Moving into the mainstream – therapeutic jurisprudence

Magna Carta – still relevant to New Zealand law today?

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THIS ISSUE:

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+ Criminal justice, mental health law

THERAPEUTIC JURISPRUDENCE – MOVING FORWARD

By Dr Warren Brookbanks LLD, Professor of Law, the University of Auckland

In September this year, Auckland University will be hosting the 4th International Therapeutic Jurisprudence Conference, following the theme of "Weaving strands: Raranga nga whenua". This is intended to signify the “unique interlacing of cultural, legal, psychological and social practice and philosophy in Aotearoa New Zealand to the international concept of therapeutic jurisprudence.”

The conference will be held at the University of Auckland Business School on 3 and 4 September 2015. It is not, however, the first time that therapeutic jurisprudence has been showcased in New Zealand. In 2000, the Australian and New Zealand Association of Psychiatry, Psychology and Law held a conference which included a keynote address given by the late Professor Bruce Winick who, with Professor David Wexler, was one of the two co-founders of the therapeutic jurisprudence movement. The address was entitled “Therapeutic Jurisprudence – Past, Present and Future”.

At that point in time, the movement’s past was short, its present emergent and its future profoundly unknown – at least as far as New Zealand was concerned.

It is an understatement to say that things have changed in New Zealand in the 15 years since that conference was held. Although the therapeutic jurisprudence movement lost a towering figure with Professor Winick’s untimely death in 2010, initiatives in recent years, both in New Zealand and abroad, are testimony to the pulling power of an idea whose time has clearly come.

It is true to say that therapeutic jurisprudence now has a global reach that has taken it well beyond the foundational role, conceived by its founders, as a means of exploring the intersection of law with the mental health system and its principal professional disciplines, namely, psychiatry and psychology. This curiosity led Professors Winick and Wexler to examine, more generally, the extent to which substantive rules, legal procedures, and the roles of lawyers and judges may produce therapeutic or anti-therapeutic consequences.

The rest, as they say, is history. It is, nonetheless, useful to recap on what therapeutic jurisprudence is, and to offer a brief perspective on how it is currently being applied, both in New Zealand and abroad. It has been described by Professor Wexler as the "study of the role of

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the law as a therapeutic agent” and a means of focusing on the impact of the law on emotional life and on psychological well-being.

Since the law may be characterised as a type of therapist, or, at least, as a therapeutic agent, Professor Wexler describes the task of therapeutic jurisprudence as being to identify, and to examine empirically, relationships between legal arrangements and therapeutic outcomes. Other commentators have observed that therapeutic jurisprudence is “both a practical attempt to describe and improve processes that are already happening in courts and legal practice, and also a normative agenda, that is, an effort to prescribe what ought to happen” (see N Stobbs, “How to do therapeutic jurisprudence research” (link at end of article)).

As such, therapeutic jurisprudence may be used as a specific method for designing or reforming new laws or new legal practices. When applied to its most visible manifestation, namely, problem-solving, or solution-focused, courts, therapeutic jurisprudence offers procedural guidelines, “protocols and techniques for making the justice system more effective in quite specific ways” (N Stobbs). The successful establishment in Auckland of the Alcohol and Other Drug Treatment Court (AODTC) pilot in November 2012, aimed at reducing offending, drug and alcohol dependency and the use of imprisonment, while positively impacting offenders’ health and wellbeing, is eloquent testimony to the power of therapeutic jurisprudence in operation. An important feature of therapeutic jurisprudence is that its applications are interdisciplinary, drawing on social science to inform research to influence more effective outcomes. More recently, various agencies have begun to use evidence-based approaches, employing rigorous research, to discover what works in criminal justice, youth justice and services for victims of crime.

In both the USA and Canada, recent research in the domain of sentencing has looked at evidence-based practice as a means of reducing recidivism in order to increase public safety. Research conducted in other jurisdictions has shown that properly designed and implemented mental health courts, not yet a feature of the New Zealand judicial landscape, are able to cost-effectively and safely reduce recidivism, while at the same time improving the health and psychosocial functioning of mentally impaired offenders (see M Edgely, “Why do mental health courts work? A confluence of treatment, support & adroit judicial supervision” (2014) 37 International Journal of Law and Psychiatry 572-580).

Recent discourse around therapeutic jurisprudence has begun to explore how evidence-based problem-solving can be employed in mainstream court settings. The hope is that the insights forged in specialised solution-focused courts might devolve into a broader base of offenders, and ultimately into the wider community. In the foreword to WJ Brookbanks’ (ed) Therapeutic Jurisprudence – New Zealand Perspectives (forthcoming, Thomson Reuters), Professor Wexler explains his “wine and bottle” metaphor as a means of examining the law and its administration. According to this approach, the law itself – legal landscape and structures – is the “bottle”, and the roles, behaviours, practices and techniques used by legal actors are the “wine” or liquid. The “wine and bottle” methodology has recently been applied to assess and evaluate sentencing practice in the state of Victoria (see P Spencer, “From Alternative to the New Normal – Therapeutic Jurisprudence in the Mainstream” (2014) 39:4 Alt LJ 222).

