

ALORA JOHNSON, ASSISTANT EDITOR

LLB Student, Victoria University of Wellington, Students

MĀMARI STEPHENS, EDITOR

Senior Lecturer of Law, Victoria University of Wellington

[Browse ALL abstracts for this journal](#)

[Links: Subscribe ~ Unsubscribe](#) | [Distribution](#) | [Network Directors](#) | [Submit ~ Revise Your Papers](#)

Announcements

Victoria University of Wellington Student and Alumni Subseries Issue XI: Equity

Equity is the third in 2016 of several issues of the Student and Alumni sub-Series of the VUW Legal Research Papers. The Student and 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.

Table of Contents

Symptoms of Neglect: Trust Claims under the Limitation Act 2010

[Paul Comrie-Thomson](#), Victoria University of Wellington, Faculty of Law, Students

Prest v Petrodel Resources Ltd: A Cautious Approach Required for Future Application

[Caleb McConnell](#), Victoria University of Wellington, Faculty of Law, Students

The Discretionary Remedial Constructive Trust '[A] Debate as Cogent as a Discussion of the Merits of English versus American Unicorns'

[Jacob J Meagher](#), Victoria University of Wellington, Faculty of Law, Students

Exploiting the Crowd: The New Zealand Response to Equity Crowd Funding

[Henry Hillind](#), Victoria University of Wellington, Faculty of Law, Students

From Equality to Equity: The Pursuit of Pay Equity under the Equal Pay Act 1972

[Grace Miles](#), Victoria University of Wellington, Faculty of Law, Students

[^top](#)

LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"Symptoms of Neglect: Trust Claims under the Limitation Act 2010"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 12/2016

PAUL COMRIE-THOMSON, Victoria University of Wellington, Faculty of Law, Students

Email: paul@comriethomson.co.nz

New Zealand's limitation legislation was overhauled with the enacting of the Limitation Act 2010. Despite this comprehensive reform, the way in which trust claims are best to be addressed appears to have been largely overlooked in the reform process. Consequently, the multitude of historic issues that have plagued statutory provisions dealing with trust claims endure in the 2010 Act, with the few changes to the structure of drafting compounding these problems. This paper explores the policy considerations at work, and, by way of example, undertakes a thorough analysis of the exception for fraudulent breaches of trust in light of these policy considerations to illustrate some of the new problems that are bound to arise in practice. Given the numerous and significant difficulties, and the substantial implications for parties seeking to rely on these provisions, this paper argues that a broad reconsideration of the way in which trust claims are dealt with in the 2010 Act is urgently needed.

"Prest v Petrodel Resources Ltd: A Cautious Approach Required for Future Application"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 13/2016

CALEB MCCONNELL, Victoria University of Wellington, Faculty of Law, Students

Email: c.d.mcconnell1@gmail.com

The majority of commentary in the wake of *Prest v Petrodel Resources Ltd* has focused on the Supreme Court's discussion of a court's jurisdiction to pierce the corporate veil. This has overshadowed the Court's decision to recognise a resulting trust, which achieved the same result as if the Court had pierced the corporate veil. The focus of this paper is on the Court's recognition of a resulting trust. By assessing the position of key stakeholders affected by this decision, the author argues that any further application of *Prest* in New Zealand should be approached with caution.

"The Discretionary Remedial Constructive Trust '[A] Debate as Cogent as a Discussion of the Merits of English versus American Unicorns'"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 14/2016

JACOB J MEAGHER, Victoria University of Wellington, Faculty of Law, Students

Email: jacobmeagher@gmail.com

Those who seek settled property rights in Equity will find little comfort in this paper. With legal realism in mind the author asks what are the courts of Equity doing to property when recognising an institutional constructive trust? The author concludes that there is little distinction between a remedial and an institutional constructive trust; they are the same remedial equitable mechanisms for transferring property from A to B in equity. That is, an ICT, like the RCT is awarded/imposed/recognised by the courts based on the underlying concepts of fairness and justice (or the equitable term of art; 'unconscionability'). The ICT is seen as legitimate because it hides behind the mask of language of 'institution'. Finally if jurisdictions continue to recognise and impose the ICT, then there is no logic in rejecting the RCT as an any less legitimate tool in the Equities armory.

"Exploiting the Crowd: The New Zealand Response to Equity Crowd Funding"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 15/2016

HENRY HILLIND, Victoria University of Wellington, Faculty of Law, Students

Email: hillind@xtra.co.nz

The crowd funding exclusion in the Financial Markets Conduct Act 2013 allows issuers, often innovative start-up businesses, to raise up to \$2,000,000 in a 12 month period from retail investors through an internet platform provided by a licensed intermediary service, without the need for the product disclosure statement and on-line disclosures usually required under Part 3 of the Act. In order to protect the interests of investors in a market with a high risk of negligible return, other protections need to be provided. International jurisdictions have imposed investor caps, but New Zealand has failed to do so. This essay argues that, particularly in light of shortcomings with other aspects of crowd funding investor protections, a mandatory investor cap of five per cent of the amount being raised should be imposed, to protect investors both from the high risks of venture capital investing and from their own inexperience in this new and rapidly developing market.

