Pandemic’ (SSRN Scholarly Paper ID 3573176, 16 April 2020)

Jurisdictions: Canada and USA

Abstract: This paper considers government responses to unemployment caused by the COVID-19 pandemic. It analyses the two main legislative responses adopted by North American governments: a broadening of access to (un)employment insurance (EI) and the adoption of payroll subsidies for companies. It comparatively and critically assesses these two solutions, to eventually propose an alternative plan. Under this plan, access to EI would be broadened to cover those not traditionally covered by it, such as self-employed workers, contract workers, and those caring for a family member sick from COVID-19 or for a child who is at home due to school and day-care closures. Unemployed workers who have traditionally paid into the EI system would be rewarded through a tax credit. To avoid incentivising temporary layoffs, a payroll subsidy would be adopted. The subsidy would make it as attractive to keep workers on payroll as to lay them off so they can benefit from EI. It would also provide a more faithful picture of unemployment rates during the crisis. The plan would also address broader concerns regarding the unsustainability of public spending during the crisis by limiting access to both temporary layoffs and the payroll subsidy. Large and profitable companies, as well as companies with high revenue or cash reserves, would not be able to temporarily lay their employees off during the crisis or benefit from the subsidy. For companies that face liquidity issues yet are not eligible for the subsidy, short-term, interest-bearing emergency loans would be available.

Lord, Phil and Lydia Saad, ‘Tackling the COVID-19 Pandemic’ (SSRN Scholarly Paper ID 3554436, 8 April 2020)

Abstract: The recent coronavirus outbreak provides a fit backdrop for us to assess our preparedness for and reaction to this and future outbreaks. This article considers the role of non-state actors in global health crises. While much attention has been afforded to the role of the state in preventing and managing these crises, the recent coronavirus outbreak reminds us that the effectiveness of the state’s response to (the economic consequences of) global health
crises is largely dependent on the good faith and implicit obligations of the private sector. In a capitalistic society and in the absence of specific legal obligations, companies have no obligation to keep their workers on payroll during an economic slowdown or use government stimulus funds to actually benefit those governments hope to target. We argue that relying on private actors to take measures which they have no obligation to take and are disincentivised to take is neither responsible nor sustainable. It causes private actors to shoulder a disproportionately low portion of the burden of a crisis, leaving governments to, in the unique circumstances of a prolonged global health crisis, spend public funds at an unsustainable rate. We further argue that the current framework, aimed at helping unemployed workers, provides perverse incentives and encourages companies to lay off their workers. Absent changes to this framework, our response to global health crises is bound to be inadequate.

Franchising World 16–19

Jurisdiction: USA

Abstract: The article discusses New Federal Coronavirus Laws. Topics include The FFCRA creates two limited-duration programs for providing workers impacted by the coronavirus with paid sick leave and paid ‘family’ leave under the federal Family and Medical Leave Act (FMLA); and the CARES Act provides additional economic support for individuals and businesses to maintain operations, retain workers and increase unemployment benefits under state-administered unemployment compensation systems.

‘Poland: Coronavirus: Impacts on Employment in Poland’ [2020] Lawyer (Online Edition) 1

Abstract: The article offers information on Crisis Act enacted by Poland for addressing the impact of coronavirus on employment. It mentions that an order to work from home can be given in any form, also verbally, however, employers should confirm such order to work from home in writing or in an official email or, in the absence of other possibilities, even by a text message.
LEGAL EDUCATION


Jurisdiction: USA

Abstract: The coronavirus pandemic requires law schools to train students in the new art of remote legal services, to anticipate how this will change the practice of law and what it means to be ‘practice ready.’ The accompanying essays, by students caught in the middle of the epidemic during an immersive training program, offer reflections and visions. Written by students at the end of their spring 2020 semester in George Washington University’s New York City (GWNY) business law program, the students explore how they must adapt their competencies accordingly.

Ebner, Noam, “‘Next Week, You Will Teach Your Courses Online’: A Reassuring Introduction to Pandemic Pedagogy’ (SSRN Scholarly Paper ID 3552124, 10 March 2020)

Abstract: Many institutions of higher education in the US and around the world have responded to the 2020 coronavirus pandemic by closing down campus operations and moving all teaching activity online. This essay aims to provide a helpful, demystifying and comforting first read for faculty who have just received online transition orders from their institution.