In a blog posting, it has been suggested, applying the “wine and bottle” model, that mandatory sentencing laws may create a therapeutic jurisprudence-unfriendly “bottle” because the inflexible nature of such laws does not allow for a lot of therapeutic jurisprudence “wine” to be poured in (see “Mandatory sentencing – a TJ unfriendly bottle?” (link at end of article)). In the last two decades, courts in the US and in a growing number of other jurisdictions have come to rely on therapeutic jurisprudence to help in tackling many complex and challenging social problems. Therapeutic jurisprudence has been described as a “procedural jaws of life”, creating a “corridor and procedural space for courts to engage in actionable problem-solving, in whatever context, to provide a chance to connect to real solutions which fundamentally entail assumption of personal responsibility and transformative life changes”. Above all, it is suggested that therapeutic jurisprudence “has the potential to offer victims a meaningful opportunity for court participation, engagement and process for healing” (see Ginger Lerner-Wren, “The Hidden Power of Courts that Heal” (link at end of article)). Some of these themes (and many others) will be explored at the forthcoming therapeutic jurisprudence conference. While the conference will provide an invaluable opportunity for
This year (specifically, 15 June 2015) marks the 800th anniversary of that important symbol of rights and liberty, Magna Carta. Readers may have even noticed Google getting in on the act, with a cartoon of a grumpy-faced King John stamping the charter appearing as the “Google doodle” on the website’s homepage on the relevant date.

Today, Magna Carta (otherwise known as “the Great Charter of the Liberties”) is seen as the foundation for fundamental civil liberties and human rights enjoyed by democratic countries across the world. It is somewhat ironic then to think that this celebrated document almost did not make it into existence.

Magna Carta was reluctantly (to say the least) agreed by the highly unpopular King John of England at Runnymede on 15 June 1215, in an attempt to appease his rebellious barons. Among other things, the charter promised protection from illegal imprisonment and access to swift justice, in an attempt to counter King John’s “force and will” approach to ruling the country.

In its original state, the document was short-lived – it was swiftly annulled by the Pope. However, after King John’s death in 1216, his young son Henry III reissued the document in a stripped-down form, in an attempt to secure political support for the royalist cause.

Later, Magna Carta formed part of a peace treaty agreed at Lambeth, and was re-issued at intervals by various monarchs – initially in exchange for grants of taxes, but ultimately (in 1297) being confirmed as part of England’s statute law and becoming part and parcel of English life. Lord Denning later described it as “the greatest constitutional document of all times – the foundation of the freedom of the individual against the arbitrary authority of the despot” (Danziger and Gillingham, 1215: The Year of Magna Carta).

Associate Professor Jennifer Lees-Marshment (of the Politics and International Relations department at the University of Auckland) is the Chair of the Magna Carta 800th anniversary committee for New Zealand. She says that her vision has been to make New Zealand’s celebrations as much about New Zealand as possible – to showcase New Zealand’s organisations, events and perspectives on our progress and future plans for promoting a just rule and society.

“Although everything we have done is because of an event 800 years ago, my goal was to use the commemoration to think not just about the past, but the present and the future. Anniversaries – even those 800 years old – provide us with the chance to reflect on where we have come from, but also where we might be going,” she says. So what is the significance and relevance today of this 800-year-old document to modern New Zealanders, faced as we are with an ever-changing array of legal issues and societal challenges to address?

An upcoming series of public lectures will aim to answer these very questions. Organised by Dr Stephen Winter (of the University of Auckland’s Politics department), the lectures will be held in Auckland, running each evening of the week of 6-10 July 2015. Speakers will look not only at the historical aspects of Magna Carta but also modern applications of its basic tenets of fairness, justice and law. Topics will include digital rights, the rights of others including refugees, and visions for the future.

Says Associate Professor Lees-Marshment, “Magna Carta is not just about an elite set of rules. It is about the nature of society in which we live. And this commemoration is about ensuring we continue to reflect on what changes we might need to make to ensure that the law continues to provide appropriate and fair rule for the way we live today. As one participant at a Wellington Young Lawyers’ panel discussion in May this year commented, whilst it is instinctive for lawyers to honour traditions and look to precedent, it is also important to discuss topics like ‘the unruly world of cyber’ and to assess the law and its relevance in the context of everyday life.”

“And of course we also know that history creates the future. Those involved in the sealing of Magna Carta 800 years ago would never have imagined that one day, on the other side of the world, it would be referred to in debates about the Internet. It is more important to have imagination in the law and government than we sometimes realise. By looking back, and seeing how far we have come and changed, we realise that anything in the future is possible, and the more open to this we are, the better.”

Confirmed themes and speakers to date at the 6-10 July public lecture series include:

• “Magna Carta & the Kiwi Constitution” with Chief Justice Sian Elias, Dr Lindsay Diggelmann (University of Auckland), the Rt Hon Judith Collins;
• “The Māori Magna Carta – Waitangi and Beyond” with Attorney-General Chris Finlayson; Isaac Hikaka (LeeSalmonLong), Judge Carrie Wainwright (Waitangi Tribunal);
• “Magna Carta Online – Security and Privacy in the Digital Age” with Howard Broid, CNZM (Deputy Chief Executive, Security and Intelligence, Department of the Prime Minister and Cabinet), Joy Liddicoat (Assistant Privacy Commissioner), Martin Crocker (NetSafe);
• “Magna Carta Beyond the Commonwealth: Migration and Refugees” with Grant Bayldon (Amnesty International), Michael White (Human Rights Commission), Andrew Lockhart (Immigration NZ); and
• “Magna Carta – Visions for the Future” with Andrew Little (Labour Party leader), Patrick Reilly (Acting British High Commissioner), Dr Chris Jones (University of Canterbury) and Johanna McDavitt (JustSpeak).

