Fundamental rights — freedom from discrimination — right to life - right to liberty - gender discrimination - sexual harassment - female employee alleging sexual harassment by superior - employer's disciplinary authorities finding allegations proved and dismissing superior — High Court reinstating superior — whether employee victim of sexual harassment - whether violation of fundamental rights

International law — treaties — application in domestic law - human rights - gender discrimination - sexual harassment - International Convenant on Economic, Social and Cultural Rights — Convention on the Elimination of All Forms of Discrimination Against Women

Administrative law — judicial review — employer's disciplinary authorities — female employee alleging sexual harassment by superior — employer's disciplinary authorities finding allegations proved and dismissing superior — High Court, reinstating superior whether findings and penalty subject to judicial review (India) Apparel Export Promotion Council v Chopra [2000] 1 LRC 563

Fundamental rights - protection against cruel, inhuman or degrading treatment or punishment - accused convicted of importing, supplying or possessing an armament — statutory minimum sentences — not per se unconstitutional — statute providing same minimum sentence for importing supplying and possessing armament — whether particular mandatory minimum sentence unconstitutional — appropriate test — proportionality - appropriate remedy - whether particular sentence to be set aside or statutory provision to be declared unconstitutional - appropriate test — appropriate remedy — Constitution of the Republic of Namibia 1990, Art 8(2)(b) (Namibia)

State v Likuwa [2000] 1 LRC 600 (HC)

Fundamental rights — right to vote — prisoners — Electoral Commission — failure of Electoral Commission to make provision for prisoners to register and vote — whether in breach of fundamental right — registration of voters — 'ordinarily resident' — prisoners - whether prisoner 'ordinarily resident' in prison - prisoners - arrangements required to enable prisoners to register to vote - supervision by court (South Africa) August and Another v Electoral Commission and Others

[2000] 1 LRC 608 (CC)

Parliament privilege proceedings in Parliament - parliamentary inquiry making adverse findings as to former Member's conduct — defamation action subsequently brought by former Member over accusations on television programme concerning same conduct — trial of action requiring examination of veracity of statements made before inquiry — whether potential breach of parliamentary privilege — whether former Member's

115

117

Costs — security for costs — claimant based in another member state — appointment of person resident in United Kingdom (United Kingdom)	
Dieter Rossmeier v Mounthooly Transport, Inner House, The Times, 7 February 2000	447
Counsel — payment of costs by counsel personally — costs incurred unreasonably or negligently — care proceedings — local authority bringing care proceedings and relying on expert medical witness — parties receiving relevant medical records but not putting them before expert witness — judge initiating wasted costs inquiry — whether appropriate for court to initiate inquiry into wasted costs — whether counsel for parties collectively responsible for wasted costs (United Kingdom)	
Re G and others (children) (care proceedings: wasted costs) [1999] 4 All ER 371	447
Law Reform Reform of the House of Lords (United Kingdom)	449
Reform of the House of Lords (Officed Kingdom)	449
Other Developments	
Recent articles	450
Judicial Group on Strengthening Judicial Integrity: Record of First Meeting, Vienna, 15 to 16 April 2000	451
Internet lawyers said to be operating in 'ethical vacuum'	459
Tightening up on firm-switching rules (Australia)	460
Children must see human side of lawyers (New Zealand)	460
'Disturbing' conclusion from study on access to legal services (New	
Zealand)	462
Law Society studying new Australian electronic legal information	
system (New Zealand)	462
Qualified approval given for televised court cases (New Zealand)	463
Digital audio recording trial for Auckland Courts (New Zealand)	464
Judges to be given legal aid to sue the press (United Kingdom)	466
Lawyers and City auditors called to account (United Kingdom)	466
Lawyers facing shake-up (United Kingdom)	467
Crime court debut for blind judge (United Kingdom)	468 468
Courts will link fines to income (United Kingdom) Acquittals may be subject to appeal (United Kingdom)	470
Ombudsmen	472
Legislation Pension Ombudsman Bill C-341, 1999 (Canada)	472
Judicial Decisions Pension — pension scheme — maladministration of pension scheme — jurisdiction of Pensions Ombudsman — exercise of jurisdiction	

xxxiv

of Pensions Ombudsman — trustees of pension scheme amending rules by deed of amendment — amendment giving extra benefits to one class of members — Pensions Ombudsman holding that trustees had acted in breach of trust and directing scheme to be administered under pre-amendment rules — direction depriving persons who were not parties to proceedings of proprietary rights — whether trustees under duty to act impartially when exercising discretionary powers between various beneficiaries — whether Ombudsman entitled to make direction affecting rights of third parties to proceedings (United Kingdom)	475
Other Developments Complaints watchdogs on guard (United Kingdom)	476
International Developments	478
Conventions and Agreements Council of Europe: Criminal Law Convention on Corruption Council of Europe: Civil Law Convention on Corruption	478 490
Council of Europe: European Convention on the Promotion of a Transnational Long-Term Voluntary Service for Young People UN Optional Protocol to the Convention on the Elimination of All	490
Forms of Discrimination against Women UN International Convention for the Suppression of the Financing of Terrorism	504 509
Legislation Industrial Property Act 1999 (Kenya) Adoption (Intercountry Aspects) Act 1999 (United Kingdom)	521 521
Judicial Decisions Citizenship and migration — refugees — persecution — whether "black children" a particular social group — whether applicant feared persecution "for reasons of" membership of particular social group — (CTH) Migration Act 1958 s. 481 — Convention relating to the Status of Refugees Art 1A(2) (Australia) Chen Shi Hai (an infant) by his next friend Chen Ren Bing v Minister for Immigration and Multicultural Affairs (2000) 170 ALR 553 (HC of A) Children and young persons — trial of persons under 17 — Crown	521
Court trial — eleven-year-old boy tried in public in Crown Court for murder of two-year old boy — whether conduct of trial breaching defendant's right to fair hearing — whether defendant being subjected to inhuman or degrading treatment — Convention for the Protection of Human Rights and Fundamental Freedoms 1950, Arts 3, 6	

Sentence — young person — serious criminal offence — tariff period — eleven-year-old boy being convicted of murder and being sentenced to detention during Her Majesty's pleasure — Secretary of State fixing tariff period — whether fixing of tariff by Secretary of State violating convention right — whether detention during Her Majesty's pleasure breaching right to liberty — Convention for the Protection of Human Rights and Fundamental Freedoms 1950, Arts 5, 6 (European Court of Human Rights)	500
T v United Kingdom [2000] 2 All ER 1024 (ECHR)	523
Legal aid — availability — proceedings before UN Human Rights	
Committee — whether Committee "judicial authority" for pur-	
poses of legal aid — whether jurisdiction to grant legal aid (New	
Zealand)	
Pauline Eunice Tangiora v Wellington District Legal Services	
Committee [2000] 1 WLR 240 (PC)	523
European Community — equality of treatment for men and women	0_0
— equal working conditions — dismissal — Secretary of State	
imposing threshold of two years continuous employment before	
unfair dismissal claim could be made — female employees being	
dismissed after less than two years' employment — employees	
claiming that fewer women able to comply with threshold than	
men — whether extension of qualifying period having disparate	
adverse impact on women — whether extension of qualifying	
adverse impact on women — whether extension of qualifying period objectively justified — Unfair Dismissal (Variation of	
Qualifying Period) Order 1985 — EC Treaty, Art 119 (United	
Kingdom)	
R v Secretary of State for Employment, ex parte Seymour-Smith	
and another [2000] 1 All ER 857 (HL)	524
Conflict of laws — jurisdiction — challenge to jurisdiction	524
contracts between parties demicifed in accounting accounting	
- contracts between parties domiciled in convention countries	
— claimant reinsurers bringing proceedings in England against	
insurer domiciled in Sweden — claimants seeking to avoid rein-	
surance contracts on grounds of misrepresentation or non-dis-	
closure during pre-contract negotiations in London — whether	
duty to disclose constituting obligation in question for purposes of	
jurisdiction convention — whether claim falling within conven-	
tion rules on matters relating to insurance — Civil Jurisdiction	
and Judgments Act 1982, Sch 3C, Arts 5(1), 7, 11 (United	
Kingdom)	
Agnew and others v L and försakrings-bølangens AB [2000] 1 All	
ER 737 (HL)	525
Conflict of laws — jurisdiction — civil and commercial matters	
- forfeiture proceedings in relation to unauthorised use of	
trademark and false trade descriptions — whether such	
proceedings a civil matter for purposes of jurisdiction convention	

