

# ANNUAL REPORT 2016

## ABOUT THE OBLIGATIONS GROUP

The Obligations Group at Melbourne Law School supports research and scholarly discourse on the law of obligations, which includes the law of contract, tort, unjust enrichment and restitution, equity and trusts, property, remedies and private law theory. The group provides a forum for academic discussion of these topics and facilitates interaction between academics and practitioners on issues of current interest.

## PEOPLE

Professors Elise Bant and Matthew Harding continued in their roles as joint convenors of the Obligations Group in 2016. The members of the Obligations Group in 2016 were:

- Professor Graeme Austin
- Associate Professor Katy Barnett
- Mr Matthew Bell
- Dr Alysia Blackham
- Emeritus Professor Michael Bryan
- Mr Arlen Duke
- Mr Andrew Godwin
- Dr Linda Haller
- Dr Rosemary Langford
- Professor Ian Malkin
- Dr Wendy Ng
- Associate Professor Jeannie Paterson
- Professor Andrew Robertson
- Associate Professor Jason Varuhas

## GRADUATE RESEARCH STUDENTS

MLS Research Higher Degree students affiliated with the Obligations Group in 2016 included Michael Crawford, Tobias Barkley, Robyn Honey, Kate Galloway, Grant Reithmuller and Paul Collins.

## VISITORS

In 2016 the Obligations Group hosted a number of international scholars working in the field, including Assistant Professor Kathryn Chan from the University of Victoria, Canada, who visited from 4 to 9 April 2016 and Associate Professor Paul Miller of McGill University, who visited from 22 April to 1 May.

## RESEARCH AND TEACHING

Obligations Group members teach in the areas of Equity and Trusts, Property, Private Law Theory, Consumer Law, Contract Law, Remedies, Tort and Restitution. Members also produce a substantial number and range of publications each year. Members draw on their research also to contribute to public debate on topical issues arising in this field. Below is an indicative list of publications produced by members of the Obligations Group over 2016. This is a short, representative selection only, in order to illustrate the range and quality of members' publications and presentations. For a full statement of research and publication activities, please refer to their individual research profiles.

### SELECTED BOOKS

- **Michael Bryan**, SE Degeling, MS Donald & VJ Vann, *A Sourcebook on Equity and Trusts in Australia* (Melbourne, CUP 2016)
- **Justice James Edelman and Elise Bant**, *Unjust Enrichment* (Oxford, Hart Publishing, 2016)
- **Andrew Robertson** and Michael Tilbury (eds), *The Common Law of Obligations: Divergence and Unity* (Oxford, Hart Publishing, 2016)
- **Andrew Robertson** and Michael Tilbury (eds), *Divergences in Private Law* (Oxford, Hart Publishing, 2016)
- **Jeannie Paterson, Andrew Robertson and Arlen Duke**, *Principles of Contract Law* (5th ed, Sydney, LawBook Co, 2016)
- **Jeannie Paterson, Andrew Robertson and Arlen Duke**, *Contract: Cases and Materials* (13th ed, Sydney, LawBook Co, 2016)
- **Jason N E Varuhas**, *Damages and Human Rights* (Oxford, Hart Publishing, 2016)

### SELECTED PEER-REVIEWED ARTICLES

- **Katy Barnett**, 'Substitutive Damages and Mitigation in Contract Law: Tension between Two Competing Norms' (2016) 28 *Singapore Academy of Law Journal* 795.
- **Katy Barnett**, 'Great Expectations: a Dissection of Expectation Damages in Contract in Australia and England' (2016) 33 *Journal of Contract Law* 163
- **Alysia Blackham**, 'Legitimacy and Empirical Evidence in the UK Courts' (2016) 25(3) *Griffith Law Review* 414-440
- **Michael Bryan**, 'The Inferred Trust: An Unhappy Marriage Of Contract and Trust' (2016) *Current Legal Problems* 1-24
- **Andrew Godwin** and Richard Wu, 'Legal Education, Practice Skills, and Pathways to Admission: A Comparative Analysis of Singapore, Hong Kong, and Australia' (2016) *Journal of Legal Education* [in press]

