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CONCESSION THEORY AND POST-SETTLEMENT GOVERNANCE ENTITIES: MĀORI LEGAL AUTONOMY WITHIN STATE-DEFINED CORPORATE FORMS

Daniel Haines

How do state-defined legal forms both enable and constrain Māori governance? This article applies concession theory to post-settlement governance entities (PSGEs) in Aotearoa New Zealand to examine how Crown-created legal persons facilitate the management of iwi assets while simultaneously placing limits on the exercise of rangatiratanga.

Drawing on Waikato-Tainui and Ngāti Whātua Ōrākei, this article shows how iwi embed tikanga Māori within formal governance settings. It uses those examples to examine how tikanga-based governance is carried through PSGE structures, and how its legal force remains shaped by statutory obligations, compliance regimes, and Crown-recognised legal forms.

The article argues that Māori governance cannot be fully realised through state-created legal personhood. While PSGEs are a mechanism for iwi to advance their objectives, they also render the legal effect of Māori authority dependent on Crown-defined forms. This dependence sustains an imbalance between settler law and tikanga Māori, because iwi exercise decision-making through legal structures that are created and bounded by the state. The article concludes by identifying the limits of concessionary corporate law and points towards the need for legal frameworks that can better accommodate tikanga as sources of authority alongside state law.

INSURANCE CLAIMS HANDLING AFTER THE CONTRACTS OF INSURANCE ACT 2024

Rohan Havelock

The Contracts of Insurance Act 2024 represented the first major reform of insurance contract law in New Zealand in nearly four decades. This article examines the law relating to claims handling in property insurance, in light of the enactment of the legislation. It is argued that the implied term which the Act introduces, requiring an insurer to pay sums due in respect of claims "within a reasonable time", is fraught with uncertainty and is unlikely to be effective. The article then surveys the case law on the insurer's post-contractual duties and explores avenues for future judicial development. Ultimately, it proposes that the insurer's duties should be assimilated with the principles of contract law relating to control of contractual discretion. Those principles are particularly apt in the insurance context, where decisions as to the nature and extent of the insured's entitlement are made by the insurer, absent a successful complaint or legal challenge by the insured.

THE AI-FRIENDLY REGIME AND ITS NEW ZEALAND TAX POTENTIAL: INSIGHTS FROM OPENAI

Victoria Plekhanova and Tana Pistorius

The OpenAI group owns many AI systems and makes them available to individuals and business customers in New Zealand and other countries. This article uses Open AI's business in New Zealand, as an example, to illustrate the domestic tax effects of what can be called an "AI-friendly regime" – a global legal environment that allows the group to maximise the benefits of legal protection of intellectual capital associated with AI technology and minimise the tax burden arising from its commercial use. This environment comprises New Zealand's IP, contract and tax laws and ratified international agreements and contributes to a growth of wealth inequality between countries. This article argues that the inequality of opportunity is rooted in a lack of effective legal mechanisms to ensure a return on investment for the support that each state provides to digital businesses to monetise their operations across national borders.

MONETARY (F)LAWS IN AOTEAROA NEW ZEALAND: THE TRAJECTORY OF DIGITAL CASH

Matteo Solinas

The Reserve Bank of New Zealand is considering the case for a digital dollar, to complement tangible cash and make a more contemporary form of central bank money available to the general public. In addition to various economic, technological and policy choices, the creation of digital cash poses several legal challenges. This is because the existing legislation around central bank money – at least in its retail form – has historically regulated only the ability of central banks to issue bank notes in paper form and metallic coins. This article discusses to what extent digital cash can be stretched or squeezed into the conceptual taxonomies of traditional monetary law. Notably, it considers whether the current New Zealand legal framework is flexible enough to accommodate a default model for digital cash without law reform. In doing so, it reviews the legal basis for issuing digital cash under the existing legislation, discusses the initial agreed high-level features and focuses on some critical issues, inevitably subject to the (uncertain) final design choices.

THE PREPARATION OF EVIDENTIAL DOCUMENTS IN CIVIL PROCEEDINGS

Nadia Sussman

This article considers the role of civil litigators in preparing evidential documents. These documents (affidavits, witness statements, briefs of evidence) can be a witness' sole opportunity to communicate to the court in a manner unstructured by opposing counsel's questioning. They purportedly emanate from a witness yet are usually prepared by lawyers. Despite the importance of these documents and the significance of lawyers' involvement in their development, this remains a murky area for lawyers to navigate. Ambiguous regulation, judicial disagreement and distracting scholarship put even the would-be competent, would-be ethical lawyer at risk of confusion as to the scope of their role. This article accordingly seeks to clarify the lawful parameters on the lawyer's involvement. It also thereby lays the groundwork for further reflection on what such communication on behalf of others reveals about the role of lawyers today.