1 — Trade Marks Act 1994, s. 97 (United Kingdom) R v Crown Court at Harrow and another, ex parte UNIC Centre Sarl [2000] 2 All ER 449 (QBD)	527
Other Developments Europe - Africa Summit: Cairo, 3-4 April 2000	528
Articles	540
Modes of Appointment and Training of Judges — A Common Law Perspective (<i>The Hon Justice Michael Kirby AC CMG</i>) The Latimer House Guidelines and Their Implementation in Small	540
Commonwealth Jurisdictions (<i>The Hon Sir Philip Bailhache</i>) Some Reflections on Executive Discretion and Judicial Independence	550
(Justice GE Harre)	567
Reforms in Criminal Justice (Hon JW Shaw) E-Commerce Business Models — The Law's Response	571
(Charles Lim Aeng Cheng) The Role and Implications of Bilateral Investment Treaties	580
(Dr A Rohan Perera) International Investment Agreements: Admission and Establishment,	607
Legal Standards of Treatment (<i>M Sornarajah</i>) Bilateral Investment Protection Agreements: A Legal Framework for the Protection of Foreign Investments (<i>Sreenivasa Rao</i>)	614 623
Miscellaneous	631
Some Notes	
Commonwealth Heads of Government Meeting, Durban, South Africa, 12 to 15 November 1999: Communiqué The Fancourt Commonwealth Declaration on Globalisation and	631
People-Centred Development, 1999 Commonwealth Ministerial Group on Small States: Report to	641
CHOGM 1999	644
Criminal trial reform (Australia)	646
E-Commerce law passed in the Senate (Australia)	647
Computer games and Australians today (Australia)	648
New computer and bushfire offences feature in Model Criminal Code	C 40
(Australia — South Australia) Tougher Penalties for Trading in Prohibited Imports/Exports	648
(Australia — South Australia)	649
Women's fear of crime (Australia — South Australia)	651
Tuvalu may drop Queen as its Head (Tuvalu)	651
Dependent territories — future relations (United Kingdom)	652

xxxvii

Agreements between United Kingdom Government and the devolved administrations in Scotland and Wales (United		
Kingdom)	652	
Queen prepares royal e-signature (United Kingdom)	653	
Call for a change in law on air rage (United Kingdom)	654	
Reviews and Notices Law Reports of the Commonwealth 1999, Vols 1-4 (Butterworths,		
London)	655	
Recent Articles	677	
Announcements	679	
Personalia	679	
Law Ministers and Attorneys-General of Commonwealth Countries	681	
Coming Events	691	
Secretariat Legal Publications	Inside Back Cover	

Finance, Trade and Economic Development		
Euro Conversion Law 1999 (Cayman Islands)	36	
Capital Markets Authority (Amendment) Act 1999 (Kenya)	37	
Central Depositories Act 1999 (Kenya)	38	
Parliamentary Pensions (Amendment) Act 1999 (Kenya)	40	
Environmental Protection Levy Act 1999 (Saint Lucia)	40	
Exchanges (Demutualisation and Mergers) Act 1999 (Singapore)	41	
Goods and Services Tax (Amendment) Act 1999 (Singapore)	42	
Income Tax (Amendment) Act 1999 (Singapore)	42	
Betting and Sweepstake Duties (Amendment) Act 1999 (Singapore)	45	
Finance Act 1999 (United Kingdom)	45	
Tax Credits Act 1999 (United Kingdom)	54	
Tax Crodits Not 1999 (Cinted Kingdom)	34	
Health, Education and Social Welfare		
Health Services (Fees) Law 1999 (Cayman Islands)	55	
Bukura Agricultural College Act 1999 (Kenya)	56	
Private Hospitals and Medical Clinics (Amendment) Act 1999		
(Singapore)	57	
Health Act 1999 (United Kingdom)	59	
School Standards and Framework Act 1998 (United Kingdom)	61	
Teaching and Higher Education Act 1998 (United Kingdom)	66	
reaching and righer Education Act 1996 (Officed Kingdom)	00	
Industrial and Intellectual Property		
Copyright Amendment (Computer Programs) Act 1999 (Australia)	68	
Industrial Property Act 1999 (Kenya)	75	
massimi Property (101 1777 (11011)4)	7.5	
Industrial Relations		
Employment Relations Act 1999 (United Kingdom)	77	
Insurance		
Insurance Intermedaries Act 1999 (Singapore)	79	
Insurance (Amendment) Act 1999 (Singapore)	81	
Land		
Land Titles (Strata) (Amendment) Act 1999 (Singapore)	82	
Local Aid		
Legal Aid	0.4	
Access to Justice Act 1999 (United Kingdom)	84	
Local Government		
Local Government Act 1999 (United Kingdom)	84	
Local Government Act 1999 (Officed Kingdom)	04	
Primary Industries and Animals		
Tea (Amendment) Act 1999 (Kenya)	85	
Breeding and Sale of Dogs (Welfare) Act 1999 (United Kingdom)	87	
2.1.1 and on 2050 (would) not 1777 (Omtod Kingdom)	0,	
Professions and Trades		
Caribbean Community (Free Movement of Skilled Persons) Act 1999		
(Belize)	88	
· · · · ·		

Constitution s. 109 — freedom of interstate trade and commerce — whether BLF (De-recognition) Act 1985 (Vic) and orders under it restricting use of property contravene freedom of intercourse — Commonwealth Constitution s. 92 Industrial law — registered organisation — cancellation of registration — merger of organisations — transfer of voidable title to assets and property of organisation — whether transfer effective — (CTH) Builders Labourers' Federation (Cancellation of Registration) Act 1986 — (CTH) Builders Labourers' Federation (Cancellation of Registration — Consequential Provisions) Act 1986 - (VIC) BLF (De-recognition) Act 1985 Statutes — commencement — proclamation — different commencement dates whether Act proclaimed to come into effect within specified one year period Words and phrases — "proclaimed to come into effect" (Australia) Sutton and Another v Sharp and Others (No. 3); Atkinson and Others v Sutton and Others (2000) 170 ALR 637 (1RC of A) 103 Civil and political rights — discrimination — appeal — question of law — finding concerning causation — finding concerning reasonableness of imposition of requirement — occupation — provision of goods and services — unfavourable treatment — causation provision of goods and services — imposition of condition or requirement — reasonableness of condition or requirement Words and phrases — "purpose" — "reasonable" — "transaction" (Australia — ACT) Edgley v Federal Capital Press of Australia Pty Ltd (2000) 139 ACTR 1 (SC-ACT) 105 Fundamental rights — enforcement — locus standi — 'any person aggrieved' — association of environmental lawyers — government authorising flood action plans for certain areas — association bringing proceedings under Constitution alleging adverse effects of plans on residents and environment — whether association 'any person aggrieved' — whether possessing sufficient interest appropriate considerations — Constitution of Bangladesh, Arts 8(2), 102(1), (2)(a) (Bangladesh) Farooque v Secretary of the Ministry of Irrigation, Water Resources & Flood Control (Bangladesh) and Others [2000] 1 LRC 1 (SC) 106 Constitutional law — fundamental rights — right to fair trial — trial within a reasonable time — sentencing — delay in sentencing — delay due to judicial illness — whether sentencing part of 'trial' whether right to be tried within a reasonable time applying to sentencing — whether such delay breaching right to trial within a reasonable time — whether delay in sentencing unreasonable

