

Issue 557 | 16 October 2023

LexisNexis News

Did you know that our LexisNexis training webinars are complimentary and most are CPD compliant?

Getting Started with Lexis Advance Webinar – Tuesday, 17th of October at 3pm

In this session we provide an orientation to Lexis Advance. Learn to harness the power of the Lexis Advance search engine to find commentary, case law, legislation, forms and precedents, and practical guidance on all different areas of law. This session will enable you to find what you need quickly and save you time.

Duration: 60 min

The Laws of New Zealand on Lexis Advance Webinar – Thursday, 19th of October at 4pm

The Laws of New Zealand is an encyclopedic work providing a comprehensive comment on New Zealand law. Updated regularly it provides a reliable statement of the whole of the law of New Zealand - statutory, regulatory, and judicial. Laws of New Zealand includes extensive cross-referencing to Halsbury's Laws of England and Halsbury's Laws of Australia. Authors of this prestigious work include judges, academics, and senior members of the profession. The authors give the publication its authority through their specialist and practical knowledge of New Zealand law. Attend this session to learn about the 150+ titles contained in LONZ and how to work with these efficiently during your legal research.

Duration: 60 min



We'd like to hear about your perceptions of generative AI, what you think the biggest areas of opportunity are for using generative AI tools in the law, and whether there are any risks in using generative AI tools in your work.

To have your say, please click [here](#) to fill in a short five-minute survey.

In thanks for your time, each qualifying participant will receive a **\$20 GiftPay voucher** on completion of the survey.

Commercial

Heath and Whale on Insolvency

Service 58 is now available online.

This service includes updates to commentary on: Personal Insolvency, Receivership, Liquidation, Antecedent Transactions, Preferential Debt and Set-Off, and Court Procedure.

Employment

Mazengarb's Employment Law

Service 280 is now available online.

This service includes updated commentary to the Employment Relations Act 2000, Part 1, Key provisions; Part 5, Collective bargaining; Part 6, Individual employees' terms and conditions of employment. Updates to commentary have also been made to the Contractual Aspects of Employment Topic; the Health and Safety at Work Act 2015; and the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016.

New annotated legislation for Parts 3 and 4 of the Fair Pay Agreements Act 2022 is now available online and in hardcopy.

We also have new legislation for subpart 4 of the Education and Training Act 2020, also available online and in hardcopy. This can be found under the Special Employment guidecard.

Family

New Zealand Family Law Journal

Volume 2, Issue 2 of the New Zealand Family Law Journal is now available online. This issue includes the following articles:

- "Ara Kotahi – a pathway to the elimination of family violence in Aotearoa" by Kirsten Fox
- "Connecting the pieces: why including the perspective of a user of violence is required to stop family violence" by Meighan Hay

Textbooks

Family Law in New Zealand, 21st edition

Mark Henaghan, Bill Atkin, Shonagh Burnhill & Anna Chapman

RRP*incl GST: \$175.00 \$157.50 (pre-order price)

ISBN: 9781988598604 (two-volume set)

Projected publication date: 10 October 2023

Family Law Legislation, 21st edition

LexisNexis Legislation Series

RRP*incl GST: \$160.00 \$144.00 (pre-order price)

ISBN: 9781988598611 (two-volume set)

Projected publication date: 13 October 2023

New Zealand Family Law Reports

Volume 2022 Part 14 is now available online.

Green v Hing — [2022] NZFLR 643

Relationship property — Proceedings — Time limits for making applications — Applicant sought extension of time within which to bring proceedings — Proper approach — Property (Relationships) Act 1976, s 24(2).

Family proceedings — Power of Family Court to make orders upon inquiry into property of parties or either of them — Time restraint of “reasonable time” by reference to final decree — Applicant sought declaration that application brought within “reasonable time” — Family Court has no power to make such declaration — Family Proceedings Act 1980, s 182 — Declaratory Judgments Act 1908.

