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

### **"The Illusory Trust Doctrine: Formal or Substantive?"**

*Victoria University of Wellington Law Review, Forthcoming*

*Victoria University of Wellington Legal Research Paper No. 7/2021*

**MARK J. BENNETT**, Victoria University of Wellington - Faculty of Law

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This paper argues that the illusory trust doctrine is an exercise in formal reasoning according to principles of trusts law, rather than a substantive flight to substance.

### **"Against Subversion, a Contribution to the Normative Theory of Trust Law"**

*Oxford Journal of Legal Studies, published by Oxford University Press, Forthcoming*

*Hebrew University of Jerusalem Legal Research Paper 20-25*

*Victoria University of Wellington Legal Research Paper No. 8/2021*

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This article closes a gap in the theory of trust law by supplying a normative account of the use of trusts to avoid and subvert other legal norms. While the use of trusts to subvert other law has been a major function thereof since the middle ages, a fact acknowledged by jurists, doctrinal and textbook authors for centuries, theorists of trust law have largely steered clear of this function. We evaluate the two most commonly proffered justifications for the use of trusts to subvert the law: that such use enhances users' autonomy, and that trusts allow people to avoid or mitigate injustices found in law to which they are subject. We find that such justifications are not plausible in liberal legal systems, and so the subversion use of trusts should be, and usually is, curtailed, principally by anti-subversion norms found outside

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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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