- principles to be applied — Canadian Charter of Rights and

110

Freedoms 1982, s. 11(b) (Canada)

R v MacDougall [2000] 1 LRC 390 (SC)

Trusts and Trustees — constructive trust — remedial constructive trust — money paid under a mistake — whether retention of money after mistake was discovered gave rise to remedial constructive trust — circumstances under which money was paid — whether claim for restitution based on constructive trust frivolous, vexatious or otherwise abuse of process of court (Singapore) Ching Mun Fong (executrix of the estate of Tan Goek Tee, deceased) v Liu Cho Chit and another appeal [2000] 1 SLR 517 (CA)	150
Crown Court — practice — trial of children and young persons — avoidance of intimidation, humiliation or distress — assisting young defendants to understand and participate in proceedings — young defendants not normally to be tried jointly with adults — conduct of trial and facilities for reporting (United Kingdom) Practice Direction (Crown Court: Young Defendants) (Supreme Court) [2000] 1 WLR 659	152
Criminal Law and Procedure Sentencing — appeal against adequacy of sentence — sentencing principles — whether appropriate for appellate court to lay down sentencing guidelines or tariffs — sentencing principles for drug-related offences — relevance of drug addiction and drug treatment order to imposition of custodial sentence — adjournment or deferral of sentence — Griffiths bond or remand (Australia)	
R v Griggs (2000) 167 ALR 673 (FC of A) Sentencing — unlawful damage to property — mandatory minimum sentence — whether exceptional circumstances for not imposing sentence — whether offence trivial in nature — objective circumstances of offence Words and phrases — "trivial in nature" (Australia — Northern	155
Territory) Curnow v Pryce (2000) 131 NTR 1 (SC-NT) Criminal procedure — arrest — scope of police's power to arrest — seizable offence — reasonable suspicion to arrest appellant — whether arrest legal — illegal search by police — whether amount to unlawful imprisonment and criminal trespass (Malaysia) Yong Moi Sin v Kerajaan Malaysia & Anor [2000] 1 MLJ 35	156
(HC) Criminal procedure — habeas corpus — detention of drug dependant — application for habeas corpus — finding by rehabilitation officer that applicant took drugs once in a while — recommendation made by officer that applicant be detained in rehabilitation centre for a period of two years — order for detention made by Magistrate — whether applicant a drug	157

ŧ

Practice and procedure — discovery — immunity conferred on members of Refugee Review Tribunal (Australia)

Herijanto v Refugee Review Tribunal and Others (No. 2); Muin v Refugee Review Tribunal and Others (No. 2); Lie v Refugee Review Tribunal and Others (No. 2) (2000) 170 ALR 575 (HC of A)

Pre-trial relief — Mareva injunction — plaintiffs commencing proceedings in England against third party — defendants trust companies with which plaintiffs alleged third party connected — defendants not parties to English proceedings or to proceedings elsewhere — third party not resident in The Bahamas — whether court empowered to grant plaintiffs Mareva injunctions against defendants' assets (The Bahamas)

Meespierson (Bahamas) Ltd and Others v Grupo Torras SA and Another [2000] 1 LRC 627 (CA)

Civil procedure — jurisdiction — foreign proceedings — restraint of — turbine under hire-purchase chartered to foreign company — High Court of Malaya assumed jurisdiction over hire-purchase dispute — continued arrest of vessel within jurisdiction — proceedings in foreign jurisdiction relied on hire-purchase agreement — whether declarations granted in foreign court mere brutum fulmen and vexatious — whether court can instruct parties to vacate order of arrest of vessel issued by foreign court and discontinue all proceedings before that court — Courts of Judicature Act 1964 s. 69(4)

Hire purchase — hire purchase agreement — no evidence that property in goods had passed — property in goods remained with hirer — whether merely device to cloak loan upon security of goods transaction — whether hire-purchase agreement was actually an unregistered bill of sale — whether agreement was void (Malaysia)

BSNC Leasing Sdn Bhd & Ors v Sabah Shipyard Sdn Bhd & Ors [2000] 2 MLJ 70 (CA)

Civil procedure — record of appeal — whether leave needed for supplementary appeal record to be filed out of time — whether photostated copy and not sealed or certified true copy of order contained in supplementary appeal record is admissible — whether court should exercise discretion to cure defects — whether respondents should be allowed to raise preliminary objections at rehearing stage — Rules of the Court of Appeal 1994 rr 18(4)(d), 18(7) & 102 (Malaysia)

Capital Insurance Bhd v Kasim bin Mohd Ali [2000] 1 MLJ 193 (CA)

Civil procedure — abuse of process — circumstances in which court's process may be abused — whether categories of abuse of process closed — whether abuse of process includes use of interlocutory relief as instrument of oppression — what constitutes abuse

137

138

140

— respondent using court process to by-pass established procedure, impede appellants, nullify consent order, interfere with jurisdiction of court of co-ordinate jurisdiction and choosing inconvenient forum — whether amounts to abuse of process — appeal — interference by appellate court — trial judge paying insufficient regard to historical background of case and other considerations — trial judge failing to exercise discretion in accordance with law — whether interference by appellate court warranted (Malaysia)

Jasa Keramat Sdn Bhd & Anor v Monatech (M) Sdn Bhd [1999] 4 MLJ 637 (CA)

Writ — service out of jurisdiction — infringement of patent — joint tortfeasors — appropriate standard of proof — whether evidence satisfied standard — Rules of Court O 11 r 1(f)(i) (Singapore)

Bradley Lomas & Anor v Colt Ventilation East Asia Pte Ltd & Ors [2000] 1 SLR 673 (CA)

Civil procedure — reliefs — infringement of registered design — injunction granted — whether order for delivery up should also be made — whether injunction sufficient — rationale for relief of delivery up — costs — appeal — appellants successful on appeal — costs to be awarded below and on appeal (Singapore)

Hunter Manufacturing Pte Ltd & Anor v Soundtex Switchgear & Engineering Pte Ltd (No. 2) [2000] 1 SLR 436 (CA)

Civil procedure — pleadings — striking out — court to exercise right to strike out sparingly and only in plain and obvious cases — whether defect in question could be cured by amendment — amendment preferable to striking out — amendment — no serious objection to amendment of statement of claim — statement of claim amended to introduce new claim in constructive trust — striking out — whether amended statement of claim should be struck out — whether claim frivolous, vexatious, time-barred or otherwise abuse of process of court — not plain and obvious that action time-barred under Limitation Act — not plain and obvious that claim for restitution based on constructive trust frivolous and vexatious

Estoppel — per rem judicatam — matters which could and should have been litigated in prior proceedings — abuse of process true basis of extended doctrine — distinction between cause of action or issue estoppel and abuse of process not amounting to res judicata — mere inconsistency with earlier claim insufficient to justify striking out proceedings as abuse of process

Limitation — money paid under mistaken assumption — mistake as to ownership of property — whether mistake one of fact or of law — whether mistake could be discovered with reasonable diligence