- **Andrew Godwin**, Ian Ramsay and Edwin Sayes, 'Assessing Financial Regulatory Coordination and Integration with reference to OTC Derivatives Regulation' (2016) *Capital Markets Law Journal* [in press]
- **Andrew Godwin**, Timothy Howse, and Ian Ramsay, 'Twin Peaks: South Africa's Proposed Financial Sector Regulatory Framework' (2017) *South African Law Journal* [in press].
- Jasper Hedges, Helen Bird, George Gilligan, **Andrew Godwin** and Ian Ramsay, 'The Policy and Practice of Enforcement of Directors' Duties by Statutory Agencies in Australia: an Empirical Analysis' (2016) 40(3) *Melbourne University Law Review* [in press].
- **Linda Haller** and Francesca Bartlett, 'Views from inside: a comparison of admission process in NSW and Victoria before and after the Uniform Law' (2016) 42 *Monash University Law Review* (forthcoming).
- **Matthew Harding**, 'Charitable Trusts and Discrimination: Two Themes' (2016) 2 *Canadian Journal of Comparative and Contemporary Law* 227
- **Matthew Harding**, 'Equity and the Rule of Law' (2016) 132 *Law Quarterly Review* 278
- **Rosemary Langford** and Ian Ramsay, 'The Proper Purposes Rule as a Constraint on Directors' Autonomy - *Eclairs Group Limited v JKX Oil & Gas plc* [2015] UKSC 71' (2017) 80 *Modern Law Review* [forthcoming]
- **Rosemary Langford**, 'Best Interests: Multifaceted But Not Unbounded' (2016) 75 *Cambridge Law Journal* [forthcoming]
- **Rosemary Langford**, 'General Law and Statutory Directors' Duties: "Unmixed Oil and Water" or "Integrated Parts of the Whole Law?" (2015) 131 *Law Quarterly Review* 635-51
- **Jeannie Paterson**, 'Consumer Protection in Singapore: Statute and the Ongoing Influence of the General Law' (2016) 28 *Singapore Academy of Law Journal* (forthcoming)
- **Jeannie Paterson** and **Elise Bant**, 'In the Age of Statutes, Why Do We Still Turn to the Common Law Torts?: Lessons from the Statutory Prohibitions on Misleading Conduct in Australia' (2016) *Torts LJ* (forthcoming)
- **Andrew Robertson**, 'The Limits of Interpretation in the Law of Contract' (2016) 47 *Victoria University of Wellington Law Review* 327-343
- **Jason N E Varuhas**, 'The Development of the Damages Remedy under the New Zealand Bill of Rights Act 1990: From Torts to Administrative Law' [2016] *New Zealand Law Review* 213

## SELECTED BOOK CHAPTERS AND OTHER PUBLICATIONS

- **Elise Bant** and **Jeannie Paterson**, Submission to the Australian Consumer Law Review regarding findings and recommendations arising from the grant project, Remedies at Common Law and under the Australian Consumer Law: Evolution and Revolution ([www.consumerlaw.gov.au](http://www.consumerlaw.gov.au))
- **Matthew Bell**, 'Contract Theorists: What did they ever do for us in Construction Law?', *Society of Construction Law UK papers*, 2016
- **Matthew Bell**, 'International Construction Law as a "Private Legal System": Emerging from the "Primordial Soup" in the Search for Coherence' (2016) 1(1) *Romanian Construction Law Review* 23
- **Andrew Godwin**, 'The Acquisition of Property Rights and Equitable Property' and 'Mortgages' in Brendan Edgeworth, Christopher Rossiter, Pamela O'Connor and Andrew Godwin, *Sackville and Neave Australian Property Law* (LexisNexis, 10th Edition, 2016) [in press]
- **Matthew Harding**, 'Trustees' Powers and Social Justice' in Kit Barker, Simone Degeling, Karen Fairweather and Ross Grantham (eds), *Private Law and Power* (Hart Publishing, Oxford, 2016) 137

