

# CURRENT AWARENESS BULLETIN

**July- September 2009**



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## INTRODUCTION

This publication is designed to inform users of acquisitions by the library within the stated period, and will appear quarterly until further notice.

Under **TREATISES, DIGESTS, ETC.**, the classification number for the location of the publication on the shelves, is included to the right of the listing.

Under **LEGISLATION**, the abbreviation “G.S.” means – Jamaica Gazette Supplement Bills and Acts.

Judgments are arranged by country, then listed alphabetically by names of parties, followed by the court and date of decision. Abbreviations for the courts are as follows:

P.C. Privy Council  
C.A. Court of Appeal  
S.C. Supreme Court  
R.C. Revenue Court  
F.C. Full Court

Jamaican judgments have been broadly classified to facilitate the user. Headings are indicated in bold letters appearing after the date of decision for each judgment.

Publications of other Caribbean territories are included as and when received.

**Comments:** As we begin to adapt to the new normal, John Gould asks whether it’s time to adopt a new approach to ethics

**Specialist:** Employment Ian Smith takes a gender at short, precise, but nonetheless important aspects of both common & statutory

**Procedure and Practice:** Standard of Proof **Adrian Keane** considers jurors should be given a fuller & more accurate direction before returning their verdict.

**Inside Court:** Law Digest

**Profession: Expert Witness-** Expert witnesses at a conference with counsel- a practical guide-compiled by Mark Solon.

conversion in the digital age

**JUDGMENTS**

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KEANE, DR. RICHARD and Karene Keane v Dorothy Vendryes  
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KENNEDY-HOLLAND, Fenella (Suing in her capacity as Co-Executrix of Estate, Kenneth Stanley Kennedy, deceased and Sheila Gwendoline Kennedy Suing in her capacity as near relation and Dependent of Estate, Kenneth Stanley Kennedy, deceased) v Joan Williams (Appointed as Administrator Ad Litem in respect of Estate, Henry Ellis Wisdom, deceased pursuant to an Order of Hon. Mr. Justice Sykes made on 4<sup>th</sup> May 2009) and Dawn Paris (nee, Wisdom and Ronald Paris and The Administrator General for Jamaica  
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MARCH, Carl v Alcan Jamaica Limited  
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PLUMMER, Judith v Andrew Plummer

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**FAMILY LAW – Application for declaration of interest under Property (Rights of Spouses) Act, 2004**

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**COMPANY LAW – Companies Act, 2004, s. 130(2) – Removal of Directors**

THOMAS, Welch v Caribbean Aviation Training Centre and Captain Errol Stewart  
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**EMPLOYMENT – Whether appellant’s claim falls within the ambit of the Employment (Termination and Redundancy Payments) Act**

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**CRIMINAL LAW – Breach of Corrections Act, s. 80**

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17/2009	Appropriation (Capital Development) (2009/2010) Act
16/2009	Appropriation (Revenue Account Expenses) (2009/2010) Act
10/2009	Communications Act
13/2009	Companies (Amendment) Act
28/2009	Cruise Ships (Overnight Incentives) (Amendment) Act
20/2009	Customs Management (Amendment) Act
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7/2009	Finance (Supplementation and Variation of Appropriation) (Capital Development) (2008) Act
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23/2009	Hotels (Amendment) Act
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26/2009	International Persons Landholding (Amendment) Act
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2/2009	National Insurance (Amendment) Act
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25/2009	Real Property Tax (Amendment) Act
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6/2009	Supplementary Appropriation (2008/2009) (Capital Development Account Expenses) Act
4/2009	Supplementary Appropriation (2008/2009) (Recurrent Account Expenses) Act
18/2009	Tariff (Amendment) Act

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19/2007	Domestic Violence Act
13/2007	Families and Children (Amendment) Act
7/2008	Freedom of Information (Amendment) Act
8/2009	Inferior Courts (Amendment) Act
15/2003	Interpretation (Amendment) Act
10/2003	Juries (Amendment) Act
2/2007	Marriage (Amendment) Act
9/2008	Supreme Court of Judicature (Amendment) Act

#### **Commonwealth of Dominica**

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9/2009	Financial Administration and Audit (Amendment) Act
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11/2009	Trade (Amendment) Act

