



### President's Report



Registrations for the London 2016 International Commercial Law Conference ('**London 2016 ICLC**') will close at 6:00pm on Friday 17 June 2016.

Registrations already exceed 100 attendees and excitement is building for what promises to be a fantastic conference. For more information on the London 2016 ICLC, visit: [www.london2016iclc.com](http://www.london2016iclc.com).

The Melbourne Law School and CommBar seminar series is being run again this year following a successful inaugural year in 2015. Upcoming topics include: Mediation in an Asian Context; Jurisdictional Clauses and Proof of Foreign Law; and Damages in Professional Negligence. Dates and venues will be advertised shortly.

The National Commercial Court seminar series co-ordinated by Monash University, the Federal Court (Davies J) and CommBar also goes from strength to strength. The next seminar is to be held on 1 June 2016 on the topic of Sale of Businesses. The session will be chaired by the Honourable Justice Mark Moshinsky and the speakers are Mark Robins QC, Adrian Ryan SC and Rob Jackson of Rigby Cooke Lawyers.

The annual CommBar cocktail function will be held on the evening of 19 October 2016. Details will follow.

**Philip Crutchfield QC | President**



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## Quotes of Note

*Tell me and I'll forget. Show me, and I may not remember. Involve me, and I'll understand.*  
Native American proverb.

*Children may tear up a house, but they never break up a home.* Confucius

*A year? What is a year? All time is relative. One day may be a lifetime, a year can be forever. It is not the number of days but what goes into those days.* Louis L'Amour

## Forthcoming Events and Updates

### CONSTRUCTION LAW

#### **Concurrent delays and the contractor's entitlement to extensions of time and compensation**

*Thursday 20 October, 5:15pm, Neil McPhee Room, Level 1 ODCE*

This CPD will explore the meaning of "concurrent delay" and a contractor's entitlement to extensions of time and compensation where there are concurrent delays, one entitling the Contractor, to an extension of time, the other for which the Contractor is contractually responsible.

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#### **The Society of Construction Law – End of year function**

*Friday 9 December 2015, 5:45pm for 6:00pm, Corrs Chambers Westgarth*

The evening will commence with the Grand Final of the inaugural Charrett Moot.

It is envisaged that in the near future the Construction Law Division of CommBar will conduct Practice Group sessions. Rather than having two practice group sessions running in parallel, the existing construction law practice group sessions conducted by the Victorian Bar will migrate into the Commbar Practice Group sessions. Further details will be provided shortly.

## Banking and Finance

### **Characterising interests in funds paid into Court – PPSA security interests or not?**

**May 20, 2016** · by Lynton Hogan

While courts have long wrestled with the proper characterisation of parties' interests in money paid into court, the journey of judicial interpretation of the PPSA has only just begun. In *Dura* the Victorian Court of Appeal considered whether payments into court gave rise to [...] [Read More](#) »

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### **Divergence in summary disposal of cases shown by contrasting recent decisions by the Courts of Appeal in Victoria and New South Wales**

**May 26, 2016** · by Brian Kennedy

The decision of the New South Wales Court of Appeal demonstrates how a strict approach to granting summary judgment still prevails in that jurisdiction. There is in pronounced contrast to the post – Civil Procedure Act landscape in Victoria, where novel claims (unknown to Australian law in its current state) need to be supported by compelling submissions in order to [...] [Read More](#) »

## Civil Procedure / Insurance & Professional Negligence

### Enough already? The LSC's recent pronouncements on your costs disclosure obligations

March 17, 2016 · by Paul Duggan

The Legal Services Council's inaugural guideline and direction deals with lawyers' costs disclosure obligations. Simply put, we are required to provide single figure estimates of our costs. But even the guideline and direction seems to recognize that things will rarely be [...] [Read More](#) »

