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Editor-in-Chief's Introduction to the Autumn Issue of Volume VII of the Cambridge Law Review

It is with great pleasure that I present the Autumn Issue of Volume VII of the Cambridge Law Review. Another academic year has come to an end, over which our journal has received a significant number of interesting submissions.

In this issue's first article, Scott Morrison analyses the legal, economic, and political implications of Brexit for Northern Ireland in light of the Northern Ireland Protocol. The author considers that the Protocol has failed to strike the right balance between nationalists and unionists. In favouring the nationalist position of avoiding a hard border between the Republic of Ireland and Northern Ireland, the Protocol has disrupted the movement of goods between Northern Ireland and Britain. It has done so by imposing customs duties on all goods subject to commercial processing, as well as to goods which are at risk of being sold in the EU single market. As the local economy relies primarily on trade with Britain, this development has had an alarming impact on the economy of Northern Ireland. The author examines two solutions to the particular problem of the disruption of the food supply, one involving the UK aligning with EU regulations on food products, the other advocating for a precise definition of the class of products at risk of being sold in the EU single market. The author considers the former to be the most effective with respect to resolving the disruption of the food supply, but concedes that it is politically unfeasible under the present circumstances. The article then turns to the legal enforcement of the Northern Ireland Protocol. The author here expresses some doubt on whether the preliminary reference procedure to the Court of Justice of the European Union and the possibility of opening infringement proceedings for violation of the Protocol will result in the effective resolution of legal disputes, given the UK's dualist legal system and the UK government's statements about the prospect of disregarding international law. Finally, the article examines the political unrest following the adoption of the Protocol and the

dissatisfaction—which has led to litigation—around the fact that the Northern Irish Assembly is disabled from having a voice on the continuing validity of the Protocol until 2024.

In "'Legitimate' Protest in European Human Rights Law: A Critical Reconstruction", Mythili Mishra studies the construction of 'legitimate' protest in European human rights law. Her article uses the jurisprudence of the European Court of Human Rights to understand and evaluate what kinds of protest the Court legitimises, and what kinds it does not. It does so on the basis of three ideas, namely responsibility, disruption, and offence. The author argues that these three fundamental strands come together to construct the Court's account of 'legitimate' protest. This account is also reconstructed in the article through a critical evaluation of the Court's justifications, which enable one to interrogate the Court's judgments and criticise them for inadequately protecting the right to protest. The article concludes with observations about what its findings mean for the protection of human rights and democracy. In particular, it posits that the Court offers only limited or no protection to protestors who do not fit a certain model. This practice constitutes, in the author's view, a threat to democracy.

In "A Critical Analysis of the Scottish Government's Draft Gender Recognition Reform (Scotland) Bill and its Adherence to the UN Convention on the Elimination of All Forms of Discrimination against Women", Esther Hodges examines the Scottish government's draft Gender Recognition Reform (Scotland) Bill. The draft Bill aims to streamline the process for those seeking to obtain a Gender Recognition Certificate and so amend the sex on their birth certificate to the gender with which they identify. Its proposed reforms have attracted significant opposition. Drawing on qualitative analysis of submissions to the draft Bill's second public consultation, this article argues that opposition is typically based on a reductive, classical sociological conceptualisation of gender, which understands gender as an immutable binary ordained by nature and contends that trans women are not women. By making it easier for trans women to gain legal recognition for the gender with which they identify, those opposing the draft Bill on these grounds therefore argue that its reforms put the rights and freedoms of cis women at risk. The article explores this contention by critically analysing the draft Bill's adherence to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Setting analysis against a framework of two of the CEDAW's most relevant articles and its General Recommendation 28, it argues that the draft Bill is demonstrably in adherence with CEDAW because of its efforts to reduce discrimination against trans women through means which in no way increase the risk of discrimination against cis women. Finally, the author argues that the draft Bill, and indeed CEDAW, could go further in their efforts to reduce discrimination faced by trans women by reducing their evidential reliance on binary

conceptualisations of gender. In so doing, the Bill could encourage greater feminist and queer coalitional work, discouraging efforts to pit women's rights against those of trans people.

The issue's fourth article, titled "An Assessment of the Effectiveness of the Unfair Prejudice Remedy in UK Company Law: How can we Guarantee Appropriate Judicial Discretion?" brings attention to section 994 of the Companies Act 2006, which enables members of a company to petition the court for a remedy in respect of conduct by other members that unfairly prejudices their interests. The author, Ziyuan Li, argues that, although the court's open-ended interpretation of s 994 provides a reliable safeguard for the minority shareholders' interests, it may indirectly encourage opportunistic behaviour leading to abusive unfair prejudice actions. The rapidly growing number of s 994 petitions have led to this type of proceeding becoming more burdensome, thereby increasing the financial and time burden on both the petitioner and the court. Moreover, the expansive discretion has resulted in an overlap in jurisdiction between s 994 petitions, which traditionally represent personal relief, and derivative claims, which represent corporate relief. The author's view is that this development opens the floodgates for minority shareholders to bring malicious claims to interfere with the affairs of the company. As a consequence, the unfair prejudice remedy regime may run counter to the objectives of 'efficiency' and 'fairness' in the area of shareholder remedies law. In light of this background, the article explores how the effectiveness of the s 994 petitions may be improved. It does so by proposing a guiding framework for the construction of appropriate judicial discretion that better balances shareholder protection and corporate autonomy.