Further details can be found at https://magnacartanz.wordpress.com/university-of-auckland-lecture-series/. Everyone is welcome and the events are free of charge – however please register in advance. Videos of the University of Auckland public lectures will be uploaded in due course, and other reports and resources will also be made available.
Mainprice King, in association with DUAL NZ Limited (a part of the world’s largest underwriting agency and backed by Lloyd’s of London’s largest international cover holder) has developed a “Capped Conveyancing” insurance policy.

For one low premium per policy, per conveyancing transaction (provided it is purchased for all your New Zealand conveyancing transactions), lawyers and their clients can now better manage their risks in residential conveyancing than ever before.

Jeff Williamson of Mainprice King, which is launching the new service in New Zealand, answers some questions about Capped Conveyancing insurance policies.

“Risk management” is a term often used, but what does it actually mean?

Risk management is minimising the problems that can occur in residential conveyancing and the professional indemnity claims that often arise out of these transactions, and then constructing a practical solution that lessens the risks in the process for both lawyers and their purchasing clients.

Capped Conveyancing insurance grew out of Mainprice King’s recognition of a gap in the market and so it has introduced a new risk management strategy for lawyers in New Zealand based on residential conveyancing products which have been operating successfully in the United Kingdom for many years.

How can lawyers reduce risk in the residential conveyancing process?

Professional indemnity claims are a real concern for most lawyers because of their adversarial nature.

At risk is a lawyer’s professional indemnity excess, unproductive time taken in dealing with the client and insurer and potentially a subsequent increase in his or her professional indemnity premium. Ultimately, lawyers may lose a client’s future work because of the adversarial nature of these claims.

There can be many risks of which a lawyer may not be aware at the date of settlement of a property. These can include:

- LIM reports that do not expose encroaching boundary structures;
- vendor warranties that are not true;
- unwitting breaches of restrictive covenants affecting height; or
- past breaches of council covenants.

Capped Conveyancing insurance was developed to cover as many of these problems as possible.

If a problem arises post-settlement, then, if it is covered by the policy, the conveyancing insurer just focuses on fixing the problem without the need to find any fault.

Using Capped Conveyancing insurance, lawyers are therefore able to substantially “de-risk” their residential conveyancing transactions and benefit in terms of both professional indemnity and dealings with their clients.

Who is covered by Capped Conveyancing insurance?

Capped Conveyancing insurance is taken out by the lawyer (who pays the premium) but it also includes the interests of the lawyer’s client and the client’s mortgagee. To ensure a client is fully aware of the cover, the lawyer should advise the client (ideally by way of their engagement letter) that the client is included in the lawyer’s Capped Conveyancing insurance programme as part of services provided. Mainprice King can supply a suggested wording to use.

What risks are covered by Capped Conveyancing insurance?

Risks covered include:

- any adverse matter not revealed or identified by LIM or title searches and enquiries (including fraud);
- prior non-compliance with registered covenants/encumbrances;
- lack of building consent or unauthorised additions;
- boundary disputes;
- seller misrepresentation; and
- unknown rights over the property.

What are the benefits in having cover for each residential conveyancing transaction?

When a problem is discovered, instead of working against their client, a lawyer who has Capped Conveyancing insurance will be able to provide a solution.

Other benefits include:

- better quality client offering;
- competitive advantage over practitioners who do not have Capped Conveyancing insurance;
- improved risk management;
- reduced exposure to professional indemnity claims (and therefore a reduction in PI premiums after a period of use);
- no excess payable (as there is under professional indemnity cover);
- the insurer waives subrogation rights against the lawyer where an innocent mistake has been made;
- lawyers maintaining their billable hours by not having to be involved in defending professional indemnity claims; and
- lawyers potentially securing additional fees from the Capped Conveyancing insurer where the solution to the problem is a legal one.

Capped Conveyancing insurance will create a positive transformation in residential conveyancing and re-define how professional indemnity will be used in the future.

What is the cost per transaction? Is it high?

Quite the opposite. The Capped Conveyancing insurance policy (limited to claims of up to $100,000 – overseas experience in the United Kingdom suggests that only cases of fraud are likely to exceed this amount) is available to lawyers for only $56 plus GST or, with the ADLSI member discount applied, only $50 plus GST, per policy, per conveyancing transaction.

However, this low premium is conditional on the lawyer purchasing a Capped Conveyancing insurance policy for each and every conveyancing transaction he or she does.

How is the Capped Conveyancing insurance policy arranged?

This is a simple process that is done via an online portal – it is easy and secure.

The lawyer registers for access to the portal and agrees to purchase a Capped Conveyancing insurance policy for each of their residential conveyancing transactions.

Using the portal, the lawyer enters each purchaser’s details, the property’s details and

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the settlement date and answers a few simple questions about the property.

The lawyer will immediately be emailed an insurance certificate and policy wording to back up the cover. It is that easy and secure.

How long does the policy last?

Each Capped Conveyancing insurance policy lasts for as long as the purchaser is the owner of the property, or if the purchaser transfers the property within the family group or to a Family Trust, and includes any mortgagee’s interest.

Has this cover been trialled in New Zealand?

A pilot scheme has been undertaken by an Auckland law firm over the past eight months. The firm found that all its clients appreciated the additional benefits provided by this insurance and responded positively to being included under it.

