

**NZULR ABSTRACTS**  
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**THE NEW LAW OF FORFEITURE OF LEASES:  
MORE THAN A CHANGE OF TERMINOLOGY?**

NIGEL P GRAVELLS

*This article considers the reform of the law relating to the forfeiture of leases for breach of covenant by the lessee. The rationale of the doctrine of forfeiture remains sound; but, in its structure and terminology, the law of forfeiture is widely regarded as archaic and misleading; and it no longer reflects the realities of the modern landlord and tenant relationship. The respective interests of the parties have been recognised by the courts and the legislature and have prompted piecemeal modifications of the law. The result is a set of rules that has been the subject of frequent criticism on the ground that it is complex, lacks coherence and can lead to injustice. However, in New Zealand the Property Law Act 2007 has now codified the law (with some modifications) under the new terminology of "cancellation"; and in England recommendations for comprehensive reform under the new terminology of "termination" are currently awaiting enactment. This article examines five key issues in the law relating to the forfeiture/cancellation/termination of leases and considers how far the New Zealand and English reforms address those issues.*

**INTEREST ON MONEY CLAIMS: THE RESTITUTIONARY AWARD**

RICHARD SUTTON

*Last year, the House of Lords in the Sempra case offered an important restatement of the law governing the award of interest on money claims. This article concentrates on what the House had to say about the award of interest in cases based on unjust enrichment. Interest, it seems, is awarded only where it can be shown or inferred that the defendant was actually enriched as a result of having the use of the money that had been received. There were considerable differences amongst their Lordships about how that principle should be applied to the particular facts of the Sempra case. The House placed too much emphasis on the need for actual enrichment. As Law Commissions have argued, standard rates of interest should be applied. The receipt and retention of money should be presumed beneficial to the defendant and detrimental to the plaintiff. There is little to be gained by exploring the particular facts of each case. This is a principled approach. In simple cases such as money paid under mistake, the law has always favoured awards based on a prima facie enrichment. Questions about whether the defendant was in fact enriched can be advanced only by way of defence. The article concludes that in most cases, awards of interest should be based on standard commercial interest rates. These rates should not reflect any significant allowance for the risk of the defendant not repaying the money, and should be calculated on a compounding basis.*

**A CONSTITUTIONAL SURPRISE! SEARCHING LEGISLATORS' OFFICES  
IN NEW ZEALAND AND THE UNITED STATES**

SARAH KENNEDY-GOOD

*This article offers an insight into the practical operation of government in a liberal democracy. It undertakes a comparative analysis of the procedures that govern the search of legislators' offices in New Zealand and the United States, drawing on recent precedents in both countries. The article identifies differences between the New Zealand and United States approaches; differences that are largely attributable to the level of involvement of the legislative branch of government in the search warrant process. Possible explanations for the difference in approach are identified, including factual differences in the precedent cases, differences in New Zealand and American law, and differences in the constitutional structure and size of each country. Despite the differences identified, this article predicts that both jurisdictions will adopt a similar approach in the future. This conclusion is surprising. It suggests that the practice of democratic government is not heavily influenced by legal and constitutional specifics.*

**FRAUD VITIATING CONSENT TO SEXUAL ACTIVITY:  
FURTHER CONFUSION IN THE MAKING**

CHRIS GALLAVIN

*In this article the author examines the application of sexual offence legislation in both England and Wales and New Zealand. While once complementary it is contended that these jurisdictions have moved apart from one another. This article supports the objectification of the criminal law in this area and rejects the encroachment of subjective intention as a sufficient indicator of sexual activity. While this may give rise to sexual offending in the absence of a sexual motive the objective interference with victims in such cases justifies such an extension of the criminal law. In New Zealand the legislative amendments of 2005 give no guidance to the judiciary in establishing a principled application of the law in this area. In this respect the English and Welsh reforms under the Sexual Offences Act 2003 is enlightening although not fully indicative of the options available in New Zealand. Finally, in proposing a principled expansion of the circumstances in which fraud will vitiate consent to sexual activity, this article presents a new analysis of the contrary cases of R v Richardson and R v Tabassum.*

## **THE REGULATION OF DIRECTOR INVOLVEMENT IN PHOENIX COMPANIES UNDER SECTIONS 386A TO 386F OF THE COMPANIES ACT 1993**

LYNNE TAYLOR

*Sections 386A to 386F were inserted into the Companies Act 1993 to address a particular subset of inappropriate phoenix company activity. The new provisions do not seek to ban phoenix company structures, nor do they seek to distinguish between acceptable and inappropriate arrangements. Rather, they prohibit a director of a company in an insolvent liquidation from being involved in a phoenix company or business that has a name that is the same as, or is similar to, the name of the company in the insolvent liquidation. A director in breach of this prohibition faces civil and criminal consequences. This paper assesses the scope and practical consequences of the new provisions.*

## **REGULATING SUBGLACIAL AQUATIC RESEARCH UNDER THE ANTARCTIC TREATY SYSTEM**

KAREN N SCOTT

*The discovery of Lake Vostok and other subglacial aquatic environments beneath the Antarctic ice-sheet ranks as among one of the most important and exciting scientific discoveries of the twenty-first century. However, physical research into subglacial aquatic environments faces considerable practical and logistical challenges. The most significant of these challenges is the development of techniques permitting the penetration of lakes and other aquatic environments without microbial or chemical contamination thereof. At the time of writing no lake has yet been penetrated although plans for the physical exploration of Lake Vostok and, to a lesser extent, Lake Ellsworth are relatively advanced.*

*This article will examine and analyse the rules applicable to the exploration of Antarctic subglacial lakes and other aquatic environments under the 1959 Antarctic Treaty and the 1991 Environmental Protocol to the 1959 Antarctic Treaty. It will discuss and critique the proposal developed on behalf of the US National Science Foundation in 2007 for the purpose of guiding subglacial aquatic research. This article will conclude with the identification of further options designed not only to improve the management of research taking place within subglacial aquatic environments, but also to enhance environmental protection within the Antarctic more generally.*

