

Issue 506 | 2 August 2021

LexisNexis News

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

CaseBase & LexCite on Lexis Advance Webinar – Monday, 2nd of August at 12pm

Look under the hood of Lexis Advance to get a better understanding of how CaseBase and LexCite work as our case law and legislation citators. Understand the sources from which they draw their information and how they can be used to aid your legal research and save you time. Duration: 60 min

Getting Started with Lexis Advance Webinar – Tuesday, 3rd of August at 3pm

In this session, we will provide an orientation to Lexis Advance. Learn to harness the power of the Advance search engine to find caselaw, legislation, commentary, forms & precedents and guidance on all different areas of law. This session will enable you to find what you need quickly and efficiently and organise your research effectively to save time. Duration: 60 min

Property Law Resources on Lexis Advance Webinar – Thursday, 5th of August at 4pm

In this 60-minute webinar focusing on the land and property law resources available in Lexis Advance, we will show you how to quickly and efficiently find up to date commentary, case law, forms and precedents and the relevant legislation on the ever-changing landscape of New Zealand property law. Our key texts in this area include Hinde McMorland and Sim's Land Law in New Zealand, Adam's Land Transfer and the Practical Guidance Property Law module. Learn to set up alerts on relevant topics and publications and keep track of your documents for future reference, saving you valuable time in your day. Duration: 60 min

Getting Started with Lexis Red Webinar – Tuesday, 10th of August at 4pm

This session shows you how to browse and search your digital versions of your key LexisNexis publications. We show you how to quickly find, highlight and annotate content for effective offline use of publications when you are out of the office, offline or for deep reading in a user-friendly format. Duration: 60 min

Working Smarter with Lexis Advance Webinar – Friday, 13th of August at 10am

Become more skilled and efficient in your research. Join this session to examine methods of conducting searches on Advance, from understanding the algorithm that runs behind the scenes, to applying advanced filters to generate effective results. Learn to set up alerts and folders, share documents, and customise your publications pod and favourites to ensure that the platform is working efficiently for your research needs. Duration: 60 min

Focus on The Laws of New Zealand – Tuesday, 17th of August at 1pm

Regularly updated and available in its entirety on Lexis Advance and Lexis Red, The Laws of New Zealand is an encyclopaedic work providing a reliable statement of the whole of the law of New Zealand – statutory, regulatory and judicial, including 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. Learn how to use key words and browse features when accessing it on either Lexis Advance or Lexis Red to improve your research efficiency, collate your research results and save time. Duration: 60 min

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

In this session, we will provide an orientation to Lexis Advance. Learn to harness the power of the Advance search engine to find caselaw, legislation, commentary, forms & precedents and guidance on all different areas of law. This session will enable you to find what you need quickly and efficiently and organise your research effectively to save time. Duration: 60 min

Lexis Advance for Barristers Webinar – Thursday, 19th of August at 4pm

Improve your research skills and save time using Lexis Advance. In our Bar-focused training session, discover how to customise your publications efficiently, learn how to filter your search results, link to your favourite publications, highlight and make annotations, create your own work folders to organise your research results, and stay up to date with the latest content. Makes researching easy for you. Duration: 60 min

Practical Guidance on Lexis Advance Webinar – Monday, 23rd of August at 12pm

This session will look at how Practical Guidance operates as a stand-alone module, and as a partner to the research you run on Lexis Advance. In Practical Guidance, you can find guidance written by experts in different areas of law that link you to relevant cases and legislation, forms, checklists and precedents, as well as extracts from the key that text LexisNexis publishes in that area. Understand the use and benefits of Practical Guidance modules for your everyday research. Duration: 60 min

Working Smarter with Lexis Advance Webinar – Tuesday, 24th of August at 4pm

Become more skilled and efficient in your research. Join this session to examine methods of conducting searches on Advance, from understanding the algorithm that runs behind the scenes, to applying advanced filters to generate effective results. Learn to set up alerts and folders, share documents, and customise your publications pod and favourites to ensure that the platform is working efficiently for your research needs. Duration: 60 min