Relationship property — Proceedings — Entitlement to be heard — Notice of proceedings — Applicant applied for restraining orders over trust property — Applicant did not give respondents notice of proceedings before issuing them — Absence of notice does not bar power to make restraining orders — Trustees joined and entered appearance and indicated opposition despite non-compliance — Unnecessary for applicant to comply with requirement — Property (Relationships) Act 1976, s 37.

Trusts — Dispute resolution — Suits between trustees and against self in different capacity — Requirement to obtain directions from court as to representation of opposing interests — Applicant did not comply with requirement — No practice in Family Court requiring applicant to obtain such directions — Family Court empowered to make such directions after commencement of proceedings —

Unnecessary for applicant to comply with requirement – Trustee Act 1956, s 33A – Trusts Act 2019, s 137.

Relationship property – Proceedings – Protection of spouses' or partners' rights – Restraint of dispositions – Applicant applied for restraining order over trust property – First respondent and corporate trustee proffered undertakings and assurances – Court's acceptance of undertakings and assurances rendered restraining order unnecessary – Property (Relationships) Act 1976, s 43.

Trusts – Court powers – Family Court – Jurisdiction under – Family Proceedings Act 1980 – Power to make orders or give directions – Removal or replacement of trustees – Proper approach to exercise of power – Trusts Act 2019, s 141.

Family proceedings – Discovery – Bank statements – Applicant sought discovery of bank statements for period exceeding decade before proceedings commenced – Proper approach.

Glass v Glass – [2022] NZFLR 674

Estates – Leave to bring claim under s 25(1)(a) of Property (Relationships) Act 1976 – Dispositions into trusts – Dispositions to defeat estate's claim to relationship property – Claim by adult child – Large estate – Adult child only receiving modest provision during life time – Not possible to contract out of Family Protection Act 1955 – Family Protection Act 1955, s 4 – Law Reform (Testamentary Promises) Act 1949, s 3 – Property (Relationships) Act 1976, ss 9A, 17, 21, 25, 44, 44C and 88.

Volume 2022 Part 15 is now available online.

Ross v Hughes – [2022] NZFLR 688

Relationship property – Division of property – De facto relationship – Post-separation adjustments – Unequal sharing – Whether exception should be made to equal sharing – Whether orders should be made for benefit of children – Mother's lack of involvement with children – Mother to uplift share of sale of house within a year or proceeds held on trust for children – Monetary adjustments – Family home – Chattels – Liabilities – Care of Children Act 2004 – Family Violence Act 2018 – Property (Relationships) Act 1976, ss 13, 18B, 23, 25 and 26.

Alden v Levitt – [2022] NZFLR 698

Relationship property – De facto relationship – Classification and division of property – Existence of de facto relationship – Whether qualifying de facto relationship – Parties having four children over 13 years – Living together on and off for years – Period of imprisonment – Common residence – Financial deception – Evidence of parties – One partner in possession of two properties – Care of Children Act 2004 – Property (Relationships) Act 1976, ss 2D(2) and 8.

Hopkins v Jackson – [2022] NZFLR 707

Day-to-day care and contact – Care arrangements – Decision on school child should attend – Welfare and best interests of child – Father seeking continuation of previous care arrangements – Family Court ordering new care arrangements put forward by mother – School decision dictating care arrangements – Father seeking child to attend same school as his other daughters – Tikanga Māori – Impact of changing care arrangement on relationship with sisters, father and whānau – Continuity of care – Importance of strengthening family relationships – Cultural identity – Care of Children Act 2004, ss 4, 4(2), 5, 5(d), 5(e), 5(f) and 143(4) – High Court Rules 2016, r 20.19(1) and (3).

Cursons v Chamberlain – [2022] NZFLR 725

Relationship property – Application to enlarge time for making an application – Application made after death of former partner – Unjust split of relationship property prior to partner's death – No legal advice received – Material disadvantage – Beneficiary of estate charitable trust, not close family member – Property (Relationships) Act 1976, ss 21A, 24, 61, 81, 89 and 90.

Volume 2022 Part 16 is now available online.

