



Accepted Papers

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The Interpretation of Wrongdoing: The Public and Private Law of Social Media in the Workplace
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Information technology has dramatized anew the difficulty in separating public and private law into distinct areas. This interconnection is explored here using employment law as a backdrop. There has been a developing line of case law suggesting the public right of free speech has been attenuated within the private context of employment: where workers are disciplined (up to and including termination) for remarks made on social media platforms. Employment contracts used as a form of social regulation (where speech has been unilaterally classified as 'harmful' by an employing business) alludes to a need for pointed consideration; notably when the impugned speech is of questionable harm. The justification for the status quo has been the protection of business reputation. While an established aim in itself, the singular focus on business reputation negates attempts at a better balance. It is contended that wide protection for the public right to free speech must be the starting point; that is, there is a prima facie right to speech, even in relation to the private setting of the workplace, which is subject to limitation based on balancing free speech with protection for business reputation.