

The Evolution of Internet Defamation Law:

Will *Dow Jones v Gutnick* Survive the International Legal Schisms and Legislative Onslaught?

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I. Introduction

The *ratio decidendi* of the decision of the High Court of Australia in *Dow Jones Inc & Company v Gutnick*¹ (“*Gutnick*”) was that it is where a person downloads comprehensible information/ material from the World Wide Web that damage to reputation may be done.² It was held in the case that the damaged reputation of Mr Joseph Gutnick took place in Australia-Victoria where the alleged defamatory material was downloaded, not New Jersey where the material in issue was uploaded and the website’s server located.³

The effect was therefore that the Australian High Court imposed Australian law over Dow Jones & Co Inc (“Dow Jones”), the United States based publisher of Barron’s online. The issue that arises is whether such a decision can be reconciled with decisions in other jurisdictions, in particular in the US where freedom of speech rights enshrined in the First Amendment are upheld to be sacrosanct. In the US corridors of justice *Gutnick* would barely have crawled past the preliminary objection stages.

The discourse illuminates on the international impact of this decision and whether it is possible to reconcile the competing positions. The first part of the discourse explains the *Gutnick* case, and then delves into an analysis of the background of defamation tort law. It also explores the jurisdictional and conflict of law difficulties that arise in the online environment internationally. The second part analyses case law and the logic behind the conflicting and similar positions taken worldwide. The last part analyses the impact of *Gutnick* internationally and whether the decision can be reconciled with other international jurisdictions. This analysis is on the backdrop of the borderless nature of the internet.

II. Historical and current underpinnings of the tort of defamation

A. The Gutnick case

The case involved Mr Joseph Gutnick, a prominent and well known businessman in Victoria, and Dow Jones, the publisher of the Wall Street Journal.⁴ In October of 2000 Dow Jones published an article on Barron’s magazine entitled ‘*unholy gains*’ which was uploaded in New Jersey on its wsj.com subscription news site on the web.⁵ The article claimed the Melbourne businessman Mr Joseph Gutnick had engaged in improper business

dealings and was associated with a convicted tax evader and money launderer.⁶ Of 550,000 web site subscribers 1700 of them paid by way of Australian credit cards and an estimated 300 were from Victoria.⁷

B. Background on Conflicts of Choice of Law in Australia and Internationally

The tort of defamation is an intentional tort that arises when communication harms the reputation of a person such that it lowers the person’s estimation in the community or deters third persons from dealing with the person.⁸ There are two traditional forms of defamation, namely, libel and slander, which divides defamatory communication into written and spoken word respectively.⁹ The common law development of tort law in Australia is of particular interest as it elaborates on the reasoning adopted by the High Court in the *Gutnick* case. The Defamation Act of 2005 however does away with the distinction between libel and slander.¹⁰

The Australian High Court changed the common law rule for choice of law in tort cases to a rule which requires the application of the law of the place of tort.¹¹ This change for both inter and intranational choice of law was evidenced by the decision of the court in *Regie Nationale des Usines Renault SA v Zhang*¹² (“*Zhang*”) and *John Pfeiffer Pty Ltd v Rogerson*¹³ respectively. The rule adopted in the quest to create certainty was that: the law to be applied in tort cases was none other than that of the place where the tort occurred- *lex loci delicti* rule.¹⁴ Therefore in the *Gutnick* case once it was established that the place of downloading not uploading was the place where the tort of defamation occurs, it automatically followed that Australian law applied.

This is the first point of conflict and departure with predominant international norms in other jurisdictions worldwide. The United Kingdom which has a rather similar system to that of Australia has legislatively moved away from a strict application of the *lex loci delicti* rule.¹⁵ Since 1995 the Private International Law (Miscellaneous Provisions) Act in the UK has provided for the *lex loci delicti* rule to be displaced where it is substantially more appropriate for another law to apply.¹⁶ It will however be shown that UK courts have successfully utilised other benchmarks which have turned it into a prime destination for internet libel tourism.¹⁷ The Restatement (Second) of Conflict of Laws, in its treatment of personal injury torts also calls

for the application of the place where the tort occurred unless some other state has a more significant relationship to the occurrence and the parties.¹⁸ Other tort related conventions also allude to a similar approach of creating some flexibility with regard to the choice of applicable law in tort cases.¹⁹ In Europe under the Brussels I Regulation defamation claims can be brought wherever the harmful event occurred - where it is read, however as interpreted in *Handelskwekerij G.J. Bier BV v Mines de Potasse d'Alsace SA*²⁰ the European Court of Justice noted that it also means a plaintiff can do so where the damage occurred or the place of the event giving rise to it.²¹ This is also a flexible approach.

