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## Announcements

### Lord Cooke of Thorndon: Collected Papers Part VI: Company Law in New Zealand

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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## LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES

### VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

#### ■ "Corporate Collapse Pitfalls"

*Victoria University of Wellington Legal Research Paper Series, Cooke Paper No. 25/2016*

**ROBIN COOKE**, Victoria University of Wellington - Faculty of Law (Deceased 1926-2006), House of Lords  
Email: [robincookevuw@gmail.com](mailto:robincookevuw@gmail.com)

This was a speech made by Lord Cooke to an audience of experts in banking law. Lord Cooke says that he is cautious about applying rigid rules of liability (applying to, for example, directors, auditors and bankers) in commercial law. He recognises that it is often difficult to decide what is fair and just in

commercial cases. Hethen makes several observations about the then Companies Bill (enacted as the Companies Act 1993), in particular the provisions dealing with directors' duties. He next discusses several commercial cases that he has sat on in the Court of Appeal, including the JBL litigation *Scott v McFarlane* [1978] 1 NZLR 553 (CA), and *Nicholson v Permakraft (NZ) Ltd* [1985] 1 NZLR 242 (CA). Lord Cooke concludes by asking the audience for comments on a case, which was at the time reserved for judgment in the Court of Appeal, concerning whether the director of a one-person company owed a personal duty of care in respect of negligent advice given. The decision in this case was *Trevor Ivory Ltd v Anderson* [1992] 2 NZLR 517 (CA). Abstract by Elizabeth Chan

### "Answering for Nominee Directors"

*Victoria University of Wellington Legal Research Paper Series, Cooke Paper No. 26/2016*

**ROBIN COOKE**, Victoria University of Wellington - Faculty of Law (Deceased 1926-2006), House of Lords  
Email: [robincookevuw@gmail.com](mailto:robincookevuw@gmail.com)

This is a joint paper presented by Rt Hon Sir Robin Cooke and Hon Justice Thomas discussing liability for the acts of nominee directors. In this context, they comment on two major canons of common law. The first canon is vicarious liability: the principle that an employer is liable for the torts of an employee committed in the course of his or her employment. The second canon is that commercial law should take a practical approach according with commercial reality. Appended to this paper is a series of suggested "rules" in respect of the liability of nominee directors, which the authors consider accord with both ordinary legal principles and commercial reality. Abstract by Elizabeth Chan

### "A Real Thing: *Saloman v. A. Saloman & Co Ltd*"

*The Hamlyn Lectures: Turning Points of the Common Law (1997)*

*Victoria University of Wellington Legal Research Paper Series, Cooke Paper No. 27/2016*

**ROBIN COOKE**, Victoria University of Wellington - Faculty of Law (Deceased 1926-2006), House of Lords  
Email: [robincookevuw@gmail.com](mailto:robincookevuw@gmail.com)

This article is the first of four in Lord Cooke's Hamlyn Lectures, in which he explores four English cases that have signalled turning points in the evolution of the common law. Lord Cooke examines the limited liability of companies as explained and developed in *Saloman v A Saloman & Co Ltd* [1897] AC 22, where the House of Lords held that a company had a legal entity separate to its shareholders. Lord Cooke observes the popular use of limited liability companies for business globally, then discusses "piercing the corporate veil" as a limitation to this principle. He argues that there is only one class of cases in which limitations imposed on the limited liability company are truly consistent with *Saloman*. That class of cases involves fraud or oppression. Lord Cooke critiques a second class of cases, where the corporate vehicle is used as a façade or sham to conceal the true facts, and argues that the sham doctrine is unnecessary because the limits of limited liability companies are better demarcated by through other principles, such as the public policy doctrine. Finally, Lord Cooke considers the law relating to attribution, identification, and vicarious liability in relation to limited liability companies.

### "Corporate Identity"

*Robin Cooke "Corporate Identity" in Andrew Borrowdale, David Rowe, and Lynne Taylor (eds) Company Law Writings: A New Zealand Collection (The Centre for Commercial & Corporate Law Inc, Christchurch, 2002) 39-58*

*Victoria University of Wellington Legal Research Paper Series, Cooke Paper No. 28/2016*

**ROBIN COOKE**, Victoria University of Wellington - Faculty of Law (Deceased 1926-2006), House of Lords  
Email: [robincookevuw@gmail.com](mailto:robincookevuw@gmail.com)

This article is a sequel to the first Hamlyn Lecture titled "A Real Thing" on *Salomon v A Salomon & Co Ltd* [1887] AC 22 (HL), delivered in September 1997 at a conference at the University of Melbourne. It is also a revised and updated version of an article originally published in *The Companies and Securities Law Journal*. Lord Cooke first summarises the key points of his Hamlyn Lecture before considering two points from that lecture in detail. He first considers corporate identity as being a "real thing", by discussing Viscount Haldane LC's speech in *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705 (HL). Lord Cooke then discusses the extent to which a company can sue for defamation at common law. Finally, Lord Cooke comments positively on statutory recognition of corporate crime, and concludes with comments on the concept of reflective loss.

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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 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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