Additionally, the firm’s professional indemnity insurer was able to apply a discount to its professional indemnity premium when it was recently renewed in recognition of the “de-risking” effect of the Capped Conveyancing insurance coverage.

What happens if a lawyer only wants conveyancing insurance cover for a one-off transaction?

In such a case, Mainprice King will be able to arrange a one-off “Full Value” policy, with the sum insured being the purchase price of the property. The cost of a Full Value policy is .05% of the purchase price with a minimum of $300 (plus GST), including the ADLSI discount. If the lawyer is not an ADLSI member, it is .056% of the purchase price with a minimum of $340 (plus GST).

For example, a property with a purchase price of $750,000 would cost $375 (plus GST) for a member (or $420 plus GST for a non-member). This still represents considerable value.

What if a risk comes up during due diligence?

If an issue is identified as part of due diligence that is within the earlier-mentioned insured risks (such as an incorrect cross lease plan, unpermitted building work and access over land not owned by the vendor), this may be able to be insured on a “Full Value” policy basis.

If lawyers are registered to use the online portal, they will be able to obtain a quotation from the portal. If not registered, a lawyer can simply contact Mainprice King to provide the details of the purchaser, the property and the specific risk to be covered and Mainprice King can then ascertain whether cover can be obtained and on what terms and conditions. Most identified specific risks appear to be insurable. The premium for this is also discounted if the lawyer is an ADLSI member.

The availability of cover for such specific risks enables the lawyer to discuss the problem and provide a simple solution, which may have been difficult or costly to find in the past. The client can then choose to pay for this additional cover or decline and self-insure. Whether the client takes the cover or not, the lawyer has then discharged his or her responsibility for this risk. An added bonus is that any future purchasers, owners or mortgagees are also covered for that specific risk as the cover runs with the land, thus avoiding any issue when the property is resold.

Who underwrites the Capped Conveyancing insurance policies?

The security behind Capped Conveyancing insurance is Lloyd’s of London which has an “A+ Strong” Standard and Poor’s rating. The policies are underwritten by DUAL Asset Underwriting in London on its behalf and are available in New Zealand through DUAL New Zealand Limited. The DUAL Group is the world’s largest international underwriting agency and a Managing General Agent for Lloyd’s.

For more information, please contact Mainprice King directly on 09 336 1006 or by emailing info@mpk.co.nz. Alternatively, visit the ADLSI website www.adls.org.nz.

This Insurance is promoted by Mainprice King Chartered Brokers Limited, a Registered Financial Services Provider. In providing a link to information regarding Residential Capped Conveyancing insurance, ADLSI is not operating as an insurance broker.

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ADLSI and Law News were saddened by the news of the passing of Jacqueline McClew on 11 June 2015 in Auckland Hospital after an illness.

Ms McClew was a longstanding member of ADLSI and had been in practice as a barrister for over 20 years. She will be remembered as a popular and long-serving duty solicitor at Auckland District Court, a respected District Inspector for Mental Health for the Auckland and Northland regions, and a friend to many.

Friend and fellow Auckland District Inspector for Mental Health, Rosemary Thomson, spoke at the service for Ms McClew held at St Mark’s Anglican Church in Remuera on Wednesday 17 June 2015, and remembered her passion for the role.

“It is difficult to maintain a balance between the competing interests. Jacqueline brought to bear her extensive criminal experience and her compassion to the role. She loved being a District Inspector and those who worked with her, loved her being one.

“She was well liked and respected by all parties. It will come as no surprise to any of you, that Jacqueline was also known as ‘the glamorous DI’ by her colleagues and service users alike. A number of service users requested Jacqueline by name, many no doubt needed her professional guidance, others were just very pleased to see her latest outfit and enjoy her company,”

Julian Hague, Duty Solicitor Supervisor at the Auckland District Court, also spoke on behalf of those who have worked with Ms McClew as lawyers and colleagues in the Auckland District Court over the years.

“Jackie never wavered in her values and manner of dealing with the world, no matter how confrontational that world might be. On a daily basis, for decades, she did her polite and kind and decent best for the constant stream of unfortunates who churn through the Auckland District Court, and often, even more tragically or frighteningly, through our city’s psychiatric hospitals.

“Jackie was always polite and kind, considerate and gentle, polished and warm and generous of mind. She was refined without affectation, and cultured without conceit,” he said.

“Her loss has diminished us, but her life has enriched us.”

A message from Wellington-based Chief District Inspector Helen Cull QC also noted her sadness at the loss of “a good DI”. ADLSI President Brian Keene QC extended sympathy to Ms McClew’s family, friends and colleagues and noted, “Her contribution to the legal profession will be greatly missed.”
Human rights
Hunger protests and the right to die

Prepared by the New Zealand Centre for Human Rights Law, Policy and Practice

Some cases few would wish to decide. Like Department of Corrections v All Means All [2014] NZHC 1433, where Panckhurst J had to reckon with a hunger-striking prisoner who vowed to refuse food and treatment even to death.

Mr “All Means All” was a serving prisoner (we’re not told how that name came about – we’ll call him “AMA” in this note). AMA went on hunger strike to protest against the alleged untruthfulness of a detective at his trial. By the time of the Court’s decision he had gone 27 days without food.

