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WHAT STRUCTURES ARE APPROPRIATE TO RECEIVE TREATY OF WAITANGI SETTLEMENT ASSETS?

MEREDITH GIBBS

While the Treaty of Waitangi settlement process continues to produce results in terms of settlement of historical Treaty claims there are questions about the appropriate entities for the management of assets gained under this process. This article addresses these issues, stating that the settlement entity must have historical continuity with the kin-group suffering the relevant breaches of the Treaty and must represent all contemporary members of that kin-group. An analysis of Māori incorporations is undertaken with a specific focus on the Mawhera Incorporation's receipt of pounamu under the Ngai Tahu settlement. The article concludes that Māori incorporations are inappropriate to receive settlement assets due to the lack of representation that their shareholding and share voting mechanisms provide for the kin-group.

CIRCUMCISION AND THE CRIMINAL LAW: THE CHALLENGE FOR A MULTICULTURAL STATE

ELISABETH MCDONALD

Section 204A of the Crimes Act 1961 makes the practice of female genital mutilation an offence. In this article, the author compares this practice with male circumcision and the genital normalising surgery performed on intersex infants. She makes the argument that all three practices may be criticised or supported for similar reasons, yet only one form of genital alteration is currently criminalised. Further, the defences in section 204A are inconsistent in their application, as their availability is dependent on the definition of "culture", an interpretation which is itself informed by the culture of those undertaking the defining. The author concludes the criminal law should not be relied on when resolving cultural disagreements, as was strongly argued at the time section 204A was introduced.

FINANCIAL PROVISION AND PROPERTY DIVISION ON RELATIONSHIP BREAKDOWN: A THEORETICAL ANALYSIS OF THE NEW ZEALAND LEGISLATION

JOANNA MILES

This article examines New Zealand's law of financial provision and property division on the breakdown of spousal and de facto relationships. It seeks to identify the theoretical basis of the law and to ascertain whether that basis is suitable for the relationships to which it applies and is internally coherent. The article begins by examining various theories that might underpin the law in this area, and advocates a particular model for resolving relationship property disputes: a form of substantive economic equality, based on notions of entitlement and compensation; this model would seek to ensure satisfaction of children's needs, but largely exclude from consideration the needs of the adult parties. It is argued that, while New Zealand law goes some way in adopting such a model, it ultimately fails to be coherent because of its retention of needs-based remedies.

JUDGE NORMAN SMITH: A TALE OF FOUR 'TAKE'

GRANT YOUNG

This article examines the Māori customary law concept of 'take'. It argues that Judge Norman Smith's model of 'take' is not necessarily the starting point for describing the process by which Māori customary land tenure was converted to individual title in the nineteenth century. Smith's model has four 'take': discovery, ancestory, conquest, and gift; combined with the exercise of some act indicative of ownership. However the antecedents for this model are unclear. Other authors have developed different models and Smith's attempt could be seen as imposing twentieth century order on nineteenth century chaos.