NO TRIBULATIONS OF RETRIAL FOR COMMODORE KEAT: THE CONSEQUENCES OF THE DECISION IN KEAT V R
MIKE FRENCH

The decision of the Court Martial Appeal Court in Keat v R not to order a new trial of Commodore Keat raises some interesting issues regarding retrials and the jurisdiction of the military tribunals, especially the Court Martial. This article will examine the discretion that an appeal court has to order a retrial and argue that, while the decision to decline a retrial in this case might have been justifiable, the reasons given for that decision were misconceived and failed to pay sufficient regard to the constitutional relationship between the military justice system and the criminal justice system.

LESSONS FROM PIKE RIVER: REGULATION, SAFETY AND NEOLIBERALISM
NEIL GUNNINGHAM

This article draws on the findings of the Pike River Royal Commission and other investigations, on the wider international literature on Work Health and Safety (WHS) regulation and on the writer’s own interviews with mining industry stakeholders, to develop a composite picture of what went wrong at Pike River and how best to prevent such disasters in the future. It argues that there are four pillars of effective WHS management and regulation: appropriately designed regulation; effective implementation and enforcement; a competent and motivated enterprise/facility operator; and genuine worker representation and participation. However, building or strengthening these pillars is difficult to achieve. Over and beyond legislation incorporating a complementary combination of different types of standards and worker empowerment, a skilled and adequately resourced regulator is essential. Where regulators are neither, then implementation is likely to be severely compromised. Moreover, unless the influence of neo-liberalism and its accompanying free-market ideology are substantially negated, then these pillars are vulnerable to being undermined, creating the seeds of a future disaster. Implications of the Health and Safety at Work Act 2015 are also considered.

SECTION 9 OF THE LAW REFORM ACT 1936: A CALL FOR MODERNISATION
HENRY HOLDERNESS

Section 9 of the Law Reform Act 1936 is a statutory mechanism which assists a third party claimant by cutting through the privity of contract between an insured and its insurer. In particular, s 9 applies when the insured is insolvent – a situation which can, absent a provision like s 9, make it practically very difficult for the third party to recover any compensation even if its claim succeeds legally. In BFSL 2007 Ltd v Steigrad, the Supreme Court of New Zealand was faced with the question of whether s 9 prevented payment of legal defence costs under a directors’ liability policy. By 3:2 majority, the Court held that s 9(1) did indeed have this effect. This is not the first time s 9 has generated protracted and (presumably) costly litigation in recent years requiring the attention of our highest court – and causing a divergence of judicial opinion. The case of Ludgater Holdings Ltd v Gerling Australia Insurance Co Pty Ltd, which concerned the territorial scope of s 9, is a further example. This article considers these cases (and others) and argues that s 9 is outdated, inadequate and badly in need of reform. Arguably, by neglecting to update the section, Parliament has made it inevitable that difficult cases like Steigrad and Ludgater will arise on an all too regular basis. This trend might be slowed or even arrested if s 9 was thoroughly and carefully reformed. This article concludes by making some recommendations in that regard.

JUDICIAL REVIEW OF ADMINISTRATIVE INTERPRETATIONS: LESSONS FOR NEW ZEALAND FROM THE UNITED STATES?
BREE HUNTLEY

This article compares the standards of review applied by courts in New Zealand and the United States when reviewing administrative interpretations of statutes. In New Zealand, it is well established that courts are to substitute judgment on all questions of law. By contrast, administrators in the United States are afforded significant deference in the interpretation of the statutes they administer. This article aims both to explain the intricacies of the United States’ position for a New Zealand audience and to advance a fresh perspective on the New Zealand position. After noting that the approach taken in New Zealand seems at first to lack any resemblance to that taken in the United States, the article suggests that the two approaches are not as dissimilar as they initially appear. A common thread can be discerned: courts in both jurisdictions evade blanket standards of review and instead reserve the discretion to afford or deny deference to administrative interpretations according to context. This article concludes that the lesson for New Zealand to draw from the United States relates not to any particular doctrinal feature, but rather the comparative willingness to discuss the constitutional and policy considerations that in reality contribute to the formulation of a standard of review.
In 2004 the High Court held that a forestry investment known as the “Trinity Scheme” was a tax avoidance arrangement for the purposes of the Income Tax Act 1994. For the next four years, this decision became the subject of appellate scrutiny, with the Supreme Court ultimately delivering its most important and widely read decision on tax law to date, namely, Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue [2008] NZSC 115, [2009] 2 NZLR 289. While most practitioners will be familiar with the Supreme Court’s decision, a smaller group will be aware that the taxpayers have brought a raft of collateral litigation from 2003 to 2015 in the hope of derailing the decision and reducing their liability to tax. The purpose of this article is to bring that litigation to light. It catalogues the taxpayers’ collateral proceedings, briefly setting out the arguments and their reception by the courts. In closing, the article offers observations about the importance of careful tax planning and appellate litigation strategy.

**REGULATING QUALITY IN CSR REPORTING IN AUSTRALIA**

*Mia Rahim and Victor Vicario*

While it is undisputed that corporate social responsibility (CSR) is good for society, the question remains as to the most effective way of increasing the quality of CSR reporting. It is becoming evident that relying on market forces is not delivering the hoped for results, and if corporations are under no obligation to report their CSR performance in an easily comparable manner, CSR will be neglected. A solution would be for governments to ensure that corporations disclose all their CSR activities in a scientific manner, so that the market can easily compare corporations’ social performance and respond accordingly. In this context, an analysis of how, and to what extent, legal regulation matters in developing quality in CSR reporting is essential. This is the focus of this article.

**NEW ZEALAND’S FINANCIAL ADVISER REGULATION: FALLING BEHIND IN THE WAKE OF OVERSEAS REFORMS**

*Victoria Stace*

This article looks at New Zealand’s conduct of business rules for financial advisers. It compares New Zealand’s rules to conduct of business rules applicable in the United Kingdom and Australia. There are major respects in which New Zealand’s conduct of business rules fall behind best practice, particularly with regard to the rules around receipt of commissions. This article proposes that the New Zealand Government should conduct an urgent review of its conduct of business rules for financial advisers, and in particular look at introducing a ban on conflicted remuneration in relation to personal advice given to retail clients. Other areas in need of review are the rules around assessing suitability of advice, and best execution requirements.

Key words: financial adviser regulation; conduct of business rules; commissions.