Content Webinars

LexisNexis ONDEMAND webinars are delivered by subject experts and accompanied by a short comprehension quiz. Our current ONDEMAND webinars are as follows:

Employment Law Disciplinary Issues and Investigations [ONDEMAND]

Guidance on the principles and practical issues associated with workplace disciplinary processes and investigations. Duration: 60 min

Fairness, Expectation and Reward in Inheritance Disputes [ONDEMAND]

The webinar looks at the recurring issues of fairness and reward that are commonly encountered during inheritance disputes and provides legal advisors, arbitrators and mediators with tools to advise and manage these when drafting or advising clients on wills, estates and succession. Duration: 60 min

Customer Due Diligence Tips and Tricks [ONDEMAND]

This webinar examines the ongoing challenges of knowing your customer and practicalities of ensuring appropriate customer due diligence in an increasingly digital world in order to meet AML/CFT requirements. Duration: 60 min

Letters of Administration on Intestacy: Issues and Solutions [ONDEMAND]

Applying for a court order to administer a deceased estate when a person dies without a will is often complicated. This webinar appraises the requirements for an application of intestacy; the selection of appropriate evidence in support of the application and the recognition of factors that affect entitlement. Duration: 60 min

Letters of Administration with the Will Annexed [ONDEMAND]

The application process for Letters of Administration with the will annexed differs from probate applications, and knowing what matters need to be considered and addressed and supported by evidence, or indeed omitted, when making an application, is not always clear. This webinar provides guidance on recognising the key requirements for the preparation of a valid will and the requirements for making an improperly executed will declared valid. Duration: 60 min

Civil Procedure

Sim's Court practice

Sim's Court Practice service 230 is now available online.

This service includes extensive updates to commentary on the High Court Rules, the Judicial Procedure Act 2016, the Senior Courts Act, the Court of Appeal (Civil) Rules 2005, the Interest on Money Claims Act 2016 and the Contempt of Court Act 2019.

Commercial

Company and Securities Law Bulletin

Issue 6 is now available online

This issue provides a headnote for *Du Val Management Ltd v Henderson* [2021] NZERA 218 and the article "Directors' duties after Debut Homes – a return to the scene" by Peter Watts QC.

Textbook

Heath and Whale Insolvency Law in New Zealand, 4th edition

Paul Heath & Mike Whale (editors)

RRP*incl GST: ~~\$200.00~~ \$180.00 (pre-order price)

ISBN: 9781988546605 (book – two volume set)

Publication date: September 2021

Family

Family Law Service

Family Law Service 203 (July 2021) is available online.

There is discussion on the review of adoption law by the Ministry of Justice and the review of surrogacy law by the Law Commission. This service includes case commentary in the areas of Adoption, Care and Protection, Change of names, Day to day care and contact, Family Violence, Guardianship, Guardianship of Court, Hague Convention, Maintenance, Marriage, and Relocation.

Fisher on Relationship Property

Fisher on Relationship Property 97 (July 2021) is available online.

This service includes case commentary in Chapter 1 (Nature of relationship property), Chapter 2 (De facto relationships), Chapter 7 (Joint family homes), Chapter 9 (Protecting the non-owner spouse or partner), Chapter 12 (Division of relationship property), Chapter 15 (Debts) and Chapter 18 (Jurisdiction, orders and implementation).

New Zealand Family Law Journal

New Zealand Family Law Journal Vol 10, Issue 6 (July 2021) is available online.

This issue includes articles by Nicolaas Platje “Te Ao Māori, Whāngai, and the Law of Intestacy: A Principled Proposal” and William Porter “Bad law makes hard cases – the case for repealing or limiting the Family Protection Act 1955”.

Practical Guidance: Family

Latest legal updates

Bill submitted to allow victims of family violence to apply for immediate order dissolving a marriage or civil union

Police investigation into elderly abuse theft of more than \$500,000 from 92-year-old man

Number of marriages involving minors has dropped since 2018 marriage law change

Demand for divorce lawyers increases since COVID-19 coronavirus pandemic

Changes in adoption law must stop severing ties with birth parents

New Zealand Family Law Reports

Part 16 of Volume 2020 is now available online.