Ebner, Noam and Sharon Press, ‘Pandemic Pedagogy II: Conducting Simulations and Role Plays in Online, Video-Based, Synchronous Courses’ (SSRN Scholarly Paper ID 3557303, 19 March 2020)

Abstract: The goal of this paper is to continue to support teachers as they transition their classroom-based courses to an online, synchronous, video-based format in response to recent campus closures resulting from the coronavirus pandemic of 2020, which has rendered classroom gatherings unsafe. Written with teachers in the fields of negotiation, mediation, conflict management and dispute resolution in mind, this paper addresses these fields’ central teaching tool: conducting simulations and role plays. However, the paper will also be helpful for teachers in fields such as business, nursing, law, social work, education and others, who also utilize simulations as a teaching tool. While our focus is on negotiation and mediation simulations, our suggestions should remain valid across many simulated processes, such as
patient interviewing, client counseling, coaching, student advising, etc. We will note minor tweaks required for simulating other conflict resolution processes; teachers in other fields can consider how they might tweak our guidance to support simulations in other areas.

Ghori, Umair, ‘Readapting Assessments in Response to COVID-19: Bond Law Perspective’ Bond University Centre for Professional Legal Education (Blog Post, 14 April 2020) [2020]

Abstract: There was a time when we as academics used to love debating about online exams, its nuances, pros and cons...and then like all academics we went back to our favourite pastime: answering emails! And, of course, marking research essays and conducting our own research. The thought that we will ever depart from our comfortably set routine of traditional end-of-semester exams was limited to seminars and staff meetings... and then a one-in-a-hundred-year event jolted us into action. What was once an interesting option suddenly became the only viable way forward.


Abstract: This short paper discusses my experiences designing asynchronous online law school courses. It is meant to serve as a quick resource for professors moving classes online to deal with Covid-19 live class cancellations.

Oranburg, Seth, ‘Distance Education in the Time of Coronavirus: Quick and Easy Strategies for Professors’ (Duquesne University School of Law Research Paper No 2020-02, 2020)

Abstract: A worldwide pandemic is forcing schools to close their doors. Yet the need to teach students remains. How can faculty – especially those who are not trained in technology-mediated teaching – maintain educational continuity? This Essay provides some suggestions and relatively quick and easy strategies for distance education in this time of coronavirus. While it is written from the perspective of teaching law school, it can be applied to teaching other humanities such as philosophy, literature, religion, political theory, and other subjects that do not easily lend themselves to charts, graphs, figures, and diagrams. This Essay includes an
introductory technology section for those techno-phobic faculty who are now being required to teach online, and it concludes with five straightforward steps to start teaching online quickly.

Oranburg, Seth and David Tamasy, ‘Corporations Hybrid: A COVID Case Study on Innovation in Business Law Pedagogy’ (Duquesne University School of Law Research Paper No 2020-03, 2020)

Abstract: This essay, written by a law professor and a student teaching assistant, shares suggestions intended to increase student engagement and improve learning outcomes by creating and using digital teaching assets effectively. The essay briefly summarizes the literature on traditional and online law school pedagogy and then explains the Hybrid Corporation class we taught during the Spring 2020 COVID-19 emergency. We report on what worked well in our real-world classroom environment and what worked when we had to shift totally to an online delivery format. We found that good videos are critical, and we explain why and how we created what the students found to be effective instructional videos. We also explain how to juxtapose videos and other passive learning content with active digital teaching assets such as quizzes, essay tests, reflective journals, and discussion boards, all intended to enhance student learning and engage students in our virtual classroom. Following the essay we have appended a case brief template to serve as a resource for law teachers who want to use the case law method online and for students who want a more structured approach to reading cases.


Abstract: This Article offers lessons from an empirical study of an Online Trusts & Estates course. More than 280 law students were surveyed over three semesters on what works well for them and what does not in this online course. Their top three answers in each category serve as guidance for faculty creating online courses.