#### **LAW REPORTS**

Dominion Law Reports	Vol. 305	2009 4 <sup>th</sup> Series
Law Reports of the Commonwealth	Vol. 3	2009 Issue

#### **TREATISES, DIGESTS ETC.**

Atkin's Court Forms. 2<sup>nd</sup> ed. 2009  
Vol. 12(3) Copyright

Drafting 2009-2010 / City Law School  
Oxford: Oxford University Press, 2009

Jamaica Justice Report 2007 – 8  
The Bob Woolmer Legacy – lessons for Jamaica  
Jamaicans for Justice, October 2008



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The advantage of association offerings

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Prosecuting money launderers: Do the prosecution have to prove the predicate offence?

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Prisoners, pardons and politics: *R (On the application of Shields) v Secretary of State for Justice*

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**Journal of Planning & Environment Law      Issue 8 2009**

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**Case Law Reports**

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**Property:** *James Naylor* asks whether an Englishman's home is still his castle

**Commercial:** *Jonathan Cohen* provides an update on repercussions of the European banking crisis

**New Law Journal      Vol. 159 No. 7373      June 12, 2009**

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**New Law Journal      Vol. 159 No. 7374      June 19, 2009**

**Comment**

*Dominic Regan* proposes a simple solution to the ongoing costs fiasco – proportionality

**Employment:** Are eco warriors holding employers to ransom? Asks *Caroline Doran*

**Family:** *Geraldine Morris* revisits the thorny issue of conduct & financial provision

**Personal injury:** Post Smith, where should the PUWER lines be drawn? Asks *Hugh Preston*



**Property:** *Stephanie Tozer & Nathaniel Duckworth* discuss recent cases on & around rights of way

**New Law Journal      Vol. 159 No. 7375      June 26, 2009**

**Comment**

*John Cooper* puts identity cards & surveillance under the spotlight

**Employment:** *Emma Williamson* disability discrimination cases must be treated on their own merits

**Property:** What does a landowner own? *Malcolm Dowden*

**Family:** In times of recession, proportionality over the use of experts is critical, says *Ayla Dogruyol*

**Personal injury:** *Brent McDonald* examines pupils' supervision in school, setting aside consent orders & the latest case on limitation

**New Law Journal      Vol. 159 No. 7376      July 3, 2009**

**Comment**

Raw economics, not lack of dedication, will force lawyers to consider their commitment to legal aid, says *Carol Storer*

**Employment:** *Chris Bryden & Michael Salter* explains why successful tribunal claimants are often short-changed

**Family:** *David Burrows* examines the relationship between judicial discretion & the law

**Negligence:** *Kenneth Warner* considers the scope of an assumed duty of care

**Property:** Despite careful drafting, easements can be a ripe source of dispute, says *Sue Highmore*

**Public:** *Tracey Bloom & Kate Markus* report on the complexities of eviction action & the obligation to house minors

**New Law Journal      Vol. 159 No. 7377      July 10, 2009**

**Comment**

JFS pupil selection: race discrimination or religious freedom? Asks *Craig Rose*

**Employment** *Spencer Keen* looks at time limits in reasonable adjustments cases & DDA 1995

**Family:** *Charlotte Jeffery* reports on the important role of CAFCASS officers in final judgments

**Intellectual property:** *Jane Foulser McFarlane* assesses how far toys can be used for role play without breaching copyright

**Property/ Landlord & tenant:** How can landlords guarantee they receive rent payments when insolvency looms? *James Naylor & Claire Southway* investigate

**Public/ Human rights:** Should Orthodox Hindus in the UK have the right to conduct open air funeral pyres? *Nicholas Dobson* reports

**Personal injury:** Smith has forced the courts to re-evaluate the concept of control, says *Brent McDonald*

**New Law Journal**      **Vol. 159 No. 7378**      **July 17, 2009**

**Comment**

Sunlight is the best of disinfectants, or is it? Asks *Julian Samiloff*

**Employment:** *David Tyme* on territorial jurisdiction and the fright not to be unfairly dismissed

**Family/ insolvency:** *Shantanu Majumdar* examines debt case and a judge's prerogative to change his mind

**Personal injury:** *Amanda Stevens* asks whether upcoming reforms signify the dawn of a brave world

**Property/ Landlord & tenant:** Human rights now have relevance in social housing agreements, reports *Louise Curtis*

**Public/ Human rights:** *Keith Soothill & Brian Francis* question the scientific argument for keeping innocent people on the DNA database

