

ANNUAL REPORT 2017

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 Andrew Robertson are joint convenors of the Obligations Group in 2017. The members of the Obligations Group in 2017 were:

- Professor Graeme Austin
- Associate Professor Katy Barnett
- Mr Matthew Bell
- Dr Alysia Blackham
- Emeritus Professor Michael Bryan
- Professor Eric Descheemaeker
- Mr Arlen Duke
- Mr Andrew Godwin
- Dr Linda Haller
- Associate Professor Matthew Harding
- Ms Robyn Honey
- Mr Wayne Jovic
- Dr Rosemary Langford
- Dr Ying Liew
- Professor Ian Malkin
- Dr Wendy Ng
- Associate Professor Jeannie Paterson
- Professor Ian Ramsay
- Ms Lisa Sarmas
- Dr Julian Sempill
- Associate Professor Jason Varuhas

GRADUATE RESEARCH STUDENTS

MLS Research Higher Degree students affiliated with the Obligations Group in 2017 included Michael Crawford, Tobias Barkley, Robyn Honey, Nicola Howell and Vivi Tan.

VISITORS

In 2017 the Obligations Group hosted a number of international scholars working in the field, including:

- Professor Donal Nolan in of University of Oxford in March
- Professor Ben McFarlane of University College London in August.
- Mr William Swadling of University of Oxford in August
- Associate Professor Desmond Ryan of Trinity College Dublin in August
- Associate Professor Gemma Turton of University of Leicester in August
- Professor David McLauchlan of Victoria University of Wellington in September
- Associate Professor James Goudkamp of University of Oxford in September.
- Associate Professor Rod Thomas of Auckland University of Technology in September.

RESEARCH AND TEACHING

Obligations Group members teach in the areas of Consumer Law, Contract Law, Equity and Trusts, Private Law Theory, Property, Remedies, Tort and Unjust Enrichment and Restitution. Members produce a substantial number and range of publications each year in these fields. Members also draw on their research to contribute to public debate on topical issues. Below is an indicative list of publications produced by members of the Obligations Group over 2017. This is a short, representative selection only, included 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

- Elizabeth Siew-Kuan Ng and Graeme Austin, *International Intellectual Property and the ASEAN Way Pathways to Interoperability* (Cambridge, Cambridge University Press, 2017)
- Ying K. Liew, *Rationalising Constructive Trusts* (Oxford, Hart Publishing, 2017)
- Jason N E Varuhas and Simone Degeling, *Equitable Compensation and Disgorgement of Profit* (Oxford, Hart Publishing, 2017)

SELECTED PEER-REVIEWED ARTICLES

- Elise D Bant and Michael Bryan, 'Outflanking Barnes v Addy? The Revival of Recipient Strict Liability' (2017) 11(3) Journal of Equity 271-292.
- Elise D Bant, 'Evolution of Unjust Enrichment and Restitution Law in the High Court of Australia' (2017) 25 Restitution Law Review 121-135.
- Elise D Bant and Jeannie Paterson, 'Consumer Redress Legislation: simplifying or subverting the law of contract' (2017) 80 Modern Law Review 895-926.
- Elise D Bant and Jeannie Paterson, 'Statutory Causation in Cases of Misleading Conduct: Lessons from and for the Common Law' (2017) Torts Law Journal 1-31.
- Elise D Bant and Michael Bryan, 'Outflanking Barnes v Addy? The Persistence of Strict Recipient Liability' (2017) Journal of Equity 11(3), pp.271 – 292
- Matthew Bell, '2016's yuletide judgments on security of payment: gifts that will keep on giving in 2017?', (2017), Australian Construction Law Bulletin, 28 (9-10), pp. 275 - 279 (5)
- Matthew Bell and Wayne Jovic, 'Negligence Claims by Subsequent Building Owners: Did The Life Of Bryan End Too Soon?' (2017), Melbourne University Law Review 41(1), pp. 1 - 29 (29)
- Alysia Blackham, 'Addressing the ageing workforce: a critical examination of legal policy objectives and values in the United Kingdom' (2017), AGEING & SOCIETY, 37 (7), pp. 1362 - 1393
- Alysia Blackham, 'Judicial Retirement Ages in the UK: Legitimate Aims and Proportionate Means?' (2017) Public Law, pp. 196 – 214
- Lev Bromberg, Andrew Godwin and Ian Ramsay, 'Fintech Sandboxes: Achieving a Balance Between Regulation and Innovation' (2017) Journal of Banking and Finance Law and Practice. 28(4), pp. 314 – 336
- Vivien Chen, Andrew Godwin and Ian Ramsay, 'An ASEAN Framework for Cross-Border Cooperation in Financial Consumer Dispute Resolution' (2017) Asian Journal of Comparative Law 12(1), pp. 167 - 196
- Arlen Duke and Rhonda Smith, 'The Geographic Dimension of Markets: Some Observations' (2017) Competition and Consumer Law Journal 25.
- George Gilligan, Andrew Godwin, Jasper Hedges and Ian Ramsay, 'Penalties regimes to counter corporate and financial wrongdoing in Australia - views of governance professionals' (2017) Law and Financial Markets Review, 11 (1), pp. 4 – 12
- Andrew Godwin, Timothy Howse and Ian Ramsay 'A Jurisdictional Comparison of the Twin Peaks Model of Financial Regulation' (2017) Journal of Banking Regulation 18(2), pp. 103 - 131
- Jasper Hedges, Helen L 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' (2017) Melbourne University Law Review 40(3), pp. 905 - 966

