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Announcements

Victoria University of Wellington Student and Alumni Subseries Issue XX: Issues in Property Law

Issues in Property Law is the third in 2017 of several issues of The Student/Alumni sub-Series of the VUW Legal Research Papers.

The Student/Alumni sub-Series was launched in 2015. It publishes a selection of honours and postgraduate papers from Victoria University of Wellington Law School.

The sub-Series includes both general and thematic issues.

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Deficiencies in the Property (Relationships) Act 1976 (PRA) have led to allegations of sham trusts, alter ego trusts, the bundle of rights doctrine and illusory trusts. These claims are not the correct means to deal with the failure of legislation to fulfil its intention. They are ill-suited for trust law and are indicative of a growing pressure to allow access to trust capital, and to prevent excessive control of trusts defeating the rightful entitlement of a spouse to equal sharing of relationship property. In order to clarify the law of trusts and of relationship property this article recommends reform to s 44C of the PRA, to allow access to trust capital. It recommends repealing s 182 of the Family Proceedings Act. This article stands for the proposition that these reforms alone are insufficient. Indications of what constitutes intent to defeat rights should be included in s 44. Effective control of trust property by a defendant who is the claimants spouse or partner, should be an indication of intent to defeat rights that will allow the disposition to be set aside. These reforms will give effect to the purpose of the PRA and clarify trust law.

"Research on Legal Interventions to Meaningfully Increase Housing Supply in New Zealand Cities with Housing Shortages"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 10/2017

MICHELLE TUSTIN, Victoria University of Wellington, Faculty of Law, Student/Alumni

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This paper considers legal interventions to facilitate an affordable housing market in New Zealand. In particular, it focuses on meaningfully increasing supply and facilitating intensification and options in growing cities. It analyses the measures currently proposed by Central Government, including de-regulation and reforms to the Resource Management Act 1991 and assesses whether these measures can achieve density and options. It proposes measures such as making full use of the RMA's effects-based model, releasing National Policy Statements and carefully drafting cohesive and strategic City Plans which focus on outcomes and quality. These measures should be supported by a range of incentives, disincentives, regulations and supplementary measures to ensure the implementation of transformative town plans.

"Dixon v R – Property in Digital Information?"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 11/2017

ANUSHA WIJEWICKRAMA, Victoria University of Wellington, Faculty of Law, Student/Alumni

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In 2015, New Zealand's Supreme Court ruled in *Dixon v R* that digital files are property for the limited purposes of a computer misuse provision – s 249(1)(a) of the Crimes Act 1961. The Court said it was distinguishing digital files from pure information, thus it was not challenging the long-standing legal position that information cannot be property. This paper analyses the Court's purposive, conceptual and factual reasoning, ultimately concluding that a distinction between digital files and information is difficult to justify. It argues that the Court's decision therefore actually erodes the traditional legal position. It concludes that Parliament, which can more fully explore policy considerations, might be better placed to determine whether digital files should be property. Potential ramifications of the Supreme Court's decision are also briefly outlined.

"Potable Groundwater Extraction for Bottling – the Environment for Reform?"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 12/2017

ROANNA GRAVIT, Victoria University of Wellington - Faculty of Law

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This paper discusses the regulatory regime for the extraction of potable groundwater for bottling in New Zealand, the community interest in same and the political and regulatory environment for reform. It discusses issues for iwi in expressing kaitiakitanga in relation to groundwater extraction in two instances, Te Waikoropupu Springs and Poroti Springs.

"Water Trading in New Zealand"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 13/2017

SUSANNAH SHARPE, Victoria University of Wellington, Faculty of Law, Student/Alumni

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New Zealand looks destined for increasing pressure on its water resources as its economy continues

with a strong basis on agriculture and horticulture. Much of the agricultural economy leverages from the 'clean green' image of New Zealand's pristine environments. Water trading mechanisms may assist in achieving this balancing act, if made to work effectively. This paper considers the potential for trade in water rights in New Zealand and its limitations, including any structural or legislative impediments. The focus is on what components need to be in place in the legal framework for an effective, functioning market for water trading (trading in water quantity). This includes issues with a clear definition of the 'right' to be traded and the ease of transferring permits (often referred to as low transaction costs in economic terms). Trading in diffuse discharges to water that has occurred in New Zealand (Lake Taupo nitrogen trading) will be considered as a comparative example. Based on this comparison some options are suggested for an approach to water quantity trading that would unbundle a water permit and have an allowance of 'units' within a water use permit. There is potential to improve the current setting for water trading under the RMA without a wholesale change but in a clearly structured legal framework. This paper does not consider issues involved in any initial allocation of water rights, including for recognition of iwi interests in water. Nor does it consider the effectiveness of water trading for addressing environmental concerns.

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About this eJournal

Victoria University of Wellington Legal Research Papers Series primarily contains scholarly papers by members of the **Faculty of Law at Victoria University of Wellington**. Some issues collect a number of papers on a similar theme to form a suite of papers on a single topic. Others issues are general or distribute mainly recent work.

The Student/Alumni Series is a subseries of the Victoria University of Wellington Legal Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachusetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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