Restitution — money paid under mistake — recovery of — right of recovery — whether mistake one of fact or of law — whether mistake could be discovered with reasonable diligence

145

147

legislation

Maritime Law

Shipping — Admiralty Court — jurisdiction — inland waters — ships colliding in inland waters — previous criminal proceedings dismissed by court having power to award compensation — action brought in Admiralty Court for damages — whether Admiralty Court having jurisdiction over inland waters — whether action barred

Evidence — admissibility — depositions — admiralty proceedings — depositions given for purposes of criminal proceeding — whether admissible in proceeding before Admiralty Court (Bangladesh)

Bangladesh Inland Water Corp v Al-Falah Shipping Lines Ltd and Others [2000] 1 LRC 39 (SC)

204

Privacy

Confidential information — disclosure — public interest — police investigation into death of nursing home patient — statement made by plaintiff nurse to police during interview under caution — police wishing to give information to professional regulatory body investigating allegations against plaintiff — public interest in maintaining confidentiality of information given to police — whether outweighed by public interest in protecting health and safety — whether police entitled to make disclosure (United Kingdom)

Woolgar v Chief Constable of Sussex Police and Another [2000] 1 WLR 25 (CA)

206

Torts

Tort — general — res ipsa loquitur

Negligence — duty of care — employer — employee relationship — ambit or content of duty of care

Evidence — burden of proof — res ipsa loquitur (Australia)

Schellenberg v Tunnel Holdings Pty Ltd (2000) 170 ALR 594

(HC of A)

Defamation — libel — article alleged that plaintiffs as shareholders would make large profits by charging exorbitant rooms rates — exorbitant rates proved wrong — defence of fair comment — objective test applied — intention of defamer not relevant — whether article read as a whole was defamatory — plaintiffs gravely injured in reputation — whether aggravated damages should be awarded (Malaysia)

Noor Asiah bte Mahmood & Anor v Randhir Singh & Ors [2000] 2 MLJ 173 (HC)

Cause of action — malicious prosecution — allegations of misconduct against local councillor — local authority subcommittee finding allegations proved — special committee confirming subcommittee's decision — councillor's application for

207

208

xxii

to a trust — whether money could be paid out in satisfaction of costs order in different proceedings (United Kingdom) Regina v Common Professional Examination Board, Ex parte Mealing Mc Cleod, Court of Appeal, The Times, 2 May 2000	216
Law Reform	220
New Work Programmes Sixth Programme of Law Reform (United Kingdom)	220
Administrative Law Powers and Procedures For Administrative Tribunals in Alberta (Canada — Alberta)	231
Consumer Protection Cost of Credit Disclosure (Canada — Alberta)	251
Courts Practice and Procedure Limitation of Civil Actions (New Zealand)	251
Criminal Law and Procedure Simplification of Criminal Procedure (The Right of the Attorney-General to Appeal On Questions of Fact) (South Africa)	275
Finance, Trade and Economic Development Cost of Credit Disclosure (Canada — Alberta)	290
Health, Education and Social Welfare Informal Assessment of Competence (Canada — Manitoba)	302
Privacy The Interception and Monitoring Prohibition Act 127 of 1992 (South Africa)	321
Trusts and Trustees Trustee Investment Powers (Canada — Alberta)	362
Legal Profession	377
Legislation Access to Justice Act 1999 (United Kingdom)	377
Legal Aid in Criminal and Care Proceedings (General) (Amendment)	
Regulations 1999 (United Kingdom) Legal Advice and Assistance (Amendment) (No. 3) Regulations 1999	380
(United Kingdom)	381
Legal Aid (Mediation in Family Matters) (Amendment) (No. 2) Regulations 1999 (United Kingdom)	381

xxiv

Costs — taxation — application for taxation — proceedings not	
brought within time limit — solicitor's action on bill of costs	
- client contesting reasonableness of solicitor's charges after	
expiry of right to claim taxation — whether entitled to assessment	
(United Kingdom)	
Turner & Co (a firm) v O Palomo SA; O Palomo SA v Turner & Co	
(a firm) [2000] 1 WLR 37 (CA)	430
Costs — order for costs — payment of costs by non-party	
— discretion of court (United Kingdom)	
Globe Equities Ltd v Globe Legal Services Ltd; Same v Same;	
Kotrie v Globe Equities Ltd; Globe Equities Ltd v Globe Legal	
Services Ltd, Court of Appeal, The Times, 14 April 1999; Review	
para 99/1482	431
Equity — undue influence — presumption of undue influence — hus-	
band and wife — manifest disadvantage — constructive notice of	
undue influence — duty of creditor to take reasonable steps to	
satisfy himself that wife properly advised — wife charging	
property to bank to secure loan to husband — legal executive	
certifying that wife had received independent legal advice	
— whether transaction manifestly disadvantageous to wife	
— whether bank entitled to rely on certificate from legal executive	
(United Kingdom)	
Barclays Bank plc v Coleman and another [2000] 1 All ER 385	
(CA)	431
Discovery — collateral use of information obtained — undertaking	
not to use disclosed documents for collateral or ulterior purpose	
— parties providing judge with pre-trial reading guide in action to	
revoke patent — material in guide including or referring to	
documents disclosed by patent holder on discovery — patent	
holder offering to surrender patent on day before trial — judge	
stating that he had read material and revoking patent at short	
hearing in open court — whether documents remaining subject to	
implied undertaking not to use for any purposes outside	
proceedings (United Kingdom)	
SmithKline Beecham Biologicals SA v Connaught Laboratories	
Inc [1999] 4 All ER 498 (CA)	432
Negligence — information or advice — accountant — statutory	732
provision requiring solicitors' practices to deliver annual	
accountant's report to Law Society — defendant accountants	
preparing annual reports on firm — firm's clients being defrauded	
 Law Society making payments from compensation fund 	
 Society suing accountants for negligence in preparing 	
reports — whether accountant owing Law Society duty of care in	
preparing reports (United Kingdom)	
Law Society v KPMG Peat Marwick (sued as KPMG Peat	
Marwick McLintock) and others [2000] 1 All ER 515	434
2 2 2 2 2 [2000] 1 7th DR 515	7.7

Medical Laboratory Technicians and Technologists Act 1999	
(Kenya)	90
Dentists Act 1999 (Singapore)	91
Land Surveyors (Amendment) Act 1999 (Singapore)	94
Public Utilities	
Water Industry Act 1999 (United Kingdom)	0.6
water industry Act 1999 (Officed Kingdom)	95
Transport	
Public Transport Council (Amendment) Act 1999 (Singapore)	96
Road Traffic (Vehicle Testing) Act 1999 (United Kingdom)	97
	,
Trusts and Trustees	
Trustee Delegation Act 1999 (United Kingdom)	98
Judicial Decisions	00
	99
(see also under Legal Profession, Ombudsmen and International Developments	sections)
Arbitration	
Agreement — incorporation of arbitration clause — disputes arising	
out of various work orders — whether arbitration clause in one	
work order extended to other work orders — whether incorpora-	
tion of arbitration clause by reference a matter to be determined	
by facts of case, words and conduct of parties — arbitrator	
— jurisdiction — parties agreeing to refer disputes to arbitrator	
selected by them — whether parties may by words or conduct	
acquiesce to have same arbitrator decide other disputes between	
them not covered by their original agreement — whether party	
that so acquiesces may be estopped from later asserting that	
arbitrator lacked jurisdiction	
Equity — estoppel — arbitration — conduct of one party — whether	
party in view of its conduct in arbitration may be estopped from	
asserting lack of jurisdiction in arbitration (Malaysia)	
Bauer (M) Sdn Bhd v Daewoo Corp [1999] 4 MLJ 545 (CA)	99
Stay of proceedings — arbitration clause — whether alleged	99
agreements were 'matters arising under or out of or in connection	
with' contract — Arbitration Act (Cap 10) s. 7	
Words and phrases — "matters arising under or out of or in	
connection with" (Singapore)	
SA Shee & Co (Pte) Ltd v Kaki Bukit Industrial Park Pte Ltd	
[2000] 2 SLR 12 (CA)	101
[2000] 2 3ER 12 (CA)	101
Constitutional I am and Homes Disher	
Constitutional Law and Human Rights	
Constitutional law — inconsistency of laws — whether rules of	
industrial organisation are laws of Commonwealth — whether	
inconsistency between BLF (De-recognition) Act 1985 (Vic)	
and Industrial Relations Act 1988 (Cth) — Commonwealth	