Greene criticizes this approach and its application in *Gutnick* because there will always be cases where it is very difficult to feel that there is an obvious place where a tort occurred.²² Victorian law was rightly applied in line with *Zhang* because the tort occurred in Victoria. However the premise that the tort occurred in Victoria was based on technicalities of the law of defamation rather than any cogent concerns of the law regulating choice of law.²³

1. Fundamental Point of Divergence in International Defamation Law

It is imperative to acknowledge the close proximity between the UK law of defamation and Australian law of defamation. This explains why *Gutnick* has been cited severally in English courts as a clear indicator that the place of downloading is where the tort of defamation occurs.²⁴ The US on the other hand has over the years taken a different approach to the law of defamation.²⁵ The European Union on its part is still struggling to adopt uniform defamation laws after a rejection of Rome II's defamation provisions.²⁶

Defamation involves striking a delicate balance between free speech rights and the protection of reputation.²⁷ Free speech is driven by courts' recognition of the need for free flow of information in society, while protection of reputation oscillates around the value in one's reputation.²⁸ This is the point of divergence between America and other jurisdictions like Australia and the UK, primarily because in this delicate balancing act American courts tip the scales in favour of free speech while Australian courts tip the scales in favour of reputation.²⁹ U.S libel law is based on First Amendment jurisprudence since 1964 while British and Australian law favours the plaintiff and an untarnished reputation.³⁰

These conflicting legal standards on tackling defamation have become more pronounced with the advent and growth of the internet. This is because the internet has no respect for traditional ideological constructions like sovereignty. Therefore conflicts on which legal standards to apply, as was evident in *Gutnick*, are on the rise.

III. Global defamation case law developments, from Victoria to London to New York: the logic behind unyielding positions

A. Substantive Law and Common Law Disparities

The development of American jurisprudence on defamation took a different path from that of Australia and the UK with the decision of the Supreme Court in *New York v Sullivan*³¹ The court essentially placed strict limitations on libel suits and the burden of proof shifted to the plaintiff who if it is a public figure must prove "actual malice".³² The Supreme Court also eliminated the common law presumption of falsity and strict liability hence a plaintiff is required to prove fault in addition to falsity even if the plaintiff is a private figure.³³

Defendants in England and Australia still shoulder the burden of proof to prove the truth of disputed statements.³⁴ Proving truth can be difficult given journalists confidential sources.³⁵ Defences such as truth which make a defence justified have been criticised as requiring one to prove the truth of every material fact, another uphill task.³⁶ Existing exceptions to strict liability in both Australia and England such as "fair comment" and "qualified privilege" are said to still have a high truth threshold placed on defendants and narrow interpretations.³⁷ Perhaps the only avenue that grants substantial immunity to a defendant's freedom of speech in most common law jurisdictions, in particular Australia and England, is absolute privilege offered to judicial proceedings and parliamentarians.³⁸ In Australia, other defences such as honest opinion, innocent dissemination and triviality are also available to the defendant.³⁹

B. Civil Procedure Disparities

The United Kingdom has fee shifting provisions in the sense that it is the losing party that has to bear the costs that are associated with litigation.⁴⁰ Australia also has similar provisions however it is possible for the court to order that both parties pay their respective costs for the suit.⁴¹ However as already highlighted, since the burden of proof lies with the defendant, the odds favour the plaintiff.⁴² Furthermore litigation costs in both Australia and the UK are substantially high; in the case of the latter the much needed multiple lawyers in such suits charge as much as 1,300 pounds an hour.⁴³

The statute of limitations on internet material is another fundamental point of departure. In Australia and the US time runs from the first publication, however the UK has a rather ridiculous provision in the age of the internet which states that the statute of limitations doesn't begin until the publication is no longer available in print.⁴⁴ Reforms are ongoing and were evident in the Defamation Reform Act of 1996 which reduced the limitation period of any libel claim to one year, and included new defences like innocent dissemination.⁴⁵

The multiple publication rule however remains the most irreconcilable disparity evident in *Gutnick* because the