- **Matthew Harding**, 'Fiduciary Undertakings' in Paul B Miller and Andrew S Gold (eds), *Contract, Status, and Fiduciary Law* (Oxford University Press, Oxford, 2016) 71
- **Matthew Harding**, 'Fiduciary Relationships, Fiduciary Law and Trust' in D Gordon Smith and Andrew S Gold (eds), *Research Handbook on Fiduciary Law* (Edward Elgar, forthcoming 2016)
- **Matthew Harding**, 'Disgorgement of Profit and Fiduciary Loyalty' in Simone Degeling and Jason Varuhas (eds), *Equitable Compensation and Disgorgement of Profit* (Hart, Oxford, 2016) 19
- **Rosemary Langford**, 'Liability of Directors of Responsible Entities Where the Responsible Entity Breaches the Law' (paper presented at Federal Court of Australia - Law Council of Australia, Business Law Section Conference on Corporations Law, 25-26 August 2016, to be published as a book chapter by the Ross Parsons Centre of Corporate, Commercial and Taxation Law, 13,457 words).
- **Andrew Robertson** and Michael Tilbury, 'Unity, Divergence and Convergence in the Common Law of Obligations' in Andrew Robertson and Michael Tilbury (eds), *The Common Law of Obligations: Divergence and Unity* (Oxford, Hart Publishing, 2016) 1-13
- **Andrew Robertson** and Michael Tilbury, 'Why Diverge?' in Andrew Robertson and Michael Tilbury (eds), *Divergences in Private Law* (Oxford, Hart Publishing, 2016) 1-8
- **Andrew Robertson**, 'Proximity: Divergence and Unity' in Andrew Robertson and Michael Tilbury (eds), *Divergences in Private Law* (Oxford, Hart Publishing, 2016) 9-35
- **Andrew Robertson**, 'The Foundations of Implied Terms: Logic, Efficacy and Purpose' in Simone Degeling, James Edelman and James Goudkamp (eds), *Contract in Commercial Law* (Sydney, LawBook Co, 2016) 143-166

## SELECTED CONFERENCE PRESENTATIONS

- **E Bant** and **J Paterson**, 'Statutory interpretation and the critical role of soft law guidelines in developing a coherent law of remedies in Australia', Australian National University National Law Reform Conference, 14 April 2016
- **E Bant** and **J Paterson**, Victorian Consumer Affairs Tribunal workshop on 'Australian Consumer Law: Comparing Remedial Regimes' 8 March 2016 at the VCAT Learning Centre.
- **Elise Bant** and **Jeannie Paterson**, 'Remedies under the Consumer Protection from Unfair Trading Regulations: Revolution and Evolution?', Obligations VIII: Revolutions in Private Law, University of Cambridge, 19-22 July 2016
- **E Bant**, 'Causation and Misleading Conduct', presented at Kings College London, 4 July 2016
- **Elise Bant**, 'The Future of Unjust Enrichment and Restitution Law in Australia', Obligations VIII: Revolutions in Private Law, University of Cambridge, 19-22 July 2016
- **Matthew Bell**, 'Freedom of Contract: the Balancing Act', Peking University, Tsinghua University, Fudan University, Shanghai Jiao Tong University, China, March 2016
- **Matthew Bell**, 'Construction Law Masterclass', Law Institute of Victoria, Melbourne, 27 May 2016
- **Matthew Bell**, 'Consumer-focused regulation of residential construction: Australia', Construction, Consumers and the Law Conference, King's College London, UK, 9 June 2016
- **Matthew Bell** and Wayne Jovic (facilitators), 'Construction Law Academic Forum', Society of Construction Law Conference, São Paulo, Brazil, 13 September 2016
- **Michael Bryan**, 'The Inferred Trust: An Unhappy Marriage of Contract and Trust', Public Lecture, Current Legal Problems Series, University College London, 5 May 2016