The applicants were the Department of Corrections and the Canterbury District Health Board. Each sought a declaration that they had lawful excuse for not providing medical treatment, so long as AMA continued to refuse consent. In the alternative, Corrections sought a declaration that they could arrange artificial hydration and nutrition when things had got to the stage that:

(a) AMA’s health or life was in peril (as decided by a clinician); and
(b) AMA could no longer indicate consent or refusal to treatment.

The key provision in the case was section 11 of the New Zealand Bill of Rights 1990 (NZBOR): “Everyone has the right to refuse to undergo any medical treatment.”

Corrections argued that this right could justifiably be limited (in terms of section 5 of the NZBOR) at the point where AMA was no longer able to indicate consent, thus legitimating treatment. The argument was essentially that the State’s duties supplied the (reasonable) legal imperative to intervene and that the common law would so recognise were any intervention to be challenged. Panckhurst J was not persuaded. He gave these five reasons:

1. The nature of the section 11 right itself

Citing Lord Keith in Airedale NHS v Bland, the sanctity of human life, though fundamental, must yield to the principle of self-determination. Panckhurst J found these statements “almost decisive of the outcome in this case”.

Panckhurst J was reluctant to place the medical practitioners in an ethical dilemma. If required to treat [the hunger-striking prisoner], doctors would be forced to act against the ethical priority that New Zealand doctors placed on patient consent. The principle of patient consent is widely understood and practised, and a limitation on section 11 [right to refuse to undergo any medical treatment] would unsettle this stability.

Corrections’ point was that the section 11 right was not absolute because AMA’s welfare was ultimately their responsibility. It contended the hunger strike was akin to suicide by means of a sharp blade. Panckhurst J disagreed, noting that death was neither AMA’s desire, nor his intention. He was just willing to die for his cause. Further, psychiatric evidence showed no reason to believe that AMA did not retain capacity to consent or refuse.

2. The New Zealand context

New Zealand law demonstrated a very high regard for patient’s rights and the importance of patient consent – affirmed in section 11. It is seen also in the Health and Disability Commissioner Regulations 1996. Right 7 of the Code provides that “every consumer has the right to refuse services and to withdraw consent to services”. To similar effect is the New Zealand Medical Council Code of Good Medical Practice, issued just last year.

3. Arguments from overseas jurisdictions not compelling

European cases focused on “the conflict between the right to life, the obligations of the state and the individual’s right to physical integrity” and not, said Panckhurst J, on the issue of patient consent. The United States cases stressed the risk of prisoner manipulation of the prison system as a basis for state intervention by force-feeding. Panckhurst J noted that such claims rest on bare assertion. In fact, he suggested, the opposite might be true – that prisoners might be incentivised to attempt such manipulation by hunger strikes if they knew the state was obligated to provide medical treatment when they fell unconscious. Further, the two US Supreme Court decisions of Cruzan v Director, Missouri Dept of Health and Washington v Glucksberg were relevant. Though neither case addressed prisoners’ hunger strikes directly, they affirmed the right of the individual to refuse medical treatment even if such treatment is required to save their life.

4. & 5. The ethical qualms of the medical profession and the desirability of simplicity and certainty

Panckhurst J was reluctant to place the medical practitioners in an ethical dilemma. If required to treat AMA, doctors would be forced to act against the ethical priority that New Zealand doctors placed on patient consent. Finally, the principle of patient consent is widely understood and practised, and a limitation on section 11 would unsettle this stability.

Panckhurst J therefore made a declaration in the following terms: “Persons owing a duty of care to AMA will have lawful excuse for not providing medical treatment to him while he continues not to give informed consent to such treatment, or an advance directive refusing consent is in place.”

The situation was open to change if AMA decides to give such consent.

This case summary was prepared by the New Zealand Centre for Human Rights Law, Policy and Practice at the Faculty of Law, Auckland University, and is reproduced here with permission.
+ Case summary

McKeown v Small & Ors [2015] NZHC 1043 (Gendall J)

Prepared by Sacha Jugum, Editor of ADLSI's Bulletin

Estate – dispute over valuation and apportionment of estate as between adult children beneficiaries – claim against executors – applicable principles – Partnership Act 1908 – farming partnership – valuation of estate – administration of estate – beneficiaries who are also executors – distribution of estate – consideration of accounting evidence – doctrine of survivorship – plaintiff son’s share in late father’s estate is increased by $93,126.67 with interest to accrue pursuant to Judicature Act 1908 – costs reserved.

Mr and Mrs M [the parents of the parties in the current dispute] were farmers – Mr M settled a trust – Mr & Mrs M executed mutual wills forgiving certain debts and leaving their residuary estate equally to their children – Mr M passed away – over time Mrs M subsequently made three new wills, effectively excluding her son JM [the present plaintiff] from inheriting anything from her estate – Mrs M instead left her residuary estate to her two daughters – Mrs M left an explanatory note [with an earlier will, not her final one] referring to the help given to JM when he originally purchased a farm and noting that JM still received an equal share of Mr M’s estate.

JM disputed this “help” he had allegedly received – JM did not take issue with his mother’s will or with trust distributions but instead “primarily” argued that his father’s estate had been undervalued [and so his two sisters who were the defendants and executors should reimburse him] – the executors had authorised distributions to themselves as beneficiaries and JM, despite JM requesting that no further distributions be made [pending resolution].