US subscribes to the single publication rule⁴⁶. A section of the bench in *Gutnick* unreservedly reiterated the application of the multiple publication rule.⁴⁷ The rule has its origins in the old common law case *The Duke of Brunswick*⁴⁸ which held that every publication of disputed work, in any forum worldwide, gives rise to a separate tort.⁴⁹ Kirby J was rightly apprehensive about the multiple publication rule and pointed out the Australian Law Reform Commission's proposal for an abrogation of the rule.⁵⁰ However he insinuated that his hands are tied without legislative reform, especially considering Australian aversion for wanton judicial activism.⁵¹

The single publication rule in contrast holds that only one edition of a book, article etc constitutes a single publication, and therefore a plaintiff can only bring one action for recovery of damages in all jurisdictions.⁵² The European Union on its part has also rejected the single publication rule but continues to be unable to settle on the place-of-harm rule or place-of-publication rule or a blend of both, hence a lacuna persists.⁵³

The UK has furthermore adopted a rather broad interpretation of personal jurisdiction, which is unlike the American narrow view based on due process, which prohibits American courts from exercising jurisdiction over a non resident if it would be unfair or burdensome to a defendant.⁵⁴ This explains the minimum contacts standard and express targeting as a prerequisite in the US.⁵⁵ The permissive English approach of 'universal jurisdiction' has on several occasions involved citing of *Gutnick*.⁵⁶

These radically different positions on defamation have the effect that a plaintiff is more likely to succeed with a libel suit in Australia and England while the suit would have no chance of success in the US. The years subsequent to *Gutnick* have witnessed the growth of forum shopping (libel tourism), attempts at virtual borders, increased defamation reform and an actual chill on free speech in America⁵⁷. The rich and famous have resorted to come from the four corners of the world, more so from the US, to bring libel actions in the UK.⁵⁸ The UK courts on their part have proved to be trigger happy against defendants when it comes to online defamation litigation.⁵⁹ Several cases indicate the growth of libel tourism with London being a favourite destination⁶⁰.

IV. Reconciling *Gutnick*'s position with other international jurisdictions: reality or wishful thinking?

It is clear from the foregoing that it is extremely difficult to reconcile the *Gutnick* decision with decisions in the US. It seemingly however strongly resonates with the decisions in the UK, albeit hesitantly with Canadian decisions.⁶¹ In an attempt to illustrate this difficulty a case illustrating the growth of the much feared chill on free speech is in order. It often operates in tandem with libel tourism.⁶² Dr Rachel Ehrenfeld was an expert in the financing of terrorism and in her book *Funding Evil* she

reported allegations she got through her sources that Saudi Arabian businessman Khalid Bin Mahfouz funded terrorism prior to September 11, 2001.⁶³

Bin Mahfouz sued Dr Ehrenfeld in England for libel even though she wrote and published her book in the US.⁶⁴ Because twenty three copies were somehow purchased in England and the first chapter of the book was online, English courts agreed to hear the matter.⁶⁵ As an independent writer with inadequate funds Dr Ehrenfeld did not defend the matter however a default judgment was awarded against her for 60,000 pounds together with an injunction.⁶⁶ Her attempts to gain a declaratory judgment in New York barring enforcement of a foreign verdict were unsuccessful due to Bin Mahfouz's insufficient contacts with New York.⁶⁷

Americans subsequently decided to take draconian legislative measures to curb further imposition of foreign laws and judgments within their jurisdiction. New York set the pace, in reaction to the judgment passing the Libel Terrorism Protection Act (dubbed "Rachel's law")⁶⁸. The law had the effect of providing writers with security of a judicial statement codifying the Buchanan rule⁶⁹ and ensuring that foreign judgment will not be recognised. It was further designed to work retroactively giving Dr Ehrenfeld a new chance to sue Bin Mahfouz⁷⁰.

Several states like Illinois have also enacted this law and Congress is in the process of enacting the Free Speech Protection Act with draconian international ramifications yet aimed at protecting all American publishers, persons and academics.⁷¹ It allows US authors to countersue for damages; a domestic court may award them treble damages if a fact finder determines that the plaintiff's aim was to suppress First Amendment rights.⁷² These damages are based on the amount of the foreign judgment, costs including all legal fees attributable to the foreign lawsuit and harm caused to the US person due to decreased opportunities to publish, conduct research, or generate funding.⁷³

Clearly the internet defamation battle lines between reputation and free speech have been redrawn and a great opportunity to use private international law and comity in resolving this tussle seems lost.⁷⁴ It is even apparent that some of the New York law provisions are so overarching that they could be unconstitutional.⁷⁵

Gutnick can easily be reconciled with decisions in the UK and possibly Europe and Canada. However given that the bulk of litigation remains against American corporate media houses, writers and publishers, individuals with US interests will think twice prior to launching defamation suits at the place of downloading material.

