

**NZULR ABSTRACTS**  
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**CHILD ABDUCTION CASES: EVALUATING RISKS  
TO THE CHILD AND THE CONVENTION**

JOHN CALDWELL

*This article examines the recent approach of appellate courts in varying jurisdictions to the defences contained within the 1980 Hague Convention on the Civil Aspects of Child Abduction. With particular reference to the key 'grave risk' defence, the author argues that there is a discernible international judicial movement to secure the compatibility of the Convention with the individual child's welfare and safety, and that the previously strong judicial emphasis on the need to apply the Convention's philosophy of summary return in an uncompromising manner is seemingly being softened by a more sustained judicial focus on the needs and welfare of the particular child. On this new child-centric thinking, a 'good' Hague Convention decision can be one that declines an order of return.*

**"MYSPACE" OR PUBLIC SPACE: THE RELEVANCE OF  
DATA PROTECTION LAWS TO ONLINE SOCIAL NETWORKING**

GEHAN GUNASEKARA AND ALAN TOY

*The law has always struggled to keep abreast of technological innovation. This is especially the case with privacy law. The communications revolution wrought by the Internet has rendered existing privacy jurisprudence obsolete. In the 1980s and 1990s principles-based data protection norms were developed that were designed to be technologically neutral. However they viewed individuals as data subjects and did not anticipate that the subjects would become users of the technology themselves. Online social networks such as MySpace allow individuals to place personal information on the World Wide Web that may potentially be accessible to others including employers and insurers and that may have negative consequences for individuals. Courts in the United States have thus far refused to apply traditional privacy torts to this new arena. This article considers whether data protection principles are capable of filling the gap. It argues that seamless information privacy regimes such as New Zealand's are capable of preventing the misuse of personal information gathered from online social networks thereby allowing a zone of purely personal "social" space to exist where individuals are free to disseminate and use personal information.*

**EXCLUSIVE JURISDICTION CLAUSES – A NEW ZEALAND PERSPECTIVE ON  
THE HAGUE CONVENTION ON CHOICE OF COURT AGREEMENTS**

GIORA SHAPIRA AND RONEN LAZAROVITCH

*Exclusive jurisdiction clauses in transnational contracts predetermine a litigation forum in case of potential disputes. Their application, though vital for contract certainty, has proved problematic. A recent Hague Convention addresses this problem. It has three main aims, seeking to ensure that (a) the chosen court exercises jurisdiction (with minimal forum non conveniens considerations) and (b) a non chosen court refuses jurisdiction. As well, (c) the Convention increases efficiency of enforcement of foreign judgments by chosen courts. Maintaining a New Zealand perspective, this article introduces the Convention, highlighting its main features. Prior to this the common law on exclusive jurisdiction clauses is briefly discussed. Noting criticism of the Convention, the article concludes that New Zealand should adopt it.*

**ARBITRAL JURISDICTION**

AMOKURA KAWHARU

*This article considers the respective roles conferred on courts and tribunals by the Arbitration Act 1996 for resolving disputes over arbitral jurisdiction. A challenge to the validity and scope of an alleged arbitration agreement is a standard choice for a nervous or obstructive disputant. The legal framework established under the Act for responding to such challenges should be interpreted so as to maintain the integrity and efficiency of arbitration, and to deter obstructive behaviour. Pursuit of these aims in turn requires giving priority to the role of the tribunal. To this end, this article argues that the court should adopt a prima facie review standard when dealing with an application to stay litigation proceedings brought in breach of an arbitration agreement. It further argues that in the ordinary course, a court dealing with a challenge to a tribunal's decision on jurisdiction should adopt a review, and not a rehearing, approach.*

**NECESSITY AND PRECAUTION IN INTERNATIONAL LAW:  
RESPONDING TO OBLIQUE FORMS OF URGENCY**

CAROLINE FOSTER

*This article examines the plea of ecological or environmental necessity as a justification for breaches of international law, taking into account the precautionary principle. The article argues that in an appropriate case there should be little hesitation in permitting reliance on necessity despite the presence of scientific uncertainty about the extent to which the threatened environmental harm will actually eventuate. In the past, it has been indicated that scientific uncertainty precludes the 'imminent' character of a peril, rendering the plea of necessity inapplicable. This article puts the view that the existence and imminence of a peril must be distinguished from the state of scientific knowledge about the peril. A peril may exist regardless of the extent to which the peril is known to science, and a peril may be of an imminent character despite the fact that this cannot be confirmed by scientific evidence at a given point in time. Further, 'imminence' should be interpreted more generously in a situation of scientific uncertainty than in a situation of indeterminacy. The article also investigates the availability of compensation in a case where necessity is invoked to justify a breach of an international obligation, and works to identify principles on which settlements might be based.*

