

# Bar notes

## Provisional liquidators: undertakings as to damages

The Bar Association has recently been informed that the judges of the Equity Division propose to adopt the English practice outlined in *re Highfield Commodities Limited* 1984 3 All E.R. 884 as to the giving of undertakings as to damages in connection with the appointment of provisional liquidators.

The general practice as stated in *re Highland* is to require an undertaking as to damages if a provisional liquidator is appointed *ex parte* but not where the appointment is made *inter partes*.

The reason for the distinction was said to be that the protection of the undertaking would be required where the company had had no opportunity of providing any answer or explanation to contentions which might prove to be wholly unfounded.

The difference in practice from that in relation to the grant of interlocutory injunctions in relation to which undertakings as to damages are virtually always required appears to be that there is nothing in an ordinary case of obtaining an interlocutory injunction corresponding to the presentation of a winding up petition, or the filing of a summons seeking a winding up order.

The claim of a defendant who will not ordinarily suffer any damage until an interlocutory injunction is granted to be

given an undertaking as to damages when the order is made is thought to be considerably stronger than the claim of a company which has already suffered an injury, without receiving any undertaking, by reason of the application for winding up being made.

Practitioners are reminded of the necessity of being armed with instructions to give an undertaking as to damages when making an application in which one may be required, and of the need to ensure that the client understands the nature of the undertaking.

This is, in essence, that if the Court in its discretion so orders, he will pay to the party subjected to the relevant order such compensation as the Court may assess.

An order for compensation may be made where the plaintiff is later found not to have been entitled to the injunction or other order, whether or not there was misrepresentation or default in obtaining it (*Griffith v. Blake* (1884) 27 Ch.D. 474).

Although the ordering of compensation is discretionary, it has been said that "generally speaking, so long as the claim for damages is not trivial or trifling an enquiry should be directed and the defendant will be entitled to recover the loss which is the natural consequence of the grant of the injunction" (*Air Express Limited v. Ansett Transport Industries (Operations) Pty. Limited* (1979-81) 146 C.L.R. 249 at 323).

## Supreme Court building and engineering list

It is proposed that there be constituted a special list within the Common Law Division of the Supreme Court for building and engineering cases.

Rules to regulate this have been formulated (as part 14A of the Supreme Court Rules) and are likely to come into effect within the near future.

Rule 14 envisages the appointment of a court expert to advise the judge on any technical question which may arise in such proceedings.

Such an appointment cannot be made where all parties oppose it.

There is no provision obliging the judge to acquaint the parties with the substance of his communications with the adviser.

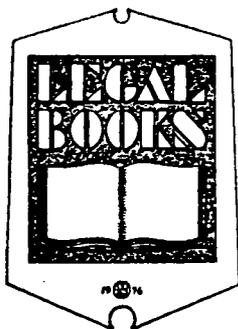
The Bar Council regards this as an undesirable aspect of the rules and draws the attention of members to the potential dangers inherent in the proposal.

## New Supreme Court scale of counsel's fees

A new scale for counsel's fees came into operation in the Supreme court in respect of briefs delivered on or after 1 June 1985.

The recommended fees were arrived at by the Chief Executive Officer and Principal Registrar of the Supreme Court after taking into consideration the National Wage increase in April 1984 (4.1 per cent) and in April 1985 (2.6 per cent).

Captain Duchesne has circulated a copy of the new scale to all members of the Bar Association.



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## New Barristers' committee

The Committee was set up initially following a resolution by the Bar Council on June 12, 1975 and was then entitled "Young Members' Committee".

The concept, formation and purpose of the Committee was set out in a report by J.R.T. Wood (as he then was) dated June 12, 1975.

The Committee consists of four persons elected by members of less than five years standing, one of the two members of the Bar Council of less than five years standing, and one senior member of the Bar Council.

The Committee is now known as the New Barristers' Committee and, in substance, is an avenue for identifying and if possible solving problems affecting new members, advancing the interest of new members in the Bar Association, and where appropriate making recommendations to the Bar Council.

The 1985 Committee has been holding at least one meeting a month and minutes are circulated to all notice boards.

So far this year the 1985 Committee has considered a number of matters raised by new members and on February 26, 1985, held an open forum in the Bar common room which was well attended.

The open forum discussed issues including accommodation, new chambers, fees and a social function.

Details relating to the date and venue of the social function for new members will soon be circulated and a further open forum will be held.

In the meantime the 1985 committee would greatly appreciate the names of new members who are prepared to assist in work experience programmes for school students.

New members are also reminded that matters may be raised for the consideration of the Committee either by approaching a member of the 1985 Committee or through the Registrar.

## European young lawyers

The Association Internationale des Jeunes Avocats ("AIJA" or the International Association of Young Lawyers) was founded in 1962.

The objects of the Association are:

- to study advanced problems of law and questions facing young lawyers;
- to help in the formation of groups of young lawyers in countries where they do not yet exist;
- to further the interests of young lawyers;
- to take an active part in the development of the legal profession and in the harmonisation of its professional rules;
- to intervene when the right of lawyers to practise freely or the rights of persons to be legally represented and to receive a fair trial are threatened;
- to defend those principles common to and indivisible from the notion of justice and law.

These ends are achieved by the following means, among others:

- (i) An annual conference lasting one week and which is usually held between the end of August and the beginning of September.
- (ii) Two or three meetings each year of the Executive Committee.
- (iii) Regional meetings between young lawyers of neighbouring countries.
- (iv) Permanent commissions.
- (v) Introductory courses to the main legal systems of the world.
- (vi) The publication of an annual directory.
- (vii) A quarterly magazine.

The 1985 Conference will be held in Lisbon, Portugal from September 24 to 28 inclusive. The topics are:

- Legal protection of software.
- The removal of minors from one jurisdiction to another.
- The legal status of company directors, their civil and criminal responsibility.
- Free movement of goods in the EEC.

A very friendly atmosphere pervades the Conference. There is also an opportunity to dine in the homes of local lawyers.

These, and the social programme, are features of the Conference which set it apart from those of other organisations.

Membership and conference information may be obtained from Cowan or from the Association Internationale des Jeunes Avocats, Avenue Louis Le Poutre 59, Bte 20, B-1060 Bruxelles, Belgium.

## Coming events

### Bar Association events — short term

**July 5** — Bench and Bar dinner (guest of honour, Dame Leonie Kramer)

**August 5** — Tennis Day (contact Don McCredie)

**August 23** — Dinner in honour of retiring Registrar

### Bar Association events — long term

**Nov. 1986** — NSW Bar Association Centenary Ball (University of Sydney Great Hall and front lawn)

### Other events

**July 26-27** — Building Industry Liability Conference organised by the Royal Australian Institute of Architects. Speakers include J. Dorter of Allen Allen & Hemsley and G. Masel of Phillips Fox & Masel. (Contact: The Practice Division, RAIA, 30 Howe Crescent, South Melbourne, Victoria.

**August 24** — Seventh National Conference, Australian Society of Labor Lawyers, Melbourne (contact: The Australian Society of Labor Lawyers, GPO Box 736F, Melbourne 3001).

**August 5-9** — Twenty-third Australian Legal Convention "Destinations in Law", Melbourne. Registration fee \$275 for delegates and \$90 for accompanying persons.

**Sept. 24-28** — 1985 Conference International Association of Young Lawyers Lisbon, Portugal (contact: D. Cowan).