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TASNEEM HARADASA, ASSISTANT EDITOR
Victoria University of Wellington, Faculty of Law, Student/Alumni
tazharadasa@gmail.com

JOHN PREBBLE QC, EDITOR
Professor of Law, Victoria University of Wellington - Faculty of Law, Gastprofessor, Institut für Österreichisches und Internationales Steuerrecht, Wirtschaftsuniversität Wien, Adjunct Professor of Law, University of Notre Dame Australia - School of Law

MĀMARI STEPHENS, EDITOR
Reader, Victoria University of Wellington - Faculty of Law

Announcements

Victoria University of Wellington Student and Alumni Sub-Series Part 7: Private Law (II)

Private Law (II) is the seventh in 2019 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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"Fundamental Rights and Private Litigants: The New Zealand Bill of Rights Act 1990 in Private Common Law Disputes"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 24/2019

LUCY KENNER, Victoria University of Wellington, Faculty of Law, Student/Alumni
Email: kenner.lucy@gmail.com

This paper addresses the effect of the New Zealand Bill of Rights Act 1990 (NZBORA) in disputes between private parties which arise under the common law. Because the NZBORA applies to the courts as the judicial branch of Government, this implies that it imposes obligations on the courts when deciding cases, including ones between private parties. However, through an assessment of the relevant case law, I argue that as the courts protected rights in disputes between private parties through the common law before 1990, the NZBORA does not introduce this role. I then distinguish between the Act's application to the courts, and other ways it affects disputes between private parties. While the NZBORA does not require a change in the courts' approach, it has resulted in a greater emphasis on rights in private common law disputes through a number of channels. These include forming part of the statutory landscape, reinforcing existing values, enhancing access to rights for litigants and providing consistent language. I conclude that

the NZBORA's effect on private common law disputes is complex, but ultimately has been a beneficial one.

"Fusion: Can It Encompass the Trust? An Assessment in Light of the Trusts Bill 2017"
Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 25/2019

ANNA MCLEAN, Victoria University of Wellington, Faculty of Law, Student/Alumni
Email: annamclean2@gmail.com

This paper applies the fusion debate to the most recent reform of the law of trusts in New Zealand, the Trusts Bill. The fusion debate centres around whether a distinct role for equity is needed, or whether the common law and equity can integrate to form one unitary body of law. It aims to achieve coherence in the law – where equitable and common law doctrines aim to achieve the same objectives, it is incoherent to maintain reference to two distinct sets of rules. The Trusts Bill is analysed in light of this – can equity's traditional flexibility and conscience-based approach be seen in the Bill and in the wider reform process? These values are often used to differentiate between equity and the common law. This paper argues that the Trusts Bill does take incremental steps towards fusing common law and equity even in relation to the trust, traditionally the heartland of a distinct equitable jurisdiction. Flexibility and conscience-based reasoning do not differentiate the law of trusts as seen in the Trusts Bill from common law doctrines. The shift towards a statutorily-defined framework, the language used throughout the Bill and the underlying rationale behind reform all show incremental steps towards fusion occurring even if complete fusion cannot yet be seen. The future of fusion is left to the courts, but the Trusts Bill shows increasing fusion even in this area of the law is possible.

"ACC for the Cows? Analysing How Best to Deal with the Losses Caused by Biosecurity Breaches"
Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 26/2019

ALEXANDRA MOORE, Victoria University of Wellington, Faculty of Law, Student/Alumni
Email: morobarrs@xtra.co.nz

Since 2010, New Zealand has suffered a number of biosecurity breach events causing losses to primary industries. The response decisions from the Ministry for Primary Industries have had huge impacts on different sectors ability to recover their losses. This paper considers the current approach to recovering financial losses caused by biosecurity breaches. It evaluates the options available for reform; Negligence claims, comprehensive state compensation schemes, private insurance and improving the existing scheme. The ability for capped state compensation schemes to share costs according to benefits gained, increase certainty and consistency in the application of compensation and the avoidance of long drawn out negligence cases makes it the most viable solution to these compensation issues.

"Patel v Mirza and the Future of the Illegality Doctrine in New Zealand"
Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 27/2019

CALEB O'FEE, Victoria University of Wellington, Faculty of Law, Student/Alumni
Email: caleboflea@msn.com

In 1775, Lord Mansfield CJ held that no court will lend its aid to a man who founds his cause of action on an immoral or an illegal act. From this simple dictum sprang a common law doctrine so complicated that it would take the courts 241 years to pronounce a definitive view on the correct approach to its application. Historical confusion about whether the illegality doctrine is an inflexible rule of law, or a discretionary public policy doctrine has generated a mass of inconsistent authority throughout the Commonwealth. In Patel v Mirza, the Supreme Court of England and Wales held that the illegality doctrine should be applied in a flexible manner, having due regard to the various policies militating for and against the application of the doctrine. This paper examines the historical position of the illegality doctrine in New Zealand and explores whether there is anything to be gained by the adoption of Patel in a New Zealand context.
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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 Massachussetts 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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Directors

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BERNARD S. BLACK
Northwestern University - Pritzker School of Law, Northwestern University - Kellogg School of Management, European Corporate Governance Institute (ECGI)
Email: bblack@northwestern.edu

RONALD J. GILSON
Stanford Law School, Columbia Law School, European Corporate Governance Institute (ECGI)
Email: rgilson@leland.stanford.edu

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