Bailey v Rerekura – [2020] NZFLR 710

Relationship property – Division of property – Whether property classified as family home – Jurisdiction – Tikanga Māori – Tino rangatiratanga – Rate arrears – Post separation liabilities – Post separation income – Rental income – Treaty of Waitangi 1840, art 2 – Local Government (Rating) Act 2002 – Property Law Act 2007, ss 6, 119 and 122 – Property (Relationships) Act 1976, ss 6, 8, 33 and 42 – Te Ture Whenua Māori Act 1993.

Cross v Cook – [2020] NZFLR 718

Relationship property – Contracting out agreement – Absence of independent legal advice and certification – Seeking declaration giving effect to agreement – Whether materially prejudicial to one party if agreement given effect – Compliance with formalities – Property (Relationships) Act 1976, ss 21F, 21F(3), 21H, 21J and 21J(4).

Golden v Herring – [2020] NZFLR 732

Relationship property – Adding of parties to proceedings – Family trust – Disposition of property to family trust – Whether relationship property – Seeking to join trustees of trust to proceedings – Whether trustees would be directly affected by proceedings – Family Court Rules 2002, r 133 – Property (Relationships) Act 1976, s 44C.

Hall v Hall – [2020] NZFLR 738

Maintenance – Child maintenance – Overseas maintenance order – Application to confirm overseas order – Variation – Ability to pay – Father living in New Zealand with new partner – Insufficient and inconsistent income – Building new business – Impact of COVID-19 – Family Proceedings Act 1980, ss 138 and 138(7).

Re Shui – [2020] NZFLR 745

Adoption – International surrogacy – De facto couple – Final adoption order – Couple wanting to bring child back to New Zealand – Child born in USA – COVID-19 holding up US passport applications – COVID-19 International Surrogacy Protocol – Adoption Act 1955, s 10 – Adoption (Intercountry) Act 1997.

Re Hopkins – [2020] NZFLR 749

De facto relationship – Consent to de facto relationship – 17-year-olds – Welfare and best interests of child – Couple living together with child – Committed to each other – Wanting to ensure correct benefit from Work and Income New Zealand – Families fully supportive – Care of Children Act 2004, ss 4, 5, 6 and 46A.

Part 17 of Volume 2020 is now available online.

Stone v Stone – [2020] NZFLR 752

Relationship property – Sale of home – Release of half equity to husband – Australian superannuation fund – Whether husband's share of home able to be provided out of superannuation fund – Whether superannuation able to be withdrawn prematurely – Foreign immovable property – Children living in home – Husband's right to share in property – Property (Relationships) Act 1976 – Superannuation Industry (Supervision) Regulations 1994, regs 6.01(5) and 6.19A.

Bhatia v Bhatia – [2020] NZFLR 755

Care of children – Day-to-day care – Relocation – Relocation due to employment opportunity – Proposal that child visit mother every month – Interests of child – Effect of relocation on child's daily activities – Care of Children Act 2004, ss 4, 5, 6, 46R and 133.

Sears v Franks – [2020] NZFLR 763

Relationship property – Division of property – De facto relationship – Whether qualifying relationship – Whāngai – Whether whāngai relationship – Parties having child together – Contemporaneous relationships – Duration of relationship – Nature and extent of common residence – Parties not living together in same residence – Sexual relationship – Degree of mutual commitment to shared life – High Court Rules 2016, sch 4 – Care of Children Act 2004 – Property (Relationships) Act 1976, ss 2, 2D, 2D(2) and 52B – Te Ture Whenua Māori Act 1993, s 129(2).

