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 Jocic
- 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

SELECTED PEER-REVIEWED ARTICLES


• **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)


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


- **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


SELECTED CONFERENCE PRESENTATIONS


- **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


• **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.

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Type</th>
<th>Title</th>
<th>Presenter</th>
</tr>
</thead>
<tbody>
<tr>
<td>28 March</td>
<td>Lunch</td>
<td>Seminar</td>
<td>‘The Essence of Private Nuisance’</td>
<td>Presented by Professor Donal Nolan (University of Oxford)</td>
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<tr>
<td>03 August</td>
<td>Evening</td>
<td>Lecture</td>
<td>‘The Nature of Knowing Receipt’</td>
<td>Presented by Mr William Swadling (University of Oxford)</td>
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<tr>
<td>07 August</td>
<td>Evening</td>
<td>Lecture</td>
<td>‘Substance and Form in Equity’</td>
<td>Presented by Professor Ben McFarlane (University College London)</td>
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<tr>
<td>16 August</td>
<td>Lunch</td>
<td>Seminar</td>
<td>‘Causation, Coincidence and Medical Non-Disclosure of Risk’</td>
<td>Presented by Associate Professor Gemma Turton (Leicester Law School)</td>
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<tr>
<td>23 August</td>
<td>Lunch</td>
<td>Seminar</td>
<td>‘The Federal Court of Australia on Misleading Conduct and Taxation’</td>
<td>Presented by Professor Elise Bant, Professor Miranda Stewart and Associate Professor Jeannie Paterson (University of Melbourne Law School)</td>
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<tr>
<td>30 August</td>
<td>Lunch</td>
<td>Seminar</td>
<td>‘Vicarious Liability: in search of a general principle in the High Court of Australia and the United Kingdom Supreme Court’</td>
<td>Presented by Assistant Professor Desmond Ryan (Trinity College Dublin)</td>
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<tr>
<td>1 September</td>
<td>Lunch</td>
<td>Workshop</td>
<td>‘Two Conceptions of the “Performance Interest” in Contract Damages’ – held in partnership with the Legal Theory Workshop.</td>
<td>Presented by Dr David Winterton (University of NSW) Commentated by Associate Professor Katy Barnett (University of Melbourne)</td>
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<tr>
<td>4 September</td>
<td>Evening</td>
<td>Lecture</td>
<td>‘The Interpretation and Implication of Contract Terms’</td>
<td>Presented by Associate Professor Jason Varuhas and Professor Andrew Robertson (University of Melbourne)</td>
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<tr>
<td>5 September</td>
<td>Evening</td>
<td>Lecture</td>
<td>‘Contract Interpretation: The Recent History of Continuity, Not Change?’</td>
<td>Presented by Professor David McLauchlan (Victoria University of Wellington)</td>
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<tr>
<td>Date</td>
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<tr>
<td>13 September</td>
<td>Lunchtime</td>
<td>Seminar</td>
<td>‘Constructive trusts up to Lord Eldon’</td>
<td>Presented by Associate Professor Rod Thomas (Auckland University of Technology)</td>
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<tr>
<td>20 September</td>
<td>Evening</td>
<td>Seminar</td>
<td>‘Contributory Negligence in the Twenty-First Century: An Empirical Perspective’</td>
<td>Presented by Associate Professor James Goudkamp (University of Oxford)</td>
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<tr>
<td>7-8 December</td>
<td>Annual</td>
<td>Conference</td>
<td>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.</td>
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