NZULR ABSTRACTS
Vol 21, No 3 June 2005

BEYOND THE NEEM TREE CONFLICT: QUESTIONS OF CORPORATE BEHAVIOUR IN A GLOBALISED WORLD

OLIVER KRACKHARDT

This article examines conflicts arising in international patent law involving indigenous people. With ongoing globalisation the power of nation States diminishes. At the same time the power of multinational corporations rises. The article argues that as a consequence multinational companies have to take over some social responsibility. In the area of patent law, international treaties like the TRIPS Agreement allow for uncompensated exploitation of indigenous peoples' knowledge and products. This is mainly due to the fact that the TRIPS Agreement represents a Western-style approach, taking only individual ownership into account and disregarding community ownership. The article argues that, as a question of corporate social responsibility, companies obtaining a patent based on indigenous peoples' knowledge should voluntarily compensate these people on a fair basis. This is not only a moral obligation, but derives from the fact that companies obtain valuable knowledge in exchange. Moreover, there are several incentives for multinational companies to compensate indigenous people, such as improved cooperation, marketing advantages, and avoidance of less desirable developments. It is also the natural consequence of treating indigenous people as business partners. It is argued that the use of corporate codes of conduct provides the fastest and most efficient way to achieve such compensation in practice and that chances for such an achievement have never been better than today.

PUBLIC DISCUSSION AS A DEFENCE TO A NINETEENTH CENTURY DEFAMATION ACTION

ROSEMARY TOBIN

Two of the most important common law defences to a defamation action today are fair comment, now known as honest opinion, and qualified privilege. An examination of the earliest cases around the beginning of the nineteenth century shows confusion in terminology and overlap. This became particularly acute when the fair comment defence was extended from artistic criticism to encompass criticism of the conduct of the public man. The uncertainty as to the ambit of these two defences culminated in the middle of the nineteenth century with a form of a public discussion defence that protected false matters of fact even where they were published to a large audience. This article traces the early development of these two defences through the public discussion defence and examines the reasons for its disappearance.

COMPETITION POLICY AND ARRANGEMENTS INVOLVING THE MEDICAL PROFESSION IN AUSTRALIA AND NEW ZEALAND: AN OVERVIEW

WARREN PENGILLEY

Competition law, in principle, applies to all commerce equally. But it impacts on various businesses and professions in different ways. This article is about its impact on medical practitioners. In Australia, medical practitioners have only now come under competition regulation because for two decades the Commonwealth writ, for constitutional reasons, did not cover individuals acting solely within a State. Supplementary State legislation changed this in the late twentieth century. In New Zealand, the Ophthalmologists Case*, decided in mid-2004 and discussed in some detail in the article, has dramatically demonstrated the Commerce Act's applicability to medical practitioners. In particular, medical practitioners run risks in joint negotiation arrangements, in accreditation decisions, and in straddling the fine line which runs between anticompetitive acts and the proper enforcement of medical standards. The article suggests where the boundaries of competition law lie in each of these areas.*

DEBT, DRUNKENNESS, AND DESERTION: THE RESIDENT MAGISTRATES' COURT IN EARLY CANTERBURY 1851-61

JEREMY FINN

This article offers a contextual account and analysis of the operation of the Resident Magistrates' Court in the first decade of the Canterbury settlement 1852-61. Quantitative analyses of the work of the court in its criminal and civil jurisdictions are drawn on to explain shifting patterns of litigation. It considers, with case examples, the extensive litigation about debt and the procedural factors affecting litigants. It also draws on case examples to explore the experience of Māori and women litigants (as plaintiffs, prosecutors, and defendants) and to appraise the Court's treatment of four groups of frequently heard cases: those involving farmers and seamen, and a range of employment and assault cases.