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Announcements

Victoria University of Wellington Student and Alumni Subseries Issue XVI: Property Law

'Property Law' is the eighth issue in 2016 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.

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"The Frankenstein Mortgage: Conceptual Inconsistency and the Quest for Legal Coherence in the Torrens System"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 40/2016

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The principles of "certainty" and "autonomy" are central to the Torrens system and contract law respectively. Courts seek to resolve conflict between these principles. Systemic incoherence is especially apparent when courts consider the all-obligations mortgage.

The mortgage document does not only place a charge on title. It secures personal obligations also. Registration may or may not extend to these obligations. According to the laws of contract, these personal obligations are established by the substance of the relationship between the parties, illustrated by a structure of legal forms via the contract. Registration then purports to "animate" the contract through the legal form of "title/interest by registration". Hence the title of this paper: the

"Frankenstein Mortgage".

The Torrens system requires jurisdictions to engage in a perpetual search for coherence. An awareness of the ideological disunion underlying the law of real property enables judges to sub-duct concepts in a congruent manner and achieve a semblance of a unified legal form.

Rather than etiolating the Torrens principle of certainty through policy-based rationales, reforms require an examination of residuary common law principles and conceptual sources of law, combined with a consciousness of the illogical nature of lawmaking that must, to maximize practical efficacy, provide a compromise between the two systems.

"Pandora's Box? An Exploration of S 81 of the Land Transfer Act 1952 and Its Effect on Indefeasibility of Title"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 41/2016

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Section 81 of the Land Transfer Act 1952 has a tumultuous past. It has faced various criticisms surrounding its potential for undermining indefeasibility of title, a key concept under our Torrens system of transfer. This paper addresses some of these criticisms, positing first that S 81 does in fact grant the District Land Registrar a wide discretion to correct or cancel titles which have been gained fraudulently or wrongfully, and secondly that this discretion should be exercised if an appropriate case surfaces. Such an exercise is supported by the approach taken in other Torrens jurisdictions and can be regulated through the adoption of a number of simple guidelines, to be considered during any exercise of discretion under S 81. This will reduce the risk of any uncertainty arising from a wide interpretation of S 81 and ensure that the overall justice of the case is the central consideration of any exercise of discretion.

"Woe Unto Them That Lay Field to Field: Closer Settlement in the Early Liberal Era"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 42/2016

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This article undertakes a re-examination of the origins, construction and application of the Land for Settlements legislation in the early Liberal era. The Liberal's commitment to closer settlement reveals part of the story of highly contested land policy in colonial New Zealand. Land for Settlements legislation of the 1890s, aimed at "bursting up" the great estates, was predominantly the product of settlers' ideological aspirations and two determined politicians: John Ballance and John McKenzie. When measured against the rhetoric used to promote it, however, the policy was not necessarily effective: it was complicated by practical realities and a narrow vision of New Zealand as a vigorous Arcadian paradise. When contrasted with the treatment of Māori land, yet more of the complexity of the land issue and the frailties of the actors facing it are revealed. The article concludes by proposing that Liberal policy, while flawed in execution, may have nevertheless contributed something to the consolidation of the concept of New Zealand as an agrarian ideal, a concept that remains largely intact today.

"Should Repairers Have Something to Lien on? An Analysis of Reform Options for the Common Law Lien in the Personal Property Securities Act 1999"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 43/2016

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The repairer's lien is one of the last remaining at common law. Under the Personal Property Securities Act 1999, a repairer's lien over goods takes priority over any security interest in the same goods. Due to the advent of trading on credit terms, repairers are increasingly unable to rely on a lien as a means of security. Because of the nature of their work, ordinary security interests taken by repairers are likely to lose in any priority dispute.

This paper addresses two broad points within this issue. The first point considered is whether the repairer's interests should be protected, concluding that they should be afforded a super priority similar to the current scheme. The second point considered is the nature of reform that could be undertaken, concluding that a statutory lien should be inserted into the PPSA. This lien would generally subsist in credit trading environments whilst not adversely affecting the interest of other creditors.

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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