JM alleged that Mr M’s estate had been undervalued and so his one-third share should be $93,125.67 more than he had in fact received – JM claimed for costs, interest on the extra sum or an account of profits on the extra sum – consideration of accounting evidence and partnership structure – consideration of evidence as to partnership and duration – applicability of the doctrine of survivorship in relation to the partnership.

Held: in this case the partnership continued beyond Mr M’s death [cf with Partnership Act 1908] – gains or losses associated with investments purchased through partnership assets are to be equally borne by each of the estates of Mr and Mrs M – the default position is that the principle of survivorship does not apply to partnerships – no basis for departure from that position in this case – the accounting evidence is “wanting”.

JM has succeeded on all points in relation to the value of Mr M’s estate – JM’s share in Mr M’s estate is increased by $93,126.67 with interest to accrue pursuant to Judicature Act 1908 – costs reserved. [See in particular para 59 for commentary on administration of estates and considerations relating to the independence of accounting evidence.]

A PDF of this decision is available from the Judicial Decisions Online section of the Ministry of Justice website https://forms.justice.govt.nz/.

+ ADLSI event

Annual Immigration and Refugee Law dinner, 27 July 2015

The ADLSI Immigration and Refugee Law Committee is again holding its annual dinner with the Minister of Immigration, the Hon Michael Woodhouse.

Immigration lawyers, licensed advisers and other senior figures in the immigration sector are invited to this valuable opportunity to meet and build rapport in a convivial setting. The evening will include pre-dinner drinks and a three-course dinner, plus a short address from the Minister.

Date: Monday, 27 July 2015
Timing: 7.00pm arrival and drinks 7.30pm dinner
Dress code: Business attire
Venue: Northern Club, 19 Princes Street, Auckland
Tickets: $83.00 + GST ($95.45 incl. GST) for ADLSI members and the judiciary $95.00 + GST ($109.25 incl. GST) for non-members

To register for this dinner visit www.adls.org.nz; alternatively email adls.events@adls.org.nz or phone (09) 303 5287. Spaces are limited, so register before Wednesday 22 July 2015 to secure your spot, subject to availability.

ADLSI’s standard cancellation policy applies for this event.

+ New book

Directors’ Powers and Duties, 2nd Edition

Author: Peter Watts

This new edition of Directors’ Powers and Duties provides practitioners with a detailed treatment of the New Zealand law in relation to one of the most important and complex aspects of company law – directors’ powers and duties.

In the many areas where the law is unclear, this book comprehensively analyses the various options and attempts to provide clear solutions. It also supplies useful sketches of leading cases to illustrate the point of law.

Price: $169.56 plus GST ($195.00 incl. GST)*

Price for ADLSI Members: $152.60 plus GST ($175.50 incl. GST)*

(* + Postage and packaging)

To purchase this book please visit www.adls.org.nz or contact the ADLSI bookstore by phone: 09 306 5740, fax: 09 306 5741 or email: thestore@adls.org.nz.)
To view all ADLSI CPD & register: www.adls.org.nz/cpd
Email us: cpd@adls.org.nz | Phone us: 09 303 5278

Selected CPD

Featured CPD

**Perspectives on Group Litigation and Litigation Funding**
Representative actions are a growing trend in New Zealand. With potentially large numbers of plaintiffs, the complexities of procedure, case management, funding and insurance must be carefully managed. This seminar will dispel misinformation and provide key information on the representative action legal landscape, explain how you can secure funding and insurance for these actions, and include practical tips from those involved in running and defending such claims.

**Learning outcomes**
- Gain insight into the utility and risks of representative actions.
- Understand the current legal issues relating to representative actions and litigation funding in New Zealand.
- Learn, from experienced personnel, how to effectively build, manage and defend a representative action.
- Become better positioned to secure funding for your clients for payment of your fees.

**Who should attend?**
All lawyers who deal with large-scale disputes (or who might be approached to do so).

**Presenters:** Oliver Meech, Partner, Minter Ellison Rudd Watts; Catherine Levermore, Senior Associate, Minter Ellison Rudd Watts; Patricia Mills, Barrister, Redmond Chambers; Adina Thorn, Principal, Adina Thorn Lawyers Chair; The Honourable Justice Asher

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**Research Skills for Lawyers II: Best Sources of Free Legal Information – Techniques and Tips for Using Them**
The Internet offers lawyers a wealth of free legal sites, a steady flow of news feeds and updates, and endless information relevant to client files of every description. However, the Internet can also expose the unwary researcher to a minefield of mis- and dis-information. This webinar will arm you with legal and resources to help you get the most out of the best free resources.

**Learning Outcomes**
- Become aware of the range of free legal resources on the Internet.
- Discover legal update services you can subscribe to for no cost.
- Acquire more sophisticated research techniques to get better results.
- Learn how to assess the reliability of websites.

**Who should attend?**
Any lawyer wishing to update their Internet research skills. Legal executives would also benefit from attending.

**Presenters:** Therese Duffin, National Information Services Manager & Amanda Wall, Research & Information Librarian, Bell Gully

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**Strategies Around the Use and Analysis of Dispute Resolution Clauses**
Recent Supreme Court judgments have highlighted the importance of having knowledge of Dispute Resolution clauses when including them in commercial contracts. All too often, Dispute Resolution clauses become part of such agreements with little thought to content or whether they are really needed in the first place. Learn how best to advise clients on what form, if any, Dispute Resolution clauses might take and gain insights into how best to tailor them to suit clients' needs.

