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THE ENFORCEMENT OF ANIMAL WELFARE OFFENCES AND THE VIABILITY OF AN INFRINGEMENT REGIME AS A STRATEGY FOR REFORM

DANIELLE DUFFIELD

New Zealand's Animal Welfare Act 1999 is often heralded as world-leading. However, the enforcement arrangement for animal welfare offences provided for under this Act remains an anomaly within the criminal law. Instead of utilising a state prosecutor, the role of detecting and prosecuting companion animal abuse is instead left almost exclusively to a private charity, the Royal New Zealand Society for the Prevention of Cruelty to Animals. This paper argues that this enforcement arrangement fundamentally undermines the effectiveness of the Act, resulting in the detection, prosecution and sentencing of animal welfare crimes being disproportionately low. In consideration of changes proposed in the Animal Welfare Amendment Bill 2013, this paper then examines the viability of adopting an infringement regime based on instant fines as a strategy for reform. It explores the history and purpose of infringement regimes before discussing the risks and benefits associated with adopting such a scheme in an animal welfare context. It then analyses the appropriate scope of such a regime with respect to offences, penalties, and the rights of offenders.

DIFFERENT PLANETS OR PARALLEL UNIVERSES: OLD AND NEW PARADIGMS FOR INFORMATION PRIVACY

ALAN TOY

This article considers information privacy rights in the context of increasing technological pressures. It argues that understanding of such rights is currently impeded by a lack of a consistent underlying theory, and by fragmentation of approaches across different jurisdictions. The proposed solution is to offer a set of fundamental principles that may underlie and justify information privacy rights in a number of jurisdictions. The fundamental principles take account of the latest developments regarding information privacy in the United States and the European Union. These principles embody a paradigm shift that may benefit human rights and consumer protection.

MULTIPLE CAUSES OF LOSS AND CLAIMS FOR CONTRIBUTION

STEPHEN TODD

In Marlborough District Council v Altimarloch Joint Venture Ltd *the New Zealand Supreme Court dealt with a number of inter-related questions. These were: whether a council owed a duty of care to purchasers of land in issuing a Land Information Memorandum which misstated the water rights associated with the land; whether damages payable by the vendors, for similarly misrepresenting the water rights, should be based on the difference between the value of the land contracted for and the value obtained or on the cost of providing the represented quantity of water; whether the council could be seen to have caused the purchasers to suffer loss in circumstances where the purchasers retained the ability to claim damages for misrepresentation under the contract with the vendors; and whether the vendors could obtain an order for contribution in equity from the council. The article examines and evaluates the differing views expressed by the members of the Court about each of these issues. In the result the vendors' claim for contribution was rejected, which decision has left the law in an unsatisfactory state. Basing the right to claim contribution on the question whether enforcement by a plaintiff against person A discharges, in whole or part, any obligation to pay the plaintiff owed by person B would resolve the problem.*

THE PRACTICAL KNOWLEDGE CONUNDRUM: WHAT PRACTICAL KNOWLEDGE SHOULD BE INCLUDED IN A LAW SCHOOL CURRICULUM AND HOW CAN IT BE TAUGHT?

ANNE HEWITT AND KELLIE TOOLE

Michael Oakeshott theorised that mastery of any area of human endeavour requires both technical and practical knowledge, and the practice of law is no different. However, the development of practical knowledge in law school is ripe with difficulty. As practical knowledge is developed through experience and practice, traditional teaching methodologies are often poorly equipped to assist law students to develop this knowledge. In addition, legal curricula are already crammed with a wide variety of technical subject-matter, leaving limited space and time for additional learning, and there is no consensus about what practical knowledge lawyers need, or should be prioritised for development by law schools. In this article the authors offer a concrete contribution to these problems. They consider how law schools and academics might approach the question of what practical knowledge to include in a curriculum, and how practical knowledge can be incorporated into a situational learning methodology. This discussion is illustrated by reference to group work and advocacy skills modules implemented in a situational learning environment at Adelaide Law School.

DEGRADED UNIT TITLE PROPERTY RIGHTS – A JUDICIAL TREND

ROD THOMAS

This article argues against a judicial trend that has recently emerged of imposing short term solutions for individual unit title developments by manipulation of statutory provisions concerning obligations to fund and undertake repairs to developments. This trend has effectively eroded property rights granted to owners under the relevant legislation, and caused an unsatisfactory level of uncertainty in dealing with unit titles which may, in due course, affect the integrity of the title. The trend is discussed under the following headings: can the body corporate be obligated to pay for repairs to private property?; altering the statutory repair obligations between owners and the body corporate; ultra vires rule changes binding owners under an assumed "consent" theory; and owners' title obligations being extended to land outside the development.

EASIER SAID THAN DONE: A LESSON IN CONTRACT CONSTRUCTION FROM THE *HOME BONDS* CASES

JOHN REN

In recent years, there have been a number of cases in which New Zealand Home Bonds Ltd (NZHB) has been involved. In those cases, on the purchasers'/account parties' request and account, NZHB issued deposit bonds to the vendors/bondholders to satisfy the purchasers' obligation to pay a deposit under the sale and purchase of land agreements. In Sim v New Zealand Home Bonds Ltd *[2010] NZCA 192, the Court of Appeal construed the bonds as (or as akin to) traditional guarantees rather than on-demand performance bonds, despite the fact that all three previous judgments unanimously characterised the bonds as the latter. This article respectfully argues that the construction process used by the Court in* Sim *was fundamentally flawed in that the Court did not apply, at all or properly, some well-settled principles of contract construction. Considering the adverse impact the* Sim *decision may have on the use of on-demand performance bonds in New Zealand, the article, at the end, also suggests ways in which the decision can be contained or circumvented.*

FINANCING TRANSACTIONS STRUCTURED AS SALES OF GOODS

MIKE GEDYE

This article examines the evolving practice of structuring what are arguably financing transactions as sales of goods and the courts' mixed response to that practice. The "buyer" in such transactions aims to acquire the goods in a way that delivers priority over any earlier security interests in the goods and to maintain that status, often by resorting to complex related party transactions, until the buyer has cashed up. The significance of the practice lies in its potential to circumvent the statutory priority rules found in the Personal Property Securities Act and as such requires the courts to make a careful analysis with due regard to the policies underpinning that Act. In two of the three cases thus far, that analysis, in the author's respectful submission, has been found wanting. The author distils the key questions required to determine the relative priorities of competing claims to the goods and suggests a logical approach for undertaking the necessary analysis; one that will appropriately differentiate between genuine sales and disguised secured financing transactions.

A FAILURE TO PERFORM: BUT WAS IT A BREACH?

LAUREN BRAZIER AND DAVID MCLAUCHLAN

This article analyses the recent decision of the Court of Appeal in Messenger v Goodman *in which the Court awarded substantial damages for breach of contract against the purchasers of a multi-million dollar property. The article seeks to demonstrate that the vendors were not entitled to succeed in their action in view of the absence of proof that they were ready and willing to perform at the date of settlement. The Court wrongly assumed that the purchasers' failure to tender settlement was a breach of contract unless the vendors had indicated that such tender would be futile. It is well-established law that the purchasers could not be in breach if the vendors were not in fact ready and willing to settle in accordance with the terms of the contract.*