Extract (page 3): It is important to note that this Online Trusts & Estates course is fully asynchronous and was built over time. In an asynchronous course, teaching and learning is done through an online learning management system (in this case, Canvas), with lessons organized by modules containing prerecorded lectures by the professor, readings, supplemental videos, and student assessment activities that often receive faculty feedback. This differs from synchronous courses done live but online through video conferencing, such as Zoom, which most faculty
adopted during the COVID-19 pandemic because they were confronted with an emergency and lacked the time to build a course in advance. Nonetheless, many of the lessons for asynchronous courses presented in this Article hold true for synchronous courses as well.

LEGAL PROFESSION / LEGAL PRACTICE


Jurisdiction: USA

Abstract: The novel coronavirus COVID-19 has profoundly disrupted life in the United States. Among other challenges, jurisdictions are unlikely to be able to administer the July 2020 bar exam in the usual manner. It is essential, however, to continue licensing new lawyers. Those lawyers are necessary to meet current needs in the legal system. Equally important, the demand for legal services will skyrocket during and after this pandemic. We cannot close doors to the profession at a time when client demand will reach an all-time high.

In this brief policy paper, we outline six licensing options for jurisdictions to consider for the Class of 2020. Circumstances will vary from jurisdiction to jurisdiction, but we hope that these options will help courts and regulators make this complex decision. These are unprecedented times: We must work together to ensure we do not leave the talented members of Class of 2020 on the sidelines when we need every qualified professional on the field to keep our justice system moving.


Jurisdiction: USA

Abstract: The NCBE [National Conference of Bar Examiners] issued a White Paper in early April 2020 attacking proposals to admit 2020 graduates of law schools through a diploma privilege with some additional requirement of supervised practice hours. Its justifications are both self-serving and inconsistent. In an unprecedented time, the NCBE chose to protect its monopoly position in providing bar examination products rather than the 2020 bar applicants upended by the COVID-19 pandemic. Its claim to protect the public from the licensing of ‘incompetent’ bar
applicants rings hollow. Because the legal profession is wedded to the status quo in licensing of new lawyers, the NCBE will likely survive the threat to its existence delivered by the pandemic. But its claims should not go unanswered.


Simmons, Richard, ‘Coronavirus: Full Details of the Law Firms Affected so Far’ [2020] *Lawyer (Online Edition)* 1

*Jurisdiction:* UK

*Abstract:* The article provides an overview of the impact of coronavirus on law firms. Topics discussed include Simmons & Simmons delays partner distributions; the Inns of Court announce an emergency hardship fund to assist barristers who need urgent help amid the coronavirus crisis; and Mayer Brown launches an emergency service in order to support staff with problems working from home.


*Abstract:* As a lawyer accustomed to spending every working day in court I sit contemplating what the future holds for the legal industry. What is not in dispute is that the legal industry is an essential service and therefore must continue. The way it will proceed is the real question that many of us are still coming to terms with.

**PRIVACY & DATA PROTECTION**

Finnegan, Matthew, ‘Zoom Hit by Investor Lawsuit as Security, Privacy Concerns Mount’ [2020] *Computerworld (Online)* 4

*Abstract:* The article discusses video conferencing app Zoom. Topics include the challenges facing Zoom continue to mount, as the company now faces an investor lawsuit and more organizations ban the use of the video meeting app due to privacy and security concerns; company also upped efforts to improve its security and privacy practices by hiring Facebook’s
former CSO as a consultant; and Zoom seen a surge in use as self isolation in response to the pandemic ramps up the demand for video software.