In "A Necessary Shift from Shareholder Primacy toward Stakeholder-Conscious Governance in Light of Corporate Social and Environmental Responsibility", Sophie Treacy engages with the effect of climate change on corporate governance. The author identifies a tension between the traditional model of shareholder primacy, with its priority to profit-maximising activities, and the need for a sustainable and socially responsible governance. To address this tension, the article argues that, at the level of doctrine, corporate purpose is undergoing a paradigm shift from strictly shareholderist to stakeholder-conscious governance, prompted by a growing number of social and environmental exigencies. The author supports this statement by examining the origins and normative legitimacy of shareholder primacy, along with the extent to which shareholderist governance can be reconciled with activities of corporate social responsibility. The article concludes that shareholder primacy is teetering on the brink of collapse, as the climate crisis demands corporate purpose to evolve toward a much more holistic, stakeholder-conscious model of governance.

In his article, "The Strange Saga of Compensatory Taxes: Charting a Way Out of India's Maze of Doctrinal Uncertainty", Rishabh Jain reviews the 'doctrine of compensatory taxation' ('DCT') – that is, the levy of supposedly non-restrictive taxes by States on account of facilitation of trade, commerce, and intercourse ('TCI') – in Indian constitutional law. The article analyses the rise and fall of the DCT to reveal underlying conflicts between its two referents which explain the 'maze of doctrinal uncertainty' around it. It then argues that the DCT was rightly rejected, but that the conceptual confusions introduced by it have not been fully extirpated and have even figured in some of the grounds used to reject the DCT. In the process, the article engages with some of the rough edges of Indian constitutional jurisprudence, such the conflation of two different and contrary doctrines under the common label of DCT, the rejection of the older 'direct and immediate impact' doctrine due to conflation with DCT, and the mislocation and misapplication of the fee-tax distinction. The author concludes by regarding the strange saga of the DCT as a warning against over-emphasis in TCI jurisprudence on textual factors to the exclusion of conceptual (particularly economic and logistical) ones.

The issue concludes with three case comments. In "Justice Shortchanged? Redrawing the Ethical Boundaries of Lifted Judgments Following *Crinion v IG Markets Ltd* [2013] EWCA Civ 587", Shen-Way Chong makes the case for the imposition of a duty on the bench not to plagiarise the language of the victorious litigant—what he refers to as the practice of issuing lifted judgments—and to advocate for a "functional approach" to deal with instances of unbridled judicial copying. By referring primarily to the leading Court of Appeal decision in *Crinion v IG Markets*, the author seeks to illustrate the paradox between lifted judgments and the ethics espoused in the Guide to Judicial Conduct.

"Assumptions of Irresponsibility: Liability for Omissions following *Tindall v Chief Constable of Thames Valley*" analyses the present state of negligence liability in English tort law as set out in the recent case of *Tindall v Chief Constable of Thames Valley*. Despite recent landmark decisions regarding acts and omissions, the boundaries of the distinction between the two remain to be fully explored. Following the decision in *Tindall*, the author, Sam Pearce, suggests that a temporary conferral of a benefit must always fall to be classified as an omission. The article then argues that, for a claimant to establish that a defendant has assumed a responsibility to them, it must first be shown that the defendant has a relationship with the claimant that is sufficiently distinguishable from the general public. It is the lack of such a relationship that prevented the claimant in *Tindall* from successfully arguing that the police had assumed a responsibility to all road users. This commentary concludes that Tindall further

elucidates key duty of care principles under the law of negligence, whilst also highlighting important questions that will require clarification from the courts in the future.

The issue's final case comment, "Dichotomy between Jurisdiction and Admissibility: Illuminating the Twilight Zone – *BTN v BTP* [2021] 1 SLR 276", authored by Joel Soon, reviews the Singapore Court of Appeal's judgment in *BTN v BTP*. According to the author, the significance of this judgment lies in that it affirmed that the tribunal versus claim test, which was introduced in the Singapore Court of Appeal's earlier judgment in *BBA v BAZ*, continues to apply to determine whether issues go towards jurisdiction or admissibility. Notwithstanding the strong impetus for drawing a dichotomy between jurisdiction and admissibility, the dichotomy's usefulness is called into question where issues defy easy classification. The inflexibility perpetuated by the dichotomy has led, according to the author, to the emergence of a twilight zone. The central thesis of the case comment is that the dichotomy may be of limited usefulness in certain areas in the law of arbitration, although, admittedly, the Singapore courts are stuck between a rock and a hard place since alternatives to the dichotomy come with shortcomings of their own.

I wish to thank our team of Senior, Associate, and International Editors for their work and dedication during this period.

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