- **Michael Bryan**, 'Maitland and the Unfinished Revolution in Equity', Obligations VIII: Revolutions in Private Law, University of Cambridge, 19-22 July 2016
- **Michael Bryan**, 'When Can Equity Reform Bargains? A Case Study of the Penalties Doctrine', Auckland University of Technology, 10 October 2016.
- **Andrew Godwin**, 'Legal Education, Practice Skills, and Pathways to Admission: A Comparative Analysis of Singapore, Hong Kong, and Australia', Law and Society Association Annual Meeting, New Orleans, 3 June 2016
- **Andrew Godwin**, 'Asian Litigants attitudes to adversarial litigation and mediation', Victorian Bar, Melbourne, 24 March 2016
- **Andrew Godwin**, 'The Asia Region Funds Passport – Legal and Regulatory Developments', APEC Financial Forum, Sydney, 23 March 2016
- **Andrew Godwin**, 'Asia in the Courtroom', Commercial Court of the Supreme Court of Victoria, Melbourne, 15 February 2016
- **Matthew Harding**, 'Recent Reforms to Australian Charity Law', Australian National Law Reform Conference, ANU, April 2016
- **Matthew Harding**, 'Charity Law and the Liberal State: Reply to Commentators', Book Symposium on Charity Law and the Liberal State, Australian Society of Legal Philosophy Conference, Melbourne Law School, June 2016
- **Rosemary Langford**, 'Client letters as a means of refining legal analysis and writing', Legal Writing Symposium, 10 December 2015
- **Rosemary Langford**, 'Proscriptive Fiduciary Revolution - Insights from Directors' Duties', Obligations VIII: Revolutions in Private Law, University of Cambridge, 19-22 July 2016
- **Rosemary Langford**, 'The Multifunctional Nature of the Duty of Care', Commercial Bar, Melbourne, 29 November 2016
- **Andrew Robertson**, 'The Limits of Interpretation in the Law of Contract', public lecture at Victoria University of Wellington, 23 February 2016
- **Andrew Robertson**, 'Equitable Estoppel Revolutions', Obligations VIII: Revolutions in Private Law, University of Cambridge, 19-22 July 2016
- **Andrew Robertson**, 'Policy in Causation and Remoteness in the Law of Negligence', Obligations Group Remedies Conference, Melbourne Law School, 7-9 December 2016
- **Andrew Robertson**, 'Implied Contract Terms in the Common Law', Lund University Centre for Business Law, 19 December 2016
- **Jason N E Varuhas**, 'The Socialisation of Private Law', Obligations VIII: Revolutions in Private Law, University of Cambridge, 19-22 July 2016
- **Jason N E Varuhas**, Panel Discussion on Damages and Human Rights with Professor Brice Dickson (Queen's Belfast), Mr James Lee (KCL) and Dr Paul Daly (Montreal), University of Montreal, 26 May 2016
- **Jason N E Varuhas**, Panel Discussion on *Damages and Human Rights* with Professor Claudia Geiringer (VUW), Hon Justice Matthew Palmer (NZ High Court), and Mr Chris Curran (Partner, Russel McVeigh), Victoria University of Wellington, 1 June 2016
- **Jason N E Varuhas**, Panel Discussion on *Damages and Human Rights* with Professor Carol Harlow (LSE), Professor Christopher Forsyth (Cambridge), and Professor Robert Stevens (Oxford), SLS Annual Conference, Oxford, 5-9 September 2016

- **Jason N E Varuhas**, 'Varieties of Damages for Breach of Privacy', International Workshop on Remedies for Breach of Privacy, Melbourne Law School, 12-13 December 2016

## ENGAGEMENT ACTIVITIES

The events calendar of the Obligations Group has been expanding each year. Lunchtime and evening seminars and workshops have continued to provide a regular focal point for Group members and colleagues. Below is an indicative list of events and activities hosted by the Obligations Group in 2016.

22 March	Lunchtime seminar	Emeritus Professor Michael Bryan (Melbourne Law School) led a seminar on 'Contract Law Trumping Trusts Law: The Problem of the Inferred Commercial Trust'.
26 April	Lunchtime discussion	The Group held a lunchtime discussion on the nature of fiduciary obligations and fiduciary relationships with Associate Professor Paul Miller, visiting from McGill University.
11 May	Lunchtime seminar	Professor David F. Partlett (Emory University) led a seminar on 'Apple: Privacy, Security and Surveillance'. Co-hosted with CMCL and IPRIA.
1 June	Obligations VIII Conference Preparation Workshop	The Group led a preparation workshop for those presenting at the Obligations VIII Conference in Cambridge. Elise Bant, Jeannie Paterson, Katy Barnett and Michael Bryan all presented papers on a wide range of topics that included issues of contract, tort, equity, unjust enrichment, remedies and consumer law.
13 July	Public lecture	'The penalties doctrine in international construction contracting: where to from here?' presented by Doug Jones, AO (Melbourne Law School). Co-hosted with the Society of Construction Law Australia, the Australian Centre for International Commercial Arbitration, the Chartered Institute of Arbitrators Australia and Corrs Chambers Westgarth.
4 August	Book launch	Obligations Group Book Launch: Unjust Enrichment (second edition) by James Edelman and Elise Bant, launched by the Hon. Geoffrey Nettle, Justice of the High Court.
2 September	Evening seminar	'The Future of Unjust Enrichment and Restitution Law in Australia': panel discussion with Professor Keith Mason, Professor Elise Bant and Emeritus Professor Michael Bryan.
7 December	Colloquium	Colloquium event presented by Professor Elise Bant and Associate Professor Jeannie Paterson on their ARC Discovery project 'Remedies under the Australian Consumer Law: Evolution and Revolution'.
7-9 December	Annual Conference	Annual Obligations Group Conference. The 2016 theme is 'Remedies'. This year's conference involved 26 speakers and over 50 registered attendees from across Australia, New Zealand, Hong Kong and Singapore.