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Announcements

Lord Cooke of Thorndon: Collected Papers Part XVII: The Law of Negligence

The Cooke Series forms part of the Victoria University of Wellington Legal Research Paper Series (VUWLRPS). Lord Cooke (1926-2006) was one of New Zealand's most prominent jurists and the first and only New Zealander to sit as a judge in the House of Lords. He was a Distinguished Fellow of the Victoria University of Wellington Law Faculty. The faculty gratefully acknowledges the generous support of the Cooke family for their sponsorship of the series. Lizzie Chan and Tim Cochrane, Wellington solicitors, abstracted and posted Lord Cooke's papers.

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VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"Hands on: A Changed Judicial Approach to Professional Negligence and Discipline"
Victoria University of Wellington Legal Research Paper Series, Cooke Paper No. 73/2017

ROBIN COOKE (1926-2006), Victoria University of Wellington - Faculty of Law

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These are the notes for Lord Cooke's speech to the Wellington Medico-Legal Society in March 2003. In the first part of the article, Lord Cooke shares memories of his first-hand experience of professional negligence and discipline cases, referring to cases he argued at the Bar and presided over from the Bench. In the second part of the article, Lord Cooke explains that courts are now "rolling up their sleeves" and engaging further in relation to professional issues, rather than adopting a deferential attitude. He refers to Preiss v General Medical Council [2001] 1 WLR 1926 (PC) and A v Bottrill [2002] 3 WLR 1406 (PC) as examples of this new approach in medical professional negligence proceedings. He then stresses that this change is not confined to the area of medicine, referring to the abolition of barristerial immunity in England in Arthur J S Hall & Co v Simons [2000] 3 All ER 673 (HOL). Lord Cooke notes that this issue is (at that point) on its way to the New Zealand Court of Appeal in the case Lai v Chamberlains, outlining arguments for and against its abolition. (Barristerial immunity was subsequently abolished in this proceeding by the Supreme Court: see [2006] NZSC 70, [2007] 2 NZLR 7). Lord Cooke concludes by commenting favourably on the Australian Federal Government's Review of the Law of Negligence released by a panel chaired by Justice David Ipp in September 2002. Abstract by Tim Cochrane

"The Right of Spring"

Robin Cooke "The Right of Spring" in Peter Cane and Jane Stapleton (eds) The Law of Obligations: Essays in Celebration of John Fleming (Clarendon Press, Oxford, 1998) 37
Victoria University of Wellington Legal Research Paper Series, Cooke Paper No. 74/2017

ROBIN COOKE (1926-2006), Victoria University of Wellington - Faculty of Law
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In this book chapter, Lord Cooke discusses the House of Lords' "pioneering" decision of Spring v Guardian Assurance plc [1992] 2 AC 296 (HL), which held that an employer owed a duty of care to a former employer when providing a reference letter for the employee. He describes Spring as a "sea change in public policy", challenging two centuries of the common law of England which had accorded qualified privilege to employers in such instances. He discusses other jurisdictions' reactions to Spring, with particular focus on the New South Wales jurisdiction's decision not to follow it. He concludes with some thoughts on how the employer–employee relationship might be characterised in different ways, for example as a contractual relationship and/or one underpinned by a duty of trust and confidence, and how this might impact on the tension between developments in negligence in tort and the law of defamation. —Abstract by Elizabeth Chan

"The Temptation of Elegance Resisted"

The Hamlyn Lectures: Turning Points of the Common Law, Sweet & Maxwell, London, 1997
Victoria University of Wellington Legal Research Paper Series, Cooke Paper No. 75/2017

ROBIN COOKE (1926-2006), Victoria University of Wellington - Faculty of Law
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In this lecture, the third of Lord Cooke's Hamlyn Lectures on 'Turning Points in the Common Law', Lord Cooke argues that the courts must resist simple solutions in the law of negligence, especially in regards to tortious liability for economic loss. He asserts that the untidiness of life and complexity of human relations overrules 'elegant', simple solutions. The search for simplicity means to make the law easier to understand, but simple solutions (such as the rejection of any tortious liability for economic loss) do not always lead to more certainty or less litigation. Lord Cooke draws on the Hedley Byrne & Co Ltd v Heller & Partners Ltd [1964] AC 465 (HL(E)) line of cases finding liability for economic loss flowing from negligent misstatements (as well as other cases on other types of duties of care) as examples of how the House of Lords has resisted the temptation of elegant solutions. Lord Cooke argues that the development of the common law must be shaped by the general policy of Parliament but, subject to those general policy indications, judges are responsible for fleshing out the criteria and content of liability in negligence. He emphasizes that progress is not measured by an expansive approach to negligence (in favor of the plaintiff) but that judges do have a creative role to play in developing legal frameworks for resolving complex tort issues.

"An Impossible Distinction"

(1991) 107 LQR 46
Victoria University of Wellington Legal Research Paper Series, Cooke Paper No. 76/2017

ROBIN COOKE (1926-2006), Victoria University of Wellington - Faculty of Law
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In this article Cooke J discusses the liability in negligence of builders, manufacturers, and local authorities for defective buildings. He argues that those who put members of the community into what are intended to be sound and durable structures (such as homes) intended for a succession of people should be expected to take reasonable care that these structures are fit for use. He considers, in particular, that a local authority's duty of care stems from its control over the building inspection process, and therefore it should be required to take care not to cause or contribute to causing economic loss to homeowners. Cooke J discusses this duty of care in light of judicial developments in England and the United States of America. Abstract written by Elizabeth Chan

"Tort Illusions"

Robin Cooke "Tort Illusions" in PD Finn (ed) Essays on Torts (Law Book Co, Sydney, 1989) 71
Victoria University of Wellington Legal Research Paper Series, Cooke Paper No. 77/2017

ROBIN COOKE (1926-2006), Victoria University of Wellington - Faculty of Law
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In this paper, Lord Cooke comments that negligence law is dominated by judicial discretion, although this discretion is not unfettered. He stresses that it may be "in vain" to go on trying to improve or clarify the law by reformulations of principle. Decisions in specific cases are ultimately applications of broad criteria to a particular set of facts. Negligence cases thus involve judges making decisions of mixed fact and law, not only decisions that can be arrived at as a matter of applying logical legal principle. Lord Cooke says that the search for more illuminating and more complex reformulations of principle may turn out to be illusory, though he emphasises that negligence law is not a "wilderness of single instances". He concludes by identifying four trends showing that the "signposts" of negligence liability have become more precise.—Abstract by Elizabeth Chan

"Professional Negligence Today and Tomorrow"

Victoria University of Wellington Legal Research Paper Series, Cooke Paper No. 78/2017

ROBIN COOKE (1926-2006), Victoria University of Wellington - Faculty of Law
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This is a paper presented by Lord Cooke to the Professional Negligence Bar Association on Lord Cooke's personal experience dealing with professional negligence cases as an advocate and judge. He first discusses his experience at the bar, giving as examples Furniss v Fitchett [1958] NZLR 396 (HC); Bannerman Brydone Folster & Co v Murray [1972] NZLR 411 (CA); and In re a Medical Practitioner [1964] NZLR 784 (CA). He then discusses memorable events from his 30 years on the bench, including Day v Mead [1987] 2 NZLR 443 (CA); Mouat v Clark Boyce [1992] 2 NZLR 599 (CA); and Lord Cooke's experience being sued as a judge. Lord Cooke concludes by offering "a few thoughts about the direction which the law of professional responsibility is taking", discussing medical negligence and professional discipline generally. Abstract by Tim Cochrane.

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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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