"From Equality to Equity: The Pursuit of Pay Equity under the Equal Pay Act 1972"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 16/2016

GRACE MILES, Victoria University of Wellington, Faculty of Law, Students

Email: gracemiles94@gmail.com

In 2014, the Court of Appeal considered if pay equity was also protected under the Act. In this paper I analyse and critique that decision. It seeks to answer two fundamental questions about the case and wider issues surrounding pay equity. First, it asks whether a mandate does exist under the Act requiring the provision of pay equity. Is the Act restricted to a narrow pay equality interpretation, or is it wide enough to encapsulate pay equity? The conclusion will be reached that little light is shed on the position of pay equity from an interpretation of the statute. Both the inclusion and exclusion of pay equity remain open interpretations. A realist explanation will argue a policy decision, in the absence of an interpretative answer, is driving factor of the Court of Appeal's findings.

The second question looks to the natural continuation of the current case and asks what should be the avenue through which pay equity is pursued. This is a normative inquiry. Litigation will be considered under both a traditional and strategic approach. The alternate solutions of a legislative and an unregulated market will also be investigated. It will be argued that judicial inclusion of pay equity

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.

Submissions

To submit your research to SSRN, sign in to the **SSRN User Headquarters**, click the My Papers link on left menu and then the Start New Submission button at top of page.

Distribution Services

If your organization is interested in increasing readership for its research by starting a Research Paper Series, or sponsoring a Subject Matter eJournal, please email: **RPS@SSRN.com**

Distributed by

Legal Scholarship Network (LSN), a division of Social Science Electronic Publishing (SSEP) and Social Science Research Network (SSRN)

Directors

BERNARD S. BLACK

Northwestern University - School of Law, Northwestern University - Kellogg School of Management,
European Corporate Governance Institute (ECGI)

Email: bblack@northwestern.edu

RONALD J. GILSON

Stanford Law School, Columbia Law School, European Corporate Governance Institute (ECGI)

Email: rgilson@leland.stanford.edu

Please contact us at the above addresses with your comments, questions or suggestions for LSN-LEG.

[^top](#)

Links: [Subscribe to Journal](#) | [Unsubscribe from Journal](#) | [Join Site Subscription](#) | [Financial Hardship](#)

Subscription Management

You can change your journal subscriptions by logging into [SSRN User HQ](#). If you have questions or problems with this process, please email Support@SSRN.com or call 877-SSRNHelp (877.777.6435 or 585.442.8170). Outside of the United States, call 00+1+585+4428170.

Site Subscription Membership

Many university departments and other institutions have purchased site subscriptions covering all of the eJournals in a particular network. If you want to subscribe to any of the SSRN eJournals, you may be able to do so without charge by first checking to see if your institution currently has a site subscription.

To do this please click on any of the following URLs. Instructions for joining the site are included on these pages.

[Accounting Research Network](#)

[Cognitive Science Network](#)

[Corporate Governance Network](#)

[Economics Research Network](#)

[Entrepreneurship Research & Policy Network](#)

[Financial Economics Network](#)

[Health Economics Network](#)

[Information Systems & eBusiness Network](#)

[Legal Scholarship Network](#)

[Management Research Network](#)

[Political Science Network](#)

[Social Insurance Research Network](#)

[Classics Research Network](#)

[English & American Literature Research Network](#)

[Philosophy Research Network](#)

If your institution or department is not listed as a site, we would be happy to work with you to set one up. Please contact site@ssrn.com for more information.

Individual Membership (for those not covered by a site subscription)

Join a site subscription, request a trial subscription, or purchase a subscription within the SSRN User Headquarters: <http://www.ssrn.com/subscribe>

Financial Hardship

If you are undergoing financial hardship and believe you cannot pay for an eJournal, please send a detailed explanation to Subscribe@SSRN.com

[^top](#)

To ensure delivery of this eJournal, please add **LSN@publish.ssrn.com (Stephens/Johnson)** to your email contact list. If you are missing an issue or are having any problems with your subscription, please Email Support@ssrn.com or call 877-SSRNHELP (877.777.6435 or 585.442.8170).

FORWARDING & REDISTRIBUTION

Subscriptions to the journal are for single users. You may forward a particular eJournal issue, or an excerpt from an issue, to an individual or individuals who might be interested in it. It is a violation of copyright to redistribute this eJournal on a recurring basis to another person or persons, without the permission of Social Science Electronic Publishing, Inc. For information about individual subscriptions and site subscriptions, please contact us at Site@SSRN.com

[^top](#)

Copyright © 2016 Social Science Electronic Publishing, Inc. All Rights Reserved