Furthermore liability of internet service providers for third party content has gained increased scrutiny. With regard to defamatory content on Wikipedia for example everyone who contributes to the publication is potentially liable because, as noted in *Gutnick*, publication includes publication over the internet.⁷⁶ Therefore an author of a

wiki page can be seen to have published the material. An example is an article on John Seigenthaler Sr, a journalist and politician alleged on Wikipedia to have been involved in the assassination of John F Kennedy.⁷⁷ The 2005 article remained in Wikipedia for some months, leading to considerable media attention and resulting in Wikipedia implementing an official actions policy.⁷⁸ This policy enables a Wikipedia employee to protect or modify any article.⁷⁹ These issues also explain the growth of agnotology (culturally induced ignorance)⁸⁰ through chill of speech especially with regard to Wikipedia-style publishing which is characterized by the perpetual 'balance of terror'.⁸¹

The lack of adequate judicial dialogue with regard to transnational speech has been apparent, despite Kirby J aptly doing so in *Gutnick*.⁸² There has been a failure to fully internalise the role of the judiciary in shaping international legal norms through transnational judicial dialogue.⁸³

V. Conclusion

A New dawn and a break from aristocracy?

Defamation laws are in need of harmonisation as several academics, practitioners and legislators seem to affirm worldwide.⁸⁴ Efforts towards an international treaty should be pursued despite the recent American developments.⁸⁵

Indeed freedom of speech has never really belonged to the man on the street, it would suffice to note that it has only been fully realised with the advent of the internet. It is now possible for individuals to make use of internet tools available in popular internet sites to add their two cents worth to the most widely disseminated and read articles and news reports on leading sites.⁸⁶ Clearly never before have individuals had such ability, speed, effectiveness, wide reach and access in public self expression.⁸⁷ Karniel has rightly posited:

*In the past, freedom of expression was viewed in the abstract and as an aspiration. The ability to publicly air one's views was held by a select few. Theory did not reflect reality. Much rhetoric was expended on speaking and writing about the value of free speech but in actuality it was all about freedom of the press covering large media concerns, the rich and those in power.*⁸⁸

The much resisted reality is that defamation laws in most countries are being slowly reformed legislatively and the internet has been the major catalyst. Kirby J was right in his apprehension regarding *Gutnick*.⁸⁹ Clearly another indisputable reality is these reforms will move more towards the American position of free speech than reputation in the internet age. Ongoing reforms in Australia, Britain and Europe in themselves are evidence of this.⁹⁰ A cursory glance at comments made about videos on YouTube and on Facebook is just a tip of the iceberg on what is yet to come with the evolution of the internet. It however remains vital to guard against an

absolute slide into the American approach, which is truly a 'slippery slope' that authoritarian and even democratic societies simply cannot handle.

¹ *Dow Jones Inc v Gutnick* (2002) 210 CLR 575

² Yen Fen Lim, 'Cyberspace Law' (2nd ed, 2007) 57

³ *Ibid*

⁴ *Ibid*, 50

⁵ *Ibid*, 51

⁶ *Dow Jones Inc v Gutnick* (2002) 210 CLR 575

⁷ Yen Fee Lim, above n 2, 50

⁸ Restatement (Second) of Torts s 559 (1977)

⁹ Shane Bone, 'Private Harms in the Cyber-World: The Conundrum of Choice of Law for Defamation Posed by *Gutnick v Dow Jones & Co*' (2005) 62 Washington and Lee Law Review 279, 285

¹⁰ Defamation Act 2005 s 7

¹¹ Janey Greene, 'Inflexibly Inflexible: Why Choice of Law in Tort Questions Still Won't Go Away' (2007) 33 Monash University Law Review 246

¹² (2002) 210 CLR 491

¹³ (2000) 203 CLR 503

¹⁴ Jayne Greene, above n 11, 247

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷ Trevor Hartley, 'Libel Tourism and Conflict of Laws' 59 International and Comparative Law Quarterly 25

¹⁸ Jayne Greene, above n 11, 247 'See also' Restatement (Second) of Conflict of Laws s 146 (1971)

¹⁹ 'Cf' The 1971 *Hague Convention on the Law Applicable to Traffic Accidents*- articles 3 & 4 provided for application of the law of where the accident occurred except in situations where the matter is more closely connected to another jurisdiction. 'See also' 1973 *Hague Convention on the Law Applicable to Products Liability* - articles 5 & 6 also provided for application of the law of the place of injury unless another state has a more significant relationship to the occurrence and the parties.

