added to porn actors' bodies". Consequently this item was not defamatory as the ridiculous nature of the photo, coupled with the warning, were palpable. Satire is one method by which the public can make comment on issues and circumstances – to limit free speech in Australia is to deprive the nation of a powerful medium by which individuals can express themselves.

Finally, satirical humour is an integral component of society, as it allows humour to be integrated into less comic situations. Lewis has stated:

> *"The limit of what is permissible in the way of cartoons and satire are undefined. Words obviously intended only as a joke are not actionable...but serious imputations of fact lying behind the superficially jocular may well be".*

Unfortunately, common law has failed to appreciate this divide, which consequently has diminished the validity of the law in this regard. In other nations such as the US, satire has been allowed to develop, shielded by the First Amendment. It has evolved to a medium, which can convey societal issues into a lower-brow context, while still being inherently intelligent. As Tony Fitzgerald states:

> *"Satirical humour uniquely combines laughter with information and criticism, enlightens facts and ideas, and encourages iconoclasm in preference to reverence and acquiescence"*[8].

Freedom of speech is an integral part of the democratic system of government that all western nations have embraced over the past century. The law of defamation has been inconsistently applied around Australia, and consequently is inherently flawed in its application; in some parts of the country it is codified, in others it is a fusion of statute and common law. The difficulties surrounding defamation law are indicative of their inapplicability to modern societal notions of free speech. Satire is just one medium by which society can express itself and make comment on events, people and circumstances. To regulate satire, is to dictate what can and cannot be discussed by society. As Jim Morrison once stated, *"Whoever controls the media, controls the mind".*

1 *Collins Gem English Dictionary, 1982*

2 *Sydney Morning Herald,* 19 May 1993

3 Wilkinson J in *Falwell v Flynt,* 805 F2d 484 at 487

4 *ABC v Pauline Hanson* (Unreported, 28 September 1998, Supreme Court of QLD, Court of Appeal)

5 Dworkin, "Liberty and Pornography", *New York Review of Books,* 38:14 (August 15 1991)

6 [1977] 2 NSWLR 749

7 [1995] 2 AC 65

8 Justice Tony Fitzgerald, *Telling the Truth, Laughing,* Communications Law Centre, Sydney 1998

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Dow Jones v Gutnick – Certainty For Australian Defamation Law but Uncertainty For International Publishers and Content Providers

Catherine Dickson and Aaron Timms examine this recent headline grabbing case.

While the recent unanimous decision of the Australian High Court *in Dow Jones v Gutnick* [1] follows defamation authority in Australia, it highlights the fact that activity on the Internet is answerable to national laws around the world. It also raises questions regarding the current trends in international law in Australia and elsewhere.

BACKGROUND

Joseph Gutnick sued Dow Jones & Co Inc[2] in Victoria in respect of an article, "Unholy Gains", published in the October 2000 edition of *Barron's* magazine (both hard copy and online).

Dow Jones sought a stay of the Victorian proceedings, or for the service of process to be set aside, partly on the ground that publication (a key element in proving defamation) took place in New Jersey upon "uploading" and therefore the Supreme Court of Victoria had no jurisdiction to hear the case. Gutnick argued that publication occurs when the defamatory material is made comprehensible to a third party, by being displayed on the subscriber's computer screen, i.e. on "downloading".

The High Court dismissed the appeal against the August 2001 interlocutory decision of Justice Hedigan of the Supreme Court of Victoria regarding the request for a stay of proceedings. It found that the Supreme Court of Victoria had jurisdiction to hear the case, even though Dow Jones uploaded the internet publication onto its web server in New Jersey.

The Court unanimously concluded that the trial judge was correct in finding that the tort of defamation in Australia is actionable where the publication is seen or heard and comprehended by the reader or hearer. The Court found that since the article was downloaded in Victoria, publication had taken place there. Therefore the Victorian Court was able to exercise jurisdiction. We now examine some of the issues raised by such a finding.