**Wills & probate:** Wills are not always black & white, says *Michael Tringham*

**New Law Journal**      **Vol. 159 No. 7379**      **July 24, 2009**

**Comment**

Pragmatism, not fast law, will help the UK exit the recession say *Mark Parkhouse & Andrew Jackson*

**Employment:** *Ian Smith* updates us on contingent males, some nimble judicial footwork & a dog's breakfast

**Family:** *Shantanu Majumdar* unravels the complexities of bankruptcy annulment

**Personal injury/ Education:** Who should pay for additional educational needs? *Andrew Ritchie Q.C.*

**Property/ Landlord & tenant:** *Julian Sidoli del Ceno* explains the concept behind surrender by operation of law

**New Law Journal**      **Vol. 159 No. 7380**      **July 31, 2009**

**Comment**

*John McQuater* defends the £1,000 upper limit for personal injury claims

**Employment:** prevention is better than cure say *James Pike & Naomi Greenwood*

**Personal injury/ Education:** Who should pay for additional educational needs? *Andrew Ritchie Q.C.*

**Family/ Mediation:** Global meltdown presents practitioners with a great opportunity for ADR, says *James Pirrie*

**Property/ Landlord & tenant:** *Malcolm Dowden* on disputes of disclaimed leases & subtenants of part

**New Law Journal      Vol. 159 No. 7381      August 7, 2009**

**Comment**

*Lucy Theis QC* condemns the relentless pace of family fee reforms

**Employment:** Ambiguities in health questionnaires are likely to be resolved in the employee's favour, says *Charles Pigott*

**Family:** *Finola Moss* considers when expert evidence is deemed to be unreliable

**Personal injury:** *Anastasia Karseras* reports on "obvious" dangers & fraudulent claims

**Property/ Landlord & tenant** *Laura West & Marianne Rivett* explain why the tenancy deposit scheme is coming unstuck

**Public:** What is a local authority's wellbeing duty? *Nicholas Dobson* reports

**New Law Journal      Vol. 159 No. 7382      August 14, 2009**

**Comment**

*Roger Smith* looks across the Pond to consider gender & ethnic minorities

**Property:** *Amanda Elledge* assesses the threats posed by mortgage identity fraud

**Personal injury:** Claimants cannot afford to lose part of their damages in legal costs, says *Richard Scorer*

**Family:** Recent decisions have confirmed the finality of capital orders, says *Caroline Lonsdale*

**Wills & probate:** Court decisions are interpreting statute in ways that may surprise, says *Michael Tringham*

**New Law Journal      Vol. 153 No. 7383      September 4, 2009**

**Comment**

*William Flenley* hopes civil law reform will sit high on the government's agenda

**Employment:** *Ian Smith* provides an update from the courts

**Family:** Property prices are affecting FDR payouts, *Thomas Duggins* finds

**Negligence:** *Kenneth Warner* examines the *ex turpi causa non oritur action* principle

**Property:** *Clark v Lucas Solicitors* serves as a timely warning for conveyancing solicitors say *Mark Sefton & Oliver Radley-Gardner*

**Public:** Is Public Law still public? Asks *Krishnendu Mukherjee*

**Comment**

Lookism in the workplace – discrimination or a face of life? Asks *Helen Crossland*

**Employment:** It's the end of the bonus culture in local authorities, says *Daphne Romney Q.C.*

**Family:** meditative, co-operative justice would benefit all parties and protect the legal aid budget, says *David Burrows*

**Personal injury:** *Harvey Teff* proposes reshaping the boundaries of legal liability

**Intellectual property/ Family:** To what extent are intellectual property rights matrimonial assets? Asks *Jane Foulser McFarlane*

**Oklahoma Law Review      Vol. 61 No. 3      Fall 2008**

*Danforth*, retroactivity, and federalism *J. Thomas Sullivan*

Researching across the curriculum: the road must continue beyond the first year *Brooke J. Bowman*

**Oxford Journal of Legal Studies      Vol. 29 No. 1      Spring 2009**

Pre-verdict judicial fact-finding in criminal trials with juries *Rosemary Pattenden*