²⁰ Case 21/76, (1976) E.C.R. I-735

²¹ Aaron Warshaw, 'Uncertainty from Abroad: *Rome II* and the Choice of Law for Defamation Claims' (2007) 32 Brooklyn Journal of International Law 269, 278.

²² Jayne Greene, above n 11, 250

²³ *Ibid*

²⁴ Aaron Warshaw, above n 21, 287

²⁵ *New York v Sullivan* 376 U.S. 254, 270 (1964)

²⁶ Aaron Warshaw, above n 21, 274

²⁷ Dan Jerker Svantesson, 'Borders on, or Border Around- the Future of the Internet' (2006) 16 Albany Law Journal of Science and Technology 343, 345

²⁸ Raymond Beauchamp, 'England's Chilling Forecast: The Case for Granting Declaratory Relief to Prevent English Defamation Actions from Chilling American Speech' (2010) 74 Fordham Law Review 3073, 3077

²⁹ Trevor Hartley, above n 17, 26

³⁰ Sarah Staveley-O'Carroll, 'Libel Tourism Laws: Spoiling the Holiday and Saving the First Amendment?' (2009) 4 New York University Journal of Law and Liberty 252, 255

³¹ 376 U.S. 254, 270 (1964)

³² Sarah Staveley-O'Carroll, above n 30, 256

³³ *Ibid*

³⁴ *Ibid*

³⁵ *Ibid*, 257

³⁶ Raymond Beauchamp, above n 28, 3078

³⁷ Sarah Staveley-O'Carroll, above n 30, 257

³⁸ Raymond Beauchamp, above n 28, 3081. The recent scathing statement against the Church of Scientology by Australian Independent Senator Nick Xenophon is a good example of use of Parliamentary Privilege as a shield against defamation suits. See Sabra Lane, *Australian Senator Launches Scathing Attack on Scientology* <<http://www.radioaustralianews.net.au/stories/200911/2746076.htm?desktop>> at 30 March 2010

³⁹ Defamation Act 2005, s 31, 32, 33

⁴⁰ Sarah Staveley-O'Carroll, above n 30, 259

⁴¹ Defamation Act 2005 s 40

⁴² Sarah Staveley-O'Carroll, above n 30, 259

⁴³ Ibid. See also *Support Ian Cohen* <<https://greens.org.au/civicism/contribute/transact?reset=1&id=38>> at 31 March 2010. Ian Cohen continues to struggle with a legal bill for defamation worth \$1 million of which damages comprise of only \$15,000. He has commented on the need to rethink the functioning of defamation laws in Australia. See also Rick Fenely, 'When the price of speaking out is \$1 m' <<http://www.smh.com.au/national/when-the-price-of-speaking-out-is-1m-20091218-l5py.html>> at 31 March 2010

⁴⁴ Sarah Staveley-O'Carroll, above n 30, 260

⁴⁵ Raymond Beauchamp, above n 28, 3073, 3088

⁴⁶ Aaron Warshaw, above n 21, 275

⁴⁷ *Gutnick* (2002) 210 CLR 575 8 at 27 Gleeson CJ, McHugh J, Gummow J and Hayne J noted that the 'Multiple Publication Rule' is a long established common law rule, further noting that it would be a significant step to step away from it. This is because the American 'Single Publication Rule' was rejected by the Court of Appeal of New South Wales in *McLean v David Syme & Co Ltd* (1970) 72 SR (NSW) 513 at 520, 528. Callinan J however went further rejecting the Single Publication Rule outrightly, pushing the onus of responsibility to publishers. The domino effect of so doing would be creation of pseudo borders on the internet, a concern he did not adequately address. The main reason for his position was "American Legal Hegemony".

⁴⁸ *Duke of Brunswick v Harmer* (1849) 14 QB 185 [117 ER 75] The British and Australian position continues to be consistent with this case that established the 'Multiple Publication Rule.'

⁴⁹ Ibid, 261 Ironically this rule runs afoul with the principle of *Res Judicata* and given the borderless nature of the internet it leaves the door ajar for perpetual and frivolous actions in jurisdictions that do not recognise *Res Judicata*.

⁵⁰ *Gutnick* (2002) 210 CLR 575 45 at 128 This is evident when he notes that, 'Change exceeds the judicial function'

⁵¹ Australia as a jurisdiction holds separation of powers as *Sacrosanct* while America holds free speech as *sacrosanct*.