## Class Actions

### Judges divided on scope of Anshun estoppels for group members in class actions

May 24, 2016 · by Lucy Kirwan

Two recent single judge decisions in the Timbercorp and Willmott Forests litigation, have brought into focus the role of group members in class actions and thrown real doubt over the correctness of earlier decisions in the Great Southern litigation concerning the [...] [Read More](#) »

## Building and Construction Law

### Slicing and dicing technical engineering construction cases: Orders for appointment of both an Assessor, and a Special Referee

May 24, 2016 · by David J McAndrew

Whether the Court would be best assisted by a report from a special referee under O. 50 of the Supreme Court (General Civil Procedure) Rules (Vic) 2015 and or an assessor under s. 77 of the Supreme Court Act 1986 (Vic) and s. 65M of the [...] [Read More](#) »

### Building & Construction Industry Security of Payment Act 2002 (Vic) update

May 24, 2016 · by David J McAndrew

Nature and extent of details required to be included in a valid payment claim under the Building & Construction Industry Security of Payment Act 2002 (Vic) Act (the Act), and the assessment process required to be undertaken by an Adjudicator to determine the value of [...] [Read More](#) »

## Insolvency Law

### Bond's Bell group litigation never dies: High Court strikes down WA laws as constitutionally invalid

May 26, 2016 · by Evelyn R Tadros

Alan Bond passed away last year, but the legal battles over the 1990 collapse of his Bell Group companies may yet continue. The High Court has declared state legislation, which was designed to end the long-running litigation by short-circuiting certain aspects [...] [Read More](#) »

## Insurance and Professional Negligence

### Defending may include going on the attack (just not this time)

May 25, 2016 · by Clive Madder

In this Supreme Court decision, Hargrave J confirmed that an Insured's proactive conduct may constitute reasonable defensive action covered under the Defence Costs extension of a D&O Policy, depending (as always) on the Policy's wording. However, Mr Hird could not [...] [Read More](#) »

## Public Law

### High Court dismisses claim for statutory termination payment by Tabcorp

May 25, 2016 · by Tim Jeffrie

The High Court has confirmed that Tabcorp was not entitled to a statutory termination payment in the amount of \$686.8 million following the State's decision not to renew Tabcorp's [...] [Read More](#) »

### High Court upholds Senate voting reforms

May 27, 2016 · by Anna Lord

In a unanimous judgment the High Court upheld the constitutional validity of Senate voting reforms designed to put an end to preference deals [...] [Read More](#) »

## IP and Trade Practices

### Better to curse the darkness – infringement of street lighting assembly patent upheld

May 24, 2016 · by Alan Nash and Tom Cordiner

Patents – innovation patent – construction – “preferred embodiments” in specification – fair basis – utility [...] [Read More](#) »

### What man dost thou dig it for? – Mine drilling technique patent found to be invalid

May 24, 2016 · by Alan Nash, Tom Cordiner and The Hon Peter C Heerey AM QC

Patents – mine drilling techniques – novelty – best method – infringement by section 117 – need to establish primary infringement [...] [Read More](#) »

### I had rather live with cheese and garlic – no right to register infringing food wrapping mark

May 24, 2016 · by Alan Nash, Tom Cordiner and The Hon Peter C Heerey AM QC

Trade marks – infringement – whether goods fall within registered class – own name defence – “right to register” defence – whether sufficiently distinctive [...] [Read More](#) »

## Not quiet on the WESTON front – estate agency mark still valid despite rebranding

May 24, 2016 · by Alan Nash, Tom Cordiner and The Hon Peter C Heerey AM QC

Trade marks – non-use application – limited use following rebranding – website redirection and promotion of the fact of the rebranding sufficient – infringement – “own name” defence – whether good faith use of own name [...] [Read More](#) »

## Corporations and Securities Law

### Crossing the Rubicon: court accepts market-based causation in a shareholder action

May 27, 2016 · by William Thomas

The Supreme Court of New South Wales has accepted that shareholders can rely on ‘market-based causation’ to found claims for loss flowing from a company releasing misleading financial information to the market. However, the decision raises a few more questions as [...] [Read More](#) »



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