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## Announcements

### Victoria University of Wellington Student and Alumni Sub-Series Issue 7: Tort Law (I)

Tort Law (I) is the seventh 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

#### **"Taking a Side: The Case for Neutral Reportage"**

*Victoria University of Wellington Legal Research Paper No. 20/2020*

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In defamation law, the repetition rule states that someone who publishes a defamatory statement is no less liable than the person from whom it originated. "Neutral reportage" is a controversial defence to this long-standing rule. Last year in the case of *Durie v Gardiner*, the New Zealand Court of Appeal was unable to reach a unanimous agreement on how neutral reportage should be incorporated into the law, if at all. This essay considers the merits of the opinions in *Durie*, and examines the Court's decision in the light of the history and purpose of the reportage doctrine. This essay contends that while the defence has been controversial, its existence is justified in New Zealand law. It then argues that while the majority were right to find that a reportage defence should exist, they erred in choosing to incorporate it into the responsible communication defence. This is due to reportage's distinct doctrinal basis, and the inconsistencies in reconciling a responsible communication defence with one of reportage. Lastly, this

essay outlines how a standalone defence of reportage could be defined in order to achieve doctrinal consistency and the careful balancing of rights that the law requires.

### "Innovation and Reform: Applying New Zealand's Public Interest Defence in Defamation to Social Media and Blogs"

*Victoria University of Wellington Legal Research Paper No. 21/2020*

**RUITENG LIU**, Victoria University of Wellington, Faculty of Law, Student/Alumni

The proliferation of social media and the rise of 'citizen journalists' were one of many reasons why the Court of Appeal in *Durie v Gardiner* recognised the existence of a public interest defence of responsible communication to defamation in New Zealand. The courts, however, are beginning to take a restrictive interpretation of the criteria under responsible communication to the detriment of social media users and bloggers, following experiences in England and Canada. This paper argues that the defence should be reformed for a social media age by adopting a standard based on reasonableness along Hilary Young's model in Canada, replacing the criteria under responsible communication for all types of media in New Zealand. It then explains how a sliding scale derived from the New Zealand Bill of Rights Act 1990 can be incorporated into the defence. The paper also recommends the creation of multiple voluntary codes for social media which can inform the meaning of reasonableness and the inclusion of statements of reply as a relevant factor. It concludes by offering an example of where reasonableness can lead to a different result from responsible communication.

### "New Zealand's Zombie Defamation Survival Guide: Solving the Grave State of Defamation Law with a Single Publication Rule"

*Victoria University of Wellington Legal Research Paper No. 22/2020*

**HANNAH JONES**, Victoria University of Wellington, Faculty of Law, Student/Alumni  
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"Zombie defamation" has long been the term used to describe the application of the multiple publication rule to defamation claims. While in New Zealand a defamation claim can only be brought within two years of publication of the defamatory statement, the multiple publication rule means that every time a new person accesses the defamatory material, there is a new publication. This renders the two-year limitation effectively redundant for online publications. Although both Australia and Canada take the approach used by New Zealand courts, the United Kingdom has followed the approach of the United States in adopting the single publication rule. The single publication rule means that publication occurs from the very first publication only. This paper argues that New Zealand should follow the United Kingdom in adopting the single publication rule to protect publishers from ostensibly indefinite liability.

Firstly, this paper will outline the rule in New Zealand and how it applies. It will then compare this to the single publication rule as applied in the United States, pointing to the United Kingdom as an example of a jurisdiction which has implemented the single publication rule through statute. The paper will then highlight the problems with the multiple publication rule and why New Zealand should change, including examining the unjust consequences that could arise from failing to change the rule to meet modern technological advancements, how such change would relate to the New Zealand media law climate and close potential gaps in our system and other policy considerations. Finally, it will assess whether the New Zealand courts are ready and willing to accept a single publication rule, including considering why Australia and Canada have not followed the approach of the United Kingdom.

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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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