JURISDICTION, CHOICE OF LAW AND THE DOCTRINE OF FORUM NON CONVENIENS

The decision of the Court, as well as the interrelation between the issues of juisdiction, choice of law, and *forum non conveniens,* is summarised in the judgment of Kirby J:

> *"If Victoria is identified as the place of the tort, that finding would provide a strong foundation to support the jurisdiction of the Supreme Court of Victoria; and to sustain a conclusion that the law to be applied in the proceedings, as framed, is the law of Victoria. These conclusions would, in*

turn, provide the respondents with powerful arguments to resist the contention that the proceedings should be stayed, or set aside, on inconvenient forum grounds".[3]

Expressed in this way, the decision appears simple and straight forward. Identify the place the tort is committed and you can identify both the court in Australia with authority to decide the controversy and the particular law to apply, in this case Victoria. However there are two important assumptions underlying this decision:

- it is established law, in Australia at least, that the place (or places) where the tort of defamation is committed is where publication occurs. The only extension by the High Court in this case is its application to the Internet, such that the place of publication will now be held to be the place where the information is comprehended or downloaded; and

- in this case, Gutnick limited his claim before the Victorian Supreme Court to damage to his reputation suffered in Victoria only. Therefore, there could only be one place where the tort is committed.

Take away these assumptions and the equation is not as simple, particularly where damage to reputation occurs in more than one international jurisdiction. Also where an international tort other than defamation is alleged and particularly where the wrong has been committed by means of the internet. We note that comments made by the Court regarding such scenarios are obiter dicta and are therefore not Australian law as yet.

Jurisdiction

In this case, rule 7.01(1)(j) of the Victorian Supreme Court Rules was pivotal. It allows for an originating process to be served out of Australia without order of the Court where "the proceeding is brought in respect of damage suffered wholly or partly in Victoria and caused by a tortious act or omission wherever occurring". The Court held that the simple fact that Gutnick suffered damage to his reputation in Victoria was sufficient to activate the Court's "long- arm" jurisdiction under rule 7.01(1)(j).

The majority of Gleeson CJ, McHugh, Gummow and Hayne JJ (**"Majority"**)[4] and Kirby J[5] found that since the long-arm rule determining jurisdiction was valid and applicable, the Court did not need to justify its assumption of jurisdiction by reference either to the place of the tort, or to any other factors which usually go towards establishing a "substantial and bona fide connection between the subject matter of a dispute and the source of jurisdiction of a national court over its resolution".[6] The validity of paragraph (j) of the Supreme Court Rules was not challenged in the proceedings and so provided a simple and straightforward justification for the Court's assumption of long-arm jurisdiction over the matter. As a result, it was not "essential or even necessary to localise the tort in Victoria for jurisdiction purposes".[7] This was, however, necessary for the purposes of determining choice of law.

Choice of law

The Court unanimously confirmed established law that in a tort action where the parties or the events have some connection with a jurisdiction outside Australia, the choice of law rule to be applied is that matters of substance are governed by the law of the place of commission of the tort. Determining the place of a tort with international connections is a notoriously difficult exercise. In *John Pfeiffer v Rogerson*,[8] the High Court recognised that in many cases;

> *"the place of the tort may be ambiguous or diverse. Difficulty will arise in locating the tort when an action is brought, for example, for product liability and the product is made in State A, sold in State B, and consumed or used by the plaintiff in State C. And the tort of libel may be committed in many States when a national publication publishes an article that defames a person".*[9]

The general test for determining the place of the tort comes from the Privy Council in *Distillers Co (Biochemicals) Ltd v Thompson*:[10]

> *"The right approach is, when the tort is complete, to look back over the events constituting it and ask the question: where in substance did this cause of action arise?".*[11]

The Majority appear to accept this as they apply the test that *"defamation is to be located at the place where damage to reputation occurs",*[12] and that this will ordinarily be *"where the material which is alleged to be defamatory is available in comprehensible form".*[13] Kirby and Callinan JJ object to the citation and application of the specific test from *Distillers*, since that case, which dealt with an action in negligence rather than defamation, was concerned only with the issue of jurisdiction, not choice of law – and *"[i]t has always been questionable whether jurisdictional cases should be used as authority in the choice of law context".*[14] In practice, however, all judges arrive at the same conclusion, and concur that in cross-jurisdictional cases of defamation, the law to be applied is the law of the place of publication.

A more difficult question to answer is one that is only briefly touched on by the Majority. The question concerns the law to apply where a tort other than defamation is committed if such tort occurs in connection with use of the internet. Clearly, the rule from *Gutnick* would not be directly applicable since this scenario would not attract the operation of the rule stipulating the law of the place of publication (downloading) as the applicable law.