**Learning outcomes**
- Develop a better understanding of whether a Dispute Resolution clause is really necessary, what the different Dispute Resolution options are, and what form of Dispute Resolution might be the most suitable.
- Apply your analytical skills better in relation to the content of a Dispute Resolution clause and what the possible consequences of it may be.
- Learn how best to adapt Dispute Resolution clauses to suit your client's needs.

**Who should attend?**
All lawyers involved in drafting and interpreting contracts of all types.

**Presenters:** Paul Cogswell, Principal, Cogswell Law; Nick Gillies, Partner, Hesketh Henry

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**Privacy in the Digital Age: The Risks and Opportunities of New Technology**
Technology and social media are now inescapable aspects of modern life. Privacy issues have, as a result, become increasingly complex. It is essential for lawyers to know how their clients' professional and personal privacy may be affected by technology and how to advise clients on avoiding privacy breaches or protecting them from unwanted attention.

**Learning outcomes**
- Learn more about what privacy considerations need to be taken into account when using or developing technology and learn best practice tips to avoid potential problems.
- Gain a better understanding of how technology and social media can impinge upon the privacy of both corporate and individual clients.
- Learn more about the potential consequences that arise when a client's privacy has been compromised.

**Who should attend?**
General practitioners, litigators and in-house counsel. HR managers may also benefit from attending.

**Presenters:** Daimhin Warner, Customer Governance and Privacy Manager, Sovereign Insurance; Joe Edwards, Senior Associate, Russell McVeagh
CPD in Brief

Commercial Law Series: Thanks for Sharing:
Offers of Equity Securities under the Financial Markets Conduct Act
This seminar will provide a practical overview of the new regime under the Financial Markets Conduct Act 2013 (including the key departures from the former regime under the Securities Act 1978) as it relates to offers of equity securities. Participants will then be better able to identify and overcome the challenges of the FMCA regime and maximise opportunities for their clients.
Presenters: Stephen Lowe, Partner, Chapman Tripp and Jeremy Gray, Senior Solicitor, Chapman Tripp
Chair: Andrew Lewis, Principal, Andrew Lewis Law

Bankruptcy: Uses and Abuses
This webinar will explore some of the key issues when advising debtors and creditors on bankruptcy, as well as the role of the Official Assignee in the proceedings.
Presenters: Gareth Neil, Partner, Meredith Connell and Nick Moffatt, Senior Associate, Bell Gully

Rural Law Series: Best Practice for Tailored Succession Planning
With focus on both legal and financial aspects, this webinar will equip lawyers with knowledge of how best to advise rural and farming clients according to their individual needs when planning their future, that of the farm and their children.
Presenters: Warwick Deuchrass, Partner, Anderson Lloyd, Queenstown and John Adams, Director – Tax, KPMG, Hamilton

Self-Represented and Vexatious Litigants – Civil Cases: Judicial Perspective & Practitioner’s Dilemma
This webinar will provide civil litigators with invaluable insights into the Court’s role, the practical implications for Judges and Registry staff and how the Court strives to identify and balance the various interests at play. It will also provide practical guidance on how to advocate effectively in the High Court when the other party self-represents.
Presenters: The Honourable Justice Wylie and Noel Ingram QC

CPD On Demand

Probate and Administration Matters!
Want to get probate granted efficiently? Curious about how the High Court processes probate applications? Keen to protect yourself against new and emerging administration risks? This On Demand webinar is for you.
Presenters: John Earles, Specialist Technical Advisor and Registrar of the High Court, Wellington and Tony Steindle, Director, Steindle Williams Legal

All sessions from the Property Law Half-Day Conference are available, including the following package:
Advising on Cross Leases: Before and After Purchase
Cross leases present a multitude of problems for lawyers and their clients. This session explores common issues associated with cross leases and gives practical guidance on how best to advise clients. Presenter: Joanne Chilvers, Senior Associate, Hesketh Henry

Conveyancing Practice: Making the Conveyancer’s Lot a Happier One
For conveyancers, letters of engagement and undertakings can be their friend or their foe. This session will look at the common traps and provide pragmatic solutions. Presenters: Paul Collins, Barrister and Tim Jones, Partner, Glaister Ennor

CPD Pricing

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<thead>
<tr>
<th>Delivery Method</th>
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<th>Non-Member Pricing</th>
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<tr>
<td>Webinar</td>
<td>$75.00 + GST (= $86.25 incl. GST)</td>
<td>$95.00 + GST (= $109.25 incl. GST)</td>
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<tr>
<td>Seminar (in person)</td>
<td>$125.00 + GST (= $143.75 incl. GST)</td>
<td>$180.00 + GST (= $207.00 incl. GST)</td>
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<td>Seminar (live stream)</td>
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<td>On Demand (1-hour recording)</td>
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<td>$110.00 + GST (= $126.50 incl. GST)</td>
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<td>On Demand (2-hour recording)</td>
<td>$95.00 + GST (= $109.25 incl. GST)</td>
<td>$130.00 + GST (= $149.50 incl. GST)</td>
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For group bookings for webinars & CPD On Demand, see the ADLSI website at: www.adls.org.nz/cpd/help-and-faqs/group-bookings/.
networking for people involved in various therapeutic jurisprudence-related projects, it signifies, for the purposes of New Zealand law and practice, that the concept of therapeutic jurisprudence has come of age and is fit for purpose as a methodology for bringing about humane and efficacious change in a range of legal institutions and procedures.