Attempt: the conduct requirement *Christopher M. V. Clarkson*

Assisting the factually innocent: the contradictions and compatibility of innocence projects and the Criminal Cases Review Commission  
*Stephanie Roberts & Lynne Weathered*

Waldron, Waluchow and the merits of constitutionalism *Joshua Mildenberger*

Defending the possibility of a neutral functional theory of law *Kenneth M. Ehrenberg*

In defence of the Anarchist *Gary Chartier*

Power politics and the rule of law: Shakespeare's first historical tetralogy and law's 'foundations' *Eric Heinze*

**Public Law      July 2009**

Judicial review in the age of tribunals *Peter Cane*

The threat of terror and the plausibility of positivism *David Campbell*

The conceptual foundations of Parliamentary Sovereignty: reconsidering Jennings and Wade *Michael Gordon*

Opting into Community Law and interpreting convention rights: is the United Kingdom more or less committed? *Jonathan Mance*

European Union Environmental Law – who legislates for whom in a devolved Great Britain *Andrea Ross & Hazel Nash*

**Solicitors Journal      Vol. 153 No. 25      June 30, 2009**

**Left hanging**

The long-awaited House of Lords decision on the statutory holiday entitlement of employees on long-term sick leave has left several issues unresolved, says *David Green*

**Breaking a promise**

Two recent cases have limited the scope for defendants to obtain relief from court orders, with the courts taking a tougher line on compliance, says *Mark Lim*

**Tipping the balance**

Allowing the police to 'kettle' demonstrators and non-demonstrators alike does not adequately balance the duty to preserve the peace with the rights of the citizen, says *Paul Harris*

**Regime change**

*Adam Herbert* explains how the Finance Act 2008 will affect offshore trustees and their advisers, highlighting key issues and exploring some practical solutions

**Fully enabled**

Practitioners appearing in the new tribunals should take time to review the nature and purpose of the amended procedural rules, say *Keith Wilding* and *John Marston* as they share their tips for effective and successful advocacy

**Update: insolvency**

*David Archer* reviews the latest cases and developments on debt relief orders, pre-packs, the Madoff case late submission of a CVBA claim and bankruptcy shields

**Update: company law**

*Simon Graham* takes a look at some chronologically challenged but reverend and, more importantly, still relevant cases, as he explores some of company law's hidden depths

**Solicitors Journal      Vo. 153 No. 26 July 7, 2009**

**You should have gone to Lex-savers**

Anyone who sees the supermarkets offering anything more complex than quickie divorces needs their eyes tested, says *Russell Conway*

**A framework, not a straitjacket**

New guidance out for consultation on end-of-life medical care will help to clarify patients' rights, says *Seamus Burns*

**Growing success**

Choosing the right corporate structure for a farming business is pivotal in safeguarding assets and enabling future growth, says *Mark Cullingford*

**Back in play**

HIPs provides solicitors with an opportunity to reverse conveyancing trends, and don't need to charge the earth, says *Paul Bibby*

**A fine intervention**

The European court has made a sensible decision on the commission's right to intervene in national competition cases, says *Paul Stanley*

**Where they belong**

Britain is on the verge of adopting legislation on the return of works of art stolen during the Holocaust, but will this change the way restitution is handled? *Jenny Ramage* reports

**Regulatory watch**

*Tony Guise* discusses how to stay on the right side of the regulator

**Update: housing**

*Sarah McKeown* reviews cases involving succession, possession, negligence, the Children Act and the Human Rights Act

**Update: police**

*Kim Bouwer* rounds up cases on privacy, police retention of evidence, powers of search and release of information to a third party

**Solicitors Journal      Vol. 153 No. 27      July 14, 2009**

**Ethos and ethnicity**

The ruling on the definition of Jewishness is likely to have consequences for the broader education system, says *Barbara Hewson*

**Piggy in the middle**

The EAT has clarified that 'piggyback' claims can be brought but it has left many questions unanswered, says *Cheryl Edmonds*

**Code breaker**

Still bemused by the new acronyms that have come up in the property world in the past few years? Let *Andrew Lund* decipher the jargon

**Hot property**

The ruling in *Orams* will not just affect property owners in northern Cyprus, says *Jenny Ramage*

**An evidentiary nightmare**

Except for 'cost plus' situations, 'passing on' in antitrust cases is difficult to prove says *David Shapiro*