In these circumstances, the rule from *Distillers*[15] may assume greater importance. In that case it was found that a negligent omission to warn of dangerous side effects of a drug manufactured in the United Kingdom occurred at the point of sale to the consumer in NSW. So if a plaintiff complains that defective goods were sold via the internet to him or her when located within the forum without a warning as to defects or risks, the tort is committed within the jurisdiction. The problem for a purchase of defective goods over the internet is determining exactly where the point of sale is. Is it at the point of uploading or at the point of downloading, is it determined by the law of the contract or at the place of receipt of the item in question?

The Majority suggests that when applying the test of "where in substance did this cause of action arise";

> *"in cases like trespass or negligence, where some quality of the defendant's conduct is critical, it will usually be very important to look at where the defendant acted, not where the consequences of the conduct were felt".*[16]

Although the Court in *Distillers* came to a contrary decision, they also (following *Jackson v Spittal*[17]) made it clear that it is some act of the defendant, and not its consequences, that must be the focus of

attention in determining the basic issue of where in substance the cause of action arose. Clearly, such complex questions await further judicial consideration.

When considering international misrepresentation (negligent misstatements and omissions) over the internet, *Diamond v Bank of London and Montreal Ltd*, is authority that a fraudulent misrepresentation sent by telephone or telex from the Bahamas to England constituted a tort committed in England, where it was received and acted upon. The same principle was later applied to a negligent misrepresentation sent by telex from abroad, and received and acted on in the forum, such that the forum was held to be the place of the tort for choice of law purposes.[18] In this conext the main question will be whether the internet can be considered as equivalent to the telephone or the telex.

These English authorities have been qualified in Australia by the High Court ruling in *Voth v Manildra Flour Mills Pty Ltd*,[19] regarding an allegation of *professional* negligence (the case concerned negligence in the provision of accountancy services). In *Voth,* the place of the tort was located at the place where the defendant's wrongful act or omission occurred, irrespective of where it was received or acted upon. This was because the provision of professional advice is "an act complete in itself".[20]

Taken together, these authorities are at the very least difficult to reconcile, even without applying them in an internet context. This leaves internet publishers and content providers with uncertainty and lack of clarity regarding what law will apply to their activities.

Forum non conveniens

The Court (other than Callinan J) apply the generally accepted test in Australia for *forum non conveniens* being that the forum must be "clearly inappropriate" before an Australian Court will exercise its discretion to refuse prima facie jurisdiction. This follows the recent majority decision of the High Court in *Regie National des Usines Renault SA v Zhang.*[21]

Kirby J expresses concern with this approach, restating his opinion that the test for forum non conveniens should be more harmonious with the rules of public international law and respectful of comity between nations and their courts. He is of the view that a more appropriate test is the formulation that has found favour in most other Commonwealth jurisdictions, being that set down in *Spiliada Maritime Corp v Cansulex Ltd*[22];

> *"...the issue is (as the terms of the Victorian rule suggest) whether the court in which the proceedings are pending is the natural forum for the trial or whether there is another forum that is '"more appropriate"'.*

Callinan J applies his own test as stated in ital. *Zhang* being: *"...assess the advantages and disadvantages accruing to both sides in each jurisdiction in considering whether NSW [the chosen forum] is an appropriate one".*[23]

A concern regarding the decision in this case is of its potential effect on a situation involving several actions brought in several different jurisdictions in respect of the same defamatory matter. Gaudron J found:

> *"If a plaintiff complains of multiple and simultaneous publications by a defendant of the same defamatory matter there is, in essence, a single controversy between them, notwithstanding that the plaintiff may have several causes of action governed by the laws of different jurisdictions. Accordingly, if, in such a case, an issue arises as to whether an Australian court is a clearly inappropriate forum, a very significant consideration will be whether that court can determine the whole controversy and, if it cannot, whether the whole controversy can be determined by a court of another jurisdiction".*[24]

In this case, this particular inquiry did not need to be made, since the plaintiff had agreed from the beginning to limit his action to damage to reputation suffered in Victoria. Nevertheless, Gaudron J's obiter comments provide an interesting indication of the way Australian courts might proceed in the future when faced with a plaintiff bringing multiple internet defamation actions in multiple jurisdictions.

