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Articles

The creation of new knowledge and innovation arises as a matter of course in many contracted relationships, with ownership rights being uncertain in various situations. This paper reviews the systems for allocation of the benefits of innovation by applying three axes of analysis: the nature of the innovation, the nature of the relationship between the creator and the entity, and the nature or content of any instrument seeking to regulate that relationship. By further analysing the motivations of actors such as workers, firms, and industry, as well as the types of knowledge created at various stages of innovation, it is argued that uncertainty about ownership is unavoidable. The article concludes that generalised law reform cannot provide certainty across ownership due to the diversity of actors, industries, and types of knowledge. Instead, any problems with allocation of benefits from worker-generated knowledge may need to be addressed by internalised practices and norms, or more targeted policy interventions.

This article explores the extent to which the employment contract is distinctive and why that should matter. In doing so, it focuses on employment contracts as a purported ‘class’ into which terms are implied by law. It is well accepted that courts can imply terms by law as default rules into all contracts of a particular class, including employment contracts. It is demonstrated that, in the context of implying terms by law, the class of employment contracts is not easily identifiable. The so-called ‘class’ into which terms are implied by law is an overly generalised category with blurred boundaries. Without necessarily generating an exhaustive definition, it is argued that there is scope for the courts to develop their understanding of employment contracts as a class, so as to generate greater certainty around whether new terms should be implied by law into such contracts.

Drawing on responsive regulation theory, this article analyses how the nature and legal setting of collective bargaining regulation in Australia and Italy influence the regulatory space of multinational corporations (MNCs) in shaping working conditions. We aim to identify how these two systems of collective labour law have operated in practice, by highlighting the normative outcomes of bargaining through comparison of agreement clauses in the same three MNCs — Apple, Ikea and Tiffany — with

operations in both Australia and Italy. The comparative analysis shows that although the result of firm-level bargaining involves the implementation of flexibility-enhancing measures, efficiency clauses are generally traded-off with wage increases and/or welfare measures, thus preserving a normative balance between efficiency and equity. Despite the similarities observed, they cannot be described in terms of standardisation of collective bargaining systems. In both countries, trade union power and statutory rules played important roles in mediating power relationships at firm level and in preventing market failures in the form of unfair bargaining outcomes. Even when collective bargaining was explicitly used for efficiency purposes, it still (for the most part) remained a driver for a controlled or 'socially embedded' model of normative flexibilisation. Overall, the traditional function of statutory regulation and national systems of collective bargaining — to keep wages and working conditions out of competition — is preserved, even if the agents of firm-level bargaining include MNCs on the employers' side. The evidence drawn from our study of the Australian and Italian retail operations of three MNCs confirms the importance of looking beyond the dichotomy between regulation and deregulation of labour law. Between these two processes, MNCs can engage in responsive regulation via firm-level bargaining to adapt (rather than derogate from or bypass) central rules in a way that makes them sustainable both in economic and social terms.

Despite a growing consensus that sexual harassment is wrong, it continues to be remarkably prevalent in Australian workplaces. Sex discrimination laws which were expressly designed to prohibit this behaviour have operated for several decades, yet the problem still persists. Anti-discrimination laws (ADL) have been effective to a point, but are limited by their individual and complaints-based regulatory framework. The question therefore arises: might other laws play a role in addressing this problem more effectively? In this article we explore the promise of work health and safety (WHS) laws in addressing sexual harassment in work. WHS laws impose obligations to prevent harm to workplace participants, including psychological harm. Our thesis is that this harm-prevention approach can complement the existing ADL individual redress scheme and prove an effective tool at preventing sexual harassment by tackling its antecedents in workplace cultures. However, the promise of WHS laws in preventing sexual harassment can only be realised if WHS agencies acknowledge this remit and are equipped to deal with it.

Legislative Note

The period since the September 2013 election of the Coalition government has involved significant change in the regulation of registered organisations. In that time the final stage of amendments to the Fair Work (Registered Organisations) Act 2009 (Cth) (RO Act), passed by the previous Labor government, commenced on 1 January 2014 and, following the 2016 double dissolution election, the Fair Work (Registered Organisations) Amendment Act 2016 (Cth) (FWROA Act) and the Fair Work Amendment (Corrupting Benefits) Act 2017 (Cth) (CB Act) were enacted. In addition to legislative change there has been a significant change in regulatory practice in this area. This article will discuss the enactment of the FWROA Act; the enactment of the CB Act; and the impact of a change in regulatory practice in this area over the period from 2012.