Huang, Jie (Jeanne), ‘COVID-19 and Applicable Law to Transnational Personal Data: Trends and Dynamics’ (Sydney Law School Research Paper No 20/23, 2020)

Abstract: The recent COVID-19 outbreak has pushed the tension of protecting personal data in a transnational context to an apex. Using a real case where the personal data of an international traveller was illegally released by Chinese media, the paper identifies that three trends have emerged at the each stage of conflict-of-laws analysis for lex causae: (1) the EU, the US, and China characterize the right to personal data differently, (2) the spread-out unilateral applicable law approach comes from the fact that all three jurisdictions either consider the law for personal data protection as a mandatory law or adopt connecting factors leading to the law of the forum, and (3) the EU and China strongly advocate de-Americanisation of substantive data protection laws. The trends and their dynamics provide valuable implications for developing the choice of laws for transnational personal data. First, this finding informs parties that jurisdiction is a predominant issue in data breach cases because courts and regulators would apply the forum law. Second, currently there is no international treaty or model law on choice-of-law issues for transnational personal data. International harmonization efforts will be a long and difficult journey considering how the trends demonstrate not only the states’ irreconcilable interests, but also how states may consider these interests as their fundamental values that they do not want to trade off. Therefore, for states and international organisations, a feasible priority is to achieve regional coordination or interoperation among states with similar values on personal data protection.

Marks, Mason, ‘Emergent Medical Data: Health Information Inferred by Artificial Intelligence’ (2021) U.C. Irvine Law Review (forthcoming)

Abstract: Artificial intelligence can infer health data from people’s behavior even when their behavior has no apparent connection to their health. AI can monitor one’s location to track the spread of infectious disease, scrutinize retail purchases to identify pregnant customers, and analyze social media to predict who might attempt suicide. These feats are possible because in
modern societies, people continuously interact with internet-enabled software and devices. Smartphones, wearables, and online platforms monitor people’s actions and produce digital traces, the electronic remnants of their behavior. In their raw form, digital traces might not be very interesting or useful; one’s location, retail purchases, and internet browsing habits are relatively mundane data points. However, AI can enhance their value by transforming them into something more useful—emergent medical data. EMD is health information inferred by artificial intelligence from otherwise trivial digital traces. This Article describes how EMD-based profiling is increasingly promoted as a solution to public health crises such as the COVID-19 pandemic, gun violence, and the opioid crisis. However, there is little evidence to show that EMD-based profiling works. Even worse, it can cause significant harm, and current privacy and data protection laws contain loopholes that allow public and private entities to mine EMD without people’s knowledge or consent. After describing the risks and benefits of EMD mining and profiling, The Article proposes six different ways of conceptualizing these practices. It concludes with preliminary recommendations for effective regulation. Potential options include banning or restricting the collection of digital traces, regulating EMD mining algorithms, and restricting how EMD can be used once it is produced.


Abstract: Artificial Intelligence (AI) is a potentially powerful tool in the fight against the COVID-19 pandemic. Since the outbreak of the pandemic, there has been a scramble to use AI. This article provides an early, and necessarily selective review, discussing the contribution of AI to the fight against COVID-19, as well as the current constraints on these contributions. Six areas where AI can contribute to the fight against COVID-19 are discussed, namely i) early warnings and alerts, ii) tracking and prediction, iii) data dashboards, iv) diagnosis and prognosis, v) treatments and cures, and vi) social control. It is concluded that AI has not yet been impactful against COVID-19. Its use is hampered by a lack of data, and by too much data. Overcoming these constraints will require a careful balance between data privacy and public health, and rigorous human-AI interaction. It is unlikely that these will be addressed in time to be of much help during the present pandemic. In the meantime, extensive gathering of diagnostic data on who is infectious will be essential to save lives, train AI, and limit economic damages.

Abstract: Contact-tracing apps to combat the COVID-19 pandemic have increasingly been mentioned as useful tools to accompany and contribute to a return to normality despite the many ethical and legal questions they raise. The pressure exerted by business circles and lobbies to restart and ‘save the economy’ has been intense. What started as a public health crisis morphed into an economic crisis and we are now faced with a ‘trick-or-treat’ choice: accept to ‘pay the price’ and use invasive tracing apps, and by so doing facilitate a gradual reopening of business, or fight for privacy and delay the return to normality.

