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LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES

VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

■ **"Corruption, Contracts and Common Law Illegality"**

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 29/2018

GERALD ALLOWAY, Victoria University of Wellington, Faculty of Law, Student/Alumni

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Corruption is historically dealt with by criminal law. This paper queries whether the harm caused by corruption may be better dealt with through the law of contract. The author examines whether a contract procured through bribery could rightfully be "illegal in law" under s 71 of the Contract and Commercial Law Act 2017; either by falling within the doctrine of implied statutory prohibition or common law illegality. This paper argues that common law illegality is outdated in light of the UK Supreme Court's ruling in *Patel v Mirza*. New Zealand should take a new approach to corruption and common law illegality to better comply with best international contract law practice, as contained in the UNIDROIT principles, and New Zealand's international obligations. The paper concludes that if the test from *Patel v Mirza* is adopted, there are circumstances where a contract procured through bribery should be considered "illegal in law"; when such an agreement is against public policy to enforce. Such a measure would not prejudice parties' ability to obtain relief from the agreement, and the broad discretion of a court under the Contract and Commercial Law Act 2017 to grant said relief is capable of dealing with a broad range of effects that bribery may have on contractual agreements.

■ **"The Penalty Doctrine: Reformulating New Zealand's Regime Against Penalty Clauses"**

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 30/2018

OLIVER BARRON, Victoria University of Wellington, Faculty of Law, Student/Alumni

The penalty doctrine is a long-standing rule in contract law which allows the court to render specific terms in a contract unenforceable. However, the orthodoxy of the doctrine has recently come under fire in a series of decisions from the High Court of Australia and the United Kingdom Supreme Court. Quite contentiously, the two jurisdictions have differed in their approaches to reform. With this background, New Zealand has been left in the inevitable position of deciding which approach to follow, or whether it will carve its own path. I argue the Australian and the United Kingdoms' approaches should not be followed. The most robust option for reform would be to abolish the doctrine in the commercial context completely, and preserve it only for parties who suffer from an inequality of bargaining power. Such an approach would best serve the current needs of the legal system and marketplace.

"Making the Law More Accessible? The Contract and Commercial Law Act 2017"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 31/2018

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The Contract and Commercial Law Act 2017 redrafts and consolidates 11 Acts governing contract and commercial law in New Zealand. It represents a significant change to the statute book, having repealed and replaced such important legislation as the Sale of Goods Act 1908, Contracts (Privity) Act 1982, and Electronic Transactions Act 2002. The Act is the first prepared using the "revision powers" created by the Legislation Act 2012, and aims therefore to improve the accessibility of the law. This essay assesses whether the Act achieves this aim. It is noted that the modernised drafting of the Act is likely to improve the clarity of the legislation for some users. However, the paper primarily addresses the decision to consolidate the 11 statutes into a single Act structure. Particular focus is placed on the range of significant and relevant legislation that was not included in the revision, especially the Fair Trading Act 1986 and Consumer Guarantees Act 1993. It is ultimately concluded that the effort to increase the accessibility of New Zealand's contract and commercial legislation through a revision Act in this wide-ranging area of law created more problems than it solved.

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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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