SSRN tomorrow's research today

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

Vol. 6, No. 4: Feb 25, 2016

JOHN PREBBLE, 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
john.prebble@vuw.ac.nz

HANNEKE VAN OEVEREN, ASSISTANT EDITOR
Victoria University of Wellington - Faculty of Law
hanneke.vanoeveren@outlook.co.nz

Announcements

Consumer Law in New Zealand – Papers by Kate Tokeley, Senior Lecturer of Law, Victoria University of Wellington

Table of Contents

^top

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

"Comparative Consumer Law Reform and Economic Integration"

Consumer Law and Policy in Australia and New Zealand, J. Malbon and L. Nottage, eds, Federation Press, Australia, 2013
Sydney Law School Research Paper No. 15/77
Victoria University of Wellington Legal Research Paper No. 15/2016

LUKE R. NOTTAGE, University of Sydney - Faculty of Law, University of Sydney - Australian Network for Japanese Law
Email: luke.nottage@sydney.edu.au
CHRISTINE RIEFA, Brunel University - Brunel Law School

Email: christine.riefa@brunel.ac.uk
KATE TOKELEY, Victoria University of Wellington - Faculty of Law
Email: Kate.Tokeley@vuw.ac.nz

This paper outlines the emergence of consumer law amidst economic integration. It focuses on developments in the European Union and (towards the other end of the spectrum) New Zealand, but also briefly across the broader Asia-Pacific region (including the United States and Japan).

The Australian Consumer Law reforms introduced in 2010 prompted reform debates in New Zealand culminating in the Consumer Law Reform Bill 2011, which was eventually divided into six separate Amendment Acts passed on 10 December 2013. New Zealand's provisions regulating unfair contract terms did not come into force until 17 March 2015, and cannot be invoked directly by consumers (as in Australia and the EU) but only by the regulator. The regulation of consumer credit in New Zealand also underwent a major review in recent years and resulted in the Credit Contracts and Consumer Finance Amendment Act 2014, which was passed into law on 6 June 2014. In addition there have been recent legislative reforms aimed at improving consumer protection in New Zealand financial markets. These reforms have been progressed on a staged basis, with a package of reforms: the Financial Advisors Act 2008; Financial Service Providers (Registration and Dispute Resolution) Act 2008; Financial Markets Authority Act 2011; and Financial Markets Conduct Act 2013. Significant differences remain between New Zealand and Australian consumer law reforms despite the two countries being close trading partners.

The EU's landscape has also evolved, moving towards ever more integration. The Consumer Rights Directive is now live in Member States, a draft for a reform of the Payment Services Directive is being discussed alongside a new Regulation on Multilateral Interchange Fees (to cap the amount of fees that can be charged on card payments), but the proposed opt-in Common European Sales Law was shelved while agreement is being sought on the scope of the instrument. Many new consumer law initiatives have also come to the fore recently, with much activity continuing to look at how to remove barriers to e-commerce alongside other internal market inhibitors.

"The Natural Health and Supplementary Products Bill: Homeopathy, the Truth and the Placebo Effect"

(2014) NZULR 26(2) 421-440
Victoria University of Wellington Legal Research Paper No. 16/2016

KATE TOKELEY, Victoria University of Wellington - Faculty of Law
Email: Kate.Tokeley@vuw.ac.nz

The Natural Health and Supplementary Products Bill establishes a system for the regulation of natural health products in New Zealand. It sets out three principles that relate to consumer information. These are: (1) that consumers should receive accurate information about natural health and supplementary products; (2) that they be told about the risks and benefits of using the product; and (3) that any health benefit claims made for the product should be supported by scientific or traditional evidence. This article examines how the Bill applies these principles to homeopathic remedies. There are two reasons for singling out this category of natural health product. First, the Bill, despite classifying homeopathic remedies as “natural health products”, excludes homeopathic remedies from major parts of the Bill. This article argues that there is no good reason to treat homeopathic remedies differently from any other natural health products. The second reason for examining homeopathic remedies is that they provide an excellent case study for issues surrounding deception and the placebo effect. The placebo effect relies on deception. The healing occurs because of the belief in the product, not the product itself. The article explores the question of whether it can ever be ethical to mislead consumers in order to facilitate the placebo effect.

"Unprotected Consumers Under the Consumer Guarantees Act 1993"

3 New Zealand Business Law Quarterly 254-262, 2015
Victoria University of Wellington Legal Research Paper No. 17/2016

KATE TOKELEY, Victoria University of Wellington - Faculty of Law
Email: Kate.Tokeley@vuw.ac.nz

The author argues that there are potentially three groups of people, who would normally be regarded as "consumers" intended to have the protections afforded by the Consumer Guarantees Act, but who do not fall within the present definition of "consumer". The author provides a new definition of "consumer" which she suggests would cure this defect.