Solicitor-General v Newsroom NZ Ltd – [2020] NZFLR 784

Restraining orders – Restraint of publication – Family Court proceedings – Report of Family Court proceedings – Oranga Tamariki – Uplifting children – Ultimate decisions made by Family Court – Identifying information – Criminal Justice Act 1985, s 139 – Criminal Procedure Act 2011, ss 200, 201 and 202 – Family Court Act 1980, ss 11A, 11B, 11C and 11D – Family Courts Amendment Act 2008, s 7 – Guardianship Act 1968, s 27A – Oranga Tamariki Act 1989, s 128.

Part 18 of Volume 2020 is now available online.

Brighton v Archer – [2020] NZFLR 799

Hague Convention – Hague Convention provisions as code – Estoppel – Estoppel not applicable for Hague Convention cases – Consent to removal – Clear and unequivocal consent – Acquiescence – Delay – Choice not to do anything about relocation – Residual discretion – Settled life in New Zealand – Length of time spent in New Zealand – Care of Children Act 2004, ss 103, 105, 106, 107 and 110.

Fuller v Rush – [2020] NZFLR 814

Care of children – Contact orders – Uncorroborated allegations of abuse – Child's name – Parties unable to decide child's name – Process by which child's name would be chosen – Care of Children Act 2004, ss 5, 5A, 46R, 48 and 133 – Family Court Rules 2002, r 350.

Singleton v Schmidt – [2020] NZFLR 825

Relationship property – Division of relationship property – Application for unequal division – Equity in house lost – Equity lost not by misconduct of either party – Debts – Joint debts – Purpose to which debt applied – Debt in both parties' names – Valuation of business – Valuation of business where no expert evidence – Property (Relationships) Act 1976, ss 11, 13 and 20.

LH v CC – [2020] NZFLR 835

Protection of personal rights – Compulsory medical treatment – Danger to patient's life – Least restrictive intervention – Order that medication be administered – Protection of Personal and Property Rights Act 1988, ss 5, 6, 8 and 10.

Property

New Zealand Conveyancing and Property Reports

Part 11 of Volume 2021 is now available online.

Re Application by Body Corporate 66132 – (2020) 21 NZCPR 788

Unit titles – Cancellation of unit plan – Sale of timeshare resort – Distribution of sale proceeds – Winding up of body corporate – Whether just and equitable to dissolve body corporate and cancel unit plan – Units not being used by owners – Unpaid levies – Buildings requiring maintenance or replacement – Agreement to sell by owners – Unit Titles Act 2010, ss 187 and 188.

Young v Young – (2020) 21 NZCPR 793

Division – Registered co-owner had no beneficial interest in property – Transmission by survivorship to two co-owners – Subject to equities – One registered owner making no contributions to property – Resulting trust for other co-owner – Land Transfer Act 1952, ss 35, 41, 61, 62, 122 and 123 – Land Transfer Act 2017, ss 47 and 142 – Property Law Act 2007, s 339 – Property (Relationships) Act 1976, ss 2G, 8, 13, 18 and 37.

Een v Body Corporate 384911 – (2020) 21 NZCPR 809

Unit titles – Leasing of common areas and units as hotel – Seeking to prohibit operation of hotel unless all unit owners able to participate – Whether originating application outside specified timeframe – Whether proceedings should be dismissed – Whether special resolution required to lease common areas – Interim injunction – Serious question to be tried – Balance of convenience – Resolution by body corporate prohibiting units from being leased to Airbnb or similar – Unit Titles Act 2010, ss 50, 52, 56, 56(1), 79(a), 210, 210(1) and 210(2).

Patel v Shah – (2020) 21 NZCPR 822

Lease – Cancellation – Possession – Application seeking to prevent cancellation of lease and possession of dairy – Whether serious question to be tried – Balance of convenience – Whether lease or licence – Owners of dairy unaware of management agreement between parties – Sub-lease – Maintenance and repair obligations – Jurisdiction of Court – High Court Rules 2016, r 7.53 – Property Law Act 2007, ss 246, 253, 256 and 256(1).