Watts, David, ‘COVIDSafe, Australia’s Digital Contact Tracing App: The Legal Issues’ (SSRN Scholarly Paper ID 3591622, 2 May 2020)

Abstract: The Australian government has developed a digital contact tracing app, COVIDsafe, accompanied by a temporary legal framework that is designed to support its deployment until a legislative framework is developed. This preliminary analysis argues that the temporary legal framework does a creditable job in addressing privacy concerns. Despite this, there are a variety of legal risks that remain. These centre on the ability of the courts to issue orders to obtain and inspect the data produced by or through the app; police warrant powers; metadata retention and its availability to local law enforcement agencies; the vulnerability of data to US law enforcement agencies through the US CLOUD Act; inaccurate assurances about proximity restrictions and more general concerns that users’ consent to the use of their app data for contact tracing may not be valid. These are issues that must be addressed by government when it develops its permanent legislative framework for COVIDSafe. A failure to do so will erode the community’s trust in COVIDSafe and thus undermine its efficacy as a means by which COVID-19 risks can be managed until a vaccine or an effective treatment become available.
PUBLIC INTERNATIONAL LAW


Abstract: The COVID-19 epidemic has caused governments in Europe to impose a variety of measures to fight the spread of the disease. Some governments have adopted relatively relaxed measures or adopted strict measures late, while some have been more proactive and implemented restrictions early on. This article discusses the potential liability of governments in relation to negligence and omissions with respect to COVID-19 measures. The focus is on China and the Netherlands. State liability can arise if governments have been negligent in addressing the threat of the COVID-19 epidemic, specifically where they have created risks due to not implementing restrictions or not doing so in a timely manner, or otherwise have failed to protect public health and human lives. These issues are analysed with reference to international law and the laws of the Netherlands, which has a well-developed – albeit idiosyncratic – system of state liability. Of course, it is also possible that governments are liable for damages caused by measures to fight COVID-19. For example, regulations requiring the closure of cafes and restaurants will cause economic harm to the operators thereof. This kind of potential liability is not discussed in this article. It should be noted, however, that governments are likely to offer compensation for the damages caused by these measures.


Abstract: The coronavirus (SARS-CoV-2) pandemic is currently raging throughout the world. The ensuing crisis has acquired a multidimensional nature, affecting all levels of society. Measures adopted by domestic authorities have included a broad spectrum of restrictions: from general alerts to mandatory quarantines and isolations of individuals, to blanket travel bans and cordonning-off of cities and, in some cases, countries. Many governments have declared states of emergency, thereby assuming exceptional powers. This dire crisis leads to our core questions: What are the relevant obligations, powers and procedures under public international law? Have they been complied with? What role, if any, has international law, via its institutions, played so far? The World Health Organization, a specialized agency of the United Nations, is the
international institution with a core mandate in issues of global health. Moreover, the International Health Regulations (IHR) is the main legally binding instrument laying down rules for the cross-border spread of disease. Against this backdrop, in order to address the core questions, this paper provides an overview of the IHR in light of current issues and disputes. The paper then evaluates those issues and disputes under other regimes of international law, such as human rights, trade law, peace and security law, and the law of development finance. Lastly, the paper offers conclusions by way of answers to the research questions.

REFUGEE & ASYLUM SEEKER / IMMIGRATION LAW


Jurisdiction: USA

Abstract: The petition for a writ of habeas corpus is an important tool in the arsenal of immigration attorneys who seek to fully represent their clients. Going to federal court in an attempt to obtain habeas relief may be the only remaining remedy after all other administrative options have been exhausted. Traditionally, habeas has been used to challenge prolonged detention post-final order of removal, prolonged detention pre-final order, and to challenge unlawful detention, but increasingly it is used to challenge such related issues as unlawful deportations in violation of the statute or regulatory provisions, and/or violations by CBP, USCIS or other agency actions during the expedited removal process under 8 U.S.C. § 1225(b). In response to the Covid-19 pandemic, the federal courts have changed operations to limit the spread of the disease. Also, there have been other significant changes to the operations of USCIS and EOIR, in recent days. The article addresses some of the issues to be considered by the habeas petitioner when going forward in federal court proceedings given the Covid-19 pandemic.

