

# Journal of Contract Law (JCL)

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(articles and book reviews included in this part are linked to the LexisNexis platform)

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#### Articles

##### Indemnities in Insurance

— *Wayne Courtney*

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What, essentially, does an indemnity insurer's promise of indemnity require it to do? It is remarkable that this remains controversial in the common law, despite indemnity insurance having been around for centuries. The New South Wales Court of Appeal was forced to confront the issue squarely, in relation to property insurance, in *Globe Church Inc v Allianz Australia Insurance Ltd*. The court split 3:2 and the issue will surely arise again in Australia. This article uses *Globe Church* as a springboard to explore larger questions about indemnities and insurance. The analysis is in two parts. The first part considers the implications of various constructions of indemnities for insurance claims, and the extent to which those constructions cohere with existing case law and statute. The second part focuses on enforcement of indemnity insurance contracts. It examines how an insured's rights and remedies against the insurer can be mapped onto an orthodox contractual framework. The important features of that framework include a distinction between primary and secondary obligations, and the availability of different remedies, such as damages and specific performance.

##### CISG and Chinese Contract Law Reform in the New Chinese Civil Code: Impacts, Interactions and Implications

— *Peng Guo, Shu Zhang and Linxuan Li*

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The Chinese Civil Code came into force on 1 January 2021. It has long been argued that the evolution of Chinese contract law has been strongly influenced by legal instruments such as the CISG, although it has also been observed that the provisions in Chinese contract law are distinctive, in many respects, from the time-tested consents represented by the CISG. This article provides a comprehensive and systematic comparative analysis of both Chinese Civil Code and the CISG, and evaluates their structures and contents, the legislative technicalities and the values underpinning the Chinese Civil Code and the CISG. Finally, a brief conclusion is drawn, reminding the legal profession that the Chinese Civil Code should be read and understood in the context of both the international consensus contained in the CISG and the distinctive Chinese characteristics influencing legal practice and law-making in China.

##### The Applicability of Sham Doctrine to Islamic Finance Contracts: The Malaysian Case

— *Adnan Trakic*

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In several recent Islamic finance cases, the parties explicitly questioned the fictitious nature of contractual structures used in Islamic finance to circumvent the prohibition of interest. Referring to the doctrine of sham seemed an appropriate way to address these concerns, but the parties and courts

showed considerable restraint in doing so. Instead, they treated the fictitiousness in Islamic finance contracts as Islamic law issues, which necessitated their subsequent mandatory referral to designated Islamic law experts for resolution. This article examines the reasons behind this approach and ascertains if the doctrine of sham could be applied to Islamic finance contracts to remedy the problem.

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