Chen v Auckland Weihao Investment Ltd – (2021) 21 NZCPR 826

Caveat – Second caveat – Second caveat claiming different interest than first caveat – Constructive trust – No basis to claim constructive trust – Vendor finance – Inability to obtain vendor finance – Companies Act 1993, s 10 – Contract and Commercial Law Act 2017, ss 35, 36 and 41 – Land Transfer Act 2017, ss 138, 142, 143, 145 and 146 – Land Transfer Act 2017 Commencement Order 2018, s 2 – Land Transfer Regulations 2018, sch 2.

Body Corporate S90876 v Palmer Trading Ltd – (2021) 21 NZCPR 836

Unit titles – Body corporate – Validity of body corporate resolutions – Right to vote – Resolutions purporting to remove, replace and elect new committee members – Unit title owner unable to vote due to unpaid levies – Whether mortgagee of unit title owner able to vote in place of unit title owner – Whether mortgagee's vote invalid – Property Law Act 2007, sch 2 part 1 cl 15 – Unit Titles Act 2010, s 96, 96(1), 96(3) and 96(6) – Unit Titles Regulations 2011, regs 7, 24 and 25.

Green & McCahill Holdings Ltd v Ara Weiti Developments Ltd – (2021) 21 NZCPR 844

Caveat – Application for removal – Knowing receipt – Breach of fiduciary duty – Proprietary interest in land of knowing recipient – Mortgagee sale – Properties obtained through mortgagee sale not in breach of fiduciary duty – Land Transfer Act 2017, ss 6, 52, 138 and 143.

Bargrove v MSM Holdings NZ Ltd – (2021) 21 NZCPR 867

Caveat – Application to sustain – Unopposed – Sale and purchase agreement in new subdivision – Sunset clause – Triggering date for sunset clause preceding date agreement signed – Lack of settlement date in agreement – Whether purported cancellation of agreement via sunset clause removing equitable interest in property – Vendor not returning deposit as required by agreement – High Court Rules 2016 rr 7.32 and 7.41 – Land Transfer Act 2017 ss 138 and 143.

Resource Management

Resource Management Bulletin

This issue of the bulletin includes case comments by Bronwen Norrie, Gerald Lanning and Dr Trevor Daya-Winterbottom and includes an editorial article by Dr Trevor Daya-Winterbottom.

Succession

Textbook

Law of Family Protection and Testamentary Promises, 5th edition

Bill Patterson

RRP*incl GST: \$200.00

ISBN: 9781988546506 (book)

ISBN: 9781988546513 (ebook)

Publication date: 26 May 2021

Trusts

Practical Guidance: Trusts

Latest legal updates

Suggestions for trustees based on Supreme Court *Addleman* decision

English Court of Appeal judgment on whether payment from a trust is a loan or a distribution

Supreme Court clarifies when trustees must disclose their legal advice to beneficiaries of a trust

Supreme Court judgment on the disclosure of trust documents and legal professional privilege

Textbook

Garrow and Kelly Law of Trusts and Trustees, 8th edition

Chris Kelly, Greg Kelly, Colette McKenzie & Kimberly Lawrence

RRP*incl GST: ~~\$220.00~~ \$198.00 (pre-order price)

ISBN: 9781988546292 (book)

ISBN: 9781988546308 (ebook)

Publication date: October 2021

Intellectual Property

New Zealand Intellectual Property Journal

Service 9/8 is now available online

This service included the articles “Where angels fear to tread” by John Katz QC and “Unclear and imprecise trade mark specifications” by Rob Batty. This service also included the following oppositions by Sophie Thoreau: Red Kangaroo Beverages Pty Ltd [2021] NZIPOTM 1, Waterpipes Unlimited Co [2021] NZIPOTM 2, Realme Mobile Telecommunications (Shenzhen) Co Ltd [2021] NZIPOTM 3, Brandt’s Fruit Trees I, Inc [2021] NZIPOTM 4, and Ferry Road Carwash Ltd [2021] NZIPOTM 5.

Various

Textbook

Burrows and Carter Statute Law in New Zealand, 6th edition

Ross Carter

RRP*incl GST: \$180.00

ISBN: 9780947514983 (book)

ISBN: 9780947514990 (ebook)

Publication date: 26 May 2021