SELECTED BOOK CHAPTERS AND OTHER PUBLICATIONS

- Elise D Bant and Jeannie Paterson, 'Statutory interpretation and the critical role of soft law guidelines in developing a coherent law of remedies in Australia' in R Levy et al (eds), *New Directions for Law in Australia: Essays in Contemporary Law Reform* (ANU express 2017) 301-310
- Elise D Bant, 'Rescission, Restitution and Compensation' in Simone Degeling and Jason N E Varuhas (eds), 'Equitable Compensation and Disgorgement' (Hart Publishing, 2017) 277-309
- Katy Barnett, 'Thorn in the Side of Prenuptial Agreements? Thorne v Kennedy' on Opinions on High (4 December 2017)
- Alysia Blackham, 'Judicial diversity and mandatory retirement: Obstacle or route to diversity?' in Graham Gee, Erika Rackley (eds) *Debating Judicial Appointments in an Age of Diversity*, (Routledge, 2017)
- Alysia Blackham, 'Normative Visions of Age: Progress and Change in Australian Labour Law' in John Howe, Anna Chapman and Ingrid Landau (eds) *The Evolving Project of Labour Law: Foundations, Development and Future Research Directions*, (Federation Press, 2017)
- Michael Bryan, 'Book Review: Accessories in Private Law by Joachim Dietrich and Pauline Ridge' (*Cambridge Law Journal* 76, 2017)
- Eric Descheemaeker, 'The New French Law of Unjustified Enrichment, 25 *Restitution Law Review* 77-103
- Andrew Godwin, 2017, *A Brief Introduction to the Chinese Judicial System and Court Hierarchy*
- Matthew Harding, 'Recent Reforms to Australian Charity Law' in Ron Levy et al (eds), *New Directions for Law in Australia: Essays in Contemporary Law Reform* (ANU Press, Canberra, 2017) 283-290
- Matthew Harding, 'Charity Law and the Liberal State: A Reply' (2017) 42 *Australian Journal of Legal Philosophy* 151-165
- Korman, S and Rosemary Langford, 'The Evolution of the Law of Competing Directorships in the United Kingdom, Australia and Hong Kong' (2017) 32 *Australian Journal of Corporate Law* 333-350
- Rosemary Langford, 'Stakeholder Interests and the Duty of Care' (2017) 35 *Company and Securities Law Journal* 342-344.
- Rosemary Langford and Ian Ramsay, 'The Proper Purpose Rule as a Constraint on Directors' Autonomy - *Eclairs Group Limited v JKX Oil & Gas plc*' (2017) 80 *Modern Law Review* 110-120 (50% authorship).
- Rosemary Langford, 'CBA, Directors' Duties and the Legal Importance of Reputation', opinion piece, *The Australian Financial Review*, 15 August 2017, 47.
- Wayne Jovic, 2017, *Setting sail down under: the ICP at the 2017 IBA Annual Conference in Sydney*. *Construction Law International*. 12

- Jason N E Varuhas, 2017, 'Equity's Personal Monetary Remedies' in *Equitable Compensation and Disgorgement of Profit* (Hart Publishing, 2016)