dependant under Drug Dependants (Treatment and Rehabilitation) Act 1983 — whether recommendation of rehabilitation officer wrong in law — whether Magistrate ought to have acted on recommendation — whether detention order liable to be set aside — definition of drug dependant — whether includes person who takes drugs once in a while — Drug Dependants (Treatment and Rehabilitation) Act 1983 s. 2 — Detention under Drug Dependants (Treatment and Rehabilitation) Act 1983 s. 6 — certificate issued by government medical officer, effect of — recommendation of rehabilitation officer, effect of

Evidence — documentary evidence — public document — whether report of rehabilitation officer and certificate of government medical doctor issued under Drug Dependants (Treatment and Rehabilitation) Act 1983 s. 6 are public documents — whether document may constitute a public document even in absence of right to inspect document — report of responsible officer based on investigations — report made under authority of statute — whether admissible under Evidence Act 1950 s. 35 — probative value of such report — whether report rebuttable by other evidence — recommendation of rehabilitation officer — whether an expression of opinion — whether recommendation admissible under Evidence Act 1950 s. 35 — probative value of recommendation — whether recommendation rebuttable by other credible evidence (Malaysia)

Gopinathan a/l Subramaniam v Timbalan Menteri Dalam Negeri & Ors [2000] 1 MLJ 65 (HC)

Appeal — fact, finding of — conviction based on finding of facts and credibility of witnesses — scope of appellate court's power to disturb finding — arrest — arrest by private person — scope and effect of such power — whether a private person may arrest on mere suspicion or opinion — construction of words 'in his view' under s. 27 of Criminal Procedure Code — whether liberal interpretation to be given (Malaysia)

Sam Hong Choy v Public Prosecutor [1999] 4 MLJ 433 (CA)

Murder — circumstantial evidence — discovery of body and stolen jewelleries — common intention to rob established — multiple wounds discovered on bodies of victims, whether inference of mens rea — whether all accused acted in concert to execute murders — whether mere hire of car spotted at scene of crime alone sufficient to implicate third accused with murder — trial — prima facie case — end of prosecution's case — Right's to remain silent — whether court entitled to infer that accused has no worthy defence — whether court entitled to convict

Evidence — admissions — admission by co-accused — probative value outweighed prejudicial effect — allegation that information

159

Abuse of process — second action — proceedings against negligent solicitors — collateral attack on previous judgement (United	
Kingdom) <i>LR v Witherspoon</i> [1999] 3 FCR 202 (CA); <i>Review</i> para 99/2936	423
Trial — jury — juror's special knowledge — effect on trial (United Kingdom)	
R v Fricker, Court of Appeal, The Times, 13 July 1999; Review para 99/2293	424
Trial — fairness — juror conversing with clerk to defendant's solicitor — abscondence of co-accused during trial — likelihood of prejudice (United Kingdom)	
R v Panayis [1999] Crim LR 84; Review para 99/380 Civil procedure rules — pre-trial review — attendance of legal	424
representative — insufficient case knowledge — effect (United Kingdom)	
Baron v Lovell, Court of Appeal, The Times, 14 September 1999; Review para 99/2937	425
Legal aid — assisted person's liability to pay costs — date on which person ceases to be assisted party for purposes of costs liability (United Kingdom)	
Burridge and another v Stafford and another; Khan v Ali [1999] 4 All ER 660 (CA)	425
Civil proceedings — legal aid — certificate — revocation — failure to disclose assets (United Kingdom)	
R v Legal Aid Board, ex p Parsons, Court of Appeal, The Times, 1 April 1999; The Independent, 16 April 1999; Review para 99/1446	426
Practice — chambers proceedings — party acting in person — right to assistance — right of friend to assist by attendance, note-taking and advice — litigant in person making chambers application in family proceedings — judge refusing applicant permission to act as litigant's McKenzie friend — whether judge could refuse litigant's request for assistance of McKenzie friend — whether judge ought to give reasons for refusing such a request (United Kingdom)	420
R v Bow County Court, ex parte Pelling [1999] 4 All ER 751 (CA) Practice — Chancery Division — Chancery Guide — guidance on conduct of complex cases — use of information technology (United Kingdom)	427
Morris and others v Bank of America National Trust and others [2000] 1 All ER 954 (CA)	428
Costs — order for costs — discretion — payment into court — costs after payment in — defendants adducing evidence in course of trial — claimant failing to beat payment in because of new evidence — judge allowing claimant all her costs despite failure to beat payment-in — whether judge entitled to do so (United Kingdom)	
Ford v GKR Construction Ltd and others [2000] 1 All ER 802 (CA)	429

Commonwealth Law Bulletin

Volume 26

No. 1

2000

page	
i	Editorial note
v	Contents
1	Legislation
99	Judicial decisions
220	Law reform
377	Legal profession
472	Ombudsmen
478	International developments
540	Articles
540	Modes of Appointment and Training of Judges — A Common Law Perspective
550	The Latimer House Guidelines and Their Implementation in Small Commonwealth Jurisdictions
567	Small Reflections on Executive Discretion and Judicial Independence
571	Reforms in Criminal Justice
580	E-Commerce Business Models — The Law's Response
607	The Role and Implications of Bilateral Investment Treaties
614	International Investment Agreements: Admission and
	Establishment, Legal Standards of Treatment
623	Bilateral Investment Protection Agreements: A Legal Framework for
	the Protection of Foreign Investments
631	Miscellaneous
631	Some Notes
655	Reviews and notices
677	Recent articles
679	Announcements
679	Personalia
681	Law Ministers and Attorneys-General of Commonwealth Countries
691	Coming Events
IBC	Secretariat Legal Publications



Commonwealth Secretariat

obtained by way of oppression — whether ground for court to reject admission — Evidence Act 1950 s. 27 (Malaysia) Public Prosecutor v Krishna Rao a/l Gurumurthi & Ors [2000] 1 MLJ 274 (CA) Criminal law — corruption — corruptly giving gratification — whether appellant made relevant payments — objectively corrupt element — whether payments made on understanding that they were intended for police officers Evidence — statements — previous inconsistent statement — reliability of statement as evidence of facts stated therein	162
 Evidence Act (Cap 97) s. 147(6) (Singapore) Tang Ken Boon v Public Prosecutor [2000] 1 SLR 535 (HC) Murder — identification — whether identification of witness safe — diminished responsibility — whether defence of diminished 	164
responsibility made out (Singapore) Chan Chim Yee v Public Prosecutor [2000] 2 SLR 1 (CA) Victim impact statements must conform with guidelines in cases	166
(United Kingdom) Regina v Perks, Court of Appeal, The Times, 5 May 2000 Proper factual basis for drunken intent direction to jury (United	168
Kingdom) Regina v McKnight, Court of Appeal, The Times, 5 May 2000 Waste disposal licence — breaches in conditions attached to licence — licence remains a valid site licence until suspended (United	169
Kingdom) Regina v Harris, Court of Appeal, The Times, 2 May 2000 Crime — drugs — restraint order — jurisdiction — confiscation order made on conviction of drug trafficking offence — High Court order prohibiting disposal of assets and requiring repatriation of moneys in foreign bank account — whether jurisdiction to make — Drug Trafficking Act 1994 (c. 37), s. 26 (United Kingdom)	171
Director of Public Prosecutions v Scarlett [2000] 1 WLR 515 (CA)	172
Defence Forces and Police Military law — armed forces — Criminal Injuries Compensation (Overseas) Scheme — compensation for members of armed forces suffering injury resulting from crime of violence — soldier serving overseas in United Nations peacekeeping force — warring faction deliberately firing tank shell at peacekeepers — soldier suffering injury — whether entitled to award under scheme (United Kingdom)	
Regina v Ministry of Defence, Ex parte Walker [2000] 1 WLR 806 (HL) Police — powers — proceeds of drug trafficking — claim by suspects for repayment of funds confiscated by police — suspects not	173