European Union: European Agency for Fundamental Rights, Fundamental Rights of Refugees, Asylum Applicants and Migrants at the European Borders (27 March 2020)

Council of Europe (CoE) and European Union (EU) Member States have an undeniable sovereign right to control the entry of non-nationals into their territory. While exercising border control,
states have a duty to protect the fundamental rights of all people under their jurisdiction, regardless of their nationality and/or legal status. Under EU law, this includes providing access to asylum procedures. In recent weeks, states in Europe have taken measures to protect their borders to address public order, public health, or national security challenges. This note summarises some key safeguards of European law as they apply at the EU’s external borders, bearing in mind that relevant CoE instruments apply to all borders.


Abstract: The Guidance illustrates how to ensure continuity of procedures as much as possible while fully ensuring the protection of people’s health and fundamental rights in line with the EU Charter of Fundamental Rights. At the same time, it recalls the fundamental principles that must continue to apply, so that access to the asylum procedure continues to the greatest extent possible during the COVID-19 pandemic. In particular, all applications for international protection must be registered and processed, even if with certain delays. Emergency and essential treatment of illness, including for COVID-19, must be ensured.

Global Protection Cluster (GPC), COVID-19 Pandemic: Trafficking in Persons (TIP) Considerations in Internal Displacement Contexts (March 2020)

Abstract: This guidance on TIP considerations during the COVID-19 pandemic is intended as a quick reference tool to support colleagues in the field working directly with internally displaced persons (IDPs) and/or engaged in protection advocacy. It has been developed in response to requests for further guidance on how the evolving COVID-19 pandemic may disproportionately impact internally displaced trafficked persons and people at risk of trafficking. It should be read in conjunction with the Global Protection Cluster COVID-19 guidance and anti-trafficking response guidance.
Tepepa, Martha, ‘Public Charge in the Time of Coronavirus’ (SSRN Scholarly Paper ID 3571721, 8 April 2020)

Abstract: The United States government recently passed legislation and stabilization packages to respond to the COVID-19 (i.e., coronavirus disease 2019) outbreak by providing paid sick leave, tax credits, and free virus testing; expanding food assistance and unemployment benefits; and increasing Medicaid funding. However, the response to the global pandemic might be hindered by the lassitude of the state and the administration’s conception of social policy that leaves the most vulnerable unprotected. The administration’s ‘zero tolerance’ immigration campaign poses public health challenges, especially in the prevention of communicable diseases. In addition to the systemic obstacles noncitizens face in their access to healthcare, recent changes to immigration law that penalize recipients of some social services on grounds that they are a public charge will further restrict their access to treatment and hinder the fight against the pandemic.

United Nations High Commissioner for Refugees (UNHCR)

The UNHCR COVID-19 website contains global, regional and national information, including the following publications:

• ‘Key Legal Considerations on Access to Territory for Persons in Need of International Protection in the Context of the COVID-19 Response’ (UNHCR, 2020)

  Abstract: This paper sets out key legal considerations, based on international refugee and human rights law, on access to territory for persons seeking international protection in the context of measures taken by States to restrict the entry of non-nationals for the protection of public health in response to the COVID-19 pandemic. It reconfirms that while States may put in place measures which may include a health screening or testing of persons seeking international protection upon entry and/or putting them in quarantine, such measures may not result in denying them an effective opportunity to seek asylum or result in refoulement.

• Age, Gender and Diversity Considerations – COVID-19 (UNHCR, 21 March 2020)

  This guidance on Age, Gender and Diversity (AGD) Considerations in relation to the COVID-19 pandemic is intended as a quick reference tool to support colleagues in the
field who are working directly with populations of concern and/or engaged in protection advocacy. It has been developed in response to requests for further guidance on how the evolving COVID-19 pandemic may disproportionately impact specific AGD groups.

- **Gender-based Violence Prevention, Risk Mitigation and Response During COVID-19**, (UNHCR, 26 March 2020)

  This briefing note aims at giving an overview of risks of gender-based violence (GBV) in the context of COVID-19 pandemic. It also includes recommendations to mitigate risks and ensure access to lifesaving GBV services. The last section contains a list of useful resources. Women and girls of concern to UNHCR are likely to experience distinct challenges and risks associated with the COVID-19 pandemic, and as such the outbreak might exacerbate already existing risks of GBV. Confinement is expected to increase risks of intimate partner violence for displaced women and girls, while worsened socio-economic situation will expose refugee women and girls in particular to increased risks of sexual exploitation by community members as well as humanitarian workers. In parallel, access to regular GBV services is likely to become challenging for survivors.

