THE ILLEGALITY DOCTRINE REVISITED:
Stoffel & Co v Grondona

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This article considers the case of Stoffel & Co v Grondona [2020] UKSC 42 and its application of the Patel v Mirza [2016] UKSC 42 principles in relation to the defence of illegality. It explores the role of public policy in such cases, suggests that the application of public policy in Grondona and Henderson v Dorset Healthcare University NHS Foundation Trust [2020] UKSC 43 is potentially inconsistent, and concludes that predicting the outcome of public policy-based decision-making is likely to precipitate a new body of authority.

Henderson v Dorset Healthcare University NHS Foundation Trust

James Goudkamp

In Henderson v Dorset Healthcare University NHS Foundation Trust the Supreme Court clarified the relationship between the policy-based test regarding the defence of illegality that the Court had endorsed in Patel v Mirza and the causation-based approach that the House of Lords had elaborated in Gray v Thames Trains Ltd. Henderson confirms that the latter approach is Patel-compliant and, as such, remains good law. Henderson also provides important guidance as to when and how the Patel test is to be applied. Ultimately, it suggests that the Patel test is far less important than had widely been thought and that it has a role only in novel cases.