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Editor-In-Chief

Wednesday Eden

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Foreword

It is with immense pride that I present the Autumn Issue of Volume 9 of the Cambridge Law Review, which reflects a summer of intensive work by our Editorial Board. I would like to thank the authors and our student editors (both at the University of Cambridge and as part of our International Editor programme) whose contributions were invaluable to this Issue. I would also like to express my personal gratitude to Darren Lee, who recently completed his LLM at Wolfson College, Cambridge, for undertaking the role of a Managing Editor at such short notice. As with the previous Issue, I am indebted to the members of the Managing Board (Christopher Symes, Rashidah Abdul Hamid, and Darren Lee) whose meticulous and thoughtful work greatly assisted in finalising this Issue for publication.

This Issue comprises four articles, each of which provides critical and thought-provoking insights on certain contemporary legal developments. These articles have been selected for publication because we believe that they make an important contribution to the academic literature and will be of interest to both UK and international audiences.

We begin with Daniel Beech's article, '*Deliveroo* in the Supreme Court: The Right to Collective Bargaining and the Employment Status of Platform Workers', which centres on the UK Supreme Court's decision in *Independent Workers Union of Great Britain v Central Arbitration Committee* [2023] UKSC 43 ('*Deliveroo*'). Beech critically examines two features of *Deliveroo*. The first feature is the Court's determination that, for article 11 of the European Convention on Human Rights ('ECHR') to apply to 'platform' workers, they must be in an 'employment relationship', one essential requirement of which is that workers must perform their services 'personally'. And the second feature is the Court's view that the contractual substitution clauses in this case were 'totally inconsistent' with this requirement of personal service, with the result that the Deliveroo riders were not in an employment relationship. After examining these two features, Beech contemplates the potential implications of *Deliveroo* both for platform workers, whom he describes as being vulnerable to 'sham or false self-employment', and for the hitherto 'purposive' judicial trend in analysing working arrangements. In particular, he argues that, by focusing on the Deliveroo riders' contractual power to use a substitute, the Supreme Court pursued an 'unduly restrictive' assessment of the riders' working arrangements which primarily focused on the formal terms of their contracts with Deliveroo. Beech then concludes by considering how statutory reform could ensure that platform workers 'receive adequate legal protection'.

Turning to the issue of transitional justice in Northern Ireland following the Troubles period (1968–1998), Martha McKinney-Perry examines the controversial 'amnesty' provisions in the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 ('Troubles Legacy Act') in her article, 'Rethinking Amnesty: A Critical and Prescriptive Response to Amnesty in the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023'. McKinney-Perry argues that amnesty (defined as 'the granting of exemptions from prosecution to a group or class of people') is a prima facie wrong that requires justification for two reasons: first, because of the 'risk of harm' (in the form of violations of 'the right to justice' and 'the right to truth') that amnesty presents to victims of human rights violations; and second, owing to the 'negative social meaning' of amnesty. However, she then argues that the amnesty provisions in the Troubles Legacy Act, being prima facie wrongful, cannot be justified in present-day Northern Ireland either as a necessary evil (to establish peace or to avoid a biased criminal justice system) or as a means of pursuing truth. From this, McKinney-Perry proposes two alternative revisions

to the Troubles Legacy Act that would preserve certain perceived 'benefits' of the Act, such as its establishment of a truth commission, while removing those provisions that she describes as rendering its amnesty an 'unjustified prima facie wrong'. Following a Northern Ireland Court of Appeal decision last month that made several declarations of incompatibility with the ECHR in respect of the Troubles Legacy Act, McKinney-Perry's article provides a nuanced take on this issue amid growing calls to repeal the Act.

In his article, 'Terms and Conditions Apply? Online Incorporation of Contract Terms in *Parker-Grennan v Camelot UK Lotteries Ltd* [2024] EWCA Civ 185', Eden A Smith comments on a recent decision by the Court of Appeal of England and Wales that concerned the incorporation of contract terms in an online context. Through his analysis of how the Court approached the question of whether the relevant terms in this case were incorporated into the contract, Smith identifies two 'gaps' in the Court's reasoning, which he describes as necessitating further discussion by the Court. These gaps are the following: first, the Court's failure to provide 'general guidance' on whether the incorporation analysis should differ when a court is considering a physical contract or a digital contract; and second, the Court's failure to consider, in its incorporation analysis, whether the relevant terms were unusual. Smith then compares the *Parker-Grennan* decision with cases in the USA and Australia, which he argues reveal a similar 'tendency' by courts to apply to digital contracts 'the same principles' relating to the incorporation of terms that apply to physical contracts. From this, he draws attention to the Court of Appeal's apparent acknowledgement in *Parker-Grennan* that these principles may need to 'adapt' as we enter an increasingly digital age.

Lastly, Robin M Kelly's article, 'Bridging the Private-Public Divide in Investor-State Arbitration: Can Retrofitting *Amicus Curiae* Improve How Tribunals Consider Human Rights Issues?', investigates whether third-party submissions to Investor-State Dispute Settlement ('ISDS') tribunals (referred to as '*amici curiae*') can provide 'an effective remedy' for rightsholders whose interests have historically been excluded from consideration in ISDS arbitration. She focuses in particular on human rights, including Indigenous rights, and how Indigenous peoples who live near 'resource extraction projects' in certain regions of Latin America and Africa, amongst others, often face human rights abuses owing to systemic inequalities. Drawing upon the United Nations Guiding Principles on Business and Human Rights, Kelly argues that the 'privatised model' in ISDS currently prevents *amici curiae* from forming an effective remedy for rightsholders because it produces a lack of 'predictability', 'transparency', and 'accessibility' for *amicus curiae* applicants. However, she then proposes a number of the reforms to address these limitations of *amicus curiae* involvement, the overarching goal of which is to promote the consideration of human rights interests within ISDS proceedings.

This has been a very successful year for the Cambridge Law Review and I am honoured to have served as Editor-in-Chief for Volume 9. I look forward to continuing in this role for Volume 10, alongside Christopher Symes as Vice Editor-in-Chief.

Wednesday Eden
Editor-in-Chief
Darwin College
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