Wade v Police – [2022] NZFLR 733

Civil Procedure – Habeas corpus application – Appropriate forum – Father charged with assaulting son – History of Family Court proceedings – Family Court orders in place – Best interests of child – Whether habeas corpus appropriate procedure to determine father's complaints – Whether Family Court appropriate forum to hear charges – Lawfulness of police actions in uplifting son and placing him with another family contrary to interim orders – Decision by police to lay criminal charges without recourse to Family Court – Care of Children Act 2004 – Habeas Corpus Act 2001, ss 14(1), 14(1A)(b) and 14(2) – Oranga Tamariki Act 1989.

Re Gordon – [2022] NZFLR 738

Adoption – Joint application – Former spouses – Meaning of “spouses jointly” – Whether “spouses” includes former spouses – Dissolution of marriage – Seeking to adopt child raised during marriage – Separated married couples as comparator group – Whether Adoption Act discriminating against those whose marriage had been dissolved – Whether discriminatory effect justified – Change in social norms – Adoption Act 1955, ss 3 and 3(2) – New Zealand Bill of Rights Act 1990, s 21(1)(b)(v).
Human rights – New Zealand Bill of Rights Act – Discrimination on ground of marital status – Whether adoption application by “two spouses jointly” included former spouses – Dissolution of marriage – Separated married couples as comparator group – Whether Adoption Act discriminating against those whose marriage has been dissolved – Whether discriminatory effect justified – Adoption Act 1955, ss 3 and 3(2) – New Zealand Bill of Rights Act 1990, s 21(1)(b)(v).

Blair v Blair – [2022] NZFLR 748

Parenting orders – Care and protection – Contact – Family violence – Safety of children – Whether children able to have safe and meaningful relationship with father – Whether risk of exposing children to family violence unacceptable – Children resisting contact with father – Children scared of father – Whether parental alienation – Whether resist/refuse – Nature and quality of relationship of father and children pre-separation – Justified estrangement – Welfare and best interests of children – Views of children – Care of Children Act 2004, ss 4, 5, 6 and 133 – Family Violence Act 2018, ss 9, 10 and 11.

Procedure

Textbook

Insurance Claims in New Zealand, 2nd edition

Paul Michalik & Chris Boys

RRP*incl GST: \$160.00

ISBN: 9781988598192 (book)

ISBN: 9781988598208 (ebook)

Publication date: 3 April 2023

Property

Conveyancing Bulletin

Volume 20 issue 15 is now available online.

This issue includes comment on recent key cases in the areas of unit titles, caveats, freehold covenants, landlord and tenant, mortgages, and sale of land.

Textbook

McMorland on Easements, Covenants and Licences, 5th edition

D W McMorland

RRP*incl GST: \$200.00

ISBN: 9781988598550 (book)

Publication date: 1 June 2023

New Zealand Conveyancing and Property Reports

Volume 24 Part 4 is now available online.

Pearlfisher Trustee Ltd v Mega Capital Group Ltd — (2023) 24 NZCPR 241

Caveats — Caveatable interest — Equitable mortgage — Mortgage covering fees and costs associated with loan — Fees payable even if loan not drawn down — Consideration — Parallel proceedings to sustain caveat and to set aside statutory demand — Caveatable interest identified in caveat — Land Transfer Act 2017, s 138 — Land Transfer Regulations 2018, sch 2.

Roose v Duthie — (2023) 24 NZCPR 255

Sale of land — Income tax — Whether income derived at time of unconditional agreement or at time of settlement — Income Tax Act 2007, s CB 14(1).

Negligent professional advice — Breach of fiduciary duty — Whether time-barred — Whether limitation period postponed — Sale of land from one entity to another — Sale incurring tax liability contrary to advice — Time cause of action accrued — Amount derived from disposal of land — “Derived” — Flawed transaction case versus no transaction case — Whether time for bringing causes of action deferred by failing to disclose conflict of interest — Whether equitable fraud — Income Tax Act 2007, ss CB 6 and CB 14(1).