THE INTERNET IS NOT A NEW PARADIGM - MAJORITY VIEW

The Majority disagreed with Dow Jones' argument that the fact that communications took place by way of the Internet is significant. In the context of these facts they saw no reason to refrain from applying laws, at least relating to the place that the defamation is committed, that have been established over many years. The Majority said that:

> *"It must be recognised however that satellite broadcasting now permits very wide dissemination of radio and television and it may, therefore, be doubted that it is right to say that the World Wide Web has a uniquely broad reach. It is no more or less ubiquitous than some television services".*[25]

They then go on to say that:

> *"[h]owever broad may be the reach of any particular means of communication, those who make information accessible by a particular method do so knowing of the reach that their information may have. In particular, those who post information on the World Wide Web do so knowing that the information they make available is available to all and sundry without any geographic restriction".*[26]

Callinan J is even more direct in his judgment, saying that:

> *"the torts of libel and slander are committed when and where comprehension of the defamatory matter occurs. The rules have been universally applied to publications by spoken word, in writing, on television; by radio transmission, over the telephone or over the Internet.....*
>
> *The appellant's submission that publication occurs, or should henceforth be held to occur relevantly at one place the place where the matter is provided, cannot withstand any reasonable test of certainty and fairness. If it were accepted, publishers would be free to manipulate the uploading and location of data so as to insulate themselves from liability in Australia, or elsewhere: for example, by using a web server in a "defamation free jurisdiction". Why would publishers owing duties to their Shareholders, to maximise profits, do otherwise?"*[27]

Single Publication Argument

Dow Jones argued that at least in the context of publication on the internet, the Australian Courts should adopt the single publication rule as applied in the USA. It also argued that this rule should be applied to determine the choice of law and that this should be the place of "uploading". The single publication rule

is that the publication of a defamatory statement in a single issue of a newspaper, or a single issue of a magazine, although such publication consists of thousands of copies widely distributed, is in legal efect, one publication which gives rise to one cause of action and that the applicable statute of limitations runs from the date of that publication. In contrast, common law views every publication as a separate tort.

After examining the single publication argument and the context of how the rule came to be law in 27 of the States of America, the Majority was of the view that applying the rule in Australian law is problematic because *"what began as a term describing a rule that all causes of action for widely circulated defamation should be litigated in one trial....came to be understood as affecting, even determining, the choice of law to be applied in deciding the action"*.[28] Australian law has separate principles, one dealing with prevention of multiple suits and choice of law principles to deal with which law should be applied. Notwithstanding that the single publication rule is influential in the US, it was rejected by the Hight Court as it does not fit with defamation law as developed in Australia.

WIDELY DISSEMINATED PUBLICATIONS - POTENTIAL FOR DEVELOPMENT OF THE LAW

The Majority does canvass the problems in applying their decision where damage to reputation is suffered in numerous jurisdictions. They consider that where there is an injury to reputation said to have occurred as a result of publication in a number of different places, then it may be necessary to distinguish between cases where the complaint is confined to Australian publication as opposed to cases where publication is alleged to have occurred both in and outside Australia.

The first issue they canvass is that the forum may well be considered as clearly inappropriate (as discussed above) and the litigation vexatious if more than one action is brought.

Secondly, they suggest that where the publisher's conduct has occurred outside the forum then there may be a need for development of common law defences to defamation to recognise where a publisher has acted reasonably before publishing the material that is subject to complaint. This development of the common law they suggest, has a precedent in the development of the defence of innocent dissemination.

However the view of the Majority is that three natural limitations to liability for internet publishers should be considered and balanced before embarking on further development of the common law defences to defamation. The Majority considers that these are natural limitations to what at first seems to be unrestricted liability for Internet publishers. They are:

- due weight should be given to the fact that substantial damages will only be available where the plaintiff has a reputation in the place of publication;
- judgments must be enforceable in a place where the defendant has assets; and
- if the two considerations above do not limit the concerns of those publishing on the internet, identifying the person about whom the material is to be published will readily identify the defamation law to which the person may resort.

FORUM SHOPPING AND A GRAB FOR EXTRATERRITORIAL JURISDICTION

The natural limitations suggested above do not, in our view, realistically prevent plaintiffs from embarking on forum shopping in defamation cases, particularly as communications continue to improve and reputations extend all over the world. Further there is nothing in the decision that would encourage courts around the world to exercise restraint and discretion before exercising long-arm jurisdiction in international matters.