xviii

convicted of drug trafficking offences or subject to inquiry — whether police entitled to resist claim for repayment — whether defence of illegality applicable (United Kingdom) Webb v Chief Constable of Merseyside Police; Porter and Another v Same [2000] 2 WLR 546 (CA) Police — powers — seizure of evidence — seizure and retention of vehicle — offences alleged to have taken place in vehicle — whether power to seize vehicle at common law — whether power to seize and retain vehicle as "premises" (United Kingdom) Cowan v Condon [2000] 1 WLR 254 (CA)	174 175
Environment Environmental law — adjudication — judicial role — Supreme Court — High Court — supervisory jurisdiction — pollution control authorities — technical and scientific issues — determination — reference to expert body — National Environment Appellate Authority Act 1997 — Constitution of the Republic of India 1950, Arts 32, 136, 226 (India) Andhra Pradesh Pollution Control Board v Nayudu and Others [2000] 1 LRC 578 (SC)	176
Evidence Criminal evidence — confession — admissibility — voire dire — person in authority' — requirement for trial judge to conduct voire dire when statement containing confession made to a 'person in authority' — accused admitting offence when confronted by complainant and her family — statement of accused admitted into evidence without challenge — whether trial judge required to conduct voire dire to determine admissibility of statement — whether complainant and her family 'persons in authority' — whether statement made voluntarily — circumstances under which trial judge should conduct voire dire of own motion (Canada)	
R v Hodgson [2000] 1 LRC 203 (SC) Finance, Trade and Economic Development Mortgages and securities — loan facility documents — construction — event of default — notice demanding repayment — validity of notice — debenture — default — power of mortgagee to appoint receiver — validity of appointment (Australia) Pan Foods Company Importers and Distributors Pty Ltd and Others v Australia and New Zealand Banking Group Ltd and Others (2000) 170 ALR 579 (HC of A)	179

Income tax — Schedule E relief on foreign earnings — whether drilling rig is a "ship" for income tax purposes (United Kingdom) Clark (Inspector of Taxes) v Perks; Mcleod (Inspector of Taxes v Same; Guild (Inspector of Taxes) v Newrick and Another, Chancery Division, The Times, 3 May 2000	184
Health, Education and Social Welfare Breach of contract by university or higher education corporation — no provision for supervisory jurisdiction of a visitor — whether justiciable (United Kingdom) Clark v University of Lincolnshire and Humberside, Court of Appeal, The Times, 3 May 2000	186
Housing and Construction Housing — secure tenancy — transfer — local authority granting joint secure tenacy of flat to cohabitants — woman leaving and applicant moving in to live with remaining tenant — remaining tenant leaving and applicant applying for transfer of his interest — whether jurisdiction to make transfer order — whether occupation order to be made (United Kingdom) Gay v Sheeran and Another; Same v Same [2000] 1 WLR 673 (CA)	190
Industrial and Intellectual Property Copyright — registered designs — design for electrical meter box — proprietorship of design — authorship of design — whether first plaintiffs' or second plaintiffs' employee author of design — whether plaintiffs had locus standi to sue defendants — validity of design — whether features of shape or configuration appealed to and were judged by the eye — whether features dictated solely by function — whether design was new at date of registration — anticipation by prior art — prior publication — infringement — test of infringement — proper approach — whether design of defendants' electrical meter box infringed plaintiffs' rights in registered design — defences — innocent infringement — whether defences of acquiescence, waiver and estoppel applicable on facts (Singapore) Hunter Manufacturing Pte Ltd & Anor v Soundtex Switchgear	
& Engineering Pte Ltd and another appeal (No. 1) [2000] 1 SLR 401 (CA)	191
Industrial Relations Industrial Court — dismissal of unionized employee — credibility of witness within jurisdiction of Industrial Court — whether High Court entitled to substitute its own findings of fact — whether High Court judge exceeded his role in interfering with Industrial Court's decision (Malaysia)	
National Union of Plantations Workers v Kumpulan Jerai Sdn	194

Redundancy payments to employees — whether such payments created a break in the period of continuous service of employees for purpose of calculating redundancy payments (United Kingdom)

Lassman and others v Secretary of State for Trade and Industry, Court of Appeal, The Times, 5 May 2000

196

Land

Acquisition of land — delay in making award — award not made within two years from date of publication of declaration of compulsory acquisition — effect of such declaration — whether lapsed and ineffective subs. (4) of s. 8 of Land Acquisition Act 1960 — Legislative purpose of subsection — whether time limit imposed upon State Authority to effect acquisition of land — inquiry by Land Administrator — notice of inquiry — respondent not served with Form E notice of inquiry — respondent not registered proprietor or occupier of land — respondent not having any interest in land — whether Land Administrator obliged to serve Form E notice on respondent — whether respondent had locus standi to challenge acquisition — non service of Form E notice of inquiry — whether court empowered to declare inquiry and award null and void — Land Acquisition Act 1960 s. 56 (Malaysia)

Pengarah Tanah dan Galian Negeri Kedah & Anor v Emico Development Sdn Bhd [2000] 1 MLJ 257 (CA)

Trespass — land — boundary fence — defendant removing boundary fence and erecting wall on own land — defendant clipping and pruning trees growing on plaintiffs' side of wall — whether implied agreement that new wall demarcating boundary — whether strip of land between original fence and new wall conveyed by implied agreement — whether defendant liable in trespass (United Kingdom)

Burns and Another, Morton [2000] 1 WLR 347 (CA)

199

201

Local Government

Homeless persons — accommodation available for occupation — council deciding applicant with accommodation in Bangladesh not homeless — appeal to county court "on any point of law" — whether including appeal on ground of irrationality of council's decision — whether financial ability to travel to accommodation relevant to availability of accommodation — whether inability to travel constituting inability to "secure entry to" accommodation (United Kingdom)

Nipa Begum v Tower Hamlets London Borough Council [2000] 1 WLR 306 (CA)

