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"GOING BACKWARD, LOOKING FORWARD": AN ESSAY ON HOW TO THINK ABOUT LAW REFORM IN ECOLOGICALLY PRECARIOUS TIMES

Elizabeth Fisher

This reflective essay counsels against blueprint utopian legal thinking in the face of environmental precarity. Rather it goes backwards, into the last fifty years of national nature conservation law in different jurisdictions, to "speculate" as to how law can contribute the cognitive resources for an "inhabitable future". What can be found are a multitude of active legal practices that tell us much about the necessity and possibilities of law in engaging with the "continuing vitality of life", in order to respond to environmental problems.

THE UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS AND THE INTERNATIONALISATION OF AUSTRALASIAN CONTRACT LAW

Qiao Liu

This article explores and assesses Australasian courts' complex and under-studied practice of using provisions of the UNIDROIT Principles of International Commercial Contracts (PICC) to interpret or supplement domestic contract law. Through a comprehensive and nuanced analysis of all Australasian cases referring to the PICC, set in a context of calls for the "internationalisation" of domestic contract law, the study delineates the patterns, implications and limitations of what is seen as a common law model of integrating individual PICC provisions incrementally into domestic contract law via the existing mechanics of case law. It is argued that such Australasian cases, although not great in number, demonstrate the desirability and viability of the above model, characterised by the flexibility of selective and piecemeal borrowing, and that the model should be fostered through, inter alia, greater judicial openness to and improved education and training on the PICC.

TO HAVE AND TO HOLD? INTELLECTUAL PROPERTY AS RELATIONSHIP PROPERTY

Susan Corbett and Jessica C Lai

Both the Property (Relationships) Act 1976 (NZ) and the Matrimonial Causes Act 1973 (England and Wales) take a broad approach to relationship property – potentially including all tangible and intangible assets. Yet reviews by the Law Commissions in each jurisdiction have failed to address the specific issues posed by intellectual property created during a relationship. Virtual property, Indigenous culture, and privacy are other areas which have come to the forefront of legal and societal doctrine in the 21st century and are also likely to prove problematic for the courts when assessing the division of relationship property. The article recommends that legislative reviews must directly address issues posed by intellectual property and new forms of intangible property/assets as failure to do so will result in laws that do not allow for the practical reality of the relationships within, and the exploitation of, these areas.

THE CENTRE OF INTERESTS OF THE EMPLOYMENT RELATIONSHIP

Alan Toy and Dawn Duncan

The nature of the employment relationship has evolved due to Coronavirus disease 2019 (COVID-19) which has caused changes to the conditions of workers around the globe. Of particular interest is the rise in cross-jurisdictional employment relationships and the relevance of labour laws to these relationships. The occurrence of a rapid increase in online working requires a new principle for extraterritorial application of employment laws. The place of work, a major factor in existing principles, is of less relevance now which renders existing principles obsolete.

NOTHING NEW UNDER THE SUN: THE CASE OF THE ILLUSORY TRUST

Lucas Clover Alcolea

An increasingly frequent problem faced by courts is the abuse of trusts by settlors who attempt to have the best of both worlds by transferring property to a trustee and yet retain many, or even, all the benefits and powers of owning property whilst divesting themselves of all the responsibilities, e.g., liability to pay debts. Courts and practitioners have developed several doctrines to invalidate such trusts, with the most recent to have gripped their imagination being the illusory trust. Such trusts are variously described as being trusts where the settlor has retained too much control or having some other defect in their creation, with the result that what at first sight appears to be a trust is in fact nothing of the sort. The idea has met with a mixed reception with some courts holding that illusory and sham trusts are the same, others holding that they are different but the term is nevertheless unhelpful, and yet others holding that the term is in fact useful. This paper analyses the history of the illusory trust and in so doing demonstrates that the doctrine has a long history, dating from at least the early 1800s. General unawareness of this history has led to several fundamental errors in their analysis of illusory trusts which this paper aims to fix by mooring the modern doctrine of illusory trusts to its historical foundations.

A CRITICAL ANALYSIS OF THE LAW GOVERNING THE "INVOLVEMENT HEARING" UNDER NEW ZEALAND'S FITNESS TO STAND TRIAL PROCESS AND PROPOSALS FOR REFORM

Sarah Baird

This article concerns the adequacy of the current New Zealand involvement hearing which is held following a determination that a criminal defendant is unfit to stand trial (with the result that they may be directed into secure psychiatric confinement). It challenges the notion that the current process deals fairly with the defendant and is "protective" of their interests. It recommends reform of the New Zealand involvement hearing, based on the model of the revised legislative provisions now in force in a number of other common law jurisdictions. The ensuing recommendations for reform are fuelled by the central premise that defendants with mental impairments should be afforded all the protections available to a defendant in standard criminal proceedings, rather than granted a less adequate process that effectively discriminates against them on the basis of their impairments.

TRADE MARKS AT THE INTERSECTION OF REAPPROPRIATION, FUNCTION, AND FREEDOM OF EXPRESSION: A NEW ZEALAND PERSPECTIVE

David Graham and Lida Ayoubi

This paper examines the issues that arise at the intersection of reappropriated terms, freedom of expression and the evolving functionality of trade marks in the context of New Zealand trade mark law. Using the hypothetical registration of the mark HORI, the paper analyses the registration of reappropriated trade marks focusing on marks that would be deemed offensive to Māori specifically. It argues that trade mark law in New Zealand cannot currently accommodate the nuances required for an assessment of the registrability of reappropriated marks in general, and reappropriated te reo marks in particular.

THE OPT-OUT CLASS ACTION: ECONOMIC IMPLICATIONS FOR INSURERS AND INSUREDS

Louis Norton

CRIMINAL LAW IN AOTEAROA NEW ZEALAND: JULIA TOLMIE, KRIS GLEDHILL, FLEUR TE AHO AND KHYLEE QUINCE

Mark Wright