A practical consequence of the Court's unanimous decision that the proper law(s) of a defamation is the place(s) of publication, is that public figures could theoretically sue in all jurisdictions where they believe there is damage to their reputation. Of course they should consider the extent of enforceability of the decision, but the problem nevertheless is that there is no effective restraint on forum shopping and even plaintiffs suing concurrently in more than one jurisdiction.

Theoretically, under Australian defamation law a number of different suits are possible. However, the Majority and Gaudron J say that practically this will not occur. The common law favours the policy of the resolution of particular disputes by the bringing of a single action. They say that the policy can be applied to cases where a plaintiff complains about the publication of defamatory material to many people in many places. The policy can be given effect by applying principles preventing vexation by separate suits[29] or after judgment by applying principles of preclusion such as Anshun estoppel[30]. We acknowledge that the High Court must view this issue from an Australian context however we question whether this is enough in an international context given that common law principles do not govern the entire world.

The decision highlights the reality for internet (and other international) publishers. International publication means making a risk assessment when deciding on which laws to comply with, regarding a particular publication. This is of particular concern with the internet publications that can be made almost anywhere. Without some international agreement there is, and continues to be, considerable uncertainty regarding the law(s) that will apply to such publications.

Kirby J's View

Kirby J was the only judge to reflect on features of the internet that may require a new approach:

> *"Its basic lack of locality suggests the need for a formulation of new legal rules to address the absence of congruence between cyberspace and the boundaries and laws of any jurisdiction"*.[31]

In his view the advent of the internet has brought about a need to:

> *"adopt new principles, or to strengthen old ones in responding to questions of forum or choice of law that identify, by reference to the conduct that is to be influenced, the place that has the strongest connection with or is the best position to control or regulate such conduct"*[32].

He explicitly admits that there could be undesirable consequences of rendering a website owner potentially liable to poceedings in courts of every legal jurisdiction where the subject enjoys a reputation. He says that the publisher

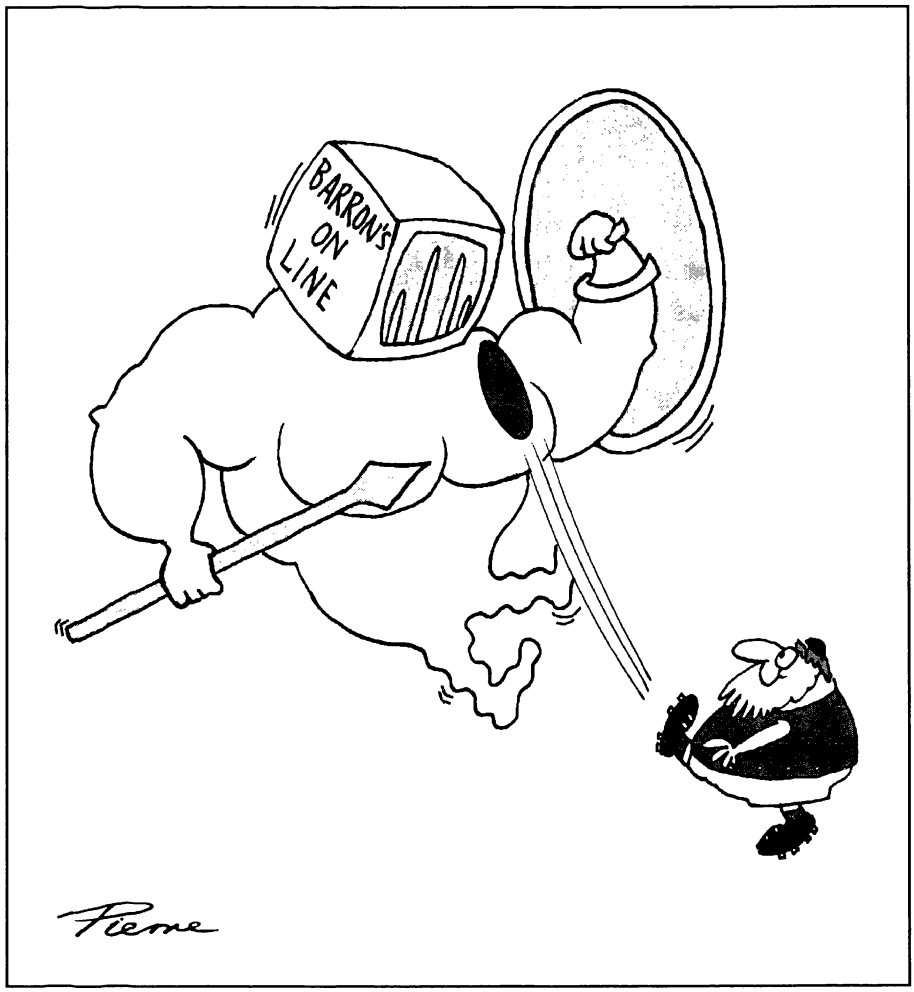
may freeze publication or restrict access to content for people in countries like Australia. Yet, he also accepts that the nature of the internet is such that it is impossible to be completely sure that a particular geographic area on the earth's surface is isolated for accessing a particular website. There are also other ways that Australians can access US content, e.g. by using an American credit card.

