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LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES
VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

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Announcements

Victoria University of Wellington Student and Alumni Subseries Issue XVII: International Commercial Contracts

'International Commercial Contracts' is the final issue in 2016 of the Student and Alumni sub-Series of the VUW Legal Research Papers. The Student and Alumni sub-Series was launched in 2015. It publishes 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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"'It Hurts My Head to Think about It' - SMEs and the Legal Framework for International Commercial Contracts"
Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 44/2016

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The exercise of party autonomy through careful contractual drafting allows parties contracting across borders to stipulate the applicable law and dispute resolution process most appropriate to the transaction at hand. This paper reflects on empirical research to consider the perceptions and experiences of small businesses in New Zealand in relation to the legal framework for international commercial contracts. The inclusion of choice of law and dispute resolution provisions can greatly increase certainty in relation to the applicable legal framework. However, the introduction of more suitable default positions for international transactions is warranted to more adequately meet the needs of New Zealand's SMEs and provide more meaningful access to justice.

"Can Indigenous Customary Law be used and recognised in International Commercial Contracts?"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 45/2016

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Indigenous customary laws often conflict with or contradict contract laws of foreign legal systems. If an indigenous person wishes to conduct an international transaction according to their customs, problems may arise where customs are inconsistent with governing laws. This paper examines the potential areas of conflict within the lifecycle of a commercial contract to determine if indigenous customary law can be recognised as a legitimate legal system in the context of international commercial contract law.

"Necessary and Practical: A National Law Obligation to Publish International Commercial Arbitral Awards"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 46/2016

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The confidentiality attaching to arbitral proceedings and awards remains of uncertain scope globally. The weight of current opinion appears, however, to be in favour of greater transparency, and as part of this, a number of scholars and commentators have made a strong case for the sanitised publication of arbitral awards by arbitral institutions. This paper goes a step further, and makes the case for a national law obligation to publish awards. It does so on the basis that there are significant public interests in the making available of certain information contained within arbitral awards; interests for which institutions have little or no incentive to provide. The paper uses New Zealand as an example, considering both the desirability of publication at the national level, and to the extent publication is desirable, how a mechanism to facilitate publication should be designed. It suggests a "statement of arbitral jurisprudence", to be published annually by the Ministry of Justice, as the most appropriate way forward.

"A Difficult Balance: Open Justice and the Protection of Confidentiality in Arbitration Related Court Proceedings"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 47/2016

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Confidentiality in International Commercial Arbitration is important to parties dealing in commercially sensitive information. Arbitrating parties have legitimate expectations of confidentiality, which is addressed to varying degrees in national laws, the courts and institutional rules. This paper assesses the irregular approach to confidentiality internationally, with a particular focus on the comprehensive codification of the obligation in New Zealand under the Arbitration Act 1996. The paper focuses in particular on confidentiality expectations in arbitration related court proceedings, which is where a careful balance must be struck between the principle of open justice and the protection of confidentiality. In assessing the application regime under the New Zealand statute, the paper explores comparative approaches and possible options for reform, concluding that an appropriate change would be to more readily allow consenting parties to have access to private court proceedings.

"The Effectiveness of the Hague Convention on Choice of Court Agreements in Making International Commercial Cross-Border Litigation Easier - A Critical Analysis"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 48/2016

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The purpose of this paper is to critically analyse the effectiveness of the Hague Convention on Choice of Court Agreements in making international commercial cross-border litigation easier. Transnational litigation is so complicated that an international litigant feels like a trapped insect in a spider's web. Now that there is a global Convention in this area, it would be useful to determine how successful the new instrument is in protecting and freeing the international litigants from the transnational litigation's web of complexities. Interestingly, the Hague Convention mainly applies its rules to exclusive choice of court clauses or agreements only. This paper argues that the exclusive choice of court agreement feature of the Hague Convention will resolve the problem of parallel proceedings and make international litigation a bit more predictable, certain and cheaper. Apart from these benefits, it is not likely to make an international litigant's life easier in any significant manner. It is argued that the Hague Convention's success is impeded by its narrow scope of applicability to exclusive choice of court agreements only, a wide variety of exclusions from the scope of the Convention, a lack of provision for parties with no choice of court agreements, a convoluted declarations system, a lack of protection for small and medium-sized enterprises entering into standard form contracts online as business-consumers, inadequate provision for issues arising out of judicial corruption and no provision for civil procedure rules. The paper ends with a few recommendations, which if adopted, would enhance the effectiveness of the Hague Convention considerably. It concludes that international litigation, being the default dispute resolution mechanism, needs to be worked upon and improved, possibly through a broader and better global Convention.

"The Three Pillars of the United Nations Guiding Principles on Business and Human Rights: A 'Non-Binding' International Contract on the State Duty to Protect Human Rights, the Corporate Responsibility to Respect Human Rights and the Access to Remedy for Victims of Abuse"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 49/2016

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This paper will discuss the importance of the United Nations Guiding Principles on Business and Human Rights (UN Guiding Principles) violations and access to remedy for victims. Communities and individuals across the globe are adversely affected by activities of multinational corporations and this paper will address the major obstacles which hinder these multinational companies being brought before judicial mechanisms. The Bhopal chemical disaster will provide a useful example of struggles victims of business and human rights abuse go through to obtain an effective remedy. The Bhopal case in particular shows the atrocities that occur when there are no stringent measures in place to curb multinational companies from causing such harms.

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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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