202

xxi

outy owed to client — family proceedings — guardian ad litem's solicitor previously acting for father in unrelated proceedings — conflict of interest (United Kingdom)	
Re T and A (Children), Court of Appeal, The Times, 1 February 2000; Review para 00/415	417
Duty owed to client — conflict of interest — divorce proceedings — application to bar solicitor from acting — discontinuance of application — costs (United Kingdom)	
Davies v Davies [1999] 3 FCR 745 (CA); Review para 00/414 Trial — plea bargaining — visits by counsel to judge in chambers before plea entered (United Kingdom)	418
R v Dossetter, Court of Appeal, The Times, 5 February 1999; Review para 99/718 Trial — evidence given by accused — opportunity for questions by	419
judge after re-examination (United Kingdom) R v Wiggan, Court of Appeal, The Times, 22 March 1999; Review para 99/1040 Appeal — refusal of leave to appeal — decision overturned — right of	419
judge to sit on subsequent hearing (United Kingdom) Mahomed v Morris, Court of Appeal, The Times, 1 March 2000; Review, para 00/637	419
Court of Appeal — application for leave to appeal — oral renewal — appropriate circumstances for oral renewal (United Kingdom) Khreino v Khreino (No. 1) (Constitution of Court) [2000] 1 FCR 75 (CA); Review para 00/641	420
Evidence — interview evidence — exclusion — mentally ill detainee — requirement for appropriate adult (United Kingdom) R v Aspinall, Court of Appeal, 4 February 1999; Review para	
99/712 Trial — summing up — direction to jury — reasons for verdict (United Kingdom)	421
R v Jones, Court of Appeal, The Times, 17 February 1999; Review para 99/719 Duty to court — criminal proceedings — decision regarding defence — solicitor's delay in taking instructions (United Kingdom)	421
R v McFarlane, Court of Appeal, The Times, 24 March 1999; Review para 99/1242 Trial — summing up — direction to jury — delay in bringing	422
prosecution (United Kingdom) R v Milliner, Court of Appeal, The Times, 9 July 1999; The Independent, 16 July 1999	422
Duty of care — solicitor acting for mortgagee — confirmation regarding advice given to borrower and wife (United Kingdom) Mercantile Credit Co Ltd v Fenwick; Same v Speechly Bircham,	
Court of Appeal, The Times, 23 February 1999; Review para 99/911	422

judge frustrates trial process — duty of counsel to protect client's	
interests (Cayman Islands) International Credit and Investment Company (Overseas) Limited	
and Finance and Investment International Limited v Adham and Five Others 1999 CILR 501 (CA)	389
Legal aid — civil proceedings — availability of legal aid — right to	
fair trial (Guernsey)	
Faulkner v United Kingdom (Application No. 3038/96), European Court of Human Rights, The Times, 11 January 2000; Review	
para 00/340	391
Advocates — professional privilege — waiver — client	
counterclaiming in suit for fees waives privilege over communications with advocate — also waived over	
communications between client and English solicitor for period	
when solicitor and advocate worked together on client's case	
— no waiver if client alleges misconduct against advocate in proceedings to which advocate not party (Isle of Man)	
J S Hinchliffe and S J Hinchliffe v Gough and Barnett 1999-01	
MLR 77	392
Discovery and production — burden of proof (Isle of Man)	393
Westhead v Zircon Ltd 1999-01 MLR Notes-2 Liability as officer of court — breach of undertaking — construction	5,5
of undertaking — payment out of compensation fund of Bar	
Council pending outcome of suit — plaintiff's solicitors	
undertook to make refund of sum paid should plaintiff succeed in suit — parties settled out of court — whether out of court	
settlement came within parameters of terms of undertaking	
— whether claim for interest of sum paid from compensation fund	
should be allowed (Malaysia) Madam Packiam Ramalingam v Badan Peguam Malaysia [2000]	
1 MLJ 151	393
Remuneration — hill of costs — lump sum bill rendered — taxation	
of bill at client's request — whether client had to undertake to pay for taxed costs — whether agreement to fees precluded taxation of	
bill (Malaysia)	
Kelvin Chan Chee Khuen v Tan Kim Soon & Co [2000] 1 MLJ	20.4
440 (HC)	394
Legal aid — availability — proceedings before UN Human Rights Committee — whether committee "judicial authority" for purposes	
of legal aid — whether jurisdiction to grant legal aid (New Zealand)	
Pauline Eunice Tangiora v Wellington District Legal Services	395
Committee [2000] 1 WLR 240 (PC) Duty owed to client — joint venture — solicitor acting for one party	393
in joint venture and joint venture itself — financial difficulties	
conflict of interest (New Zealand)	
Armitage v Paynter Construction Ltd [1999] 2 NZLR 534 (CA);	396
Review para 99/3261	2,0

ì

Contents

Legislation	1
(see also under Legal Profession, Ombudsmen and International Developments see	ctions)
Children and Young Persons Protection of Children Act 1999 (United Kingdom) Youth Justice and Criminal Evidence Act 1999 (United Kingdom) Adoption (Intercountry Aspects) Act 1999 (United Kingdom)	1 2 5
Companies and Corporate Bodies Companies Management Law 1999 (Cayman Islands) Bank of India (Africa) Limited Act 1999 (Kenya)	6 12
Constitutional Law and Human Rights Parliamentary Members (Office of Profit) Amendment Act 1999 (Australia — Queensland)	13
Courts Practice and Procedure Administration of Muslim Law (Amendment) Act 1999 (Singapore)	15
Criminal Law and Procedure Surveillance Devices Act 1999 (Australia — Victoria) Criminal Law (Temporary Provisions) (Amendment) Act 1999	16
(Singapore) Criminal Cases Review (Insanity) Act 1999 (United Kingdom)	24 24
Cultural Affairs National Gallery Law 1999 (Cayman Islands)	25
Elections and Polls Parliamentary Elections (Amendment) Act 1999 (Singapore)	27
Environment Environmental Management and Co-ordination Act 1999 (Kenya) Environmental Protection Levy Act 1999 (Saint Lucia) Environmental Public Health (Amendment) Act 1999 (Singapore)	28 32 32
Evidence Surveillance Devices Act 1999 (Australia — Victoria) Youth Justice and Criminal Evidence Act 1999 (United Kingdom)	35 35
Family Law Adoption (Intercountry Aspects) Act 1999 (United Kingdom)	35
	vii

Duty of care — duty to beneficiary of will — duty to ensure testamentary capacity of testator (New Zealand) Knox v Till [1999] 2 NZLR 753 (CA), Review para 99/3260 Show cause action — failing to defend client — failing to keep client informed of proceedings — failing to honour undertaking given to client — Client adjudged bankrupt as a result — appropriate penalty (Singapore)	397	
Law Society of Singapore v Suresh Kumar Suppiah [1999] 4 SLR 50 (CA)	207	
Show cause action — respondent convicted of criminal offence under s. 3(1)(c) of Residential Property Act (Cap 274) — whether implied defect of character rendering advocate and solicitor unfit for profession — whether nature of offence conclusive — whether offence committed in professional capacity relevant	397	
Show cause action — penalty — striking off — whether offence		
involving dishonesty (Singapore) Law Society of Singapore v Tham Yu Xian Rick [1999] 4 SLR		
168 (HC)	398	
Disciplinary proceedings — Disciplinary Committee — whether Committee bound to conclude proceedings once respondent admitted to all charges — whether Committee could proceed to look at facts surrounding charge despite respondent's admission Show cause action — penalty — failure to place client's money into client's account — whether technical offence warranting only a censure (Singapore)		
Law Society of Singapore v Prem Singh [1999] 4 SLR 157 (HC) Trial — fairness — defendants made court's witnesses — denial of opportunity to refute allegations against them (United Kingdom) R v Bingham; R v Cooke, House of Lords, The Times, 15 March	401	
1999; Review para 99/1041	404	
Natural justice — bias — judge in own cause — duty and extent of inquiry required by judge — whether direct interest in outcome of proceedings — whether automatic disqualification — whether real danger of bias — waiver of objection (United Kingdom) Locabail (UK) Ltd v Bayfield Properties Ltd and Another; Locabail (UK) Ltd and Another v Waldorf Investment Corporation and Others; Timmins v Gormley; Williams v HM Inspector of Taxes and Others; Regina v Bristol Betting and Gaming Licensing Committee, Ex parte O'Callaghan [2000] 2 WLR 870 (CA) Judge — reasons — failure by judge to give reasons for conclusion essential to judgment — plaintiffs bringing action against defendant for negligent valuation — case depending on expert evidence — judge preferring defendant's expert evidence but not giving reasons — whether failure to give reasons for conclusion essential to decision constituting ground of appeal (United Kingdom) Flannery and Another v Halifax Estate Agencies Ltd [2000] 1 All	404	~
ER 373 (CA); [2000] 1 WLR 377 (CA)	408	
	xxvii	