**The picture of health**

*Helen Brooks* explains the new guidance for employers on dealing with work-related stress

**The SMART way**

Old recipes can do wonders, says *Dianne Bown-Wilson* as she explains how firms can ensure success by implementing the SMART goal framework

**Life in crime**

Allowing a trial to be heard without a jury undermines our rights, says *Lucy Corrin*

**Update: family**

*Lynne Passmore* discusses maintenance disputes and family court openness

**Update: construction**

*Anna Stillman* discusses the new practice direction on pre-action conduct

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**Paper value**

The Law Commission will have to grapple with complex questions surrounding prenups before they can become fully binding says *Brett Frankle*

**A sore point**

The new Points Based System raises serious conflict of interest issues for immigration solicitors, says *Elena Tsirlina*

**Holding the keys**

There is a lot more to consider when purchasing property for a charity than the basic of the conveyancing process, warns *Jane Lonergan*

**All the care in the world**

*Malcolm Johnson* considers whether child abuse claims involving foster carers will leave local authorities open to vicarious liability

**Manage your manager**

*Chris Marston* gives an insight into the banker's mindset and suggests some strategies for solicitors negotiating with their banks

**View from the bench**

*DJ Tim Jenkins* discusses the latest changes to the service of repossession notices

**Regional focus**

*Jean-Yves Gilg* reports on how South East firms are growing out of the recession

**Update: road traffic**

*Robert Sproston* and *Anjali Krishnan* discuss cases involving emergency response vehicles, uninsured drivers and fraudulent claims

**Update: corporate tax**

*Jason Collins* and *Michael Blackwell* review cases involving the VAT classifications of food products and liability under the CFC regime

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**July 28, 2009**

**Change of plan**

Local authorities and applicants alike will need to consider how to meet their obligations to avoid incurring costs under the new Planning Costs Circular, says *Marco Mauro*

**Listening to reason**

The courts will be reluctant to make an order for possession on a property with a protected tenancy, warns *Julian Sidoli del Ceno*

**Interview: Carolyn Regan**

The chief executive of the Legal Services Commission shares her views on legal aid with *Jean-Yves Gilg*

**No limits**

Defendants have become less able to rely on a limitation defence if they cannot show some prejudice other than the mere loss of that defence, says *David Regan*

**Heading for the Exit**

Businesses looking to terminate contracts should consider their tactics carefully to ensure a successful exit, says *Beverley Flynn*

**Civil conduct**

The rules on the admissibility of evidence of pre-contractual negotiations have been relaxed but the practical consequences are unclear, says *John Bramhall* and *Simon Hodgson*

**Update: family (children)**

*Noel Arnold* reviews cases on findings of fact, local authorities' involvement in public law proceedings, electronic tagging and interim contract orders

**Update: employment**

*Sue Ashtiany* considers holiday pay, the new 'fit note' scheme, the effect on employers of the government's new measures to deal with the flu epidemic, and disability discrimination

**University of Pittsburgh Law Review Vol. 70 Issue 1 Fall 2008**

So dark the Con(tu) of Man: the quest for a software derivative work right in Section 117

*Lateef Mtima*

Congress, *Ex Parte Young*, and the fate of the three-judge District Court

*Michael E. Solimine*

**University of Pittsburgh Law Review Vol. 70 Issue 2 Winter 2008**

Enslaved Constitution: obstructing the freedom to travel

*Mitchell F. Crusto*

**West Indian Law Journal Vol. 34 No. 1 May 2009**

Third annual Lloyd Barnett Lecture to the Council of Legal Education

*Adrian Saunders*

The Jamaican Charter of Rights and the dynamics of development

*Edward Seaga*

Substantive legitimate expectation – The Caribbean perspective

*Albert K. Fiadjoe*

Legal professional privilege – some aspects of the Commonwealth experience

*C. Dennis Morrison*

Lifetime occupational rights

*S.A.A. Cooper*

The criminalization of breaches of corporate duties – policy considerations and Caribbean Companies Legislation

*Audrey C. Welds*

Controlling violent crime: strategy and policy options

*Anthony Harriott*

Knowing the corners:

The relevance of the Common Law to the Caribbean anticorruption project

*Derrick V. McKoy*