SELECTED CONFERENCE PRESENTATIONS

- Katy Barnett, 'Interpretation of contracts and investment trusts: *Korda v Australian Executor Trustees*', presented at Commonwealth Law Conference, Melbourne, 22 March 2017
- Matthew Harding, 'Interdisciplinary and International Aspects of Charity Law', presented at Future of Charity Law Symposium, University of Liverpool, April 2017.
- Elise D Bant, 'Evolution of Unjust Enrichment and Restitution in the High Court of Australia', presented at 40th Anniversary of the Publication of Goff and Jones' Law of Restitution, Bentham House Conference 2017 on The Global Futures of Unjust Enrichment, University College London, 21 April 2017.
- Eric Descheemaeker, 'The New French Law of Unjustified Enrichment', presented at 40th Anniversary of the Publication of Goff and Jones' Law of Restitution, Bentham House Conference 2017 on The Global Futures of Unjust Enrichment, University College London, 21 April 2017.
- Elise D Bant and Michael Bryan, 'Outflanking *Barnes v Addy*? The Revival of Recipient Strict Liability', presented at the Frontiers of Equity Journal of Equity conference, University of New South Wales, Australia, 18 May 2017.
- Matthew Harding, 'Equity and the Value of Certainty in Commercial Life', presented at Legal Theory Conference, University of New England, 9 August 2017
- Elise D Bant and Jeannie Paterson, 'Misleading Conduct before the Federal Court of Australia: Achievements and Challenges' presented at the 40th Anniversary Conference of the Federal Court of Australia, Sydney on 9 September 2017
- Matthew Harding, 'Equity and the Value of Certainty in Commercial Life' presented by invitation at the Impact of Equity and Restitution in Commerce Conference, University of Auckland, September 2017
- Michael Bryan, 'The Sociology of the Express Trust' presented at the Trusts and Legal Theory Conference, University of Kent on October 20-21st
- Katy Barnett, 'Give an inch, take a mile" – Lord Cairns' Act and statutory gap-filling' presented at Statutory Interpretation and Private Law Conference, University of New South Wales, 28 October 2017
- Jeannie Paterson and Elise Bant, 'Intuitive Synthesis and Fidelity to Purpose?: Judicial Interpretation of the Discretionary Power to award Civil Penalties under the Australian Consumer Law', presented Statutory Interpretation in Private Law Conference, University of New South Wales, Australia, 27 October 2017

- Katy Barnett, 'Causation, remoteness, and calculation of damages awards for financial mis-selling' presented at Symposium: Banks, Mis-selling and the Retail Investor at the Centre for Banking and Finance Law, National University of Singapore, 14 December 2017;
- Jeannie Paterson, 'From Disclosure to Design and Back Again: The Australian Regulatory Response to Mis-selling by Financial Services Providers in the Retail market' presented at Protecting Consumer Investors in Australia Conference, National University of Singapore, December 2017
- Jeannie Paterson and Luke Nottage, 'Consumer Contracts and Product Safety Law in Southeast Asia: Partly Trading Up?' presented at ASEAN Law in the New Regional Economic Order Workshop, Singapore Management University, December, 2017
- Matthew Harding, Co-organiser (with Professor Simone Degeling of UNSW, Professor Andrew Gold of DePaul University and Professor Paul Miller of Notre Dame University) of 'Fiduciaries Colloquium', University of New South Wales, December 2017

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 2017.

28 March 2017	Lunchtime Seminar	'The Essence of Private Nuisance' Presented by Professor Donal Nolan (University of Oxford)
03 August 2017	Evening Lecture	'The Nature of Knowing Receipt' Presented by Mr William Swadling (University of Oxford)
07 August 2017	Evening Lecture	'Substance and Form in Equity' Presented by Professor Ben McFarlane (University College London)
16 August 2017	Lunchtime Seminar	'Causation, Coincidence and Medical Non-Disclosure of Risk' Presented by Associate Professor Gemma Turton (Leicester Law School)
23 August 2017	Lunchtime Seminar	'The Federal Court of Australia on Misleading Conduct and Taxation' Obligations Group and Taxation Group Presented by Professor Elise Bant, Professor Miranda Stewart and Associate Professor Jeannie Paterson (University of Melbourne Law School)
30 August 2017	Lunchtime Seminar	'Vicarious Liability: in search of a general principle in the High Court of Australia and the United Kingdom Supreme Court' Presented by Assistant Professor Desmond Ryan (Trinity College Dublin)
1 September 2017	Lunchtime Workshop	'Two Conceptions of the "Performance Interest" in Contract Damages' – held in partnership with the Legal Theory Workshop. Presented by Dr David Winterton (University of NSW) Commentated by Associate Professor Katy Barnett (University of Melbourne)
4 September 2017	Evening Lecture	'The Interpretation and Implication of Contract Terms' Presented by Associate Professor Jason Varuhas and Professor Andrew Robertson (University of Melbourne)
5 September 2017	Evening Lecture	'Contract Interpretation: The Recent History of Continuity, Not Change?' Presented by Professor David McLauchlan (Victoria University of Wellington)

13 September 2017	Lunchtime Seminar	'Constructive trusts up to Lord Eldon' Presented by Associate Professor Rod Thomas (Auckland University of Technology)
20 September 2017	Evening Seminar	'Contributory Negligence in the Twenty-First Century: An Empirical Perspective' Presented by Associate Professor James Goudkamp (University of Oxford)
7-8 December 2017	Annual Conference	Annual Obligations Group Conference. The 2017 theme was 'Property'. This year's conference involved 28 speakers and over 50 registered attendees from across Australia, New Zealand, Hong Kong and Singapore.