Limitation of proceedings — Negligent professional advice — Whether time-barred — Limitation Act 1950, s 28.

Reid v Taylor — (2023) 24 NZCPR 270

Contracts — Interpretation — Vendor warranty in sale and purchase agreement — Whether vendors breached warranty — Sewer and stormwater services not in reasonable working order — Whether vendor warranty applying to sewer and stormwater services — Whether in reasonable working order on date of settlement — Insufficient evidence — Building Act 2004 — Evidence Act 2006, ss 18, 19, 25(2)(a), 26 and 130 — Health Act 1956, s 39(1) and 39(2) — High Court Rules 2016, r 9.43 and sch 4.

Body Corporate 406198 v Property Opportunities Ltd — (2023) 24 NZCPR 286

Unit titles — Body corporates — Management agreements — Exclusive letting agreements — Agreement requiring body corporate pay rent for commercial unit providing exclusive letting services — Payment of rent for ultra vires purpose — Clause void ab initio — Severance of ultra vires provisions — Unit Titles Act 1972, ss 15, 16, 37, schs 2 and 3.

Goldline Properties Ltd v Marsh – (2023) 24 NZCPR 302

Real estate agents – Professional conduct – Real estate agent acquiring interest in land – Agent acquiring interest in land after agreement signed – Cancellation of contract – Consumer protection – Legislation Act 2019, s 10 – Real Estate Agents Act 1963, s 78 – Real Estate Agents Act 1976, s 63 – Real Estate Agents Act 2008, ss 3, 134, 135, 136 and 137 – Real Estate Agents Amendment Act 1968, s 26 – Real Estate Agents (Duties of Licensees) Regulations 2009, reg 5 and Form 2.

Public Law

Textbook

***Electoral Law in Aotearoa New Zealand*, 3rd edition**

Andrew Geddis

RRP*incl GST: \$165.00

ISBN: 9781988598031 (book)

ISBN: 9781988598048 (ebook)

Publication date: 15 June 2023

Resource Management

New Zealand Resource Management Appeals

Volume 2023 Part 10 is now available online.

Port Otago Ltd v Environmental Defence Society Inc – [2023] NZRMA 422

Regional policy statement – Relationship between policies within statement – Potential conflict – Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd (King Salmon) – Avoidance policies under New Zealand Coastal Policy Statement potentially conflicting with ports policy – Whether ports policy subordinate to avoidance policies – Areas of outstanding natural character versus operation of ports – Avoidance policies requiring adverse effects in areas of outstanding natural character be “avoided” – Whether proposed regional policy statement giving effect to avoidance policies – Proposed regional policy statement providing adverse effects be “avoided, remedied or mitigated” – Whether absolute prohibition – Effect of King Salmon – Resource Management Act 1991, ss 5, 6, 62(3), 104 and 104D.

Bay of Islands Maritime Park Inc v Northland Regional Council — [2023] NZRMA 448

Regional policy statement — Relationship between policies within statement — Potential conflict — Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd (King Salmon) — Avoidance policies under New Zealand Coastal Policy Statement potentially conflicting with ports policy — Whether ports policy subordinate to avoidance policies — Areas of outstanding natural character versus operation of ports — Avoidance policies requiring adverse effects in areas of outstanding natural character be “avoided” — Whether proposed regional policy statement giving effect to avoidance policies — Proposed regional policy statement providing adverse effects be “avoided, remedied or mitigated” — Whether absolute prohibition — Effect of King Salmon — Resource Management Act 1991, ss 5, 6, 62(3), 104 and 104D.

Succession

Practical Guidance: Succession

Latest Legal Updates

Woman challenges decision not to add her as beneficiary to deceased partner’s will

Dying man gifts his assets to a neighbour, a friend questions his mental capacity

Daughter uses deathbed conversation to dispute her father’s will

Various

Textbook

Questions and Answers: Torts, 4th edition

Alexandra Briscoe

RRP*incl GST: \$50.00

ISBN: 9781988546674 (book)

ISBN: 9781988546681 (eBook)

Projected publication date: 30 September 2023

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