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THE EXTRATERRITORIAL APPLICATION OF NEW ZEALAND COMPETITION LAW

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More than sixty years have elapsed since the United States courts first held that the antitrust laws could apply to conduct that occurs wholly outside the United States where that conduct was meant to, and did in fact, produce some substantial effect in the United States. Although the extraterritorial application of the antitrust laws once generated enormous controversy, it is now generally accepted as inevitable, if not necessary. Many competition authorities are increasingly targeting international cartels. Successful enforcement actions are often followed by private actions for damages. One of the significant obstacles to suing international cartels in the New Zealand courts is the uncertain scope of application of the Commerce Act 1986 in international cases. A traditional territorial approach to the scope of application of the Commerce Act 1986 is not compelled by the statute and is increasingly at odds with international developments and the evolution of the common law. There is a vast literature of the extraterritorial application of United States and European Community competition law, and growing literature of the scope of the Australian Trade Practices Act 1974. However, little has been written about the subject in New Zealand. This article seeks to address this gap.

THREATENED AREAS OF INTERNATIONAL SIGNIFICANCE

ALEXANDER GILLESPIE

Although the global community is seeking to increase the number of protected areas of significance and give them appropriate status under the protection of international environmental law, these areas are increasingly at risk from many traditional and emerging threats. This article seeks to identify those threats and consider the response of the international community to them.

COPYRIGHT AND CONTRACT

ALEXANDRA SIMS

Copyright is the most powerful and thus valuable of all the intellectual property rights. Copyright's protection, however, is limited. It does not protect all works, and those works that it does protect are not protected fully. Insubstantial amounts of a work can be copied without infringing copyright; there are a myriad of defences; nearly all works can be sold, lent and hired without restriction; and, most importantly, copyright protection expires eventually. This article argues that copyright's limitations are the product of a bargain struck between the public and copyright owners. The article explores the question of whether copyright owners should be able to use contract to upset this bargain and gain greater control over their works at the expense of the public. It deals with the compelling argument in favour of freedom of contract that users and copyright owners should be allowed to waive some of their rights if this would better reflect their commercial realities, by suggesting a legislative solution to allow this to occur. The ability to remould copyright law through contract law must be limited, however. To permit untrammelled freedom of contract would destroy the copyright bargain and allow the creation of a perpetual and all encompassing copyright.

FRAUD ON A POWER: PATTERNS IN THE MOSAIC

PETER DEVONSHIRE

It is axiomatic that a power of appointment can only be exercised for an authorised purpose. The fraud on a power doctrine is therefore engaged where a discretion is exercised for the ulterior purpose of conferring a benefit on persons who are not the contemplated objects. The relevant principles have been refined in different contexts and historical settings. The formative case law has produced some arcane distinctions and qualifications which – from a modern perspective at least – are difficult to reconcile. This article will analyse these apparent anomalies and assess the extent to which they are consistent with current perceptions of the doctrine.

GOVERNMENT LITIGATION AND SETTLEMENT OF HEALTH CARE TORT CLAIMS: A FRAMEWORK FOR CONSISTENCY AND MANAGEMENT OF LEGAL RISK

ANTHEA WILLIAMS

The number of legal claims made relating to health accidents has grown significantly over the last two decades, and claimants are increasingly turning their gaze to the government to address their health accidents. The government is not in the same position as private defendants when dealing with such claims: it has a different litigation risk profile, may be required to exhibit a higher standard of behaviour during litigation, and the potential decision-makers may approach factually similar claims in different ways (often guided by political considerations). These factors can result in inconsistent and potentially unfair settlement or litigation decisions. Government lawyers should adopt a decision-making framework to ensure consistent and principled legal advice that takes account of the future legal risk and costs. This article develops such a framework in three parts, using a normative framework drawn from tort law principles and the unique position of the Crown as a defendant in civil proceedings. Examples are drawn from New Zealand and Canadian jurisprudence, particularly the hepatitis C litigation and settlements of both countries.