However, in applying the Victorian Supreme Court Rules to the facts, Kirby J agrees that the Victorian Court has jurisdiction to hear the matter. He says that although this may seem to be "long-arm" and conflict with principles of public international law, the validity of the law was not challenged in the proceedings. Further legislation giving courts long-arm jurisdiction is becoming increasingly common around the world, following recent controversial assertions of jurisdiction in US legislation.[33]

Kirby J says that the advent of the internet suggests a need to "*adopt new principles, or to strengthen old ones, in reponding to questions of forum or choice of law that identify, by reference to the conduct that is to be influenced, the place that has the strongest connection with, or is in the best position to control or regulate, such conduct*".[34] He says that the disparities between different countries regarding their approach to the defamation balance (the balance between freedom of information and the right to reputation and privacy) necessitate the need for a clear, single, readily ascertainable choice of law rule.[35] He makes a call to courts throughout the world to "*address the immediate need to piece together gradually a coherent transnational law appropriate to the 'digital millennium'.... Simply to apply old rules, created on assumptions of geographical boundaries, would encourage an inappropriate and unusually ineffective grab for extra territorial jurisdiction*".[36]

CURRENT INTERNATIONAL INITIATIVES - THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAWS

It is submitted that if there was international agreement to adopt a choice of law procedure similar to Article 10 of the preliminary draft *Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters* (**"Hague Convention"**) adopted by the Special



Commission of the Hague Conference on Private International Laws in 30 October 1999, then there would be far more certainty for Internet publishers regarding the law to be applied in a particular circumstance. However, ironically enough, those who have stymied the progress of the convention would now benefit from the certainty of the application of agreed principles similar to Article 10. For now it is undeniable that, at least under Australian law, the defamation laws in all jurisdictions can theoretically apply. The view put forward by such interests is that if the Hague Convention is widely adopted then it will cripple the internet:

> *"In a nutshell, it will strangle the internet with a suffocating blanket of overlapping jurisdictional claims, expose every web-page publisher to liabilities for libel, defamation and other speech offences from virtually any country, effectively strip internet service providers of protections from litigation over the content they carry".*[37]

Consequently agreement to the Hague Convention has been postponed to allow for further discussion regarding developments in the field of electronic commerce. Perhaps it is now worthwhile for internet interests to revisit these concerns.

If Article 10 is applied to the case of alleged international defamatory conduct then it would mean that a plaintiff could only bring an action in the courts of a State in which the injury arose and only to the extent that the defendant cannot establish that the person claimed to be responsible could not have reasonably foreseen that the act or omission could result in an injury of the same nature in that State.[38] There is also further protection for a defendant in Article 10.4:

> *"If an action is brought in the courts of a State only on the basis that the injury arose or may occur there, those courts shall have jurisdiction only in respect of the injury that occurred or may occur in that State, unless the injured person has his or her habitual residence in that State."*

So, applying these rules, if a plaintiff has a worldwide reputation then he/she is more likely to sue in the jurisdiction of his or her habitual residence.

Australia, the USA and the UK are all members of the Hague Conference.

CONCLUSION

Defamation laws around the world balance the competing rights of freedom of information and protection of reputation. Different cultures will continue to have different values and priorities regarding this balance. Consequently, it is to some extent futile to attempt to impose one culture's values on another. The decision in *Dow Jones v Gutnick* is an illustration of this. No one approach to law is ultimately correct. While this decision brings into sharp focus the questionable practice of courts exercising a long-arm jurisdiction, it also highlights that an international agreement regarding jurisdiction and applicable law will at least give publishers, content providers and Internet users some certainty regarding the various laws that they will be answerable to.