"Telemarketing and the Door to Door Sales Act 1967"

(2006) 37 VUWLR 609-621
Victoria University of Wellington Legal Research Paper No. 18/2016

KATE TOKELEY, Victoria University of Wellington - Faculty of Law
Email: Kate.Tokeley@vuw.ac.nz

The Door to Door Sales Act 1967 was intended to protect consumers from the sales pressure applied by sellers knocking on their door in an attempt to sell their products. In recent times sellers have adopted new methods of marketing their products, including the practice of telemarketing. In the recent case of Commerce Commission v Telecom Mobile Ltd the Court of Appeal concluded that the particular telemarketing activities undertaken by Telecom Mobile were covered by the Door to Door Sales Act 1967. This article analyses the difficulties and uncertainty of applying the outdated Act to the practice of telemarketing. Some contracts made as a result of telemarketing are covered by the Act and other contracts are not. The article argues that this arbitrary approach is unsatisfactory and that the law should be reformed so that the Act expressly covers all contracts that result from an unsolicited telemarketing phone call.

"New Zealand Moves to Prohibit Unfair Terms: A Critical Analysis of the Current Proposal"

University of Western Australia Law Review, Vol. 37, No. 1, p. 107, 2013
Victoria University of Wellington Legal Research Paper No. 19/2016

KATE TOKELEY, Victoria University of Wellington - Faculty of Law
Email: Kate.Tokeley@vuw.ac.nz

This article critically analyses the current proposals in New Zealand for the introduction of a prohibition of unfair terms. The article explains the details of the proposal and compares it to the unfair terms legislation in Australia and the United Kingdom. The justifications for a prohibition on unfair terms are explained. The article then considers whether the scope of the current New Zealand proposal is adequately aligned with these justifications.

"Introducing a Prohibition on Unfair Contractual Terms into New Zealand Law: Justifications and Suggestions for Reform"

(2009) 23(4) NZULR 418-448
Victoria University of Wellington Legal Research Paper No. 20/2016

KATE TOKELEY, Victoria University of Wellington - Faculty of Law
Email: Kate.Tokeley@vuw.ac.nz

This article examines the question of whether New Zealand should legislate against unfair contractual terms. It considers the extent to which New Zealand law already restricts the use of such terms and concludes that prohibiting a contractual term merely on the basis of substantive unfairness is a novel and drastic move away from principles of freedom and sanctity of contract. Such a move is accompanied by the dangers of loss of certainty and the risk that a court or other decision-maker will make false assumptions about buyer preferences. However, despite these dangers, a prohibition on unfair terms can be justified if it is limited to unexamined, standard form terms in consumer contracts. These terms are not taken into account by consumers when making purchasing decisions. Market forces cannot operate effectively on these terms and there is therefore a danger that some of these terms may be unfair.

The article critically examines the proposed Australian unfair terms provisions and the unfair terms legislation of both the United Kingdom and the Australian State of Victoria. Recommendations are made for drafting New Zealand provisions on unfair terms. Statutory definitions for the concepts of "unexamined terms", "standard form terms", "consumer" and "unfair terms" are suggested. Penalty and enforcement issues are also examined.

^top

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.

Submissions

To submit your research to SSRN, sign in to the **SSRN User HeadQuarters**, click the My Papers link on left menu and then the Start New Submission button at top of page.

Distribution Services

If your organization is interested in increasing readership for its research by starting a Research Paper Series, or sponsoring a Subject Matter eJournal, please email: **RPS@SSRN.com**

Distributed by

Legal Scholarship Network (LSN), a division of Social Science Electronic Publishing (SSEP) and Social Science Research Network (SSRN)

Directors

LAW SCHOOL RESEARCH PAPERS - LEGAL STUDIES

BERNARD S. BLACK
Northwestern University - 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**

Please contact us at the above addresses with your comments, questions or suggestions for LSN-LEG.

^top

Subscription Management

You can change your journal subscriptions by logging into **SSRN User HQ**. If you have questions or problems with this process, please email **Support@SSRN.com** or call 877-SSRNHelp (877.777.6435 or 585.442.8170). Outside of the United States, call 00+1+585+4428170.

Site Subscription Membership

Many university departments and other institutions have purchased site subscriptions covering all of the eJournals in a particular network. If you want to subscribe to any of the SSRN eJournals, you may be able to do so without charge by first checking to see if your institution currently has a site subscription.

To do this please click on any of the following URLs. Instructions for joining the site are included on these pages.

Accounting Research Network
Cognitive Science Network
Corporate Governance Network
Economics Research Network
Entrepreneurship Research & Policy Network
Financial Economics Network
Health Economics Network
Information Systems & eBusiness Network
Legal Scholarship Network
Management Research Network
Political Science Network
Social Insurance Research Network
Classics Research Network
English & American Literature Research Network
Philosophy Research Network

If your institution or department is not listed as a site, we would be happy to work with you to set one up. Please contact **site@ssrn.com** for more information.

Individual Membership **(for those not covered by a site subscription)**

Join a site subscription, request a trial subscription, or purchase a subscription within the SSRN User HeadQuarters: **http://www.ssrn.com/subscribe**

Financial Hardship

If you are undergoing financial hardship and believe you cannot pay for an eJournal, please send a detailed explanation to **Subscribe@SSRN.com**

^top
