

ROUNDTABLE with Professor Matthew Harding (University of Melbourne)

on “Attribution: Against Meridian”

BY Assistant Professor Rachel Leow, NUS Law

09 APRIL 2019, TUESDAY

5.00PM – 7.00PM (TEA RECEPTION STARTS AT 4.45PM)

NUS LAW (BUKIT TIMAH CAMPUS)

FEDERAL BUILDING LEVEL 1, FEDERAL CONFERENCE ROOM

ABSTRACT

When are acts and states of mind attributed to a company in order to determine its rights, duties, and liabilities to other persons in private law? Since *Meridian Global Funds Management v Securities Commission* [1995] 2 AC 500, it is widely accepted that the answer to this question is a highly context-specific one. The question is: whose act or state of mind is for this purpose intended to count as the company's? One commentator has gone as far as to say that “Generalisations are impossible; context is all.” At one extreme, it might be thought to be so context-specific that it is impossible to articulate general rules as to when acts and states of mind can be attributed. This would be a discredit to the rationality of private law. A context-specific approach provides insufficient justification for why a particular act or state of mind should be attributed. It leads to inconsistency across different areas of law. It may even lead to the law contradicting itself, saying at the same time that a particular act or state of mind both is and is-not the company's.

In this paper, I argue that contrary to the orthodoxy, the rules of attribution form a highly coherent set of rules that apply equally across private law. More importantly, they should do so. I show how attribution is justified by the voluntary delegation of the company's powers to act to different individuals or groups of individuals. Attribution thus turns on the individual's exercise of the company's own powers to act. Whether an act should be attributed depends on the construction of these powers. It should not change depending on the nature of the claim or area of private law. Amongst other advantages, this is the key to solving some difficult problems concerning attribution and illegality.

ABOUT THE SPEAKER



Matthew Harding is Professor of Law and Deputy Dean at the Melbourne Law School, the University of Melbourne.

Matthew's research interests lie in moral and political philosophy, the theory and doctrines of equity, property law, judicial practice and precedent, and the law of charities and other not-for-profits. He is the author of *Charity Law and the Liberal State* (Cambridge University Press, 2014) and has edited or co-edited several collections, including *Fiduciaries and Trust: Ethics, Politics, Economics and Law* (Cambridge University Press 2019, with Professor Paul Miller), *The Research Handbook on Not-for-Profit Law* (Edward Elgar, 2018), *Not-for-Profit Law: Theoretical and Comparative Perspectives* (Cambridge University Press, 2014, with Professors Ann O'Connell and Miranda Stewart), and *Exploring Private Law* (Cambridge University Press, 2010, with Professor Elise Bant). Matthew is an editor of the *Journal of Equity*, a member of the Advisory Board of *Oxford Studies in Private Law*, and the Chair of the Charity Law Association of Australia and New Zealand. He has been a visiting scholar at the University of Toronto, Queen's University Belfast, the University of Otago, the University of the Western Cape and Florida State University, and in January 2020 will be Kwa Geok Choo Distinguished Visitor at the National University of Singapore.

ABOUT THE AUTHOR



Rachel's general research interests lie in private law and commercial law. She is particularly interested in the law of agency, commercial equity, and the law of unjust enrichment. She also maintains an active interest in tort law, particularly the doctrines of vicarious liability and non-delegable duties. Her research in has appeared in leading journals such as the Cambridge Law Journal, Lloyds Maritime and Commercial Law Quarterly, Conveyancer and Property Lawyer, and Trust Law International. In 2016, her article 'Unjust Enrichment and Restitution in Singapore: Where Now and Where Next?' (co-written with Timothy Liau) was cited with approval by the Court of Appeal in *Eng Chiet Shoong v Cheong Soh Chin* [2016] 4 SLR 728.

Rachel read law at NUS (LLB) before completing her training contract at the financial services department of one of Singapore's largest law firms. Her work concerned commercial applications of equity in the financial sector (business trusts and capital markets). She was called to the Singapore Bar in 2012. Later that year, she moved to Cambridge, where she completed her LL.M. and Ph.D at Downing College, University of Cambridge. During her time at Cambridge, she won the Chancellor's Medal in English Law and the Gareth Jones Prize for the Law of Restitution (with the highest mark ever recorded at that time), among other prizes. Her PhD, "Companies in Private Law: Attributing Acts and Knowledge", considered the important question of how companies can come under duties, possess rights,

and incur liability to other persons in private law. It spanned company law, agency law, contract law, tort law, the law of unjust enrichment, and selected aspects of equitable liability. At Cambridge, Rachel taught the Law of Restitution and Commercial Equity on the LLM programme. For two years, she also interviewed for undergraduate admissions at Downing College, Cambridge.

Participation is by Invitation Only

Registration commences at 4.45pm and light refreshments will be served.

For more information, please contact Ms Atikah Shaftee at atikah.shaftee@nus.edu.sg