1. Ibid. at paragraph 71. the US-based publisher of *Barron's Online* and *Barron's* magazine
2. Ibid. at paragraphs 45-48.
3. Ibid. at paragraphs 100-103.
4. Ibid. per Kirby J at paragraph 101.
5. Ibid. per Kirby J. at paragraph 145.
6. [2000] HCA 36.
7. Ibid. per Gleeson CJ. Gaudron, McHugh, Gummow and Hayne JJ at paragraph 35.
8. [1971] AC 458.
9. Ibid. per Lord Pearson at 468.
10. *Dow Jones & Company Inc. v Gutnick* [2002] HCA 56 per Gleeson CJ, Gaudron, McHugh, Gummow and Hayne JJ at paragraph 44.
11. Ibid.
12. Cheshire and North, *Private International Law*, 11th cd. (1987) at 450, cited by Kirby J. at paragraph 145.
13. *Distillers Co. (Biochemicals) Ltd v Thompson* [1971] AC 458.
14. Ibid para 43.
15. (1870) LR 5 CP 542.
16. *The Albaforth* [1984] 2 Lloyd's Rep. 91.
17. (1990) 171 CLR 538.
18. Ibid. per Mason CJ, Deane, Dawson and Gaudron JJ at 569.
19. [2002] HCA 10.
20. [1987] AC 460.
21. [2002] HCA 10
22. Ibid at para 64.
23. Ibid at para 39.
24. Ibid at para 39.
25. Ibid at para 198-199.
26. Ibid at par 35.
27. Ibid at para 36.
28. Part of Melbourne Authority v Anshun Pty Ltd (1981) 147 CLR 589
29. Ibid at para 113.
30. Ibid at para 114.
31. Ibid at para 101.
32. Ibid at para 114.
33. Ibid at para 117.
34. Ibid at para 119.
35. Quotation from James Love, director of Ralph Nader's Consumer Project on Technology in Washington DC in Australian Financial Review 5 July 2001 p53.
36. Article 10.1(b).

The views expressed in this article are those of the authors and not necessarily those of the firm or its clients.

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The Andrew Olle Lecture 2002 Delivered by Mr Lachlan Murdoch Sydney, October 18, 2002

Good Business: Great Journalism

Lachlan Murdoch, in this much discussed lecture, examines a range of issues confronting modern journalism.

Thank you for inviting me to address Australia's pre-eminent media event generously hosted by the ABC. It is a night that honours our industry at the same time honouring Andrew Olle, a great Australian journalist. I very much thank you for this opportunity.

Although I give the odd speech now and then, I've never actually given a lecture before, so I hope you'll bear with me.

In preparing for speeches I generally try to read over previous speakers' comments, to gain a sense of the type of speech you may be expecting. Reading Kerry Stokes' comments from last year was extremely poignant, as this lecture is once again held under a pall of terrible tragedy. Sadly, Kerry's speech could just as well be given again tonight, as we again find ourselves in all too familiar territory.

JOURNALISM IN TIMES OF CRISIS

Tonight, as we honour the memory of a great Australian journalist, it is also a timely occasion to mark the work of all our colleagues and friends who have strived under heart-breaking circumstances to inform their fellow Australians and in many instances, the rest of the world. After last week's bombing in Bali, so many of our journalists, photographers and camera crews are again working in extreme conditions and under incredible duress to piece together the harrowing story that unfolded on October 12. We sometimes forget that those we send to report for us from places like Bali feel the trauma and grief like everyone else. We forget that those working behind a camera, a recorder or notebook feel the pulse of humanity as we do.

The best of them feel that pulse more strongly.

It struck me when I heard *The Sydney Morning Herald's* Matthew Moore and *The Daily Telegraph's* Peter Lalor speaking to Sally on ABC radio earlier this week, their voices trembling.

Reporting in *The Tele* on Tuesday Peter went on to write:

> *"There are times when a pen and a notebook are inadequate shields against the world....Tomorrow I promise I will be hard-nosed, today I have to grieve with all these people. My people... "*

Later that day, Peter rang his editor, Campbell Reid, and said he may not be able to report for Wednesday's newspaper. He had joined a search for the missing. Later, he did file his story.