NZULR ABSTRACTS
Vol 24, No 4 December 2011

PLAYING THE PERCENTAGES: NEW ZEALAND, SCOTLAND AND A GLOBAL SOLUTION TO THE CONSEQUENCES OF NON-MARITAL RELATIONSHIPS?

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This article offers a comparative analysis of the property consequences of non-marital relationships in New Zealand and Scotland. The article summarises and critiques the New Zealand system, where de factos are dealt with alongside married couples through the Property (Relationships) Act 1976, before analysing the provisions of the Family Law (Scotland) Act 2006 which establish a scheme for regulation of non-marital couples entirely separate from existing divorce law. An alternative regime, based on assessment of a percentage entitlement to the claim a spouse would have received in equivalent circumstances, is then proposed as a solution to the difficulties in both jurisdictions.

PRINCIPLES OR RULES: THE PLACE OF INFORMATION PRIVACY LAW

GEHAN GUNASEKARA AND ALAN TOY

Information privacy law has its genesis in international instruments which have been adopted in varying degrees at the domestic level. Despite this, laws protecting personal data form a patchy and fragmented mosaic and privacy interests have had to contend with competing imperatives, such as the need to combat terrorism and organised crime. In addition, privacy faces challenges from a myriad of new privacy-intrusive technologies. Little rational basis exists as to which laws and policies should impinge upon privacy. Current jurisprudence in relation to the proper place of rules, principles and policy in the statutory setting is as yet incomplete. This article attempts to bridge this gap with reference to information privacy statutes that are largely expressed in technology-neutral and principles-based language. The article also explores underlying principles that can be used as a model for reconciling values and policies that conflict with privacy.

E-RISKS AND INSURANCE IN THE INFORMATION AGE

NIGEL WILSON

In the Information Age new information and communication technologies (ICTs) have presented considerable challenges to existing markets and institutional structures and have also given rise to legal and insurance risks ("e-risks"). This article considers some of the areas in which the challenges arising from e-risks have impacted upon the insurance industry, insurance law and insurance litigation and identifies why e-risks are a concern to society and to the insurance industries and insurance law in New Zealand and Australia. The importance of effective e-risk management and a review of various regulatory responses to technological change, specifically those relevant to the insurance industries in New Zealand and Australia, are considered. The conclusion to this article identifies some of the characteristics of the Information Age and concludes that they are in fact compatible with the conventional nature of insurance, insurance law and risk management.

UNDERSTANDING THE OBJECTIVE: PSYCHOLOGICAL EFFECTS IN ENVIRONMENTAL DECISION-MAKING

CERI WARNOCK

A resource consent application for land use might encounter opposition by respondents who claim that the proposed activity will cause them to suffer psychologically. For example, opponents may fear that a proposed activity risks damaging their health and that they will suffer from unacceptable levels of anxiety if the application is consented to, or an activity may offend their moral sensibilities and as a consequence they feel anger and disgust. Psychological effects are a valid resource management concern but the case law on this issue appears inconsistent. This article considers the seeming contradictions in the way that psychological effects are accounted for in resource management decision-making in New Zealand. It posits that contrary to first impressions a dominant assessment approach is apparent, one that successfully manages the difficulties inherent in the 'problem of other peoples' minds' and addresses land use conflicts in a principled, equitable manner. Further, it cautions that the legislature should be wary of attempting to tinker, as it has done latterly, with this common law approach. To do so not only risks corroding the sound principles formulated by the courts but may create inequities between citizens that are incapable of justification. To render the arguments less amorphous, various scenarios are explored and set within the fictional village of 'Totoimano'.

TRANSCENDING COLONIALISM? POWER AND THE RESOLUTION OF INDIGENOUS TREATY CLAIMS IN CANADA AND NEW ZEALAND

MICHAEL COYLE

New Zealand and Canada have both created extra-judicial processes for addressing treaty disputes between the Crown and indigenous claimants. To the extent that the outcomes of those processes rely on direct bargaining between the parties, they offer the advantages of flexibility and opportunities for rebuilding damaged relationships. Reliance on unassisted negotiation, however, raises concerns that treaty settlements will be unduly influenced by imbalances in bargaining power rather than on the merits of treaty claims judged by neutral criteria. Drawing on negotiation theory and comparing the landscapes of legal alternatives to negotiated resolution in Canada and New Zealand, this article assesses the extent to which each country's treaty dispute process addresses the expected effects of power imbalances between the Crown and indigenous claimants. The author suggests that

New Zealand and Canada have each failed, in differing and significant ways, to counterbalance the risk that power imbalances will undermine the settlement process. The article concludes by sketching out practical reforms that could be adopted in each country to address these concerns.

THE CONSTITUTION AND TAKINGS OF PRIVATE PROPERTY

CHYE-CHING HUANG

Lewis Evans and Neil Quigley argue in "Compensation for Takings of Private Property Rights and the Rule of Law" that New Zealand should affirm, either in the New Zealand Bill of Rights Act 1990 or in some other statute, a generic right to compensation for the taking of private property for public purposes. This paper argues that the enactment of such a right would be a mistake, for three reasons. First, no sound evidence has been presented that property rights in New Zealand are especially insecure. Evans and Quigley give a series of examples of alleged abuse of property rights, but this paper argues that many of these examples are not, as Evans and Quigley argue, either rule of law breaches or inefficient. Secondly, a generic right to compensation for takings would undermine reliance on existing property rights, and so would hurt rather than secure the rule of law. In jurisdictions that have affirmed a right to compensation for takings of property, imprecision about the limits of the right (particularly the distinction between general regulation and regulatory expropriation) is rife and significant. The uncertainty inherent in takings jurisprudence would be exacerbated by Evans and Quigley's conception of takings, because their view of what constitutes a taking is extremely broad compared to existing constitutional principle and international precedent. Thirdly, there is no convincing evidence that a generic right to compensation for takings would cause rather than harm economic growth. The evidence and theory that developed economies can improve economic growth by increasing private property right protections is mixed. Even against the criterion of improving certainty of private property rights, a generic right to compensation for takings would be counterproductive and inferior to focusing attention on refining specific statutory regimes to protect private property.

FLOATING AND DRIVING TIMBER IN 19TH-CENTURY NEW ZEALAND: JUDGE FRANCIS D FENTON AND THE DOCTRINE OF NAVIGABLE STREAMS

GUY CHARLTON AND RUBY HAAZEN

This paper will discuss part of the legal history of logging in New Zealand relating to the water transport of logs and timber which gave rise to the Timber Floating Act 1873 and the Timber-floating Act 1884. It considers the little-known decision by Judge FD Fenton sitting as a district judge in Pope v Appleby*, which adopted an American definition of a navigable waterway to limit the rights of riparian owners to obstruct log drives; thus allowing for continued log driving in spite of the 1873 Act which had specifically excluded legal protection for driving. It argues that Appleby is evidence that New Zealand courts instrumentally modified English common law rules and precedent, or construed statutory language in a manner consistent with the 19th-century colonial consensus involving the desirability of extractive economic development in New Zealand.*