- **The Covid-19 Crisis: Key Protection Messages** (UNHCR, 31 March 2020)

  In the face of the COVID-19 pandemic, we are all vulnerable. Governments around the world are rightly adopting increasingly stringent measures to protect public health. Yet as they do so, fundamental principles of refugee and human rights laws are also challenged. Asylum seekers, refugees and the internally displaced are especially vulnerable to health risks and other protection concerns. In this context, UNHCR would like to share the following key protection messages, based on international refugee and human rights law, for advocacy by other organisations. These will be updated as needed, and feedback and suggestions are welcome.


  This guidance on risk communication and community engagement (RCCE) is intended as a quick reference tool to support colleagues in the field who are working directly with populations of concern. It has been developed in collaboration with regional bureaux specifically in response to the continuously developing COVID-19 situation. Building on
global guidance from UNHCR, WHO and other key actors, this document suggests key considerations and additional tips to help respond to some of the communications challenges we are facing at local levels.

UN Network on Migration, ‘COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?’ (Policy Brief, April 2020)

Note: this publication includes a useful and regularly updated list of COVID-19-specific guidance and policy documents, as well as tools and practical resources on alternatives to immigration detention.

SPORTS LAW


Abstract: It will take considerable time before it is possible to fully gauge the impact of Covid-19 on sports, but it is possible to see some possible and significant consequences and related legal issues that will follow in the wake of the virus. As often, most of these are related to the commercial aspects of sports and there are both short- and more long-term issues.

TAX LAW

Brown, Harriet, ‘Justice Delayed’ (2020) 185(4742) Taxation 8-9

Jurisdiction: UK

Abstract: Discusses whether the stay of proceedings in the First-tier Tribunal Tax Chamber, in response to the coronavirus outbreak, has affected taxpayers' rights so adversely that the administration of justice is at risk, and proceedings should start again as soon as possible.


Abstract: At a doctrinal level, the subject of this Article is timely. During this time of the coronavirus pandemic, casinos have been closed and large populations have been subject to
stay-home orders from local and state authorities. One can reasonably expect a large increase in electronic gaming and thus an increased need for proper consideration of its taxation. This Article argues for a cash-out rule of taxation.

At a deeper level, the subject of this Article is timeless. Tax law is wickedly complex for a reason. This Article explores that complexity using the example of electronic gaming. It grapples with the source of that complexity: an inherent and unresolvable tension between economic theories of income and the practical needs of administering a system of taxation to a large population in a democracy. That tension led some scholars to argue for a standards-based approach to taxation. This Article considers and rejects that argument. Legal rules are necessary to mediate between theory and practice. Hence, this Article demonstrates the continued relevance and importance of doctrinal analysis in legal scholarship.

‘Cyprus: Tax Measures to Support Local Businesses during Covid-19 Crisis’ [2020] Lawyer (Online Edition) 1

Abstract: The article reports that Cyprus Government have announced a number of tax measures in an attempt to support local businesses and economy to overcome the crisis related to the effect of COVID-19 pandemic. It also mentions that the tax measures are yet to be finalized and submitted for the Parliament’s approval.

Kess, Sidney, ‘First Look at the CARES Act’s Provisions for Tax Relief’ (2020) 90(4) CPA Journal 8–9

Jurisdiction: USA

Abstract: The Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748), signed into law on March 27, 2020, is a $2.2 trillion package enacted to help individuals and businesses get through the health and economic crisis triggered by the coronavirus pandemic. Rebate Checks for Individuals Rebate checks are advance payments of a new refundable tax credit [Internal Revenue Code (IRC) section 6428]. These rebate checks for individuals with adjusted gross income (AGI) below set amounts are being paid via the IRS.
TRADE


Abstract: Trade bodies the International Securities Lending Association (ISLA) and the International Capital Market Association (ICMA) have urged the European Securities and Markets Authority (ESMA) to delay the Securities Financing Transactions Regulation's (SFTR) go-live date. In an open letter addressed to Steve Maijoor, chair of ESMA on March 16, the firms have asked for a delay of the SFTR go-live date of April 11.