Solicitor — costs — personal liability — remuneration of expert witness — solicitor advising defendant in criminal proceedings on legal aid — whether prohibited from agreeing to pay personally attendance fees of expert witness (United Kingdom) Goulden v Wilson Barca (a firm) [2000] 1 WLR 167 (CA) Solicitor — negligence — immunity from suit — claims including ancillary relief in matrimonial proceedings — settlement	409
negotiated by solicitors — consent orders requiring court's approval — Judge giving approval — claims for negligence	
against solicitors advising on settlement — whether solicitors immune from suit — whether claims amounting to collateral	
attack on orders — whether abuse of process (United Kingdom) Arthur JS Hall & Co (a firm) v Simons; Barratt v Woolf Seddon (a firm); Cockbone v Atkinson Dacre & Slack (a firm), Harris v Schol-	
field Roberts & Hill (a firm) [1999] 3 WLR 873 (CA)	410
Solicitor — negligence — damages — claimant bringing claim for personal injuries — liability being admitted but claim struck out	
due to negligence of claimant's solicitors — claimant bringing	
action for negligence against solicitors — judge taking into	
account medical evidence subsequent to notional trial date in	
assessing damages — whether judge entitled to do so — whether	
judge should have made deduction for risks attendant on personal	
injury litigation (United Kingdom)	
Charles v Hugh James Jones & Jenkins (a firm) [2000] 1 All ER 289 (CA)	412
Solicitor — costs — contingency fee — fee payable only in event of	
party being successful in action — solicitor agreeing to charge	
plaintiff in libel proceedings at full rate only if successful and to	
charge at lower rate if not — whether agreement lawful or	
enforceable (United Kingdom)	
Awwad v Geraghty & Co (a firm) [2000] 1 All ER 608 (CA)	413
Undertaking — undertaking to repay loan — liability of partner	
(United Kingdom)	
Hirst v Etherington, Court of Appeal, The Times, 21 July 1999,	414
Review para 99/2492	414
Practice — law reports — duty of advocates to keep up to date with	
recent reported authority (United Kingdom) Copeland v Smith and another [2000] 1 All ER 457 (CA)	415
Duty to client — non-performance of retainer — extent of liability	113
Midland Bank v Cox McQueen (a firm), Court of Appeal, The	
Times, 2 February 1999; The Independent, 29 January 1999;	
Review para 99/602	416
Duty of care — duty to beneficiary of will — beneficiary's duty to	
mitigate loss — failure to apply for rectification of misdrafted will	
(United Kingdom)	
Horsfall v Haywards (a firm), Court of Appeal, The Times, 11	416
March 1000: Paviau para 00/12/1	416

xxviii

Civil Legal Aid (General) (Amendment) (No. 2) Regulations 1999 (United Kingdom)	382
Judicial Decisions	
Representative proceedings — costs — costs agreements between solicitors and group members — "no win no fee" agreements — provision for uplift fees and personal liability for costs of group members — whether costs agreements inconsistent with representative proceedings legislation and invalid under Constitution — whether costs agreements fair and reasonable — court's jurisdiction to supervise costs agreements Representative proceedings — costs agreements — provision for uplift fees and personal liability for costs of group members in accordance with State legislation dealing with solicitors' practice — whether inconsistent with legislation for representative proceedings in Federal Court (Australia) Johnson Tiles Pty Ltd v Esso Australia Ltd and Another (1999)	
166 ALR 731 (FC)	382
Contempt — contempt of court — Family Court of Australia — scandalising court — source of power to punish — whether such offence must be prosecuted upon indictment Contempt of court — trial by jury — whether indictable offence — whether offence against law of Commonwealth (Australia) Courts and judicial system — bias — reasonable apprehension — Family Court of Australia — speech by Chief Justice responding to criticisms of court — independence of members of judiciary — whether conduct or opinions of Chief Justice gives rise	
to reasonable apprehension of bias on part of trial judge	
Words and phrases — "law of the Commonwealth" (Australia)	
Re Colina and Another; Ex parte Torney (1999) 166 ALR 545	
(HC)	383
Courts and judicial system — Supreme Courts — whether Supreme Court of Australian Capital Territory a court created by Parliament — whether s. 72 of Constitution applies to appointment of judges to territory courts — Commonwealth Constitution ss. 52(i), 71, 72, 122 (Australia) Re Governor, Goulburn Correctional Centre, Goulburn and Another; Ex parte Eastman (1991) 165 LR 171 (HC)	
Juries — provision to prosecutor of name and criminal history of persons on jury panel prior to delivery of copy of panel in open court — whether fundamental failure to observe requirements of criminal process or requirements relating to constitution or authority of jury — empanelment of jury — jury vetting — peremptory challenge (Australia)	386
Katsuno v R (1999) 166 ALR 159 (HC) Fair trial — bias — judgment may be set aside if real danger of bias, ie court's regarding one party's case unfairly — unfair if conduct of	387
	XXV

judicial review granted — councillor bringing claim for malicious prosecution — whether available in respect of disciplinary proceedings — whether claim to be struck out as disclosing no reasonable cause of action (United Kingdom)

Gregory v Portsmouth City Council [2000] 2 WLR 306 (HL)

Tort — cause of action — misfeasance in public office — Bank of England's regulatory functions — licensed deposit-taker collapsing as result of fraud — depositors claiming Bank of England wrongly granted licence to or failed to revoke licence of deposit-taker — whether necessary to establish foresight of actual consequences of particular failure in supervision — whether breach of statutory obligation amounting to dishonesty

Banking — deposits — deposit-taking business — whether depositors or potential depositors acquiring, rights against regulatory body under Community law — Council Directive

(77/780/EEC)

Practice — pleadings — striking out — abuse of process — action for misfeasance in public office — complex case likely to lead to very long trial — whether appropriate to consider striking out pleadings — whether leave to re-amend to be granted (United Kingdom)

Three Rivers District Council and Others v Governor and Company of the Bank of England (No. 3) [2000] 2 WLR 15 (CA)

211

210

Trusts and Trustees

Succession — executors and administrators — joint administration — agreement to sell estate property executed by one of the administrators — validity of agreement — whether administrators had joint and several authority to deal with assets of deceased — whether act of one administrator could bind the other and the estate — agreement entered into before extraction of grant of letters of administration — validity of agreement — vesting of property in administrators — doctrine of relation back — application of doctrine of relation back to validate agreement — whether agreement entered into for benefit of estate — whether ratification of all administrators necessary

Equity — estoppel — estoppel by representation —whether co-administrator estopped from asserting that agreement was not binding on estate — whether his silence amounted to a representation — whether there was a duty to speak in the circumstances — detrimental reliance on the representation (Singapore)

Tacplas Property Service Pte Ltd v Lee Peter Michael (administrator of the estate of Lee Chong Miow, deceased) [2000] 1 SLR 637 (CA)

Money paid into court as security for costs — bank loan obtained for specific purpose of providing security for costs — whether subject

213

xxiii