⁵² Sarah Staveley-O'Carroll, above n 30, 260

⁵³ Aaron Warshaw, above n 21, 299

⁵⁴ *Int'l Shoe v Washington*, 326 U.S. (1945) 316-17

⁵⁵ *Young v New Haven Advocate*, 315 F.3d 256, 262(4th Cir. 2002)

⁵⁶ *Gutnick* was cited in *Harrods Ltd v Dow Jones & Co, Richardson v Schwarzenegger* (2004)EWHC 2422 (QB), the lower Court decision in *Bangoura v Wash. Post* 235 D.L.R. (4th) 564, 573 also heavily relied on *Gutnick* in ruling against the plaintiff.

⁵⁷ Sarah Staveley-O'Carroll, above n 30, 267

⁵⁸ Trevor Hartley, above n 17, 26

⁵⁹ Ibid

⁶⁰ Justin Hemlepp, "'Rachel's Law' Wraps New York's Long-Arm around Libel Tourists; Will Congress Follow Suit?' (2008) 17 Journal of Transnational Law and Policy 387, 388

⁶¹ Judit Bayer, 'Liability of Internet Service Providers for Third party Content' (2008) 1 Victoria University of Wellington Working Paper 1, 9

⁶² *Dow Jones & Co Inc v Jameel* (2005) EWCA Civ. 75. This case is the minor exception where the English courts rejected forum shopping. Ironically it would be foolhardy not to realise the great financial benefits to both the English legal profession and justice system. The US on the other hand has always been some kind of libel haven and it must also cede ground in the reform of defamation laws.

⁶³ Sarah Staveley-O'Carroll, above n 30, 273

⁶⁴ Raymond Beauchamp, above n 28, 3073

⁶⁵ Ibid

⁶⁶ Ibid, 3074

⁶⁷ Justin Hemlepp, above n 60, 388

⁶⁸ Sarah Staveley-O'Carroll, above n 30, 276

⁶⁹ *Bachchan v India Abroad Publications Inc* 585 N.Y.s. 2d 661, 665 (N.Y. Sup.Ct.1992) A New York court held that a defamation judgment by a High Court in London was unenforceable against New York Wire Service.

⁷⁰ Sarah Staveley-O'Carroll, above n 30, 276

⁷¹ Ibid

⁷² Ibid

⁷³ Ibid, 278

⁷⁴ Ibid, 282

⁷⁵ Sarah Staveley-O'Carroll, above n 30, 278

⁷⁶ Peter Black, Hayden Delaney and Brian Fitzgerald, 'Legal Issues for Wikis: The Challenge of User-generated and Peer-produced Knowledge, Content and Culture' (2007)14 Murdoch University Electronic Journal of law 245, 268

⁷⁷ Ibid

⁷⁸ Ibid

⁷⁹ Ibid

⁸⁰ Agnotology is the study of ignorance making, the lost and forgotten. It also involves the study of culturally induced ignorance. A chill on speech and literary works has an effect of reinforcing the different forms of ignorance prevalent in every society through reduced interstate discourse on issues.

⁸¹ Robert Proctor, 'Agnotology: a Missing Term to Describe the Cultural Production of Ignorance (and Its Study)' in Robert Proctor and Ionda Schiebinger (eds), *Agnotology: The Making & Unmaking of Ignorance* 1, 9

⁸² Melissa Waters, 'Mediating Norms and Identity: The Role of Transnational Judicial dialogue in creating and Enforcing International Law' (2005) 93 Georgetown law Journal 487, 548

⁸³ Ibid, 490

⁸⁴ Aaron Warshaw, above n 21, 272

⁸⁵ Heather Maly, 'Publish At Your Own Risk or Don't Publish at All: Forum Shopping Trends in Libel Litigation leave the first Amendment Un-Guaranteed' (2006) 14 Journal of Law and Policy 883, 930

⁸⁶ Yuval Karniel, 'Defamation on the internet- A new Approach to Libel in Cyberspace' (2009) 2 International Media and Entertainment Law 218, 219

⁸⁷ Ibid

⁸⁸ Yuval Karniel, above n 86, 219

⁸⁹ *Gutnick* (2002) 210 CLR 575 57 at 164 Kirby J noted that: 'the dismissal of Dow Jones does not represent a wholly satisfactory outcome'

⁹⁰ Julian Leaser, 'A Higher Standard: The Defamation Jurisprudence of I.D.F Callinan in Context' (2008) 27 University of Queensland Law Journal 119, 128