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Announcements

Victoria University of Wellington Student and Alumni Sub-Series Issue 12: General Topics (II)

Issue 12 was incorrectly published on 24 June 2020 with the heading for Issue 13. The issue, with corrections, is reproduced below. Readers who archive their VUWLRPS issues may like to delete the version of Issue 12 dated 24 June 2020.

General Topics (II) is the twelfth in 2020 of several issues of the Student/Alumni Sub-Series of the Victoria University of Wellington Legal Research Paper Series.

The Student/Alumni Sub-Series was launched in 2015. It distributes a selection of Honours and Postgraduate papers from Victoria University of Wellington Law School. The sub-series includes both general and thematic issues.

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LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES

VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"Revisiting TNT v Cunningham: Misclassification of Owner-Drivers in the Courier Transport Industry"

Victoria University of Wellington Legal Research Paper No. 35/2020

ALANA HARRISON, Victoria University of Wellington, Faculty of Law, Student/Alumni

The tradition of classifying owner-drivers as contractors dates as far back as the 1950s and was affirmed in *TNT Express (Australia) Pty Ltd v Cunningham* [1993] 2 NZLR 604 (CA). The Court of

arnew in *TNT Express worldwide (NZ) Limited v Cunningham* [1995] 3 NZLR 681 (CA). The Court of Appeal decision set an authoritative precedent with the effect of excluding a significant majority of owner-drivers in the courier transport industry from the protections of employment law. In the light of a new statutory regime, relevant judicial developments and changes in the character of the courier transport industry, this traditional classification has become contentious. This paper contends that *TNT v Cunningham* would be decided differently today. The Employment Relations Act 2000, with its inclusive approach to assessing the real nature of a relationship, has replaced the contractually focused Employment Contracts Act 1991. Subsequent judicial developments testify to the relegation of contractual terms as indicative of parties' intent and the reduced importance of industry practice. Changes in the character of the industry, such as the increasing competitiveness of the tendering process and prevalence of migrant workers, have heightened the dependence of contractors on a single principal and reduced their bargaining power. Owner-drivers in the courier transport industry are de facto employees wrongfully denied the benefits of employment law.

"Re-Thinking Transparency Under Section 46(2) of the Fair Trading Act: An Empirically Informed Inquiry"

Victoria University of Wellington Legal Research Paper No. 36/2020

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This paper analyses empirically whether common New Zealand businesses draft their standard form agreements in a readable manner. Consumers are generally bound by the terms of such agreements, regardless of whether they have read them. Yet, if consumers chose to read them, would they be able to do so? It is this issue this paper confronts. This paper begins by exploring the nature of standard form agreements, and demonstrates why it is desirable that firms do in fact draft their contracts in a readable manner. The results of an empirical inquiry are then presented, which indicate that the majority of standard form agreements in New Zealand are unreadable to the average consumer. This paper then evaluates these findings in light of our consumer law landscape, explaining how our law, in seeking to protect consumers from unfair contract terms, has rendered a contract's lack of transparency immaterial, thus failing to impose an express obligation on firms to draft readable contracts. This paper then submits that the law ought to be amended to require that firms draft their contracts to meet a minimum standard of readability, and that consumers should be granted the right to challenge unfair terms directly.

"Parallel Importing and the Blurred Lines of the Digital Age: The Implications of Avoiding the Geo-Block"

Victoria University of Wellington Legal Research Paper No. 37/2020

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New Zealand removed copyright law restrictions on parallel imports in order to improve the well-being of consumers by lowering the prices of and increasing access to goods. Avoiding a geo-block can achieve the same results and has been seen as the digital age equivalent. This essay assesses the accuracy of referring to the circumvention of a geo-block as a parallel import. It addresses the theoretical underpinnings of parallel import and how they are affected by the nature of digital transactions. Lastly, the paper looks at how, regardless of parallel importing, circumventing the geo-block can restore the balance to copyright law and provide benefits to both producers and consumers.

"The Perils of Offensive Trademarks: Trademark Function, Freedom of Expression, and Why We Should Be Barring the Registration of Offensive Marks"

Victoria University of Wellington Legal Research Paper No. 38/2020

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Traditionally, the primary function of trademarks was merely to identify the source of goods and services. However, some businesses now use trademarks for other purposes, including by incorporating offensive words into the mark so as to harness their "shock value" and attract the attention of customers. Lawmakers around the world have responded by enacting provisions which bar the registration of offensive trademarks, thereby denying the trademark owner of the benefits of registration. This paper considers the treatment of offensive trademarks in three contrasting jurisdictions: the United States, the European Union and New Zealand. The hypothetical mark YELLOW PERIL, referring to the threat of Asia and Asian people to Western society, will be used as a case study. Two key themes will also be explored: the interaction of offensive trademarks with traditional theories of trademark function, and also with the right to freedom of expression. The paper concludes that overall, offensive trademark provisions (like those in the European Union and New Zealand) are a desirable part of trademark law, capable of being used in a way which is consistent with trademark function and freedom of expression, and which helps protect minority groups from being exposed to offensive trademarks in the marketplace.

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About this eJournal

Victoria University of Wellington Legal Research Papers Series primarily contains scholarly papers by members of the **Faculty of Law at Victoria University of Wellington**. Some issues collect a number of papers on a similar theme to form a suite of papers on a single topic. Others issues are general or distribute mainly recent work.

The Student/Alumni Series is a subseries of the Victoria University of Wellington Legal Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachusetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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