**Useful links:**

- N Stobbs, “How to do therapeutic jurisprudence research” [https://mainstreamtj.wordpress.com/2015/05/20/how-to-do-therapeutic-jurisprudence-research/](https://mainstreamtj.wordpress.com/2015/05/20/how-to-do-therapeutic-jurisprudence-research/);
- “Mandatory sentencing – a TJ unfriendly bottle?” [https://mainstreamtj.wordpress.com/2015/05/20/does-mandatory-sentencing-achieve-its-aims/](https://mainstreamtj.wordpress.com/2015/05/20/does-mandatory-sentencing-achieve-its-aims/); and

For more information or to register for the upcoming conference which is taking place on 3 and 4 September 2015, please visit [http://tjaotearoa.org.nz/](http://tjaotearoa.org.nz/).

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**WILL INQUIRIES LAW NEWS**

The no-hassle way to source missing wills for **$80.50** (GST Included)

Email to: reception@adls.org.nz
Post to: Auckland District Law Society Inc., PO Box 58, Shortland Street, DX CP24001, Auckland 1140. Fax to: 09 309 3726
For enquiries phone: 09 303 5270

Please refer to deeds clerk. Please check your records and advise ADLSI if you hold a will or testamentary disposition for any of the following persons. If you do not reply within three weeks it will be assumed that you do not hold or have never held such a document.

Raymond Alan CHALLENDER, late of 902 McLaren Falls Road, RD1, Tauranga, Aged 61 (Died 23'04'2015)
Houpeke Morore PIRIPI, late of 2954 Old Russell Road, Punaruku, Hikurangi, formerly of the South Auckland area, Retired, Aged 89 (Died 05'04'2015)
Benjamin Mark SMITH, late of 16 Kipling Avenue, Epsom, Auckland, Engineer, Aged 32 (Died 01'02'2015)
Senitalela VAEA, late of 4/390 Onehunga Mall, Onehunga, Factory worker, Aged 45 (Died 09'05'2015)
Terry Leslie WETHERELL, late of 75 Ross Street, Onerahi, Whangarei, Aged 64 (Died 07'03'2015)
Tametame WIREMU (also known as Tom WILLIAMS), late of 11 Dagenham Street, Manurewa, Auckland, Civil contractor, Aged 68 (Died 20'05'2015)

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**+ Book**

*It Was All Legal*

**Author:** Graham Wear

*It Was All Legal: The Auckland District Law Society and its members 1879-2009* is a fascinating story of Auckland's colourful lawyers and the District Law Society to which they all belonged.

Set against the history of Auckland and New Zealand as a whole, it spans from the mid-19th century to the first decade of the 21st century.

The Auckland District Law Society was replaced in 2009 by an incorporated society, which has published this book as a record of an eventful 130 years.

**Price:** $43.43 plus GST ($49.95 incl. GST)*

**Price for ADLSI Members:** $34.73 plus GST ($39.95 incl. GST)*

(* + Postage and packaging)

To purchase this book please visit [www.adls.org.nz](http://www.adls.org.nz) or contact the ADLSI bookstore by phone: 09 306 5740, fax: 09 306 5741 or email: thestore@adls.org.nz.

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**Senior Associate**

*Property, commercial and private client*

We have an excellent opportunity for an experienced senior lawyer to join our growing firm.

Neilsons Lawyers has an immediate vacancy for a dynamic solicitor with minimum 10 years PQE in general property, commercial and private client work. Relationship property experience is preferred but not essential.

We are looking for a natural leader who can supervise a team of several solicitors and relate well to a diverse client base. The successful applicant will have uncompromising and exacting standards and be motivated and ambitious. Effective communication skills and meticulous attention to detail are essential.

The successful candidate will have a clear progression to directorship.

All applications will be treated in strict confidence.

Please email your application and CV to aaron@neilsonslawyers.co.nz

Initial enquiries welcome, please phone Aaron Dower on 09 634 7740

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**It Was All Legal**

[Image]
ADLSI, in association with the Auckland University Students Society [AULSS], has recently launched a pilot initiative which aims to connect 4th and 5th year law students from the University of Auckland seeking volunteer or paid work experience, with Auckland-based law firms offering such opportunities.

The programme also provides law firms with an opportunity to work with those students they may select, to help the firm with tasks that may require some additional assistance.

If you, or your firm is able to offer a paid or volunteer work experience opportunity to a 4th or 5th year law student, you will be able to post the details free of charge on the ADLSI noticeboard at www.adls.org.nz.

For more information on the work experience pilot programme, please contact ADLSI on (09) 303 5270 or email workexperience@adls.org.nz.

Terms and conditions apply.
Residential Capped Conveyancing Insurance

A new approach to managing risk in residential conveyancing

Mainprice King in association with the DUAL Group has developed a Residential Capped Conveyancing Insurance policy backed by Lloyd’s of London.

For one low premium per policy, per conveyancing transaction (provided it’s purchased for all your New Zealand conveyancing transactions), lawyers and their clients can now better manage their risks in residential conveyancing than ever before, as the capped policy covers most unknown risks at settlement.

Each policy is available for only $50+GST for ADLSI members ($56+GST for non-members) for lawyers practising in New Zealand.

For more information call Mainprice King on 09 336 1006 or visit www.adls.org.nz.

Terms and conditions apply.