FOREWORD (PRIVATE LAW)

Professor Laura Hoyano
Senior Research Fellow in Law at Wadham College
Associate Professor of Law in the Oxford Faculty of Law
Barrister, Red Lion Chambers
Fellow of the Honourable Society of the Middle Temple

Sometimes, the deeper we academics and practitioners delve into our subject, the less we see; as we tread the same ground over the years, pondering the same issues, our feet wear a deep trench which allows only a glimpse of a small patch of sky. The intelligent, perceptive student, like those published here, interrogates the issues anew, acknowledging, but unconstrained by, precedent and scholarly argument. The Oxford undergraduate syllabus and tutorial system are designed to encourage that kind of thinking. Over my years of teaching and research, I have several times formally credited some undergraduates (two of them in their first year of studies) with ideas proposed and developed in our tutorial discussion (three of them still refer to "our footnote").

Accordingly, it is my pleasure and honour to have been invited to introduce the four private law essays in the eighth issue of the Oxford University Undergraduate Law Journal. Whilst the journal this year has opened up its submissions to undergraduates in law from all leading English research universities, the vast majority of the articles selected for inclusion in this issue were written by Oxford undergraduates reading for a three or four-year degree. They attest to their authors' intellectual ambition and to the incisiveness of their education.

I have learned much in reading the private law essays in this volume, which are all extended critiques of judgments from British courts, two from the Court of Appeal Civil Division, and two from the UK Supreme Court. Two essays are in my 'home

territory' of tort law. One, by Julia Brechtelsbauer, has tested my thinking about the illegality defence with an extended critique of refusal of the Court of Appeal to apply the reasoning in the contract case of *Patel v Mirza* to the tragic negligence case of *Henderson*, which is now on its way to the UK Supreme Court. The other, by Zach Pullar, analyses the objective test for the standard of care, highlighting apparent inconsistencies in approach between two Court of Appeal judgments, which can only be resolved by the Supreme Court. Whilst the topic of the recoverability of compound interest for wrongly paid taxes might seem arid to some – at least to those who have not tried to recoup monies from Her Majesty's Revenue – Mehleen Rahman, author of "Is Time up for Recovery of Time Value?", demonstrates the implications of the judgment of the UK Supreme Court in *Prudential Assurance* for the concept of 'enrichment' across the entire field of restitution for wrongs. The fourth essay, by Antonia Kendrick, demonstrates how a judgment of the UK Supreme Court widening patent protection through 'equivalents' confers excessively wide protection on patent-holders, potentially stripping researchers in many scientific fields of the protection of their 'inventive step' if it can be considered as falling within a broader conception of the original patent than originally applied for. This encourages 'gaming' of the patent system in a way which is seemingly condoned by the British courts but not by other European jurisdictions. The author suggests that this ruling may jeopardise incremental research in the industries where we need it most, especially the pharmaceutical industry.

I commend all of these essays to readers from across the spectrum of legal experience. They offer fresh perspectives on important issues.