World Trade Organization, COVID-19 and World Trade

This site includes news, statements, proposals and the following WTO reports on COVID-19 and World Trade:

- Trade in Medical Goods in the Context of Tackling COVID-19
- Transparency — why it matters at times of crisis
- Export prohibitions and restrictions
- The treatment of medical products in regional trade agreements
- E-commerce, trade and the COVID-19 pandemic

WILLS


Jurisdiction: USA

Abstract: Most Americans do not have a will. The reasons are easy to understand. Thinking about death is unpleasant, and hiring a lawyer is expensive. However, as COVID-19 sweeps
through the country, some Americans urgently need an estate plan. Unfortunately, U.S. law makes it difficult to create a will during crises like these. Indeed, twenty-five states and the District of Columbia recognize only one type of will: a ‘formal’ will executed in compliance with the Wills Act. Under this ancient statute, wills must be written, signed by the testator, and also witnessed by two people who were present at the same time. As journalists and lawyers are recognizing, the Wills Act’s insistence that the parties physically occupy the same space creates unprecedented roadblocks during a time of widespread quarantine and shelter-in-place orders. Yet the pandemic has also arrived during a period in which wills law is in flux. In the last two decades, a handful of jurisdictions have begun excusing harmless errors during the will-execution process. And, in an even sharper departure from the Wills Act’s stuffy norms, four states have recently authorized electronic wills. This Essay argues that COVID-19 vividly highlights the shortcomings of formal wills. Indeed, the outbreak has exposed the main problem with the Wills Act: it makes will-making inaccessible. As a result, we urge lawmakers in states that cling to the statute to liberalize the requirements for creating a will. Our argument proceeds in three Parts. Part I details the social value of will-making. Part II describes the Wills Act and explains why it creates formidable obstacles for testators who are caught in the jaws of a pandemic. Part III explores four ways in which policymakers can solve this problem: by permitting holographic wills, adopting the harmless error doctrine, enacting electronic will legislation, or temporarily suspending certain elements of the Wills Act during public health emergencies.

B) ORGANISATIONS / JOURNALS / BLOGS PUBLISHING REGULAR COVID-19 LITERATURE

Note: we have not included many blogs or other online fora in this bibliography. An excellent resource of such literature has already been compiled by the George C Marshall European Centre for Security Studies in Germany, and is being regularly updated – see Jonathan G Odom, ‘COVID-19 and the Law: A Compilation of Legal Resources’. This is a list arranged by topic, and includes mostly international law commentary, and some US domestic commentary, using such authoritative sources such as EJIL: Talk! and OpinioJuris. We have included below resources not included in the list by Professor Odom.

Our currently brief list will be added to in future updates.
AUSPUBLAW: AUSTRALIAN PUBLIC LAW – from the Gilbert + Tobin Centre of Public Law at UNSW Law and the Australian Association of Constitutional Law.

- This blog has a dedicated COVID-19 and Public Law site.

INTERNATIONAL BAR ASSOCIATION includes the following publications:

- IBAHRI Covid-19 Human Rights Monitor
- IBA Global Insight – this includes many articles on coronavirus.

JUST SECURITY. This is an online journal, based in the Reiss Center on Law and Security at New York University School of Law. The journal website contains a section dedicated to Coronavirus Coverage, including a regularly updated topical index of COVID-19 articles in Just Security, and a useful and regularly updated Timeline of the Coronavirus Pandemic and U.S. Response.

VERFASSUNGSBLOG ON MATTERS CONSTITUTIONAL – published by the Berlin Social Science Centre’s Centre for Global Constitutionalism. This blog has a dedicated COVID 19 and States of Emergency Debates site, which states ‘As states of emergency are declared throughout the world in response to the spread of COVID-19, concerns arise as to the use – and potential abuse – of power in a time of crisis. In this Symposium, comparative country reports show the use of emergency powers from the perspective of democracy, human rights, and the rule of law’.